



# Department for Transport

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12 August 2022

Dear Sir/Madam,

## **Planning Act 2008**

### **Application for the Proposed A47 North Tuddenham to Easton Development Consent Order**

1. I am directed by the Secretary of State for Transport ('the Secretary of State') to say that consideration has been given to:
  - The report dated 12 May 2022 of the Examining Authority ('ExA'), comprised of Adrian Hunter (BA Hons) BTP MRTPI who conducted an Examination into the application made by National Highways ('the Applicant') for the A47 North Tuddenham to Easton Development Consent Order ('the DCO') under section 37 of the Planning Act 2008 ('the 2008 Act') as amended);
  - The responses to the further consultation undertaken by the Secretary of State following the close of the Examination in respect of the application; and
  - Other late representations received by the Secretary of State following the close of the Examination.
2. The application was accepted for Examination on 12 April 2021. The Examination began on 12 August 2021 and was completed on 12 February 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 an accompanied site inspection and four unaccompanied site inspections.
3. The DCO as applied for would grant development consent for the duelling of a 9km section of the existing A47 carriageway between North Tuddenham and Easton – the elements of which (collectively referred to as 'the Proposed Development') are:
  - 9km of new dual carriageway between North Tuddenham and Easton running to the south of the existing A47 at Hockering and north of the existing A47 at Honingham;
  - A new grade separated junction to the north of where Berrys Lane and Wood Lane intersect with the existing A47 ('Wood Lane junction');
  - A new grade separated junction to the south of the existing staggered junction at Taverham Road and Blind Lane ('Norwich Road junction');

- The removal of the existing Easton Roundabout to create a free-flowing road;
  - The building of four new bridges for the A47 to pass over or under at the new Mattishall Lane link road, the proposed Wood Lane junction, the River Tud and the proposed Norwich Road junction;
  - Two new laybys on the A47 between Fox Lane and the proposed Wood Lane junction;
  - Closure to through traffic of Church Lane (East Tuddenham), Berrys Lane, Blind Lane and Church Lane (Easton), north of the A47;
  - Widening of the junction of Rotten Row and Church Lane (East Tuddenham);
  - Converting sections of the A47 to local needs including converting to a Class B Road north of Honingham, with a new cycle track between the new Dereham Road Link and Honingham Roundabout and reducing to a single lane in front of St Andrew's Church, Honingham, with inclusion of passing places, parking places, turning area and security gate;
  - Changes to the existing public rights of way network and provision for new segregated routes for cyclists and walkers including a new route for cyclists and walkers linking Honingham and St Andrew's Church across the A47 via the proposed Honingham Church underpass and a new route for walkers and cyclists linking Easton with Lower Easton across the A47 via the proposed Easton footbridge.
  - New drainage systems including new outfalls to the River Tudd, dry culverts and new attenuation basins with pollution control devices;
  - Compounds, material storage areas and temporary vehicle parking during construction;
  - Diversion or installation of electricity lines, water pipelines, communications and telecommunications and gas pipelines.
  - Environmental measures embedded within the Proposed Development to reduce the environmental effects and deliver wider benefits.
  - Temporary closure of access to Honingham Lane at the junction with Taverham Road, Weston Road and Telegraph Hill (ER 2.2.8).
4. There were no material changes to the application during the Examination; however, a non-material change was accepted which comprised, in summary, the following:
- New ghost island at the proposed junction of Mattishall Lane Link Road and the detrunked A47;
  - New ghost island at the proposed junction of the detrunked A47 and Dereham Road and alteration to the shape of the adjacent drainage basin;
  - Extension of the proposed Highway Limits to include the existing drain on the eastern side of Berrys Lane;
  - Adjustment to the proposed access to the proposed Lyng Road drainage basin; and
  - Conversion of proposed Taverham Road drainage basin to a wetland area (ER 2.3.2).
5. The Proposed Development lies within the administrative areas of Breckland Council ('BC'), Broadland District Council ('BDC') and South Norfolk Council ('SNC') all of which fall within the administrative boundary of Norfolk County Council ('NCC') (ER 2.1.1).

6. The Secretary of State is content that the proposals qualify as a Nationally Significant Infrastructure Project ('NSIP') under sections 14(1)(h) and 22(1)(b) and (3) of the 2008 Act (ER 1.1.7).
7. Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ('the Report'). All 'ER' references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form 'ER x.xx.xx' as appropriate. References to 'requirements' are to those in Schedule 2 to the DCO as the ExA recommended at Appendix D to the Report (the 'rDCO').

### **Summary of ExA's Recommendation**

8. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad headings:
  - Legal and Policy Context (Chapter 3);
  - The Planning Issues (Chapter 4);
  - Findings and Conclusions in relation to Planning Issues (Chapter 5);
    - Good Design
    - Air Quality
    - Biodiversity
    - Climate Change
    - Geology and Soils
    - Historic Environment
    - Landscape and Visual
    - Material Assets and Waste
    - Noise and Vibration
    - Health
    - Socio-Economic
    - Land Use
    - Traffic and Transport
    - Water Environment
    - Other Considerations
  - Findings and Conclusions in relation to Habitat Regulations Assessment (Chapter 6)
  - Conclusion on the Case for Development Consent (Chapter 7);
  - Compulsory Acquisition and Related Matters (Chapter 8);
  - Draft Development Consent Order and Related Matters (Chapter 9)
  - Summary of Findings and Conclusions (Chapter 10);
9. For the reasons set out in the Report, the ExA recommended that the DCO be made in the form set out in Appendix D to the Report (the 'rDCO').

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

10. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** 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 ('the 2017 Regulations').

### **Summary of Secretary of State's Consideration**

11. The ExA recommended the Order be made subject to the Secretary of State's consideration of the matters in paragraph ER 10.3.1 as follows:
  - That Natural England ('NE') is satisfied with the provisions of requirement 7 and requirement 12 and that mitigation is broadly adequate. Also, that NE's position on the Inheritance Tax Act 1984 at Berry Hall Estate ("BHE") be sought and that NE have no other issues which would act as an impediment to the making of the Order.
  - If additional data on Barbastelle bats should become available prior to the decision being made, that the Proposed Development can robustly demonstrate that the impact on the conservation status of bat species near the route can be avoided.
  - That the Applicant and NCC have agreed the proposed Protective Provisions
  - To consider seeking the Applicant's views on the ExA's recommended deletion of article 7 in the rDCO concerning planning permission.
  - The impact of Defra's advice of 16 March 2022 in respect of nutrient neutrality.
12. The Secretary of State is satisfied that all matters listed above have been resolved, as described below.
13. The Secretary of State's consideration of the Report, responses to his further consultations of 1 June 2022, 27 June 2022, and 19 July 2022, representations received after the close of Examination and all other material considerations are set out in the following paragraphs. Where consultation responses are not otherwise mentioned in this letter, it is the Secretary of State's view that these representations do not raise any new issues that were not considered by the ExA and also do not give rise to an alternative conclusion or decision on the DCO.
14. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations as set out in the Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

### **The Secretary of State's Consideration of the Application**

15. Section 104(2) of the 2008 Act has effect in relation to the Proposed Development to which the application relates. In determining this application, the Secretary of State must therefore have regard to the relevant National Policy Statements ('NPS'), and Local Impact Reports ('LIR') submitted, any matters prescribed in relation to development of the description to which the application relates, and any other matters the Secretary of State considers to be both important and relevant to the decision (ER 3.1.1). Under section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with any relevant NPS which in this case is the National Policy Statement for National Networks ('NPSNN'), subject to any of the exceptions in section 104(4) to (8) of the 2008 Act applying (ER 3.1.2).

16. The Secretary of State does not consider any of them apply on the facts of this case. The Secretary of State has also had regard to the environmental information associated with this scheme as defined in regulation 3(1) of the 2017 Regulations. 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.
17. With regard to the NPSNN, in a Ministerial Statement issued on 22 July 2021, the Secretary of State advised that a review of the NPSNN would begin later in 2021 and would be completed no later than Spring 2023. While the review is undertaken, the NPSNN remains relevant government policy and has effect for the purposes of the 2008 Act. The NPSNN will, therefore, continue to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.
18. The LIRs and the relevant development plans the Secretary of State has had regard to are described in section 1 of the Report. The Secretary of State also notes the ExA's assessment set out in section 3 of the Report with regard to European Law and related UK Regulations, other relevant legal provisions, previous DCOs, transboundary effects, other relevant policy statements and the National Planning Policy Framework ('the Framework') and agrees these are matters to be considered in deciding this application. The Secretary of State notes that European Law and related UK Regulations set out in ER 3.4.3 remain in place despite the UK having left the EU on 31 January 2020 and despite transition arrangements ending on 31 December 2020. These are therefore still relevant to this application.

### **Need for the Proposed Development**

19. The Proposed Development is one of six A47 schemes identified in the Roads Investment Strategy ('RIS') 1 and RIS 2 to improve journeys on a 115-mile section of the A47 between Peterborough and Great Yarmouth (ER 2.4.4). The Applicant asserts that there is a need for the Proposed Development as the existing single carriageway section currently acts as a bottleneck causing longer and more unreliable journey times (ER 5.2.9). The Secretary of State notes that this section of the A47 has a poor safety record and is ranked 2nd nationally for fatalities on A roads (ER 5.2.13 and 5.2.14). The Secretary of State notes that the submission made by Norfolk Constabulary supported proposals to improve safety along this stretch (ER 5.2.15). The Secretary of State acknowledges that the Applicant considers that Proposed Development will improve safety (ER 5.2.13) and provide additional capacity along the A47 therefore increasing the reliability of journey times. The ExA concluded that these were benefits of the Proposed Development and that these would in turn add additional capacity that would help support housing and economic development in and around Norwich along with providing improved links within the wider region and beyond (ER 5.2.25). The ExA also considered that the Proposed Development would address current safety issues and deliver highway safety improvements in the future (ER 5.2.26).
20. The Secretary of State notes that both BC and NCC supported the principle of the Proposed Development (ER 5.2.11) as well as Clarion Housing Group, who

considered that it would enable growth in and around Norwich which would deliver up to 5,000 new homes (ER 5.2.12).

21. The Secretary of State notes that other IPs questioned the need for the Proposed Development emphasising it contradicted government announcements on the climate emergency and pointed to a policy shift away from cars, suggesting alternatives to building new roads (ER 5.2.16). The Secretary of State notes that the ExA highlight that paragraph 4.6 of the NPSNN sets out that the ExA and Secretary of State do not need to be concerned with the national methodology and national assumptions around key transport demands (ER 5.2.27). The Secretary of State notes that the NPSNN states (at paragraph 2.22) that without improved road networks it will be difficult to support further economic development, employment and housing and therefore at a strategic level there is a compelling need to improve the national road network. The Secretary of State is satisfied that addressing road congestion, as this scheme will do, will help to address that. The Secretary of State further notes that paragraph 2.13 of the NPSNN highlights the importance of the strategic road network in providing critical links between areas (ER 5.2.3) and that paragraph 2.21 of the NPSNN states that although there are alternative options to meet identified need, relying solely on these alternatives is not viable or desirable as a means of managing need (ER 5.2.4).
22. The Secretary of State notes that an economic assessment considering the economic, environmental and social benefits and disbenefits of the Proposed Development was undertaken by the Applicant (ER 5.2.17) which was based on forecast core growth including high and low growth traffic scenarios with the latter allowing for uncertainties in future national trends which would result in a reduced traffic demand (ER 5.2.20). Under the low growth scenario, the Secretary of State notes that the Applicant considered that the scheme would still represent medium value for money although with the inclusion of improved journey time reliability benefits and wider economic benefits the Applicant considered the Proposed Development would represent high value for money (ER 5.2.19). The Secretary of State notes the representations made by Dr Andrew Boswell, who considered that, following the publication of new carbon prices for policy and assessment, the Benefit Cost Ratio ('BCR') should be recalculated which would reduce the economic value of the scheme from high to medium value for money (ER 5.2.22). In response, the Secretary of State notes that the Applicant stated it would review its BCR in accordance with the Project Control Framework governance for Major Projects (ER 5.2.23) but at the end of the Examination the Applicant's position was that the project would still deliver a sufficient positive BCR to support delivery (ER 5.2.24).
23. The Secretary of State notes that the assessment complied with the NPSNN requirements at the time of submission, and that no further work has been undertaken by the Applicant to reflect changes made subsequently or to reflect Dr Andrew Boswell's calculations as mentioned above. The Secretary of State also notes the requirement for the Applicant to carry out further economic work as the project progresses. The Secretary of State further notes that despite Dr Andrew Boswell's provision of alternative figures, he does not question the overall benefits of the Proposed Development in that regard. The Secretary of State agrees with the ExA that the costs and benefits of the proposal have been suitably assessed and

the approach taken to the economic assessment is consistent with paragraph 4.5 of the NPSNN (ER 5.2.29- 5.2.30).

#### Conclusion

24. The Secretary of State considers that the Proposed Development aligns with the policy aims of the NPSNN and agrees with the ExA that the Proposed Development would deliver a significant benefit to the strategic road network (ER 7.3.58) by improving journey reliability times, reducing congestion (ER 5.16.29) and improving road safety (ER 5.2.26), and increasing network capacity along the A47 which would support housing and provide wider economic benefits in the Norwich area (ER 5.2.25). Consequently, the Secretary of State agrees with the ExA that high positive weight is afforded to the Proposed Development because its need has been established in accordance with the requirements of the NPSNN (ER 5.2.31).

#### Consideration of Alternatives

25. The Secretary of State notes the approach taken by the Applicant in respect of the route options and refinement of the same (ER 5.3.1 and 5.3.2) and notes that although no substantive comments were received by the ExA in relation to the overall route, that a number of IPs raised concerns with regard to the location, size and design of the proposed Wood Lane junction and considered that there were alternative approaches to solve the issues they had identified (ER 5.3.7).
26. The Secretary of State notes the proposals put forward by Weston Longville Parish Council ('WLPC'), Mr Mark Kenney and BHE as well as the Applicant's response on these proposals (ER 5.3.9-5.3.15). The Secretary of State further notes the ExA considered that the first two did not represent viable alternatives and that in relation to the last proposal, it would require substantial changes to the Proposed Development and the existing roads which the Applicant did not accept (ER 5.3.26 - 5.3.28). The Secretary of State, like the ExA, is satisfied that with regard to alignment of the Proposed Development, reasonable alternatives were considered and refined before the preferred option was identified and that the application meets the requirements of the NPSNN in respect of consideration of alternatives for the general alignment (ER 5.3.20).
27. The Secretary of State notes the ExA's consideration of viable modal alternatives and agrees that the road-based form of the Proposed Development would tackle the identified highway problems along the existing A47 directly and that Government policy continues to support investment in the strategic road network (ER 5.3.21). The Secretary of State also notes the ExA's conclusion that limited evidence was presented to the Examination to demonstrate that investment in alternative modes (such as travel by foot, cycle, or public transport) on a comparable scale to that of the Proposed Development would offer a viable alternative means of achieving the travel benefits of the Proposed Development. The Secretary of State has no reason to disagree with this and like the ExA is satisfied that the appraisal of alternatives to a road-based scheme is sufficient to meet the requirement of the NPSNN (ER 5.3.22). The Secretary of State agrees with the ExA's conclusion that the Proposed Development has been subject to an options appraisal in achieving its status in the RIS, and that proportionate option consideration of alternatives has been undertaken as part of the application process, and so complies with paragraph 4.27 of the NPSNN (ER 5.3.30). In addition, by including within the Environmental Statement

(‘ES’) an outline of the main alternatives studied and providing an indication of the main reasons for identifying the preferred route, taking into account the environmental effects, the Secretary of State is content that the Applicant has complied with paragraphs 4.26 of the NPSNN (ER 5.3.29).

### **Good Design**

28. The Secretary of State notes that the Proposed Development is a linear development that is required to integrate into the existing highway network at several locations, which constrains its siting and, to a degree, its layout (ER 5.4.7). He has taken account that the ExA was satisfied that the Environmental Masterplan included the recommendations from the various ES chapters, and that the ExA was content with the Applicant response to the ExA’s questions on their overall approach to design (ER 5.4.8).
29. The Secretary of State notes that little concern was raised about the appearance of the Proposed Development and associated structures (ER 5.4.10) save for the design of the Wood Lane junction and the relationship between the Proposed Development and River Tud, both of which are addressed in further detail below under the headings Historic Environment, Landscape and Visual and Traffic and Transport. Although the Secretary of State notes that the final details of the design are yet to be finalised, he is satisfied by the ExA’s confirmation that the safeguards, as provided by the rDCO and Environmental Management Plan (‘EMP’), are sufficient to meet the NPSNN requirements for good design and accordingly the Proposed Development is compliant with the NPSNN (ER 5.4.11 and 5.4.12).

### **Air Quality**

30. Paragraphs 5.3 to 5.15 of the NPSNN set out specific policy considerations for air quality which are summarised in Chapter 3 of the ExA’s Report (ER 5.5.7 - 5.5.12). Paragraph 5.10 of the NPSNN states that the Secretary of State should consider air quality impacts over the wider area likely to be affected as well as the near vicinity of the Proposed Development. It also states that he must, in all cases, take account of the relevant statutory air quality thresholds set out in domestic and European legislation (ER 5.5.9). The Secretary of State accepts the ExA’s assessment of policy considerations that apply to this decision (ER 5.5.4 - 5.5.14) and notes that during the Examination consideration was given to the relevant sections of the Air Quality Directive, the Air Quality Standards, the Clean Air Strategy and to relevant local plans and policies (ER 5.5.57).
31. The Secretary of State notes that the ExA was satisfied that the Proposed Development is not within an Air Quality Management Area, that paragraph 4.55 of the NPSNN, concerning pollution control, has been met, and that the ExA had no reason to believe that, for the purposes of paragraph 4.56 of the NPSNN, any environmental control permit, licence, or other consents would not be granted (ER 5.5.58 - 5.5.59).
32. The Secretary of State notes that the ExA raised a number of questions about the Applicant’s construction programme including in relation to the length of the construction period but that no substantive evidence was presented during the



Examination which disputed the Applicant's construction programme or the Applicant's assertion that the construction programme could be delivered in less than two years (ER 5.5.48 and 5.5.60).

33. The Secretary of State agrees with the ExA that the Applicant has satisfactorily considered the predicted impact of likely emissions during construction (ER 5.5.60) and that the negative impact on air quality during construction will be limited and localised and would be mitigated (ER 5.5.74). Further, he is satisfied that appropriate measures are secured within the rDCO and EMP to address unforeseen construction events, ongoing consultation, dust mitigation and monitoring of the construction phase (ER 5.6.60).
34. The Secretary of State notes that during the operational phase of the Proposed Development the ExA concluded that there will be localised net worsening of local air quality (ER 5.5.74) but is satisfied that this would not result in any new exceedance of the annual mean NO<sub>2</sub> of 40ug/m<sup>3</sup> (ER 5.5.31) or PM<sub>10</sub> annual mean air quality objectives (ER 5.5.34). The Secretary of State agrees with the ExA that the Applicant's overall approach for air quality assessment and mitigation and for NO<sub>2</sub> monitoring is satisfactory (ER 5.5.64) and further notes the Applicant's position on the conclusions of the air quality assessment that there are no significant adverse effects arising from the operation of the Proposed Development for human health receptors (ER 5.5.35).
35. The Secretary of State notes the concerns raised by various parties in relation to the Norwich Area Transport Strategy ('NATS') traffic modelling used by the Applicant, particularly the use of the 2015 model (ER 5.5.54). The Secretary notes that the Applicant states that the modelling used was developed in line with the Department for Transport's ('DfT') Transport Appraisal Guidance (ER 5.5.53). Although there is a 2019 model, it is noted this has not been approved for use by the DfT and as a result the 2015 NATS model remains the approved model and so was used in the Applicant's assessment. The Secretary of State notes that the Applicant's comparison of the 2015 and 2019 models demonstrated a good degree of consistency and that there were no other substantial changes in the intervening period unaccounted for (ER 5.5.54). The Secretary of State notes the Applicant's assertion that the increased use of electric vehicles will improve air quality and notes the ExA's point that there is little evidence regarding the effects of increased electric car use on local air quality. The Secretary of State agrees with the ExA that the assessments undertaken by the Applicant are sufficient (ER 5.5.67) and that in the ES, the Applicant has considered vehicle emissions and how tighter emission standards are expected to reduce NO<sub>2</sub> and PM<sub>10</sub> emissions (ER 5.5.61). Consequently, the Secretary of State agrees with the ExA that the methodology and modelling adopted by the Applicant in relation to Air Quality is appropriate (ER 5.5.62 and ER 5.5.63).
36. The Secretary of State notes that the results of the Applicant's assessment of Bawburgh County Wildlife Site showed a predicted annual mean NO<sub>x</sub> concentration greater than the annual mean NO<sub>x</sub> objective of 30ug/m<sup>3</sup> as measured against the Do Minimum and Do Something scenarios (ER 5.5.36). The Secretary of State notes the ExA's conclusion that no alternative evidence was provided to lead the ExA to disagree with the Applicant that any increase in emissions as a result of the

Proposed Development would not be sufficient to adversely affect the reasons for its designation (ER 5.5.72).

37. The Secretary of State notes that whilst NCC and BDC raised no substantive concerns in respect of air quality and emissions, NCC did suggest that air quality monitoring continue beyond construction and during operation (ER 5.5.43 and 5.5.44). The Secretary of State notes the ES demonstrates that there is no risk to the PM<sub>10</sub> objective being exceeded and that the Applicant's position is further monitoring is not required (ER 5.5.49). The Secretary of State agrees with the ExA that the Applicant's approach to NO<sub>2</sub> monitoring during the operational phase is satisfactory (ER 5.5.64).
38. The Secretary of State notes that where the Applicant's air quality assessment identifies locations where the local air quality position would worsen, this would be below recognised limits and therefore unlikely to have a significant harmful effect on receptors, nor would it be likely to result in the breach of any international or statutory obligations (ER 5.5.68). The Secretary of State further notes from the Applicant's modelling, Government legislation, and noting paragraphs 3.7 and 3.8 of the NPSNN, (ER 5.5.4) that emissions are likely to have been reduced by the Proposed Development's Design year (ER 5.5.69). Owing to this, the Secretary of State agrees with the ExA that the modelling undertaken provides a robust assessment and represents the likely worst-case scenario (ER 5.5.69).
39. Overall, the Secretary of State agrees with the ExA that air quality issues weigh negatively against the Proposed Development. However, given there would be no net worsening or new exceedances of objectives, this harm carries limited weight in the planning balance (ER 5.5.75).

### **Biodiversity**

40. The Secretary of State notes and accepts the ExA's consideration of the policy frameworks relating to biodiversity, ecology and the natural environment as set out in ER 5.6.3-5.6.13.
41. The Secretary of State agrees with the ExA that the Applicant has undertaken a thorough and rigorous assessment of biodiversity matters that would be affected by the Proposed Development, both directly and indirectly in relation to biodiversity and the natural environment as set in the Applicant's ES (ER 5.6.114). The Secretary of State agrees with the ExA that the application accords with paragraph 5.22 of the NPSNN in its consideration of sites, habitats, species and potential impacts, and the Applicant has adequately addressed the significance of these and so the application accords with paragraph 5.26 (ER 5.6.114).
42. The Secretary of State notes that the ExA has concluded that the Applicant's overall approach to biodiversity, including the scope and content of baseline surveys, was mainly agreed by the relevant authorities and none raised any substantive concerns with the Applicant's findings (ER 5.6.113).

43. The main biodiversity and nature conservation issues considered during the Examination were: assessment methodology and overall approach; impact on bats; biodiversity net gain; and residual impacts on species (ER 5.6.60).

Assessment methodology and overall approach

44. The Secretary of State notes concerns were raised by NCC, BC, the Environment Agency, IPs, and Norfolk Wildlife Trust regarding the ecological baseline, methodology and survey data during the Examination (ER 5.6.63 – 5.6.70) and in response to the Secretary of State's consultations post Examination.

45. The Secretary of State notes that NE did not raise similar concerns during the Examination, however, NE did not participate in the Examination. Owing to this, in its first and second consultations dated 1 and 27 June 2022, the Secretary of State asked NE, amongst other things, whether it had any concerns about the Proposed Development. In its response to that question, dated 7 July 2022, NE did not raise concerns about the level of baseline survey information, survey methodology, or survey data.

46. The Secretary of State agrees with the ExA that the application gives proper consideration to the full range of sites, habitats and species and attached appropriate weight to the potential impacts of the Proposed Development on them (ER 7.3.13).

Impact on Bats

47. The Secretary of State notes the concerns raised by several parties regarding the impact of the Proposed Development on bats (ER 5.6.68). NCC identified that the ES should consider the known barbastelle maternity colony at ROARR! Dinosaur Park/Morton-on-the-Hill (5.6.79).

48. A number of Written Representations and Relevant Representations (including those of Norfolk Barbastelle Study Group, Wild Wings Ecology, David Pett and Bryan Robinson) highlighted the presence of a nationally important super-colony of barbastelle bats located to the north of the Proposed Development. The comments referred to the Proposed Development being located within the 6km radius Core Sustainance Zone ('CSZ') of a nationally important 'super-colony' (ER 5.6.80).

49. The Secretary of State notes that the Applicant acknowledges that the main effect associated with the CSZ would be effects relating to bats crossing the Proposed Development. The Applicant highlighted that crossing points 1 and 9 lie 6km or more away from the centre of the ROARR! Dinosaur Adventure Park, with crossing points 7 and 8 being approximately 5.5km away. The Applicant is satisfied that the Proposed Development is located on the extremities of the CSZ (ER 5.6.95).

50. In addition, the Secretary of State notes that the Applicant submitted a plan which showed the broad habitat types within 6km of the known colony at ROARR! Dinosaur Adventure Park. The Applicant's view was that this demonstrated that, due to the suitable habitat in the immediate vicinity, bats from that known colony would be more likely to use the valley corridor in an east-west direction than travel to the edge of their CSZ, across large tracts of arable land, to access land to the south of the Proposed Development (ER 5.6.96).

51. The Secretary of State notes that concerns were raised regarding the baseline survey data used to assess the impact of construction and operation of the project on the conservation status of the local and regional populations of this species of bat (ER 5.6.82).
52. The Secretary of State notes the request by the ExA to Wild Wings Ecology for the provision of the bat data to support their submissions, to enable this to be reviewed and considered during the Examination. The Secretary of State notes that the full information was not provided but that Wild Wings Ecology did provide an indication of their key research findings, including that barbastelles from two maternity colonies within the super-colony (Weston Park (west) and the Ringland Woods) were recorded crossing the A47 east of Hockering (2020 and 2021 radio-tracking data) (ER 5.6.85).
53. The Secretary of State notes the information provided by the Applicant in response to issues raised by IPs and the ExA. The Applicant highlighted that the loss of 14 tree roosts would be mitigated through the European protected species mitigation licence method statement and that lost foraging habitat would be compensated for with increased and enhanced tree planting as a remediation measure. Compensatory planting would also be provided along the verges of the Proposed Development that would both mitigate the loss of foraging habitats and shield suitable habitat and roosts from disturbance (ER 5.6.87).
54. The Secretary of State notes with regard to mitigation, the Applicant's ES highlighted that there were four particular bat crossing points with the most bat traffic and that they were therefore surveyed in full. The Environmental Masterplan and Chapter 8 of the ES (biodiversity) showed that the mitigation proposals for the bat crossing points are the planting of mature tree standards (>4.25 m tall) either side of the new and existing A47, and in between, where required. The Secretary of State notes that the Applicant has concluded that this, along with fencing, will encourage bats to fly up and over traffic (ER 5.6.89).
55. The Secretary of State notes that the Applicant acknowledged that there are limited studies assessing the effectiveness of such features and therefore there is some uncertainty in respect of their effectiveness. As a result, the Applicant considers that the approach represents a worst case scenario. Other mitigation includes three underpasses and an overpass with directional fencing and vegetation planting and management to encourage bats through the pass rather than over the road. The Applicant accepted that there would be a time lag while planting matures, but this has been reflected in determining the significance of the impact (ER 5.6.90).
56. The Secretary of State notes that the Applicant proposes to monitor each of the bat crossing points and nearby underpasses/overpasses in years 1, 3, and 5 after the scheme completion, and this would be a commitment secured through the EMP and via requirement 4 of the rDCO (ER 5.6.91). The Secretary of State notes that the Applicant clarified that the main cause of the residual 'large adverse' impact of the Proposed Development was therefore due to the uncertainty around the use of hopovers in bat mitigation at the existing crossing points (ER 5.6.92).

57. The Secretary of State notes concerns from IPs regarding the baseline survey data. The Applicant confirmed that it would carry out further survey work and would ensure that the data was updated ensuring the most up to date baseline with respect to crossing points is used. The Secretary of State notes the Applicant considers that data from 2022 would provide a very good dataset to base that on and also base the scope for future monitoring (ER 5.6.94).
58. Overall, the Applicant considered that the submissions from IPs did not change their assessment of the Proposed Development having a large adverse, and therefore significant effect upon bats (ER 5.6.97).
59. The Secretary of State notes that, in its consultation response dated 7 July 2022, NE confirmed it was broadly satisfied with the proposed mitigation, subject to the monitoring and mitigation measures, identified in the ES and Table 3.1 in the EMP Rev 1 being implemented in full. The Secretary of State notes that, by Table 3.1, monitoring surveys of bat crossing points are proposed with potential further mitigation required if there is a reduction in bat numbers crossing the operational road. The Secretary of State notes that Table 3.1 is the Record of Environmental Actions and Commitments ('REAC') and so, by requirement 4(2), its contents will be captured within the second iteration of the EMP, in accordance with which the authorised development must be constructed (requirement 4(3)). The Secretary of State has amended this requirement to ensure NE are consulted on the EMP.
60. The Secretary of State agrees with the ExA that the Proposed Development is considered to have a significant adverse effect upon bats, principally due to the uncertainty with regards to the delivery of mitigation, to allow bats to safely cross the Proposed Development, along with the time lag between loss of habitat and the remediated habitats reaching maturity which could lead to loss of foraging and commuting habitat. The Secretary of State notes the ExA considered the harm weighs negatively against the Proposed Development, and the ExA attributed substantial weight to this harm in the planning balance (ER 7.3.16). The Secretary of State agrees with the ExA that with the mitigation measures proposed through the EMP the harm would be outweighed by the public benefits of the Proposed Development (ER 7.4.11).

#### Biodiversity net gain

61. The Secretary of State acknowledges that the Proposed Development would seek to maximise biodiversity delivery in accordance with the current statutory and policy requirements (ER 5.6.125). This would be achieved through considered planting to create new or extended landscape and biodiversity elements including species rich grass land, hedgerows, trees, woodland and biodiversity wetlands. This is shown in the Environmental Masterplan and would be delivered through requirement 5 of the rDCO (ER 5.6.102).

#### Residual impacts on species

62. The Secretary of State notes NCC had a number of outstanding issues still under discussion at the end of the Examination. These included: that there was no fish surveys carried out to date and only incidental records during other aquatic surveys recorded; that all reports need to be consistent and the recommendations in Chapter 8 of the ES need to be in-line with the recommendations of the targeted botanical

and protected species reports; and that a need to undertake a desk study to support the Terrestrial Invertebrate Survey Report, along with a need to revisit locations that were inaccessible (ER 5.6.107).

63. The Secretary of State notes that in response to river impacts, the Applicant confirmed that it was currently liaising with the EA to agree a way forward. The Applicant has commissioned accredited surveyors to undertake a river condition assessment survey and provide recommendations to compensate for any identified potential effect on the river, in particular the reduction in condition that will likely arise from the point of the new bridge crossing the River Tud. This assessment has identified stretches of river that could be subject to management to improve its condition and a copy of the report will be shared with NCC, when complete. Further agreement on what measures to be implemented will need to be reached and the Applicant will liaise with landowners and the EA to agree the detailed design and practical implementation of ecological enhancement measures in the detailed design (ER 5.6.108).
64. In responses to the consistency point, the Applicant highlighted that the supporting botanical and protected species reports were developed primarily to provide baseline survey data records from 2016 to 2020 to inform the main assessment in Chapter 8 of the ES. As a result, any recommendations were based on a less developed scheme design (ER 5.6.109).
65. In response to the invertebrate survey, the Applicant acknowledged the comment regarding lack of invertebrate survey data for some parts of the site but identified that this was due to access restrictions due to the presence of livestock, or in 2020 due to both access and COVID restrictions (ER 5.6.110). The Secretary of State notes the Applicant intends to integrate surveys into the detailed design stage and the Applicant is committed to developing a landscape design that is considerate of invertebrate habitat and provides adequate mitigation for the loss of part of Hall Meadows, required for the new River Tud crossing (ER 5.6.111).
66. NE confirmed in the consultation response of 7 July 2022 that they had provided letters of no impediment ('LONI') to the Applicant in respect of water voles and badgers. In respect of great crested newts, NE confirmed there was nothing from their perspective that would prevent the issue of an Impact Assessment and Conservation Certificate (which provides the same level of assurance as a LONI) once further information on scheme design had been received from the Applicant. Regarding bats, there is no LONI at this time, and the Secretary of State notes from NE's consultation response of 12 July 2022 that NE have requested further information in respect of bats from the Applicant. The Secretary of State is satisfied from NE's consultation response of 7 July 2022 that the level of mitigation proposed is broadly sufficient, subject to the monitoring and mitigation measures, identified in the ES and Table 3.1 in the EMP. There is nothing to suggest in either response that a licence will not be granted by NE in respect of bats.
67. The Secretary of State notes IPs concerns raised during the post examination consultation process and is satisfied that issues raised have been addressed by the ExA during the examination. The Secretary of State notes Mr Hawkers Response of 15 June 2022 regarding chalk streams and is satisfied with the ExA's conclusion that

sufficient measures are in place to protect the water environment (ER 5.17.98) (further information can be found in the Water Environment section of this letter). The Secretary of State also notes the Statement of Common Ground between the Environment Agency and the Applicant that all matters were agreed (ER 5.6.66). The Secretary of State is satisfied that appropriate measures have been secured through the DCO to protect the River Tud.

68. The Secretary of State agrees with the ExA that the construction effects of the Proposed Development on hedgerows, deciduous woodland and floodplain grazing marsh, along with the slight adverse effect upon breeding birds, barn owls and wintering birds, weigh against the DCO being made. However, these are short to medium term effects, which, once proposed mitigation has become established, will be mitigated (ER 5.6.127 and 5.6.129). Nonetheless, these effects weigh against the Order being made and the Secretary of State notes the ExA attributed this harm limited weight (ER 7.3.15). The Secretary of State agrees.
69. The Secretary of State agrees with the ExA that whilst harm would arise from the Proposed Development, during both the construction and operational phases, the Applicant has adopted a reasonable and proportionate approach to mitigate this harm. The EMP, through the REAC, includes a comprehensive list of mitigation and management measures during the construction process to minimise the harm arising (ER 7.4.8).

### **Habitats Regulations Assessment**

70. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations'), the Secretary of State, as the competent authority, is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site (ER 3.4.10).
71. The Secretary of State notes that the Applicant submitted a 'Report to inform Habitats Regulations Assessment' ('the Habitats Assessment') which was updated during the examination to reflect issues raised in relation to the lack of reference to the Sheringham and Dudgeon Extension Offshore Wind Farm (ER 4.8.1).
72. The Habitats Assessment used the Design Manual for Roads and Bridges ('DMRB') to identify international sites likely to be affected. This included the River Wensum SAC<sup>1</sup>, located 1.6km to the north-east of the Proposed Development and Paston Great Barn SAC 29.3km to the north (ER 4.8.2).
73. The Habitats Assessment concluded no likely significant effects on the identified European sites or on their qualifying features as a result of the Proposed Development alone or in combination with other considered developments (ER 6.3.10). The conclusion was not disputed (ER 6.4.3).

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<sup>1</sup> The Report refers to the "River Tud SAC" (ER 4.8.2); however, the correct name is the River Wensum SAC.

74. The Secretary of State consulted the Applicant on 1 June 2022 on matters regarding the Habitats Regulation Assessment and Nutrient Neutrality. NE was subsequently asked to comment on the Applicant's response on the consultation of 27 June 2022 and replied on 7 July 2022. The Secretary of State notes that the NE is satisfied with the Applicant's conclusion of no likely significant effects on either the River Wensum Special Area of Conservation ('SAC') or Paston Great Barn SAC. The Secretary of State also notes NE's conclusion that the qualifying features of the sites are located at sufficient distance from the development site to ensure they will not be adversely impacted by the development, particularly with regard to aerial emissions, noise, lighting or hydrological discharges.
75. There is agreement between NE and the Application that a likely significant effect to these sites can be ruled out both alone and in combination with other plans or projects. In addition, NE state that it should be noted that the River Tud joins the River Wensum downstream of the SAC designation. Moreover, NE agreed with the Applicant's conclusion in regards to Nutrient Neutrality and that the application, with the adoption of mitigation, 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.
76. The Secretary of State concurs with the Applicant and the ExA that there would be no likely significant effects arising from the Proposed Development, either alone or in-combination with other plans or projects, on the River Wensum SAC or Paston Great Barn SAC (ER 6.5.3). In the light of this, the Secretary of State also agrees with the Applicant, NE, and the ExA and is satisfied that no European site is required to be considered and taken forward to Appropriate Assessment.

### **Climate Change**

77. The Secretary of State notes the consideration the effects of the Proposed Development on climate change and the vulnerability of the Proposed Development despite climate change (ER 5.7.14) and is satisfied that there has been an adequate assessment of the policies relating to the likely effects of future climate change on the Proposed Development in line with the requirements of paragraphs 5.16 to 5.19 of the NPSNN (ER 5.7.64 and 5.7.92).
78. 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 the exceptions contained in 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 (ER 5.7.65); lead to him being in breach of any duty imposed on him by or under any enactment; or be unlawful by virtue of any enactment (ER 5.7.3). 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') (ER 5.7.66).

79. Paragraph 3.8 of the NPSNN sets out that the impact of road development on aggregate levels of emissions is likely to be very small (ER 5.5.4) and that the impacts of road development need to be seen against significant projected reductions in carbon emissions as a result of current and future policies to meet the Government's legally binding carbon budgets (ER 5.7.80). Paragraph 5.17 sets out that it is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets (ER 5.7.73 and 5.7.74). The Secretary of State also notes paragraph 5.18 of the NPSNN, which states that any increase in carbon emissions is not a reason to refuse development consent unless this increase in carbon emissions is so significant that it would have a material impact on the Government's ability to meet carbon reduction targets (ER 5.7.9).
80. Whilst noting the concerns raised by Mair Bain, Dr Andrew Boswell and other IPs, like the ExA, the Secretary of State agrees that the NPSNN remains relevant government policy for the determination of applications for national network NSIPs (ER 5.7.68) and that the process for making a decision is whether the carbon emissions from the Proposed Development would be at such a level it would lead to the UK being in breach of its international obligations and if not, whether it accords with guidance under the NPSNN in respect of carbon emissions (ER 5.7.69). The Secretary of State is content 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 that the approach to the assessment of the impact of the Proposed Development on climate aligns with this.
81. In June 2019 the Government announced a new carbon reduction 'net zero target' for 2050 which was given effect by the Climate Change Act (Amendment) Order 2019 and amends section 1 of the CCA2008 (ER 5.7.4). The amendment made to section 1 has raised the legally binding target for the Government to cut net carbon emissions to zero by 2050 against the 1990 baseline (ER 5.7.67). 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, fifth and sixth budgets are 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target (ER 5.7.76). The Secretary of State agrees with the ExA that compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement (ER 5.7.66). As noted by the ExA, the government's strategy for meeting carbon budgets along with the net zero target should be viewed as an economy wide transition (ER 5.7.70).
82. It is noted that the Applicant's assessment of Greenhouse gas ('GHG') 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 in June 2021, 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 (ER 5.7.13) and agrees with the ExA that sufficient time was given for the matter to be examined and for IPs to comment (ER 5.7.72).

83. The Secretary of State notes the baseline and study area used by the Applicant in their assessment is as set out in ER 5.7.19-5.7.24. 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 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.
84. The Secretary of State notes that the total increase in carbon emissions over the 60-year appraisal period associated with the Proposed Development is estimated by the Applicant to be 508,283tCO<sub>2</sub>e (ER 5.7.28). The Secretary of State notes that construction is due to take place during fourth carbon budget (Table 2 at ER 5.7.63). The ExA noted that the Applicant's ES concludes that the increase in carbon emissions resulting from the Proposed Development would represent 0.004% of the fourth (2023-2027), fifth (2028-2032) and sixth (2033-2037) carbon budgets (ER 5.7.73). The Secretary of State agrees with the ExA that based on the Proposed Development on its own, it would be unlikely to have a material impact on the UK Government meeting the carbon reduction targets currently in place (ER 5.7.74).
85. The Secretary of State notes that following the close of Examination, representations have been received emphasising concerns raised during the Examination regarding the traffic modelling and figures used to predict future traffic. The Secretary of State notes the Applicant's response to these concerns of 15 June and 8 July 2022 and is content that these matters were considered by the ExA. The Secretary of State notes that the ExA highlighted that some IPs made representations that increased emissions from the Proposed Development would, in their view, amount to an increase that would be of such a level to conflict with government policy (ER 5.7.75). The ExA, considers that whilst alternative approaches to the overall assessment and changes to the underlying assumptions may produce different figures, ultimately these do not make such a significant difference so as to alter the conclusion that the carbon emissions from the Proposed Development on its own would be unlikely to have an impact on the government meeting its carbon reduction targets (ER 5.7.74). The Secretary of State agrees with this conclusion.

#### Achievement of Net Zero

86. The Secretary of State, like the ExA, acknowledges that the construction and operation of the Proposed Development would result in additional carbon emissions (ER 5.7.77). Also like the ExA, the Secretary of State notes that the Transport Decarbonising Plan which, whilst recognising the importance of the role transport plays in generating emissions, accepts that investment in road infrastructure will be required as part of the measures to reduce congestion and associated carbon emissions (ER 5.7.78).

87. The Secretary of State agrees with the ExA that whilst the Applicant's traffic model demonstrates that the Proposed Development, once operational, will support additional traffic movements and therefore ultimately will result in increased vehicle emissions, this needs to be considered against long term Government policy which aims to remove all road emissions at the tailpipe through the gradual switch to low emission vehicles (ER 5.7.79) and 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 (ER 5.7.80). The Secretary of State agrees with the ExA that this Policy is one part of the approach towards achieving Net Zero, and that the Government has legally binding obligations to comply with its objectives under the Paris Agreement (ER 5.7.79). The Secretary of State notes the questions posed by Dr Andrew Boswell and Stop Wensum Link regarding Government's policy and strategy and that this has also been raised in response to the Secretary of State's consultations following the close of Examination particularly with regard to recent High Court cases. The Secretary of State notes that the ExA considered Government Policy and strategies on the delivery of net zero in the domestic transport sector to be up to date (ER 5.7.81). The Secretary of State acknowledges that since the close of Examination, there has been a successful challenge to the Government's 'The Net Zero Strategy: Build Back Greener' ('Net Zero Strategy'). This strategy will need to be updated to address the matters raised in this challenge. The Secretary of State has no reason to consider that the Proposed Development will hinder delivery of either the Transport Decarbonisation Plan or any future updated Net Zero strategy.

88. 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 published by Government in October 2021 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 will 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 in its current 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.

### Cumulative Effect

89. The Secretary of State notes the concerns raised by various IPs including Norwich Green Party of City and County Councillors and Dr Andrew Boswell regarding the cumulative assessment of the Proposed Development with other A47 Schemes and other road schemes and the ExA's summary of these concerns at ER 5.7.44.
90. The Secretary of State agrees with the ExA that emissions from the Proposed Development should not be viewed in isolation (ER 5.7.82) and notes that the Applicant did not provide a separate assessment of cumulative impacts of the Proposed Development with other local or national highway projects (ER 5.7.83). The Secretary of State notes Dr Boswell's post-examination letter to the ExA dated 10 May 2022, written with other interested parties, in which he raises, amongst other things, concerns with the ES. Dr Boswell says 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 followed DMRB on cumulative carbon emissions; and
  - 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 / A11 Thickthorn Junction schemes), and the Norwich Western Link, which constitutes non-compliance with the cumulative carbon assessment requirement of the 2017 Regulations.
91. The Applicant however argues that the national carbon budgets are themselves cumulative (ER 5.7.56) and the traffic model used to assess the Proposed Development is also inherently cumulative as it includes data about the following:
- The Proposed Development and adjoining SRN 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);
  - discussions with the relevant planning authority, of foreseeable developments promoted by third parties as likely to be developed in a similar timeline to the Proposed Development. 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 5.7.53).
92. In respect of the DMRB, the Applicant stated in its response to the Secretary of State's Third Request for Comments (dated 26 July 2022) the approach to climate assessment within the methodology set out in DMRB LA 114 is inherently cumulative through the inclusion of the Proposed Development and other locally committed development within the traffic model on which the GHG emissions calculations is based, and through the consideration of the Proposed Development against the UK carbon budgets. In the light of this, the Applicant considers it has assessed the impact of the Proposed Development in accordance with DMRB LA 114.

93. The Applicant set out that in terms of operational carbon, in evaluating the change in carbon emissions, this had been done 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 that both scenarios include all likely development and traffic growth factors (ER 5.7.55). The Applicant therefore considered that the assessment 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 5.7.54).
94. The ExA concluded that the Applicant's traffic model includes traffic generated from other Development's and allows for growth in traffic levels, although they acknowledged that this was less than clear from the Applicant's submissions (ER 5.7.88).
95. Whilst noting the concerns raised and proposals by IP's around alternative approaches to assessing carbon cumulatively, which are argued would address what the IPs perceive to be flaws in the assessment, (including, for instance, Dr Boswell's request for the identification and assessment of likely significant effects presented in the Environmental Statement should have been undertaken using "absolute" emissions), the Secretary of State agrees with the ExA 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 (ER 5.7.85). The Secretary of State also notes that the impact and effect of carbon emissions on climate change, unlike other EIA topics, is not limited to a specific geographical boundary and that the approach that needs to be taken to assess the cumulative impact of carbon emissions is different than would be used to assess the cumulative impacts associated with other EIA topics (ER 5.7.85). Noting this and that there is no defined boundary for assessing the impact of carbon emissions, the Secretary of State agrees with the ExA that the Applicant's approach to assessing the impact of the Proposed Development on carbon emissions and its cumulative impact is acceptable (ER 5.7.86).
96. It is also noted that the Applicant considered that national carbon budgets are inherently cumulative as they include the total carbon emissions from a wide range of sectors (ER 5.7.87). The Secretary of State notes that the ExA concluded that the Applicant's approach, through the use of carbon budgets, sufficiently considers the cumulative effects with other projects and programmes (ER 5.7.89). 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.
97. The Secretary of State notes that the ExA highlighted concerns raised by IPs that the Applicant's use of UK carbon budgets is not meaningful (ER 5.7.44). The Secretary of State also notes that following the close of the Examination, it was highlighted by parties that the Norfolk Local Transport Plan ('LTP') 4 was due to be adopted in July 2022, replacing LTP3. As LTP4 includes targets for reducing carbon, it was argued that the Proposed Development's carbon emissions should be

assessed against these. In response to this, the Secretary of State invited the Applicant to provide an assessment of the Proposed Development against the carbon targets contained in LTP4 in anticipation of LTP4 being adopted before a decision was issued. The Applicant responded on 8 July 2022 stating 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. The Applicant presented an update of the predicted emissions in respect of the Proposed Development against national carbon budgets to include the results of a sensitivity assessment using the Transport Decarbonisation Plan's trajectory to highlight the predicted impact of these policies within it. The Secretary of State notes that based on both the upper and lower trajectory the impact of the Proposed Development on carbon budgets is predicted to be less than that considered by the ExA and is therefore satisfied that the assessment considered by the ExA represents a worst case scenario. The Applicant goes on to state that carbon budgets are set a national level and that the LTP does not present methodology to determine what would be a significant impact and therefore considered that it was not appropriate or possible to undertake an assessment of likely significance relative to the LTP4 trajectory. The Secretary of State notes that that in response to the Applicant's reply of 8 July 2022, the Applicant's lack of assessment against the LTP was challenged with one party stating that their own assessment against the LTP4 demonstrated significant effects that risked the delivery of the sixth carbon budget. Concern was also raised about reliance being placed on the Applicant's Transport Decarbonisation Plan's sensitivity test.

98. The Secretary of State considers the current position is that statutory carbon reduction targets and carbon budgets are set nationally and the national guidance is included in the NPSNN.
99. There is currently no statutory carbon budget or statutory carbon reduction targets for schemes of this kind at less than a national level and considers that the policy guidance of most importance is that set out in the NPSNN. In the circumstances, the Secretary of State does not consider it is necessary in this case for the Applicant to provide assessment against LTP4 targets for the reasons given by the Applicant. Moreover and in any event, in the absence of a methodology to determine what would constitute a significant impact for any assessment carried out under LTP4, 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 an assessment against the LTP4 targets is not a matter to which he attaches any material weight in this case.
100. The Secretary of State agrees with the ExA that the carbon budgets represent the only statutory targets in relation to carbon emissions and assessment against these targets is the approach is advocated by the NPSNN (ER 5.7.88) and is satisfied that the Applicant has provided an individual and cumulative assessment against these. Whilst noting the concerns raised by IPs regarding the Applicant's

cumulative assessment and noting there may be other ways to undertake an assessment, the Secretary of State agrees with the ExA that based on the current policy framework and guidance, the Applicant's approach, including through the use of carbon budgets, sufficiently considers the cumulative effects with other projects and developments (ER 5.7.89). The Secretary of State notes and agrees with the ExA's conclusion that the carbon emissions from the Proposed Development either on their own or cumulatively are not so significant that they would have a material effect on the Government's ability to meet its climate change targets and budgets (ER 5.7.91). This is on the basis that as measures to reduce emissions from vehicle usage are implemented and delivered, over time, it is highly likely that carbon emissions from the Proposed Development would reduce; that an assessment against the national carbon budgets is appropriate and there are measures in place such as the Transport Decarbonisation Plan and National Highways Net Zero Highway Plan to ensure carbon budgets are met; and there is appropriate mitigation secured through the EMP to ensure that carbon emissions from construction activities during the detailed design stage are kept as low as possible (ER 5.7.90).

101. The Secretary of State notes that Interested Parties like Dr Boswell have argued that a cumulative assessment requires one to consider 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 Revised ES. This identifies that the total emissions in the Do-Something Scenario would be 12,190,870 tCO<sub>2</sub>e over the fourth, fifth and sixth carbon budget periods where the relevant carbon budget periods are set out in the same Table. These combined emissions would therefore equate to approximately 0.263% of those combined budgets. The Secretary of State considers that such combined emissions also to be very small and not likely to affect the ability of the Government to meet its carbon reduction plan targets in any event.

#### Conclusion

102. 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.
103. 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. The Secretary of State is aware that all emissions contribute to climate change.

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 agrees with the ExA that the Proposed Development would accord with section 104 of the 2008 Act and paragraphs 5.16 to 5.19 of the NPSNN (ER 5.7.92) 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. The Secretary of State agrees with the ExA that as the Proposed Development would result in an overall increase of emissions and 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 agrees with the ExA that limited weight is ascribed to this harm and taken forward in the planning balance (ER 5.7.93).

## **Geology and Soils**

104. The Secretary of State notes that whilst the ExA raised initial concerns about the approach taken by the Applicant to the assessment of significance, ultimately, the ExA was satisfied that the Applicant's assessment of the impact of the Proposed Development on geology and soils was robust (ER 5.8.32). The Secretary of State is satisfied with this conclusion.
105. The Secretary of State notes that the Applicant's assessment identified there are no designated geological sites located within the study area and that the land surrounding the Proposed Development is predominately agricultural (ER 5.8.8). The Secretary of State notes paragraph 5.168 of the NPSNN regarding the development of agricultural land and how the use of poorer quality land should be used in preference to that of higher quality. The Secretary of State notes that the Proposed Development would result in the substantial loss of high-grade agricultural land (ER 5.8.33) and that this was the subject of two relevant representations (ER 5.8.26). Aside from this, it is noted that consideration of this matter gave rise to very little dispute during the Examination (ER 5.8.31).
106. Although the Applicant provided details of the alternative route options they initially assessed, the ExA highlighted that they were not provided with a breakdown of the amount of agricultural land utilised in each option (ER 5.8.35). Nevertheless, the Secretary of State notes the ExA agreed with the Applicant that given the nature of the surroundings of the Proposed Development and linear nature of the route, the loss of agricultural land would be inevitable and that it would not be possible to avoid using agricultural land of higher quality without causing other potential environmental impacts (ER 5.8.35). The Secretary of State agrees with this conclusion and is satisfied that this conforms with paragraph 5.168 of the NPSNN (ER 5.8.36).



107. The Secretary of State notes that with regard to the higher grade agricultural land to be lost, the Applicant explained that the only residual aspect will be from the permanent land take as temporary land take required for construction will be returned to its current state, with suitable mitigation to be provided by measures included in the rDCO (ER 5.8.33). The Secretary of State notes that no concerns were raised in respect of the Applicant's approach to mitigation during construction and he agrees with the ExA's conclusion that the effects during the construction phase will be temporary and can be adequately mitigated (ER 5.8.34). Nevertheless, the Secretary of State acknowledges that the Applicant accepts that no measures can mitigate for the permanent land take required and the permanent loss of agricultural soils associated with the Proposed Development (ER 5.8.14) and the ExA's conclusion that this would result in a significant residual effect (5.8.37). However, the ExA is satisfied that the Proposed Development sought to minimise agricultural land take and avoid use of higher-grade land where possible (ER 5.8.36).
108. Overall, the Secretary of State agrees with the ExA that the Proposed Development would comply with paragraph 5.168 of the NPSNN because the Applicant has sought to both minimise agricultural land take and avoid the use of higher-grade land where possible (ER 5.8.36). Notwithstanding this, there is a significant residual effect, primarily relating to the permanent loss of high-quality agricultural land, and this weighs against the Proposed Development (ER 5.8.38). The Secretary of State concurs with the ExA that, considering the finite nature of best and most versatile agricultural land and the inability to mitigate for its permanent loss, that moderate negative weight should be ascribed to this in the planning balance (ER 5.8.38).

### **Historic Environment**

109. The Secretary of State is content with the ExA's description of the policy considerations of paragraphs 5.128 to 5.142 of the NPSNN (ER 5.9.2 – ER 5.9.8).
110. The Secretary of State notes that the Applicant's assessment concludes that there are likely significant impacts for archaeological remains dating from the prehistoric to post-medieval period. The Secretary of State notes that the Applicant considers this assessment to be the most likely worst case and that a programme of archaeological recording is proposed to mitigate these effects (ER 5.9.34). The Secretary of State notes the Applicant's assessment that the Proposed Development would not affect any designated archaeological assets or non-designated archaeological assets and notes that no issues were raised during the Examination in relation to archaeology. NCC as the statutory body, as shown by their SoCG, agreed with the Applicant's initial assessment of the sites potential and raised no comments in relation to the proposed mitigation and future investigations that would be undertaken. Noting the mitigation in place and secured through the rDCO, the Secretary of State agrees with the ExA on the Applicant's assessment that the effect of the Proposed Development on archaeological resources would be neutral and not significant (ER 5.9.58).
111. The Secretary of State notes that four designated heritage assets would experience adverse effects due to the Proposed Development (ER 5.9.59) namely St Peter's Church, a Grade I Listed Building; St Andrew's Church, a Grade II\* Listed

Building; Church Farm House, a Grade II Listed Building; and Berry Hall, a Grade II Listed Building (ER 5.9.33).

#### St Andrew's Church

112. The Secretary of State notes that St Andrew's Church would experience harm as outlined at ER 5.9.61, particularly due to the greater visual impact of the Proposed Development which would cause harm to the significance of the Listed Building as a designated heritage asset. Although it is noted that there would be some mitigation in the form of landscape planting and low noise road surface with the closure of the existing A47 between St Andrew's Church and Honingham roundabout reducing the impact of vehicles passing directly past the Church, the Secretary of State agrees with the ExA that this would not be sufficient to reduce the harm caused by the Proposed Development in its entirety. Accordingly, the Secretary of State agrees with the ExA that the Proposed Development would cause harm to the overall setting and appearance of St Andrew's Church and although he considers this harm to be less than substantial, the Secretary of State agrees with the ExA that this harm is at the higher end of the scale due to the proximity of the Proposed Development and the level of change this would cause (ER 5.9.62).

#### St Peter's Church

113. The Secretary of State notes that although St Peter's Church is currently affected by the presence of the existing A47 and the route of the Proposed Development would be slightly further to the North, the Proposed Development would introduce a larger form of development with more capacity for traffic likely to be travelling at faster speeds. Further, he notes that the proposed Easton footbridge is likely to be seen within and across the churchyard (ER 5.9.64). The Secretary of State notes the proposed mitigation in the form of a low noise road surface, acoustic barrier and planting and landscaping (ER 5.9.65) and concurs with the ExA that this would minimise the effect of the Proposed Development and have the potential to improve the setting as the planting matures; however, due to the proximity to the Proposed Development, the operational effects, in particular traffic noise, are likely to cause harm to the overall setting. The Secretary of State agrees with the ExA that the building is of high value as a Grade I listed building but is satisfied that with the provision of mitigation the harm caused by the Proposed Development is likely to be less than substantial (ER 5.9.66).

#### Berry Hall

114. The Secretary of State notes that whilst the listed building will not be directly affected by the Proposed Development, the Estate would be through encroachment into its north-eastern corner and subsequent loss of tress and woodland, as well as by the closure of Berrys Lane and the impact of installing drainage but that the impacts will be mitigated (ER 5.9.67-5.9.68).
115. The Secretary of State notes the representations made by BHE in relation to the crinkle crinkle wall at Berry Hall but agrees with the ExA that the Proposed Development is of sufficient distance away and appropriate mitigation is included through the REAC to minimise the harm. The Secretary of State is also satisfied that harm will be avoided to the existing cobblestones given the potential for the drainage route to avoid the cobblestones entirely (ER 5.9.69).

116. The Secretary of State notes the ExA highlighted the submissions made by BHE and that the ExA agreed with BHE that the information the Applicant provided in the ES in relation to the BHE is limited, but concluded that overall, the level of assessment undertaken by the Applicant is proportionate (ER 5.9.71).
117. The Secretary of State agrees with the ExA concerning the Applicant's assessment that the Proposed Development would adversely affect the setting of Berry Hall (ER 5.9.72) due to its proximity, the noise and disturbance from the increased traffic and its encroachment on the estate (ER 5.9.67). The Secretary of State notes that further harm would be caused to the setting by the presence of the construction compound for the duration of the construction phase but acknowledges that this would only be of limited duration as the land would be restored on completion (ER 5.9.70). Whilst it is noted that mitigation would be provided in the form of additional planting and low noise surfacing which would reduce the level of harm, the Secretary of State agrees that harm will still result to the setting of the listed building but considers this harm to be less than substantial (ER 5.9.72).

#### Church Farm and Barn

118. The Secretary of State notes that the Proposed Development would adversely affect Church Farm and the Barn at Church Farm through proximity and the associated noise and disturbance from increased traffic, particularly the presence of the Norwich Road junction. The Secretary of State notes there could be further impacts on Church Farm from the potential loss of estate fencing and wall which while not listed, provide context to the designated heritage asset (ER 5.9.73).
119. The Secretary of State agrees with the ExA that the Proposed Development would adversely affect the setting of Church Farmhouse and Barn but agrees that with the proposed mitigation of additional planting, low noise surfacing and reinstatement of the boundary after construction (ER 5.9.74) the harm would be slight adverse and less than substantial (ER 5.9.75).
120. The Secretary of State notes that the ExA concluded that the Proposed Development would have minor beneficial effects upon the setting of four listed buildings in the village of Hockering due to the relocation of the existing route away from these designated heritage assets (ER 5.9.79) and moderate beneficial effects on two milestones (ER 5.9.81). The Secretary of State notes the agreement between NCC and the Applicant in respect of the measures to conserve the gateway piers and therefore concurs with the ExA that the effect on Honingham Park, a non-designated heritage asset, would be slight adverse at worst and not significant and would result in less than substantial harm at the lower end of the scale (ER 5.9.80).
121. The Secretary of State is satisfied that the Applicant's assessment of the effect of the Proposed Development on designated heritage assets has been undertaken in accordance with paragraph 5.130 of the NPSNN (ER 5.9.76) and considers that less than substantial harm would result to St Peters Church, St Andrews Church, Berry's Hall and Church Farmhouse and Barn for the purposes of paragraphs 5.134 and 5.135 of the NPSNN.
122. The Secretary of State is content that the ExA has had regard to the very high significance of designated heritage assets, as required by paragraph 5.131 of the

NPSNN (ER 5.9.78), and agrees with the ExA that the considerable wider public benefits offered by the Proposed Development, in each case, outweigh the harm (ER 7.4.10). In conclusion, the Secretary of State concurs with the ExA as to their conclusions in respect of harm and that the less than substantial harm to the setting of four listed buildings and slight adverse effect on a non-designated heritage asset weigh negatively against the Order being made (ER 5.9.82) and that the identified benefits to the setting of the listed building in Hockering carry a limited positive weight in favour of the Order being made in the planning balance (ER 5.9.83).

## **Landscape and Visual**

123. The Secretary of State notes that although the Applicant made errors in their submissions at the start of the Examination, these were subsequently addressed to the satisfaction of the ExA who concluded that the errors did not affect the Applicant's overall conclusions (ER 5.10.66). Noting that the Local Planning Authorities ('LPAs') were satisfied that the landscape and visual effects of the Proposed Development has been properly assessed (ER 5.10.65), and that the ExA was satisfied that the methodology used by the Applicant is robust and properly considers the effects of the Proposed Development, the Secretary of State agrees with the ExA that the Applicant's assessment accords with paragraphs 5.144 to 5.146 of the NPSNN (ER 5.10.66).

124. The Secretary of State notes that with regard to construction, the Applicant predicted that the Proposed Development would have a large adverse effect on one Landscape Character Area ('LCA'), a moderate impact on another and have significant effects on eight visual receptors (ER 5.10.67). The ExA considered that due to the nature of the Proposed Development, to a degree these effects are inevitable and unavoidable. Consequently, whilst the Secretary of State agrees with the ExA that the visual and landscape effects during construction would be significant, the effects would be temporary during the construction phase or until the proposed planting matures. Nevertheless, the Secretary of State agrees that this weighs negatively against the making of the Order (ER 5.10.67).

125. With regard to operation, during year one, the Secretary of State notes that the Applicant expects there to be a large adverse effect on one LCA, and a moderate adverse effect on another (ER 5.10.25, 5.10.26, 5.10.68) and a further significant effect on eight visual receptors (ER 5.10.27). However, the ExA noted that by year 15 of operation, once mitigation planting has matured, the effects on the landscape character area would reduce to slight adverse and only two significant effects would remain for the viewpoints identified in the Applicant's assessment (ER 5.10.68). The Secretary of State agrees with the ExA that whilst in the long term the landscape and visual effects of the Proposed Development would not be significant, the harm caused during construction and year one together with the residual significant visual impacts weigh against the making of the Order (ER 5.10.69).

126. The Secretary of State notes that concerns were raised about the effect of proposed lighting, particularly around the proposed junctions (ER 5.10.46). The ExA noted that the use of overhead lighting would be limited to the parts which need to be lit for safety reasons, would be provided in accordance with current guidance and include LED fittings to reduce light spillage. Consequently, the ExA concluded that

with Requirement 4 of the dDCO and the EMP (ER 5.10.70) light spillage would be minimised and would likely represent an improvement to the exiting arrangements due to the upgrade of the existing arrangements (ER 5.10.71). The Secretary of State has no reason to disagree with this.

127. The Secretary of State notes the concerns raised in relation to Proposed Development's effect on trees (ER 5.10.72) and agrees with the ExA that trees make a significant and important contribution to the landscape character of the area and are highly valued and that the removal of trees during construction would cause harm to the landscape character (ER 5.10.73).

128. The Secretary of State notes the Applicant's proposals to retain, replace and reinforce existing vegetation where this contributes to the distinctive qualities of the landscape (ER 5.10.74) and its provisional estimate that more than 200,000 trees, woody shrubs and hedges would be planted which is considerably more than the 256 individual trees, 66 groups of trees and 27 hedgerows which would be removed together with the partial removal of 63 tree groups and 42 hedgerows (ER 5.10.75). The Secretary of State agrees with the ExA that the loss of trees on the proposed scale would have a significant effect and whilst noting the Applicant's commitment to use some semi-mature planting, concurs with the ExA that it would take a considerable amount of time for these effects to be reduced (ER 5.10.76).

129. The ExA is satisfied that no ancient trees or woodlands would be lost as a result of the Proposed Development and that the veteran tree identified by the Applicant in its assessment would be retained and adequately protected (ER 5.10.77). The ExA is also content that Requirement 5 of the rDCO contains adequate controls to limit the number of trees to be removed and sufficient detail to secure the protection and replacement planting of others, including aftercare, which reduces the scale of the harm (ER 5.10.78). The Secretary of State agrees with this conclusion and shares the ExA's view that the Applicant's commitment to replacement planting together with general landscape enhancements are important considerations in favour of the DCO (ER 5.10.76).

#### Easton Bridge

130. The Secretary of State notes that no specific concerns were raised by IP regarding the landscape or visual effect of the proposed Easton footbridge. The ExA, after initially being concerned about the lack of information and detail with regards to the bridge's design but, following the Examination, was satisfied that sufficient measures are in place within the rDCO to allow for the final design to be prepared in consultation with the relevant LPA (ER 5.10.79). The Secretary of State has no reason to disagree with this.

#### Wood Lane Junction

131. The Secretary of State notes the ExA's observations of the immediate landscape around the proposed Wood Lane Junction, particularly in relation to BHE (ER 5.10.81 and ER 5.10.82).

132. The Secretary of State notes the concerns expressed by BHE that a negative visual impact would be experienced by BHE due to the presence and prominence of the construction compound (ER 5.10.43) and that accordingly, BHE should have

been included as either a specific receptor within the Applicant's assessment or as a specific viewpoint location (ER 5.10.85). The Secretary of State notes that none of the LPAs considered BHE or its wider environment to require a specific designation, nor was the emission of BHE as a receptor raised by the LPAs in their Examination submissions. Accordingly, the Secretary of State agrees with the ExA that there is no justification for BHE's inclusion as a landscape receptor in its own right (ER 5.10.86). The Secretary of State notes that notwithstanding the proposed mitigation which would go some way to reducing the impact of the construction compound, views over the Tud Valley from the south would be harmed by its presence and the use and character of the land would change to such a degree so as to cause an adverse effect. However, the Secretary of State concurs with the ExA that these effects would be temporary, after which the land would be restored, and the harm caused would be limited and of low weight in the planning balance (ER 5.10.83).

133. The ExA states that the proposed Wood Lane junction would be a considerable structure within a rural landscape and acknowledges the Applicant's assessment that during construction and in year one, the effect of the proposed junction would be significant (ER 5.10.84). The ExA further states, however, that once replacement planting matures, coupled with the existing retained planting, the proposed junction would not be visible in views either within the BHE or on higher land at the southern side of the valley and accordingly, once mature, the landscape character would largely be restored and provide effective visual screening (ER 5.10.88). The Secretary of State is satisfied with the ExA's analysis and agrees with its conclusion that once operational, the Proposed Development and in particular Wood Lane junction would cause only limited harm to the landscape of BHE and this harm can be suitably mitigated (ER 5.10.89).

#### Norwich Road Junction

134. The Secretary of State notes that the proposed Norwich Road junction would also introduce distinctly urban features into a predominantly rural landscape (ER 5.10.90) and the use of semi-mature replacement planting would take time to alleviate the presence of the proposed junction. The ExA, however, considered that once the planting matures the landscape character around the junction would be largely restored and provide effective visual screening. Accordingly, the Secretary of State agrees with the ExA that the landscape and visual effects of the Norwich Road junction would, in the long term, be no worse than slight adverse (ER 5.10.91).

#### Conclusion

135. In conclusion, the Secretary of State agrees with the ExA that it would not be possible for the Proposed Development to avoid harm to the landscape or visual receptors and is satisfied that suitable design and mitigation is secured through the EMP and rDCO Requirements (ER 5.10.94). Consequently, he agrees with the ExA that the following weigh against making the Order: the temporary large adverse effects during construction on two LCA's and four representative viewpoints; the temporary effect on views to the south of BHE, due to the construction compound; and the significant adverse effects in year one of the operational phase reducing to moderate adverse effects by year 15 on four receptors (ER 5.10.95). Nevertheless, the Secretary of State is satisfied that these effects will be limited in nature and therefore carry a limited negative weight in the planning balance (ER 5.10.96).

## **Material Assets and Waste**

136. The Secretary of State notes that the Applicant's ES identified that the likely impacts of the Proposed Development were: the generation of construction waste and reduction of landfill void capacity; the consumption of materials during construction; and the sterilisation of mineral safeguarding sites (ER 5.11.11), and refers to the preparation of a Site Management Waste Plan ('SMWP') which provides an auditable record of waste management during the construction phase (ER 5.11.13) and the Materials Management Plan ('MMP') which details the procedures and measures to be implemented to classify, store, dispose and re-use excavated materials during construction (ER 5.11.14). The Secretary of State further notes that the Applicant considers that the recycled content of materials used would exceed the regional target of 31%, with over 70% being reused or recycled in line with the Government's target for the recovery of construction waste, and states that the residual effects during construction are likely to be slight adverse and so not significant (ER 5.11.16).
137. The Secretary of State notes that no IPs raised concerns about waste and that waste was not a main issue during the Examination (ER 5.11.21). The Secretary is satisfied with the ExA's conclusion that the effects of the Proposed Development on waste management will be adequately dealt with through the SMWP (ER 5.11.25) which, together with the MMP, will form part of the EMP as secured by Requirement 4 of the rDCO (ER 5.11.15).
138. Whilst the Secretary of State is mindful that the Proposed Development would intersect sand and gravel, alluvium and river terrace deposits which form part of NCC's safeguarded mineral resources (ER 5.11.18), he notes that NCC (as the Mineral Planning Authority) raised no objections to the Proposed Development on this basis (ER 5.11.26). The Secretary of State is mindful that although the Applicant considers that there are limited opportunities to excavate safeguarded minerals prior to construction, their intention is to use excavated material within the Proposed Development together with wider measures to avoid and minimise impact on mineral resources (ER 5.11.18).
139. Overall, the Secretary of State is therefore satisfied with the ExA's view that the Proposed Development would accord with all relevant legislation and policy requirements in the NPSNN (ER 5.11.25) and agrees with the ExA's conclusion that in respect of material assets and waste, the Proposed Development attracts neutral weight in the planning balance (ER 5.11.27).

## **Noise and Vibration**

140. The Secretary of State is content with the ExA's consideration of policy as outlined in ER 5.12.1 to ER 5.12.19 and that the mitigation of the effects of noise and vibration was appropriately considered during the identification of the route and design and the layout, in accordance with paragraph 5.194 of the NPSNN (ER 5.12.71).
141. The Applicant's baseline noise survey was undertaken in September 2020 during the global COVID-19 pandemic, but at a time when traffic was permitted. The

Secretary of State is mindful that due to changes in working practices, traffic levels at this time may have been below the levels usually expected. The Secretary of State agrees that the Applicant's approach of comparing the results with traffic data from September 2019 (ER 5.12.22) provides a robust position from which to undertake the assessment (ER 5.12.73) and that the Applicant's consideration of baseline conditions and surveys, the study area, noise models, identification of receptors and assessment methodology is satisfactory (ER 5.12.72).

142. The Secretary of State notes the questions raised by the ExA in respect of the Applicant's approach towards construction noise (ER 5.12.74) and is satisfied with the ExA's conclusion that the consideration of construction duration is consistent with relevant codes of practice and relevant guidance and that the reasonable worst-case noise and vibration effects during construction have been identified. The Secretary of State agrees with the ExA that it is not appropriate to secure noise and vibration limits, that the limit of uncertainty in the assessments is appropriate and that the measures secured are robust whilst providing sufficient flexibility to respond to uncertainties (ER 5.12.75).
143. The Secretary of State notes the concerns raised by various IPs regarding the hours of work for construction (ER 5.12.54, ER 5.12.56) and that there are many receptors that could experience significant effects due to weekend and night-time working (ER 5.12.81). The Secretary of State notes the Applicant's position that work will be carried out mainly during the daytime and that construction activity outside of this time is to be minimised as far as practical (ER 5.12.59). The Secretary of State notes the further concerns raised by BC regarding proposed night-time working mitigation, but that the Applicant considers that this would be appropriately managed within the EMP and secured within Requirement 4 of the rDCO which would enable relevant LPAs the opportunity to review noise mitigation measures should night-time working prove unavoidable (ER 5.12.60).
144. Given the scale and size of the Proposed Development, the Secretary of State agrees with the ExA that it is inevitable that construction activity will cause some disturbance to residents in surrounding areas. Although the Secretary of State notes that limiting work hours would minimise this disturbance, he is mindful that this would increase the duration of construction. The Secretary of State is therefore satisfied that the balance the Applicant has struck between minimising the potential for significant noise and vibration effects and ensuring the delivery of the Proposed Development is appropriate and that there are suitable mechanisms for consultation and to provide notification for work outside of the proposed hours of work (ER 5.12.76). In respect of night-time work, the Secretary of State notes the agreements reached between the Applicant and local authorities in respect of mitigation and is satisfied that the EMP provides sufficient safeguards in this regard (ER 5.12.77).
145. The Secretary of State notes the concerns raised by Ms Lisa Tomlin (ER 5.12.55) and the residents of BHE and agrees with the ExA that the presence of the construction compound and proximity of construction activity is likely to cause some noise and disturbance for a temporary duration (ER 5.12.78). The Secretary of State notes, however, that the Applicant's assessment does not predict significant effects during the day or night from construction activities (ER 5.12.68). The Secretary of State also acknowledges that the Applicant made amendments during the



Examination to turn construction compound 2 into a welfare compound with storage to reduce disturbance (ER 5.12.79), that the construction compound would be located away from BHE residents and screened (ER 5.12.68) and the Applicant's commitment to engage with Ms Lisa Tomlinson regarding her concerns (ER 5.12.68).

146. The Secretary of State is mindful that without mitigation, significant effects would occur to receptors closest to the construction activities. Nevertheless, he is satisfied that the proposed mitigation measures are adequate to minimise the effect of construction noise on properties in proximity and notes that these measures are secured within the EMP (ER 5.12.80). Like the ExA, the Secretary of State is therefore content that the agreements reached between the Applicant and local authorities in respect of mitigation are sufficient (ER 5.12.77). Accordingly, in view of the mitigation secured in Requirement 4 of the rDCO and the EMP, the Secretary of State is satisfied that the noise and disturbance from construction activity and construction compound 2 would be adequately managed so as not to adversely affect the living conditions of local residents (ER 5.12.79).
147. The Secretary of State notes that the Applicant predicts a significant effect would occur at Acorn Barn due to the work to create the drainage basin, but only if timescales exceed the two months it predicted (ER 5.12.35). Whilst noting that the Applicant has committed to consider the significant effects on Acorn Barn and local receptors further, the Secretary of State agrees with the ExA that these effects should be given low weight against the DCO given their temporary duration. (ER 5.12.81).
148. The Secretary of State notes the concerns expressed by Mr Edward Brown who sought the provision of a noise barrier between the Proposed Development and Hockering (ER 5.12.54). However, the Secretary of State agrees with the ExA that the Applicant's proposed mitigation is reasonable and proportionate. In particular, the Secretary of State notes the Applicant's commitment to maintain a low noise road surface for the lifetime of the Proposed Development (ER 5.12.82).
149. The Secretary of State notes the concerns raised by Honingham Aktieselskab (ER 5.12.58) and the noise assessment prepared for them by Create Consulting which demonstrates the potential for significant effects on areas of their land. The Secretary of State does not dispute the findings of this assessment, but agrees with the ExA that the land belonging to Honingham Arktieselskab does not contain any noise sensitive receptors and therefore accepts that this does not affect the Applicant's overall assessment and conclusions (ER 5.12.83).
150. Regarding Hall Farm and Hall Farm cottages, the Applicant predicted they could experience significant adverse noise effects from the Proposed Development (ER 5.12.43), the Secretary of State agrees with the ExA that given the limited noise attenuation it would deliver, a noise barrier would not be proportionate or reasonable mitigation, and that even with the provision of low noise-surfacing, a significant adverse effect is expected. The Secretary of State therefore concurs with the ExA that the significant adverse effect which Hall Farm/Farm Cottages would experience, weighs against the Proposed Development (ER 5.12.84).

151. The Secretary of State notes that significant adverse effects are predicted at 83 receptors in Lyng or on Lyng Road (ER 5.12.43) due to operational noise effects and changes in traffic volume (ER 5.12.65). The Secretary of State notes that the Applicant considers that mitigation would be difficult (ER 5.12.65) and agrees with the ExA that the Proposed Development would result in a significant adverse effect on several receptors, including those in Lyng or on Lyng Road (ER 5.12.91).
152. It is noted that Childhood First who operate a specialist children's home on Berrys Lane highlighted the need for a tranquil and contained environment for their residents and, in their representations, considered that further controls were needed in relation to the hours of work (ER 5.12.56). The Secretary of State notes that in further information provided, Childhood First outlined the assurances which had been provided by the Applicant regarding the measures to protect and safeguard their operation (ER 5.12.57). Considering Childhood First's acknowledgment that the closure of Berrys Lane would provide a quieter and safer environment (ER 5.12.57) and noting their on-going discussions with the Applicant regarding the impact of the Proposed Development, the Secretary of State is satisfied that mitigation options have been satisfactorily considered and are proportionate and reasonable and further, notes that Childhood First would experience some benefits from the Proposed Development in relation to the noise reduction resulting from the closure of Berrys Lane (ER 5.12.85).
153. The Secretary of State agrees with the ExA that appropriate mitigation has been secured in the rDCO and EMP in compliance with paragraphs 5.196 and 5.197 of the NPSNN and that appropriate options for mitigation have been considered and the secured measures are proportionate and reasonable and accord with paragraph 5.198 of the NPSNN (ER 5.12.86).
154. The Secretary of State is satisfied that noise issues in respect of Noise Important Areas ('NIA') have been considered with the local authorities, and notes that no material affects are expected, and that one NIA is predicted to benefit significantly from noise reduction. Further, the Secretary of State notes that no tranquil areas have been identified. Consequently, he is satisfied with the ExA's conclusion that the Proposed Development complies with paragraph 5.200 of the NPSNN and paragraph 185 of the Framework (ER 5.12.87).
155. The Secretary of State notes the concerns raised by Mr Edward Brown and Mr Richard Hawker in relation to the impact of noise on residents in Hockering (ER 5.12.54) and that, in response, the Applicant considered that in both the short and long term, most of the predicted noise decreases would be in Hockering due to the realignment of the road to the south and reduced traffic numbers (ER 5.12.66). Like the ExA, the Secretary of State considers that the significant beneficial reduction in operational traffic noise at some receptors, including some in Hockering, as a result of road users' behaviour brought about by the Proposed Development and expected reduction in traffic flows, weigh in favour of the DCO being made (ER 5.12.88).
156. Overall, the Secretary of State concurs with the ExA that the Applicant has identified significant traffic noise effects which, in accordance with paragraph 5.195 of the NPSNN is a ground for a DCO not to be granted, and these effects are considered further below in the section on the Planning Balance. Subject to this, the

Secretary of State is content that appropriate measures have been taken by the Applicant to mitigate, minimise and avoid adverse impacts and where possible, to contribute towards improvements (ER 5.12.89). Consequently, the Secretary of State is satisfied that appropriate consideration has been given to relevant policy and that likely significant effects have been identified in respect of noise and vibration (ER 5.12.90).

157. In response to the impact on properties on Lyng Road, the Secretary of State notes the Applicant's stated that this relates to operational noise effects and changes in traffic volume and the Applicant's view that these changes will be below SOAEL and not enough to cause significant effects on the health or quality of life of local residents (ER 5.12.65). Moreover, the ExA considers that the remaining significant effects will be below SOAEL, and effective mitigation is proposed, which means the Proposed Development complies with the NPSNN (ER 7.3.43). In conclusion, the Secretary of State agrees with the ExA's considerations as set out at ER 5.12.91 and concurs with the ExA that whilst the Proposed Development would cause some outstanding significant adverse effects on a small number of properties, given their temporary duration, limited negative weight should be given to this in the planning balance (ER 5.12.92).

## **Health**

158. The Secretary of State notes that the Applicant's assessment identified that during construction, there were likely to be some negative effects on local communities and potentially their health due to noise and dust and the visual impact of construction activities (ER 5.13.15). During operation, it is noted that there was expected to be some negative health outcomes in relation to noise for some sensitive receptors, but also positive health outcomes in respect of noise reduction and accessibility improvements (ER 5.13.16). Overall, the ExA concluded that they had no reason to disagree with the Applicant's assessment that there would be no significant effect on human health arising from the Proposed Development (ER 5.13.22).

159. The Secretary of State notes that none of the Applicant's findings were disputed by Public Health England, that none of the local authorities expressed concern about the Applicant's overall approach to health (ER 5.13.23), nor was the issue of health raised by any IP during the Examination (ER 5.13.21). Accordingly, the Secretary of State is satisfied with the ExA's view that the Proposed Development would comply with paragraphs 4.79 to 4.81 of the NPSNN (ER 5.13.23).

160. The Secretary of State agrees with the ExA that whilst there are likely to be some negative impacts on health during construction, particularly for communities near the Proposed Development and users of the relevant part of the A47 (ER 5.13.24), such effects will be temporary and will be mitigated through the Construction Environmental Management Plan and Traffic Management Plan ('TMP') (ER 5.13.25). In conclusion, the Secretary of State accords neutral weight to the impact of the Proposed Development on health-related matters (ER 5.13.26).

## **Socio-Economic**

161. The Secretary of State notes that the Applicant's ES considered there are several existing businesses, set out in ER 5.14.13, which would be affected by the Proposed Development. It is noted that Animal Warden Services, Kimblewick Riding Centre and Two Acre Boarding Kennel would all experience longer journey times to access the existing and proposed A47 due to the closure of Low Road and access to both Riverside Farm Holidays rental apartments and Merrywood House would be permanently altered resulting in extended journey times (ER 5.14.14 and ER 5.14.16). However, the Secretary of State also notes that some businesses, would experience reduced journey times such as GRRRoomers and City Stove Installs Wood Burners (ER 5.14.15).
162. The Secretary of State notes that the area surrounding the Proposed Development is predominantly rural in character and that land use is primarily agricultural. Both within and adjoining the limits of the Proposed Development, the Secretary of State notes that there are several farming enterprises that operate from land North and South of the Proposed Development and, consequently, there is heavy reliance on existing side roads and rural lanes to provide access between the various parcels of land (ER 5.14.39). The Secretary of State notes the concerns raised by several local farming enterprises, particularly in relation to the closure of existing roads and junctions and the severance of north-south routes which they stated would increase journey times and emissions, cause delays, additional noise and increase agricultural traffic through local villages (ER 5.14.32).
163. The Secretary of State agrees with the ExA that the closure or diversion of these roads would have an adverse effect on existing businesses and would result in longer journey times and associated subsequent effects and this would be a negative effect of the Proposed Development (ER 5.14.40). The ExA, however, concurred with the Applicant that the Proposed Development would improve existing arrangements via Wood Lane or Norwich Road Junctions and provide a more suitable and safer means of accessing the local road network compared to the existing situation where agricultural vehicles must cross the busy and fast-moving existing route (ER 5.14.41). The ExA considered that there is no substantive evidence to demonstrate that the Proposed Development would significantly increase agricultural vehicles using roads through local villages and therefore accorded neutral weight to this topic in the planning balance (ER 5.14.50). The Secretary of State agrees with this conclusion.
164. Overall, the Secretary of State agrees with the ExA that although the Proposed Development would inconvenience some agricultural business and enterprises, he is satisfied that the Applicant has attempted to keep this to a minimum and the negative impact would be limited (ER 5.14.43).
165. The Secretary of State acknowledges the concerns raised by BHE about the negative impact the Proposed Development would have on the enterprises and activities which currently operate from their estate and that they considered the Applicant's assessment in respect of these impacts to be insufficient (ER 5.14.33 - 5.14.34).

166. The Secretary of State notes that during the Examination the Applicant worked with BHE to understand and mitigate the impact of the Proposed Development and by the end of the Examination the ExA was satisfied that the Applicant had agreed a number of changes in response to BHE's concerns that are to be delivered by amendments to the Proposed Development or through private agreements (ER 5.14.36 and ER5.14.44). The Secretary of State notes that in relation to the Berry Hall Christmas Tree Farm, there is no agreed mitigation in respect of the effect of the Proposed Development. The Secretary of State agrees with the ExA that although only seasonal, there is likely to be some loss of business due to reduced passing trade but that the other elements of the business which does not rely on passing trade will remain (ER 5.14.45) Accordingly, although some harm would result, due to the limited duration of the activity and the fact the business will continue to operate, the Secretary of State agrees with the ExA that this harm carries low weight (ER 5.14.52).
167. The Secretary of State notes that the Proposed Development would have an adverse effect on three agricultural land holdings and given the permanent nature of this loss the Secretary of State agrees with the ExA that this carries moderate weight against the Proposed Development (ER 5.14.46 and ER 5.14.51). However, the ExA considered that the Proposed Development once constructed would deliver some economic benefits to the wider area due to reduced journey times, improved connectivity and greater journey reliability (ER 5.14.47). During construction, the Secretary of State accepts that local communities would experience additional delays, noise and inconvenience and adverse effects on some businesses due to accessibility but considers that this is balanced against the economic benefits that would result from local employment (ER 5.14.48). In respect of the impact on public transport, the Secretary of State is satisfied that there would be no significant detrimental effect during construction and agrees with the ExA that once operational, the easing of congestion should improve reliability of bus journeys passing through junctions (ER 5.14.49).
168. Overall, the Secretary of State agrees with the ExA that the Proposed Development would support economic development both locally and within the region due to improved journey times and increased reliability and this weighs highly in favour of Proposed Development (ER 5.14.53). Although the Secretary of State is mindful that some harm would be encountered by local businesses, he considers this is outweighed by the significant economic benefits the Proposed Development would deliver. In conclusion, the Secretary of State ascribes substantial positive weight in favour of the development in the planning balance (ER 5.14.54).

## **Land Use**

169. Secretary of State agrees with the policy considerations set out by the ExA at ER 5.15.2 to ER 5.15.7 and notes the summary of the likely effects of the Proposed Development in relation to land use as set out in paragraphs ER 5.5.21 to ER 5.5.22.
170. The Secretary of State notes the view held by NCC that the current A47 forms a barrier to North-South pedestrian and cycle movements (ER 5.15.29). The Secretary of State agrees with the ExA that the provision of Mattishall Lane, Hall Farm and Honingham underpasses would provide improved North South links and

would offer a viable and attractive alternative route to pedestrians and cyclists (ER 5.15.48). Further, the Secretary of State is satisfied that although there will be some severance of footpaths in this location, overall, the level and quality of the provision would be an improvement on existing arrangements, and this is therefore a benefit of the Proposed Development and weighs in its favour (ER 5.15.48).

171. The Secretary of State notes that Proposed Development would create a new overbridge ('Easton Footbridge') between Dereham Road and Church Lane, as outlined at ER 5.15.20. The Secretary of State agrees with the ExA that the provision of the Easton footbridge, whilst being located away from the existing crossing point, is a benefit of the Proposed Development as it represents a substantial improvement in safety by providing separated crossing facilities compared to the current at grade crossing and that this is a benefit and weighs in favour of the Proposed Development (ER 5.15.47).
172. The Secretary of State notes the concerns raised about the impact on the footpaths in the Tudd Valley (ER 5.15.30). With regard to the footpaths along the River Tud, the ExA considered that construction activities would have an adverse effect on the enjoyment of footpath users but agrees with the ExA that this harm would be limited in duration and once the proposed planting becomes established, this effect would be minimised (ER 5.15.49). The Secretary of State has no reason to disagree with this.
173. The Secretary of State notes the concerns raised by Honingham Aktieselskab regarding the proposed re-routing of RB1 who stated that, for safety reasons, the route should be separate from farm traffic (ER 5.15.32). The Secretary of State notes the ExA's position that the Applicant's land agreement with Easton Estates could address the use of fencing and hedging to separate users of the byway from farm traffic (ER 5.14.42).
174. The Secretary of State acknowledges the concerns raised that existing footpaths and cycleways would be compromised with longer diversions due to routes being severed by the Proposed Development (ER 5.15.30). Whilst the Secretary of State notes that there would be some instances where the deviations of existing routes would be longer, he also notes that the ExA considered that the evidence suggests that the main use of the footpaths surrounding the Proposed Development is for recreation and consequently, there is no compelling evidence to suggest that the harm caused would be significant and agrees that the mitigation proposed by the Applicant in this regard is adequate (ER 5.15.50). Further, the Secretary of State considers that the Proposed Development would provide a substantial increase in the number of footpaths available to users (ER 5.15.47).
175. The Secretary of State agrees with the ExA that, even though some temporary adverse effects will be caused, overall, the Proposed Development addresses the needs of walkers, cyclists and horse riders during the construction and operation phases (ER5.15.51).
176. In conclusion, the Secretary of State agrees with the ExA that the construction activities for the Proposed Development would have an adverse impact on users of footpaths along the River Tud around Hockering, but given the limited duration of

construction, considers that this carries low weight in the planning balance (ER 5.15.52). Overall, the Secretary of State is satisfied that although in some instances there are likely to be longer journey times experienced by properties such as Berry Hall Cottage, properties on Church Lane, Rotten Row, Ringland Road, Dog Lane and Hillcrest Cottage which he considers would be a moderate adverse significant effect (ER 5.15.21), this harm would be outweighed by the overall improvements in the network and the improvements the Proposed Development would deliver in terms of quality and provision for walkers, cyclists and horse riders and he therefore ascribes moderate weight in the planning balance to land use (ER 5.15.53).

## **Traffic and Transport**

177. The Secretary of State notes the ExA's consideration of the policy frameworks relating to Transportation and Traffic set out in ER 5.16.5 - 5.16.16. The Secretary of State also notes that the Applicant has consulted with NCC and LPAs on the assessment of transport impacts and the preparation of associated traffic models and therefore agrees with the ExA that, in this respect, the Proposed Development accords with paragraph 5.204 NPSNN (ER 5.16.82).
178. The Secretary of State notes that a number of IPs questioned why the Applicant had used a 2015 traffic model whilst the latest work undertaken for the Norwich Western Link ('NWL'), a scheme promoted by NCC, had used a 2019 model and comments were made as to why updated modelling had not been used, particularly since the 2019 model showed a 30% lower level of vehicle kilometres within the scheme area (ER 5.16.40). The Applicant stated that the Proposed Development had been in development for a longer period of time than the NWL scheme and that DfT had asked the NWL team to develop the updated 2019 NATS model, which was not used by the Applicant as it was not yet approved by DfT. The Applicant considered that they had taken all reasonable steps to reconcile the two models (ER 5.16.45) and that there was a difference of 3.3% total annual average daily traffic ('AADTs') between the two models, a difference the Applicant stated to be broadly in line with expected traffic growth over a 4-year period (ER 5.16.46). The Secretary of State also notes that agreement on the models forms part of the Statement of Common Ground between the Applicant and NCC (ER 5.16.45). The Applicant stated in response to the 30% query, that this was due to a different combination of road network links used in the 2019 model (ER 5.16.47). The Secretary of State is satisfied from the evidence that the Applicant has taken account of local models consistent with paragraph 5.212 of the NPSNN and whilst noting the different dates of the models used for the Proposed Development and NWL, concurs with the ExA that he is content with the approach taken by the Applicant in respect of the modelling dates (ER 5.16.83).
179. The Secretary of State notes a number of parties raised concerns regarding the fact the Applicant's data assumptions and projections in its data modelling did not take into account the impact of the Covid19 pandemic on travel patterns and road capacity (ER 5.16.41) and questioned the validity of the survey data in view of changes to working patterns and behaviours arising from the pandemic (ER 5.16.44). He also notes further concerns raised by Dr Andrew Boswell regarding the appropriateness of the traffic modelling baselines, as set out at ER 5.16.42. The ExA was satisfied that the approach taken by the Applicant with regard to further testing

of the NATS model in response to the concerns raised about the different dates and the Covid pandemic (ER 5.16.83). Whilst the Secretary of State notes the concerns raised by Mr Richard Hawker in his consultation response dated 15 June 2022, the Secretary of State notes that none of the local authorities or NCC raised any issues or concerns with the Applicant's baseline, assessment methodology or traffic modelling (ER 5.16.39), and the ExA's view that there was no reason to doubt that the consideration of the baseline conditions, surveys and study area are not appropriate for the assessment (ER 5.16.85). In respect of the day traffic survey undertaken by Mr Richard Hawker (ER 5.16.43), the Secretary of State also agrees with the ExA that this is not sufficiently detailed to bring into question the Applicant's identified baseline (ER 5.16.85).

180. The Secretary of State accepts that some impacts are anticipated to the surrounding network during the construction phase but notes the ExA considered that these effects are unlikely to be significant (ER 5.16.89). Like the ExA, the Secretary of State is satisfied that appropriate and proportionate mitigation has been secured within the rDCO, EMP and TMP, consistent with paragraph 5.215 NPSNN (ER 5.16.88) and that with the measures provided for the further development of the EMP and TMP, appropriate mitigation measures would be provided for construction traffic and temporary closures and diversions. Consequently, the Secretary of State is content that appropriate mitigation would be identified during the detailed design phase through traffic management planning (ER 5.16.89).

181. The Secretary of State notes that a large number of representations were received from IPs regarding the operational impact and permanent road closure that will result from the Proposed Development as summarised in ER 5.16.53, and further notes the Applicant's response to these issues at ER 5.16.55 to ER 5.16.61. With regard to the concern about increased traffic on Taverham Road due to the closure of Ringland Road and traffic using Weston Road as an alternative route, the Secretary of State notes the modelling data supplied by the Applicant as set out in Table 4 in ER 5.16.56 which demonstrates that with the scheme and NWL, there would be a reduction in traffic along this route although in the interim, between the opening of the Proposed Development and NWL, traffic flows would increase from 900 to 2600 AADT. However, through the temporary closure of Honingham Lane until the NWL is operational, there would be an increase from the Do Nothing (DN) scenario to 1300 AADT. Once the NWL is operational, it is noted that traffic numbers are predicted to fall from the DN figure to 200. The Secretary of State therefore agrees with the ExA that Taverham Road will not be significantly impacted by the Proposed Development (ER 5.16.103).

182. The Secretary of State notes the concerns raised by WLPC, primarily regarding the potential of the Proposed Development to increase traffic through the village, but also in respect of potential issues surrounding the NWL, particularly the implications for the village if its implementation was delayed or not delivered. There was also concern about what they considered to be the vagueness of the Applicant's proposed mitigation (ER 5.16.54). The ExA considered that there is an issue with traffic in the Weston Longville, but that the traffic modelling shows that there would be no significant increase in traffic as a result of the Proposed Development and this would include the scenario where the NWL is not delivered and Honingham Lane is closed. The Secretary of State therefore accepts the Proposed Development will not



make the traffic situation worse, although he notes the ExA's comment that the NWL will have to satisfy the same tests and the onus will therefore be on NCC to demonstrate this and if not, to provide the necessary mitigation (ER 5.16.102).

183. Further concerns were raised regarding the potential increase of traffic through Honingham (ER 5.16.53), but the Secretary of State notes the Applicant disputed this suggestion on the basis that it had worked with Honingham Parish Council throughout the scheme development to avoid increased traffic travelling through the village and that accordingly, a number of features had been adopted into the Proposed Development to address this concern (ER 5.16.55).
184. The Secretary of State notes the concerns raised regarding the loss of the direct connection between St Andrew's Church and Honingham Village, the concerns raised regarding the loss of a link between Honingham and Easton and the other representations made regarding the proposed closure of a number of local roads including Church Road, Berrys Lane, and Blind Lane (ER 5.16.53). The Secretary of State acknowledges that closure of side roads may result in increased journey times, particularly around Honingham but, like the ExA, agrees that whilst these changes may prove inconvenient for some residents, they are not significant. The Secretary of State is content with the justification for these closures and the highways benefits they would deliver (ER 5.16.97).
185. One of the dominant concerns during the Examination was the relationship between the Proposed Development and the NWL, with the issues raised by IPs summarised at ER 5.16.62. The Secretary of State notes that the Applicant states that for the majority of their assessments, the baseline does not include the NWL which is only included for assessments requiring traffic modelling data which has with or without NWL within their baseline scenarios (ER 5.16.64). Further, the Secretary of State notes the Applicant's position that the Proposed Development is not dependant on the NWL being delivered and like the ExA, agrees with this. (ER 5.16.91).
186. Whilst noting the concerns of IPs that the 50m stub at the Wood Lane junction to be provided to cater for the future inclusion of the NWL should be excluded from the DCO and only provided once the NWL is approved (ER 5.16.62), the Secretary of State is satisfied that the effects of this stub have been fully assessed as part of the Proposed Development (ER 5.16.92).
187. The Secretary of State notes concerns that the inclusion of the 50m stub within the Proposed Development effectively indicates that the NWL is bound to be delivered (ER 5.16.62), and agrees with the ExA that there is not any basis for these concerns, as the NWL scheme will need to go through due process and obtain the necessary permission and consents. The inclusion of the stub would not prejudice this process (ER 5.16.93). Further, the Secretary of State notes the stub is only to be provided if the NWL obtains planning permission prior to the Proposed Development commencing the main construction works (ER 5.16.36). The Secretary of State agrees with the ExA that given the importance of the link between the NWL and the Proposed Development, there is justification for the inclusion of the stub, but given the lack of certainty in relation to the delivery of the NWL, attributes no weight to this in the planning balance (ER 5.16.93).

188. The Secretary of State notes that whilst progress was made in relation to the Applicant's interim proposals for mitigating the impact upon the surrounding road network and local villages until the NWL is delivered, the ExA concluded that it would not be possible to confirm and detail all measures to be put in place due to the uncertainty over the exact impact and that for the surrounding villages the lack of clear mitigation is a concern (ER 5.16.95). The Secretary of State agrees with this but is mindful that the NWL is a NCC scheme and that substantial elements of the mitigation for its non-delivery would fall to NCC to resolve. The Secretary of State acknowledges that identifying specific mitigation measures is difficult at this stage but notes the Applicant's commitment for continued liaison between NCC and WLPC to ensure the delivery of suitable measures. It is noted that the ExA conclude that overall, on balance, it is satisfied with the approach taken by the Applicant and that the mitigation proposed is acceptable (ER 5.16.96) and that there is sufficient provision for further measures to be brought forward if necessary (ER 5.16.105). The Secretary of State agrees with this.

189. Whilst noting the various concerns raised in relation to Wood Lane junction as summarised at ER 5.16.62, like the ExA, the Secretary of State is satisfied that the Applicant was sensible in accounting for the NWL within its design (ER 5.16.98). Further, the Secretary of State agrees with the ExA that even if the NWL was not delivered or was significantly delayed, the Wood Lane junction would be required to accommodate a substantial amount of traffic, including HGVs, given that it would form NCC's HGV route between the A47 and A1067. Noting NCC's support for the design, the Secretary of State is satisfied that Wood Lane junction would be suitable for this purpose (ER 5.16.99). Although the Secretary of State appreciates that the proposed effects of the Wood Lane junction and the consequences for those living around or close by, he notes that the ExA considered that there may be other design options to deliver the junction, but was not convinced that there are any better options, either from a transport or environmental perspective (ER 5.16.100). The Secretary of State has no reason to disagree with this.

190. In conclusion, the Secretary of State agrees with the ExA that the Proposed Development would provide substantial benefits for users by reducing congestion and improving reliability; deliver improvements to the strategic road network in the context of the projected national growth in traffic levels; support the delivery of national network to meet the country's long-term travel needs and deliver safety improvements for future users. Further, he is satisfied that appropriate mitigation is in place to address impacts during construction and the Proposed Development would not result in unacceptable impacts on local side roads (ER 5.16.104). The Secretary of State therefore concurs with the ExA that overall, these weigh substantially in favour of the Proposed Development (ER 5.16.105).

## **Water Environment**

191. The Secretary of State notes the ExA's summary of the policy context relating to this matter at ER 5.17.2 to ER 5.17.12 and is content that the ExA has examined the proposal against those policies (ER 5.17.86). The Secretary of State agrees with the ExA that the content of the Flood Risk Assessment ('FRA') meets

the requirements of paragraphs 5.92 and 5.93 of the NPSNN and makes the appropriate allowances for climate change (ER 5.17.88).

192. It is noted that the Applicant identified a number of areas which would be at high risk of flooding as a result of the Proposed Development. Like the ExA, the Secretary of State is satisfied that the risks posed by and to the Proposed Development have been properly assessed and that an appropriate package of mitigation will be adequately secured through Requirement 8 rDCO and the EMP (ER 5.17.89).
193. Although it is noted that reference was made to flooding in certain locations such as Taverham Lane, the Secretary of State notes that the ExA considered that it was not presented with any substantive evidence to show that the Proposed Development would affect or be affected by these or similar incidents and nor did NCC, as the Leading Local Flood Authority, express any concerns in this regard. The ExA concludes that with the proposed mitigation in place they are satisfied that the Proposed Development would lead to a negligible risk of increased flooding. The Secretary of State has no reason to disagree with this conclusion and is therefore satisfied that the Proposed Development would accord with paragraphs 5.102 and 5.104 NPSNN (ER 5.17.90).
194. As the Proposed Development falls within Flood Zone 3 ('FZ3'), the Applicant undertook sequential and exception tests (ER 5.17.25). The sequential test is outlined at paragraph 5.94 of the NPSNN and states that the Applicant should provide evidence for the Secretary of State to apply the sequential test, while paragraph 5.98 of the NPSNN states that the Secretary of State should be satisfied that the sequential test has been applied as part of site selection. The Secretary of State notes the Applicant's conclusion that although flood risk was considered as part of the route selection, the Proposed Development is a linear scheme and each option had to pass the River Tud at some point (ER 5.17.73). The Secretary of State, like the ExA, is therefore satisfied that the parts of the Proposed Development within FZ3 could not be located to an area of lower flood risk and that there is no reasonably available alternative site. Consequently, the Secretary of State is satisfied that the sequential test has been applied as part of site selection and agrees with the ExA that the Proposed Development meets the sequential test (ER 5.17.92). The Secretary of State also concurs with the ExA that the Proposed Development falls within the definition of essential infrastructure as defined within the National Planning Practice Guidance and accordingly, subject to the exception test being satisfied, it can be located in FZ3 (ER 5.17.93).
195. In relation to the exception test set out in paragraphs 5.106 to 5.109 of the NPSNN, the Secretary of State notes the Applicant's conclusion that the Proposed Development would result in a slight reduction to flood risk downstream, but a slight increase to arable land upstream (ER 5.17.75). The Secretary of State agrees with the ExA that given the low level of flood risk posed by the Proposed Development, the established need for the development and the wider benefits that this would bring to the community outweighs the risk and is content that the Proposed Development would be safe for its lifetime and would not increase floor risk elsewhere (ER 5.17.94). According, whilst noting that no comments were made by any parties regarding the sequential or exceptional test (ER 5.17.76), the Secretary of State is

content that the Proposed Development meets the exception test and complies with the NPSNN (ER 5.17.94).

196. The Secretary of State notes that the Proposed Development would seek to make use of Sustainable Urban Drainage Systems ('SuDS') in several locations, but this could not be achieved across the whole scheme. The Secretary of State is therefore satisfied that the Proposed Development would accord with paragraphs 5.110, 5.111 and 5.230 NPSNN and paragraph 165 of the Framework. The Secretary of State also notes the absence of evidence to suggest the design of the SuDS features would not comply with the relevant National Standards as required by paragraph 5.100 of the NPSNN (ER 5.17.95)
197. The Secretary of State notes the satisfaction of certain IPs with the drainage strategy and the Applicant's commitment to investigate the possibility of using existing drainage infrastructure along Berrys Lane at detailed design stage (ER 5.17.79 to ER 5.17.84). The Secretary of State agrees with the ExA that this would reduce the impact on BHE. The Secretary of State notes that the ExA is satisfied that the Proposed Development would provide adequate surface water storage and attenuation capacity to ensure that the peak rate and total volume discharged would not exceed existing flows and volumes and has no reason to disagree with this conclusion. According, the Secretary of State is satisfied that the Proposed Development would accord with paragraph 5.113 of the NPSNN (ER 5.17.96).
198. The Secretary of State notes that the findings of the Applicant's Water Framework Directive compliance assessments were not disputed during the Examination and agrees with the ExA that the conclusions of the assessments are reasonable and therefore the Proposed Development would be unlikely to hinder the aims of the River Basin Management Plan for the affected waterbodies (ER 5.17.97).
199. On 16 March 2022, following the close of the Examination, Defra issued advice concerning nutrient neutrality in respect of certain protected sites. The ExA recommended that the Secretary of State may wish to consult on this matter (ER 5.17.45 and ER 5.17.46). On 1 June 2022, in the first consultation letter, the Secretary of State asked the Applicant to confirm whether the Defra advice changed any of the assessments carried out in relation to the Application. In its reply dated 15 June 2022, the Applicant confirmed, amongst other things, that the risk of effects from nutrients is scoped out of water risk assessment in the DMRB. The Applicant also confirmed that Chapter 13 (road drainage and the water environment) of the ES has considered mobilisation of nutrients from the disturbance of soils during construction and any associated runoff that may reach the watercourse. The Secretary of State notes that paragraph 13.9.7 of Chapter 13 confirms that the risk of nitrate and phosphate mobilisation will be managed by the implementation of best practice construction measures and the temporary drainage strategy through the EMP, and paragraph 13.9.26 states that the provision of operational drainage ponds will provide reduced nutrient inputs to watercourses as a betterment to the existing baseline. In its reply, the Applicant confirmed that riparian buffer zones next to watercourses (paragraph 13.9.41) as part of Water Framework Directive commitments would also reduce nutrient input to watercourses as a secondary effect. The Applicant's reply concludes by confirming that Defra's advice in relation to nutrient pollution does not change any of the assessments carried out in relation

to the application. On 27 June 2022, in the second consultation letter, the Secretary of State invited comments from all Interested Parties on the responses received to the first round of consultation. NE confirmed in its reply dated 7 July 2022 that it agreed with the Applicant's response. The Secretary of State considers he has no reason to disagree with the Applicant's conclusion that Defra's advice does not change any of its assessments.

200. The Secretary of State notes that the ExA was satisfied that the necessary measures to protect water quality, the provision and maintenance of the surface water drainage system and to mitigate the flood risk are set out in the rDCO and EMP and accordingly, the Proposed Development would be unlikely to have any significant effects on the water environment (ER 5.17.98). The Secretary of State accepts this conclusion and agrees that this matter attracts neutral weight in the planning balance.

### **Other Considerations**

201. In accordance with section 104 of the 2008 Act, the Secretary of States notes that, in deciding the application, regard should be had to the NPSNN and any other matters considered important and relevant to the decision.

202. The Secretary of State notes the representations made by the owner of BHE who submitted that the whole of BHE was designated by the Treasury as being of outstanding scenic, historic or scientific interest pursuant to s.31(1)(b) of the Inheritance Tax Act 1984 ('IHTA') and that this designation, while conferring upon BHE certain tax exemptions, was made for public interest reasons (ER 5.18.5). The Secretary of State notes that the ExA highlighted that IHTA designation of BHE does not fall within those listed as a heritage asset either with the NPSNN of the Framework but that given the nature of the designation, the ExA considered it an important and relevant consideration to the Secretary of State's decision (ER 5.18.2). As such, BHE considered that it should be a material consideration in planning terms (ER 5.18.13).

203. The Secretary of State notes BHE's main concerns, namely that (i) the application fails to take into account the heritage significance of BHE, consistent with its designation as a IHTA (ER 5.18.8), (ii) the Applicant's ES is silent as to the wider estate under the designation which BHE consider to be in conflict with the Infrastructure (Planning Environmental Impact Assessment) Regulations 2017, the NPSNN and Framework (ER 5.18.9) and (iii) it represents an environmental constraint not taken into account in the consideration of alternatives, and a matter not assessed in the Applicant's consideration of the compelling case for temporary and permanent compulsory acquisition of the affected land (ER 5.18.10). The Secretary of State further notes that BHE considered the impact on their estate in heritage terms to be excessive (ER 5.18.11).

204. The Secretary of State notes the Applicant's position as set out at ER 5.18.14 to ER 5.18.20, particularly, that the Applicant considered that the IHTA designation was not a heritage designation as defined in the NPSNN nor a designation made for landscape purposes as defined in paragraph 5.150 NPSNN and therefore, BHE's

submissions did not affect the conclusions within the route option studies and, in the Applicant's ES (ER 5.18.19).

205. The Secretary of State notes the response from Historic England who deferred to NE in respect of the land in BHE (ER 5.18.22) and the ExA considered this suggested that the designation relates more to the land rather than a specific heritage asset (ER 5.18.30). The Secretary of State notes that no response was received from NE before the close of Examination (ER 5.18.23).
206. The Secretary of State agrees with the ExA that there is no reference within the NPSNN or the Framework to the IHTA as being a heritage asset, but nevertheless, notes that the NPSNN requires consideration of the impacts on other non-designated heritage assets if there is clear evidence that the assets have significance which merit consideration even though those assets are of lower value than designated assets (ER 5.18.25). Although BHE is one of a few select estates in the country covered by the IHTA designation, the ExA highlighted that many of the other estates are subject to other designations and a number are also Grade 1 listed (ER 5.18.26) and by contrast, BHE, other than its designation as a Grade II listed building, is not subject to any other planning designations either for heritage or landscape (ER 5.18.27).
207. Following the ExA's recommendation that the Secretary of State consult NE as their position with regard to BHE was not clear (ER 5.18.32) the Secretary of State consulted NE on 1 and 27 June 2022. In their consultation response dated 7 July 2022, NE noted that the Proposed Development would permanently take part of the outstanding scenic land at BHE including the removal of some existing screen planting and considered that this would cause a significant but localised adverse impact until new screen planting became effective in approximately 20 years. They further noted that the proposed construction compound would temporarily take additional land from the estate and cause significant localised and time-limited adverse impact and considered it likely that two fields would lose their value as part of the land of outstanding scenic interest at BHE, resulting in removal of these fields from the designated area. Notwithstanding this, NE considered that key aspects of the outstanding land would continue to retain their outstanding interest in the long term, subject to the establishment of appropriate mitigation measures but raised concern about the mitigation measures in the EMP being insufficient to provide effective screening, recommending that tree and shrub planting is established over all the southern slopes of the southern roundabout as a minimum.
208. The Secretary of State notes the Applicant's consultation response dated 8 July 2022 in which the Applicant acknowledges NE's concerns in relation to the proposed mitigation measures with regards to effective screening and notes the Applicant's commitment to further consult with NE on the design of the proposed planting prior to seeking the Secretary of State's approval to the landscape design under Requirement 5 of the rDCO. The Secretary of State acknowledges the concerns raised by BHE in their response dated 27 July 2022 regarding the absence of measures within the rDCO which would oblige the Applicant to consult with NE, but notes from the Applicant's response dated 26 July 2022, that it would be agreeable to formally recognising this commitment by adding NE to the list of statutory consultees under Requirement 5 of the rDCO. The Secretary of State is

content with this inclusion and has amended Requirement 5 accordingly. The Secretary of State also notes that the landscaping scheme provided for by Requirement 5, is required to include details of measures for the replacement of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the relevant part of that scheme, die, become seriously diseased or seriously damaged.

209. The Secretary of State also notes that as part of BHE's response, it disagreed with the Applicant's view that the IHTA designation was for outstanding scenic land, not heritage; however, that response does not change the Secretary of State's conclusion below.
210. Whilst noting that the ExA found parts of BHE to be attractive, the Secretary of State concurs with the ExA that due to the lack of planning designations (ER 5.18.33) and in the absence of any particular qualities which would set BHE apart from other parts of order land (ER 5.18.34), the land is not of such special quality as to be considered irreplaceable and therefore, there is no compelling reason why BHE should have been considered by the Applicant as a whole, nor is there any compelling policy reason which requires specific consideration to be given to BHE over and above any other Grade II listed building in a rural setting (ER 5.18.35). Consequently, whilst noting the Applicant's conclusion that the Proposed Development would harm the surrounding LCA, the Secretary of State is content that the Applicant has appropriately assessed BHE as a designated heritage asset and that its assessment as part of an LCA is reasonable (ER 5.18.36).
211. With regard to Wood Lane junction, the Secretary of State notes the representations raised by BHE but agrees with the ExA that whilst the alternative arrangement suggested by BHE would substantially reduce the impact on BHE, this is an inevitable consequence of taking less land from BHE rather than any other specific reasons (ER 5.18.38).
212. The potential harm the Proposed Development would cause to BHE has been considered above. The Secretary of State agreed with the ExA's conclusions that the Proposed Development would cause less than substantial harm to the setting of a listed building (ER 5.18.39) and also harm due to the change in landscape and character as a result of the presence of the construction compound (ER 5.18.40). The Secretary of State agrees with the ExA that the proposed mitigation would reduce this harm (ER 5.18.41).
213. Whilst the Secretary of State acknowledges the importance of the landscape and the great care taken by the owner of BHE towards its upkeep and maintenance, he agrees with the ExA that considering the lack of both planning and formal designations, little weight should be afforded to the IHTA designation (ER 5.18.42). In conclusion, the Secretary of State agrees that whilst the Proposed Development would cause some harm to the IHTA. The ExA considered this would primarily be during the construction phase and it would therefore be temporary and limited. Notwithstanding NE's response following the close of Examination that the two fields subject to temporary works may lose their IHTA designation status, the Secretary of State agrees with the ExA that this harm would count against the DCO (ER 5.18.43).

## **Maintenance Asset Transfers**

214. The Secretary of State notes that, at the end of the Examination, there were unresolved issues between the Applicant and NCC in respect of the transfer of assets and the need for Protective Provisions (ER 1.4.45). Following the ExA's recommendation, in the consultation letter dated 1 June 2022 the Secretary of State asked for an update on these issues and on 15 June 2022, NCC confirmed that an agreement had been reached with the Applicant in respect of the all outstanding matters.

## **The Secretary of State conclusions on the Planning Balance**

215. The Secretary of State agrees with the ExA's finding that the Proposed Development would be in conformity with the NPSNN (ER 7.3.7) and notes that its benefits are supported by the LIRs submitted by BC and NCC (ER 7.3.4). The Secretary of State also agrees that the Proposed Development accords with Government Policy to deliver national networks that meet the country's the long-term needs, supporting a prosperous and competitive economy (ER 7.3.7).

216. As set out in paragraph 20 above, the Secretary of State is satisfied that the need for the Proposed Development has been established and agrees with the ExA's view that the improvement to the road network which is likely to be achieved by the Proposed Development including in terms of capacity, resilience and safety are important considerations in favour of the Order being made (ER. 7.3.7).

217. The Secretary of State agrees with the ExA's conclusion that the Proposed Development would meet the need to improve national networks that meet the country's long-term needs and that substantial weight should be given to the contribution the Proposed Development would make towards the need set out in the NPSNN (ER 7.3.8).

218. The Secretary of State agrees with the ExA's conclusion regarding the limited effects the Proposed Development would have on air quality at ER 7.3.11 to ER 7.3.12.

219. The Secretary of State agrees with the ExA that limited harm should be attributed to the construction effects of the Proposed Development on hedgerows, deciduous woodland, floodplain and grazing marsh and the findings that it would have a slight adverse effect on breeding birds, barn owls and wintering birds (ER 7.3.15). The Secretary of State also agrees with the ExA that the Proposed Development will have a significant adverse effect on bats, that substantial weight should be attributed to this harm (ER 7.3.16), but in view of the proposed mitigation, agrees that this harm would be outweighed by the public benefits of the Proposed Development (ER 7.4.11).

220. The Secretary of State agrees with the ExA that the generation of additional carbon emissions would weigh against the Proposed Development (ER 7.3.20), but that given the measures set out in national policy to reduce vehicle emissions and the measures in the EMP to reduce carbon during construction, this harm should be given limited weight (ER 7.3.21). Further, the Secretary of State agrees with the ExA



that the carbon emissions generated by the Proposed Development are unlikely to be so significant to have a material impact on the Government to meet its carbon reduction targets, and while the additional carbon generated by the Proposed Development weighs against the scheme, it does not weigh substantially against the Order being made (ER 7.4.9).

221. In relation to geology and soils, the Secretary of State agrees with the ExA that the loss of best and most versatile agricultural land weighs against the Proposed Development and given the finite nature of this resource, is given moderate weight in the planning balance. The Secretary of State also notes that consent for the Proposed Development should not be granted unless the need for and benefit of the Proposed Development outweigh its loss (ER 7.3.23). The Secretary of State agrees with the ExA that harm would be outweighed by the significant public benefits offered by the Proposed Development (ER 7.4.12).
222. The Secretary of State agrees with the ExA that the Proposed Development would have a slight adverse effect on Honingham Park, a non-designated historic park and garden (ER 7.3.26) and a residual adverse impact on the setting of four listed buildings (ER 7.3.25) but agrees that the harm to these designated assets would be less than substantial (ER 7.3.27). The Secretary of State also agrees with the ExA that the Proposed Development would result in slight beneficial effects on four heritage Listed Buildings (ER 7.3.28) which would weigh in its favour (ER 7.3.29). The Secretary of State agrees with the ExA that despite the harm which would be caused to certain designated and non-designated assets, this would be outweighed by the benefits and need for the Proposed Development and matters concerning the historic environment would therefore comply with the relevant paragraphs of the NPSNN (ER 7.4.10).
223. The Secretary of State agrees with the ExA that the methodology used for the assessment of landscape and visual effects was robust and allowed the effects of the Proposed Development to be considered in accordance with relevant policies (ER 7.3.30). The Secretary of State also agrees that it would not be possible to avoid harm altogether to landscape and visual receptors, but that suitable mitigation has been incorporated and it is necessary, reasonable and proportionate (ER 7.3.31 to ER 7.3.32). Like the ExA, the Secretary of State finds that during construction, there would be significant adverse effects on landscape character, but by year 15 this harm would be reduced (ER 7.3.33). Regarding visual effects, the Secretary of State agrees with the ExA that during construction, some visual receptors would be subject to significant adverse visual effects, but by year 15 of operation, most of the visual effects would reduce to not significant, save for four properties where moderate adverse effects would remain (ER 7.3.34). The Secretary of State therefore agrees with the ExA that the effects set out at ER 7.3.35 weigh against the DCO being made. Nevertheless, the Secretary of State is satisfied that whilst these impacts are adverse, they will be limited in nature and temporary in duration in the case of construction effects, and although there would be harm caused to some landscape and visual receptors, given the nature and scale of that harm, this should attract limited weight in the planning balance (ER 7.3.36).
224. Noting the ExA's comments as set out at ER 7.3.37, the Secretary of State agrees with the ExA that in respect of material assets and waste, no weight is to be

attributed for or against the DCO and so carries neutral weight in the planning balance (ER 7.3.38).

225. Recognising the ExA's considerations as set out at ER 7.3.39, the Secretary of State agrees with the ExA that the Proposed Development would result in noise and vibration effects which would have a significant adverse environmental effects of a number of sensitive receptors (ER 7.3.40). The Secretary of State notes, however, that some of the significant effects will be reduced through proposed mitigation and given the nature of the Proposed Development and short-term duration of the significant effects during construction, noise and vibration effects will be minimised (ER 7.3.41). The Secretary of State also notes that a significant number of receptors would experience improvements in terms of noise during operation of the Proposed Development (ER 7.3.42). Overall, the Secretary of State agrees with the ExA that whilst significant effects remain, effective mitigation would ensure compliance with the NPSNN (ER 7.3.43) and that despite the adverse noise and vibration effects which weigh against the Order being made, due to the temporary duration and proposed mitigation, this harm should be given limited weight (ER 7.3.44).
226. The Secretary of State is satisfied with the ExA's consideration of health at ER 7.3.45 and agrees that health does not weigh for or against the Order (ER 7.3.46) and so carries neutral weight in the planning balance.
227. The Secretary of State agrees with the ExA's assessment of the socio-economic topic at ER 7.3.47 and also agrees that significant economic benefits would result from the Proposed Development due to the likely reduction in congestion, improved journey times and reliability as well as temporary economic benefits during the construction phase (ER 7.3.48). Although it is noted that the Proposed Development would mean that some agricultural enterprises would have to travel longer distances, the Secretary of State agrees with the ExA that this harm would be outweighed by the benefit the Proposed Development would deliver in terms of significantly improved junctions, road layout and consequential road safety benefits (ER 7.3.49).
228. The Secretary of State notes the significant adverse effects the Proposed Development would have on three agricultural holdings and agrees with the ExA that this should be given moderate weight against the Order being made. Further, he agrees that the Proposed Development would affect BHE's Christmas tree business, but as this would continue to operate, this should attract low negative weight (ER 7.3.50). Overall, the Secretary of State agrees with the ExA that the positive social and economic benefits weigh in favour of the Order being made and given the overall aim of the Proposed Development, this carries substantial weight in favour of the DCO in the planning balance (ER 7.3.51).
229. The Secretary of State notes that the ExA was satisfied with the Applicant's consideration of Land Use and that the assessment methodology was appropriate (ER 7.3.52) and has no reason to disagree with this conclusion. The Secretary of State agrees with the ExA that the Proposed Development would have an adverse effect on users of footpaths along the River Tud and that this weighs against the application (ER 7.3.53). However, the Secretary of State agrees with the ExA that

the Proposed Development would have benefits for cyclists and walkers due to the new footways and cycleways, new crossing points and from lower traffic levels and lower speeds. Whilst he agrees that in some instances the Proposed Development may cause longer journey times, the Secretary of State is content that this harm would be outweighed by the overall network improvements (ER 7.3.55). Although the Secretary of State is mindful of the impact of users of the River Tud footpath during construction, he agrees with the ExA that this impact is outweighed by the overall benefits and that Land Use weighs in favour of the application and so it carries moderate weight in the planning balance (ER 7.3.56).

230. The Secretary of State is satisfied with the ExA's conclusions set out at ER 7.3.57 and ER 7.3.58 concerning Traffic and Transport and agrees that the Proposed Development would deliver a significant benefit to the strategic road network and would not cause any unacceptable impact on local side roads (ER 7.3.60). Further, he notes that the ExA is satisfied that in advance of the NWL development or its delay, there is provision for further measures to be brought forward if required (ER 7.3.59). Consequently, the Secretary of State agrees with the ExA that Traffic and Transport issues weigh substantially in favour of the Order being made and carries substantial weight in the planning balance (ER 7.3.61).

231. The Secretary of State agrees with the ExA's consideration of the Water Environment as set out at ER 7.3.62 to ER 7.3.65 and with their conclusion that the effect of the Proposed Development on the Water Environment does not weigh either for against the application and therefore carries neutral weight in the planning balance (ER 7.3.66).

232. The Secretary agrees with the ExA that the Proposed Development would cause harm to the IHTA designation of BHE. Whilst the ExA considered that its lack of planning or other specific landscaping designation meant little weight should be afforded to this (ER 7.3.67), the Secretary of State notes that the Proposed Development could impact on the amount of land subject to the IHTA status and therefore considers more weight should be given to this impact. However the Secretary of State agrees with the ExA that this harm would not be of such a degree as to outweigh the public benefits offered by the Proposed Development (ER 7.4.13).

233. In respect of Habitat Regulations Assessment, like the ExA, the Secretary of State is satisfied that sufficient consideration has been given to the likely significant effects of the Proposed Development on European Sites and that such effects can be ruled out due to effective pathways (ER 7.3.69). The Secretary of State therefore agrees with the ExA that HRA matters should not prevent the making of the DCO (ER 7.4.16).

234. The Secretary of State is satisfied with the ExA's consideration of policies and legislation, including international obligations as set out at ER 7.4.1 to ER 7.4.3.

235. The Secretary of State is mindful of the existing highway safety issues along the A47, which the Proposed Development would address whilst delivering future safety benefits for future users and agrees with the ExA that this is a benefit of the Proposed Development (ER 7.4.5), together with the economic benefits and overall improvements to the network for walkers, cyclists, and horse riders. Like the ExA,

the Secretary of State agrees that substantial weight should be attached to the benefits of the Proposed Development (ER 7.4.6).

236. Although the Secretary of State notes that adverse effects would be experienced in relation to Air Quality, Biodiversity (excluding bats), Landscape and Visual, Noise and Vibration and Water Quality, he is satisfied with the ExA's conclusion that these impacts will be sufficiently minimised through mitigation so as not to weigh against the Proposed Development and agrees with the ExA that it would comply with the relevant paragraphs of the NPSNN (ER 7.4.14).

237. In conclusion, having carefully weighed the benefits of the Proposed Development (as summarised at ER 7.4.17) against the adverse impacts, the Secretary of State agrees with the ExA that the potential harm would be substantially outweighed by the benefits of the Proposed Development in meeting Government policy as set out in s.104 of the 2008 Act and the NPSNN (ER 7.4.18). Consequently, having satisfied himself regarding the matters outlined at ER 7.4.19 as set out above, the Secretary of State is satisfied that there is a convincing case for Development Consent to be granted.

### **Compulsory Acquisition and Related Matters**

238. 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 8.1.1). The Secretary of State notes the Applicant has sought CA powers for the works described in ER 8.4.2, and TP powers for the works listed at paragraph 8.4.3.

239. The Secretary of State notes that the Examination included consideration of all written and oral submissions relevant to CA and TP (ER 8.5.1). The Secretary of State notes that the ExA carried out two unaccompanied site inspections as well as an assisted site inspection that included areas of land subject to CA and/or TP and that this helped the ExA develop a clear understanding of the plots of land proposed to be subject to CA and TP powers (ER 8.5.12).

240. The Secretary of State notes that the ExA is satisfied section 123(2) of the 2008 Act is met as the application included a request for CA of the land to be authorised (ER 8.7.29). The ExA also notes that the Applicant has considered the statutory tests, DCLG CA Guidance and the interference with human rights (ER 8.7.30).

241. The ExA notes that the Applicant set out the purposes for which the CA and TP powers are requested in the Statement of Reasons ('SoR') and they see no reason to disagree with the Applicant's submission that the powers are required for the delivery of the Proposed Development (ER 8.7.32). The Secretary of State notes that the ExA have considered the SoR, Book of Reference ('BoR'), Land Plans and responses to matters raised during the Examination and accept that the Applicant has a clear idea of how it intends to use the land (ER 8.7.33). The Secretary of State finds no reason to disagree.

242. The ExA notes that in preparing the DCO application, the Applicant had considered alternative alignments for the Proposed Development. The ExA finds no case for these alignments to be considered further (ER 8.7.34). The ExA further finds no evidence to disagree with the Applicant's proposal concerning the provisions for maintenance, lateral deviation, and the Applicant's commitment to reduce CA and TP during the detailed design phase, if possible (ER 8.7.35). The Secretary of State agrees.
243. The ExA is satisfied that sufficient evidence has been provided to conclude that costing, including the costs of acquisition and compensation, have been sufficiently identified and allowed for accordingly (ER 8.7.36). The Secretary of State finds no reason to disagree.
244. The Secretary of State notes that although the ExA has not seen any evidence of any other likely impediment to the Proposed Development, it recommends that the Secretary of State may wish to consult with NE prior to the determination of the Application (ER 8.7.37). As noted above in paragraph 68, the Secretary of State has consulted with NE and is satisfied there are no impediments.
245. The ExA notes that the Applicant has applied due diligence in submitting applications documents, updates to the BoR and responses to matters raised during the application and is satisfied the Applicant has had regard to the Equality Act 2010, including the Public Sector Equality Duty, and the Human Rights Act 1998 (ER 8.7.38). The Secretary of State finds no reason to disagree.

#### Objections

246. The Secretary of State notes that the Proposed Development was subject to general objections to CA and/or TP of land or rights which were sustained to the end of the Examination (ER 8.8.1).
247. During the Examination, BHE made several submissions about CA and TP powers. The Secretary of State notes the issues raised in paragraph 8.8.3 of the ExA Report and further notes the issues raised that had been addressed by the Applicant in paragraph 8.8.4.
248. The Secretary of State notes that BHE retained their objection to CA on the grounds that the proposed Wood Land junction could be smaller; proper consideration has not been given to alternative locations in respect of the construction compound in plots 8/5a and 9/1a, and the Applicant has not complied with the statutory and policy requirements for CA, including satisfying the "compelling reason" test (ER 8.8.7). The Secretary of State notes the Applicant's final response which states that the land within the application is no more than is reasonably required for the construction, operation and maintenance of the Proposed Development, and the limits of the land required have been drawn to avoid unnecessary land take (ER 8.8.8). The ExA considers that throughout the Examination, the Applicant has justified the reasoning for Wood Land junction to serve the NWL, along with its position with regards to its delivery. This has been reinforced by the submissions of NCC as the promoter of the NWL. The Secretary of State notes the Applicant's commitment to review overall land take at the point of detail design (ER 8.8.17).

249. The Secretary of State agrees with the ExA that there is a compelling case in the public interest for the Proposed Development, and the plots required from BHE would be necessary to implement the Proposed Development (ER 8.8.18). The ExA acknowledge that the CA powers sought over the BHE land might result in some adverse impacts on these Affected Parties' private interests. However, given the established national need for improvements to the strategic highway network and the need to provide certainty in terms of project delivery, the Secretary of State agrees there is a compelling case in the public interest for the land to be acquired compulsorily (ER 8.8.20).

250. The Secretary of State notes the concerns raised by the other affected parties in paragraphs 8.8.32 to 8.8.50 of the Report and further notes that the ExA considers that these parties are not or no longer objecting to the related CA and/or TP powers sought (ER 8.8.31 to 8.8.50).

251. The Secretary of State notes there are a number of other Category 1 landowners within the Order Limits whose land would be subject to CA, TP with permanent rights or TP who have not raised objections to the Proposed Development (ER 8.8.51). In these cases, the ExA considers that the land is required to enable the Proposed Development and that there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA considers the same applies to the land sought to be acquired for TP, whether or not with permanent rights thereafter (ER 8.8.54). The Secretary of State agrees.

#### Crown Land

252. 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. Section 135(2) precludes a DCO from including any provision applying to Crown land or Crown rights without consent from the appropriate Crown Authority. This is not limited to CA provisions in a DCO (ER 8.9.2 to ER 8.9.3).

253. The Secretary of State notes the BoR identifies plots subject to Crown interests held by the Secretary of State for Defence and the Secretary of State for Transport and that the Applicant has provided letters confirming their consent under section 135(1) and (2) of the 2008 Act and Article 54 of DCO as drafted to the inclusion of provisions within the DCO which would apply to their property (ER 8.9.5 to 8.9.8). The Secretary of State further notes that Crown interests shown to be held by the Secretary of State for the Environment, Food and Rural Affairs relate to functions exercised by the Secretary of State and, following the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, the land interests have been held by the Secretary of State for Transport. The Secretary of State notes this is confirmed by DfT in their letter submitted at D9 (ER 8.9.9).

#### Special Category Land

254. The Secretary of State notes that within the BoR and the Special Category Land Plans, the rDCO includes provision for the temporary possession of land and rights of Special Category Land, specifically known as Poppy's Wood (ER 8.9.11).

The Applicant confirmed that no open space land is needed to be acquired permanently for the Proposed Development (ER 8.9.13).

255. On the basis that the Applicant seeks rights over public open space land, Special Parliamentary Procedure ('SPP') would be required unless the Secretary of State is satisfied that a relevant exemption from it applies (ER 8.9.24). The Secretary of State is content the exemption in PA2008 s132(4B) would apply to the construction period, as the land would be occupied by the undertaker but on a temporary basis. In the operational period, the exemption in PA2008 s132(3) would apply because, following the undergrounding of the cable, the land surface would be restored and hence would be no less advantageous to Openreach Limited and the public than it currently is (ER 8.9.25).

256. Where an exemption to SPP is sought, PA2008 s132 requires the DCO or related documentation to record the statutory grounds. The Secretary of State notes that the preamble to the dDCO does not record that s132(3) of the 2008 Act applies. The Secretary of State agrees with the ExA and has amended the dDCO to add a reference to the application of s132(4B) as the additional exemption from SPP is applicable for the temporary use of open space land (ER 8.9.26).

#### Statutory Undertakers

257. Section 127 of the 2008 Act has provisions concerning CA of land or rights over SU land (ER 8.9.28). The Secretary of State notes that the BoR lists several SU as having interests in plots for which powers are requested (ER 8.9.31). The Applicant confirmed at the end of the Examination that an agreement had been reached with all SUs except Anglian Water (ER 8.9.35). The Secretary of State notes from Anglian Water's email dated 5 July 2022 that, following discussions with the Applicant, it confirmed the objections set out in the Statement of Common Ground had been resolved. The Secretary of State is therefore satisfied that Section 127 of the 2008 Act has been met.

#### Conclusion on Compulsory Acquisition and Related Matters

258. The Secretary of State notes that the ExA has applied the relevant sections of the 2008 Act, notably s122 and s123, the DCLG CA Guidance and the Human Rights Act in its consideration of whether to recommend CA and TP powers should be granted. In the light of the representations received and the evidence submitted, the ExA has considered whether a compelling case has been made by the Applicant in the public interest, balancing the public interest against private loss (ER 8.10.1).

259. Overall, the Secretary of State agrees with the ExA that there is a compelling case in the public interest for CA and TP and that the Proposed Development would comply with the 2008 Act (ER 8.10.8 to ER 8.10.10). With respect to the provisions of the Human Rights Act, the Secretary of State agrees with the ExA 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. The Secretary of State also agrees that the weight of national policy in favour of the Proposed Development and the wider public interest justifies the interference (ER 8.10.12 to ER 8.10.13).

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

260. The Secretary of State has made a number of minor textual amendments to the Order in the interests of clarity, consistency and precision. Further to the textual amendments the Secretary of State also makes the following modifications:

- in article 2 (interpretation):
  - “the 2004 Act” has been inserted as a defined term due to the number of times that the Traffic Management Act 2004 is referred to throughout the Order;
  - the definitions of “book of reference”, “classification of road plans”, “de-trunking plans”, “engineering drawings and sections”, “environmental statement”, “general arrangement plans”, “hedgerow plan”, “land plans”, “rights of way and access plans”, “special category land plans”, “traffic regulation plans” and “works plans” have been modified to ensure that documents to be certified by the Secretary of State are referred to in a consistent way;
  - the definitions of “carriageway”, “footpath” and “footway”, and “highway” have been amended to improve clarity by including reference to the Highways Act 1980;
  - the definition of “cycle track” has been amended to include “parts of a cycle track” to improve clarity;
  - 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; and
  - the definition of “the Secretary of State” has been removed as this is an unnecessary definition;
- in article 3 (disapplication of legislative provisions), paragraph (3) has been omitted to maintain consistency with highways DCOs as the Secretary of State is not satisfied that there is adequate reasonable justification given for the variation in the Applicant’s Explanatory Memorandum (“the EM”);
- 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 from the precedent in the EM;
- in article 9 (consent to benefit) paragraph (3) has been amended and paragraphs (4) to (11) have been removed as the Secretary of State notes that this seems to have worked well in previous DCOs and cannot see why this is necessary.
- in article 10 (application of the 1991 Act), paragraph (7)(c) has been amended to ensure that the disapplication of article 11 is framed more clearly;
- in articles:
  - 12 (classification of roads, etc.)
  - 18 (clearways, prohibitions and restrictions)
  - 28 (private rights over land)the references to “from” have been amended to “on and after” to improve clarity on the date when the provisions relate.
- in articles:



- 13 (power to alter layout etc. of streets),
  - 15 (temporary stopping up and restriction of use of streets),
  - 20 (discharge of water),
  - 22 (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 14 (street works), paragraph (1)(c) is omitted (and paragraph (1)(e) amended accordingly) as it is not preceded 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) references have been amended to ensure consistency with the provisions and to avoid unintended consequences;
- in articles:
  - 15 (temporary stopping up and restriction of use of streets),
  - 16 (permanent stopping up and restriction of the use of streets and private means of access),
  - 21 (protective work to buildings),
  - 22 (authority to survey and investigate the lands),
  - 28 (private rights over land),
  - 33 (temporary use of land for carrying out the authorised development),
  - 34 (temporary use of land for maintaining the authorised development), and
  - 39 (felling or lopping of trees and removal of hedgerows),

“as if it were a dispute” is inserted to improve clarity.
- in article 18, the title is amended to maintain consistency with highways DCOs and, in 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;
- article 19 (traffic regulation) paragraph (2)(e) has been amended to ensure consistency with other highways DCOs;
- in article 20 (discharge of water) the definitions have been moved to paragraph (9) to ensure consistency with other highways DCOs;
- in articles:
  - 25 (time limit for exercise of authority to acquire land compulsorily) paragraph (1)(a); and
  - 31 (acquisition of subsoil or airspace only) paragraph (3)(a)

have been amended to reflect the modifications in article 29;
- in article 26 (compulsory acquisition of rights and imposition of restrictive covenants), the caveats to paragraph (1) have been signposted and, in paragraph (3) and in accordance with other highways DCOs, a cross reference to paragraphs (1) and (2) has been inserted;

- in article 30 (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 used in the two precedents cited by the Applicant and, in particular, the proposed omission of the entirety of section 5 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- in article 33 (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
  - and amendments to article 33(8) in accordance with the Rev.9 of the A47 Blofield dDCO submitted by the Applicant in April 2022;
- in article 34 (temporary use of land for maintaining the authorised development), a requirement has been added to paragraph (3) that the notice of intended entry must include an explanation of the purpose of entry, which accords with the approach taken in other highways DCOs;
- in article 36 (apparatus and rights of statutory undertakers in stopped up streets) the definition of “apparatus” in paragraph (8) has been omitted as it repeats the definition of that term in article 2.
- in article 38 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession) the article has been deleted. The Secretary of State notes that the DCO cited is a non-highways DCO and that there is not any precedent for this in highways DCOs and insufficient information has been provided. Therefore, the Secretary of State is not satisfied that it is needed.
- In article 38 a new provision has been included to cover special category land which has been based on the M25 junction 28 DCO.
- in article 39 paragraph (4) has been amended to provide clarity in relation to the provisions;
- in article 47 (appeals relating to the Control of Pollution Act 1974.),
  - the text in paragraph (8)(b) from “and may deal” to the end of that sub-paragraph has been moved to be a tailpiece for the whole of paragraph (8), which is consistent with the approach in other highways DCOs and the precedents cited in the EM, and
  - the text in paragraph (14) has been updated to Department for Levelling Up, Housing and Communities;
- in 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 4 of Schedule 3 (classification of roads, etc) the note has been reformatted to improve clarity;
- in Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access), paragraph 8 is reformatted to improve clarity;
- in Schedules:
  - 2,
  - 6, and
  - 9

the paragraphs have been renumbered to start at “1” and the cross-references amended accordingly.

## **General Considerations**

### Equality Act 2010

261. The Secretary of State has complied with the public sector equality duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not. The Secretary of State notes the ExA’s conclusion that the Development’s characteristics and the proposed mitigation mean that there would be no harm to the interests of persons who share a protected characteristic or any adverse effect on the relationships between such person and any person who does not have a protected characteristic (ER 10.2.8). The Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics.

### Natural Environment and Rural Communities Act 2006

262. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 (‘the 2006 Act’) has to have regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992 when deciding on whether to grant development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and biodiversity duty in the relevant sections of the Report (ER 3.3.4 to ER 3.3.5). In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

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

263. For all the reasons set out in this letter, 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**

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

**Publicity for the Decision**

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

Yours faithfully,

Natasha Kopala

## ANNEX A

### LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

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

The A47 North Tuddenham to Easton 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-north-tuddenham-to-easton/>

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).