



**ERRATA SHEET – A47 Wansford to Sutton Dualling - Ref TR010039**

**Examining authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, dated 11 October 2022**

In the ExA report at ER 8.3.76, it states that the linesman's hut would not be demolished and ER 8.3.79 states there is potential for the linesman's hut to be retained and this would be the subject of detailed design. However, ER paragraph 8.5.39 assumes it will be demolished and deals with the harm based on this assertion. This then also affects the conclusion in the third main bullet in ER paragraph 8.6.3.

The ExA confirms that this is an error as it is not definitive that the linesman’s hut will be demolished. That being the case the report does not then deal with the effect of the Proposed Development on the significance of the linesman’s hut as a retained heritage asset. The following corrections are necessary:

**Corrections agreed by the Examining Authority prior to a decision being made**

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
120	8.5.39	Incorrect reference to demolition of linesman’s hut.	After “station building” delete “, the linesman’s hut”.
121	8.5.39	To deal with effect of Proposed Development on linesman’s hut being retained.	Add at end new sentences. “This would also apply in respect of the linesman’s hut which it is proposed to retain. As with the platform, the lineman’s hut would be so removed from its context that the Proposed Development would also result in substantial harm to the significance of this building as a heritage asset.”
123	8.6.3	To deal with effect of Proposed Development on linesman’s hut being retained.	Replace third bullet as follows: would result in substantial harm and total loss of significance to the following non-designated heritage assets: <ul style="list-style-type: none"><li>• Wansford Road Railway Station, gate and gate piers and platform (direct effect);</li><li>• Linesman’s hut (effect on setting);</li></ul>



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

**A47 Wansford to Sutton Dualling**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Transport

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Examining Authority

**Robert Jackson** BA MPhil DMS MRTPI MCMl

**11 October 2022**

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# OVERVIEW

File Ref: TR010039

The application, dated 5 July 2021, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on that date.

The Applicant is Highways England (although this organisation changed its name on 8 September 2021 to National Highways).

The application was accepted for examination on 2 August 2021.

The Examination of the application began on 12 January 2022 and was completed on 11 July 2022.

The development proposed comprises a dual carriageway road between Wansford and the western extent of the existing dual carriageway at Sutton.

## **Summary of Recommendation:**

The Examining Authority recommends that the Secretary of State should withhold consent for the development as applied for.

Should the Secretary of State consider that the effect on the Wansford west roundabout should be excluded from consideration, then the Examining Authority recommends that associated development on the Wansford west roundabout should be excluded and that the Order should be granted development consent only if the following matters have been resolved to the Secretary of State's satisfaction:

- gaining Crown consent from the Secretary of State for Levelling Up, Housing and Communities for the compulsory acquisition of plot 1/5a and the temporary possession with imposition of rights on plot 1/6a as shown on the Crown Land Plans;
- clarity as to whether Anglian Water Services Limited has an interest in land plot 3/2g on the Land Plans and, if so, whether it objects to interference with its rights as regards this plot;
- ensuring the Book of Reference is corrected;
- ensuring no significant adverse effect on bats through clarification that NE would be willing to grant a bat licence;
- any implications of the Net Zero Case;
- any implications from the latest ground investigations particularly on emissions and funding;

The Order should be in the form attached.

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# **1. INTRODUCTION**

## **1.1. INTRODUCTION TO THE EXAMINATION**

1.1.1. The application for a dual carriageway road between Wansford and the western extent of the existing dual carriageway at Sutton (the Proposed Development) (TR010039) was submitted by Highways England (although this organisation changed its name on 8 September 2021 to National Highways) (the Applicant) to the Planning Inspectorate on 5 July 2021 under section (s) 31 of the Planning Act 2008 (PA 2008) and was accepted for examination under section 55 of the PA 2008 on 2 August 2021 [PD-001].

1.1.2. The Proposed Development comprises:

- approximately 2.6 kilometres (km) of new dual carriageway including the construction of two new underpasses;
- a new free-flow link road connecting the existing A1 southbound carriageway to the new A47 eastbound carriageway;
- a new link road from the Wansford eastern roundabout to provide access to Sacrewell Farm, the petrol filling station and the Anglian Water pumping station;
- closure of the existing access to Sacrewell Farm with a new underpass connecting to the farm from the link road provided;
- a new slip road from the new A47 westbound carriageway also providing access to the petrol filling station;
- a link road from the new A47 Sutton Heath roundabout, linking into Sutton Heath Road and Langley Bush Road;
- new junction arrangements for access to Sutton Heath Road and Langley Bush Road;
- closure of the existing accesses to the A47 from Sutton Heath Road, Sutton Drift and Upton Road;
- new passing places and limited widening along Upton Drift;
- new walking and cycling routes, including a new underpass at the disused railway;
- revised access to the properties facing the A1, north of Windgate Way
- installation of boundary fencing, safety barriers and signage;
- new drainage systems including:
  - o two new outfalls to River Nene,
  - o a new outfall to Wittering Brook,
  - o extension of the A1 culvert on Mill Stream,
  - o realignment of the A47 Wansford Sluice,
  - o drainage ditch interceptors, and
  - o new attenuation basins, with pollution control devices, to control discharges to local watercourses;
- River Nene compensatory flood storage area;
- works to alter or divert utilities infrastructure such as electricity lines, water pipelines and telecommunications lines;
- temporary compounds, material storage areas and vehicle parking required during construction; and
- environmental mitigation measures.

- 1.1.3. The location of the Proposed Development is shown in the Location Plan [REP2-002] and Land Plans, final updated versions of which were received at Deadline (D) 8 [REP8-002]. Where appropriate I will refer to this as 'the Application site'. The Application site lies within the unitary authority area of Peterborough City Council (PCC) and is wholly in England, and is close to the boundaries with North Northamptonshire Council (NNC) and the two-tier area of Huntingdon District Council (HDC) and Cambridgeshire County Council (CCC).
- 1.1.4. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the then Ministry for Housing, Communities and Local Government (MHCLG) in the decision to accept the Application for Examination in accordance with s55 of the PA2008 [PD-002].
- 1.1.5. On this basis, the Planning Inspectorate agreed with the Applicant's view, stated in the application form [APP-001], that the Proposed Development is a NSIP as it is wholly within England, National Highways (NH), a strategic highways company, will be the highway authority and the area of the development is approximately 71.07 hectares<sup>1</sup> (ha) (greater than 12.5ha) and the speed limit for any class of vehicle is 50 miles per hour (mph) or greater, and so requires development consent in accordance with s31 of PA2008. The Proposed Development therefore meets the definition of a NSIP set out in s14(1)(h) and s22(1), (2) and (3) of PA2008.

## **1.2. APPOINTMENT OF THE EXAMINING AUTHORITY**

- 1.2.1. On 27 August 2021 I, Robert Jackson, was appointed as the Examining Authority (ExA) for the application under s61, s78 and s79 of PA2008 [PD-004].

## **1.3. THE PERSONS INVOLVED IN THE EXAMINATION**

- 1.3.1. The persons involved in the Examination were persons who were entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a statutory party who requested to become an IP.

## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.4.1. The Examination began on 12 January 2022 and concluded on 11 July 2022.

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<sup>1</sup> Taken from the Statement of Reasons [REP8-010] and confirmed in the Applicant's response to the Examining Authority's Written Questions at ExQ1.0.10 [REP2-035].

1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

### **Matters prior to the Preliminary Meeting**

1.4.3. On 11 August 2021 the Applicant wrote to the Case Team [AS-001] in response to the s51 letter [PD-003] sent out after the application had been accepted. The Applicant indicated that it wished to amend the Lands Plans, Works Plans, and Rights of Way and Access Plans to remove a number of small anomalies. Changes were also made to the Environmental Masterplan and to various documents within the Environmental Statement (ES) to deal with confidential matters (the location of badger setts).

1.4.4. On 30 November 2021 I wrote to all IPs and Statutory Parties under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (the Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and a first Issue Specific Hearing (ISH) [PD-006] outlining:

- the arrangements and agenda for the PM;
- notification of the ISH to be held in the early stage of the Examination;
- the agenda for that early ISH;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable;
- availability of RRs and application documents; and
- the ExA's procedural decisions.

1.4.5. Due to the on-going effects of the COVID-19 pandemic I considered that the hearings should take place virtually via the medium of Microsoft (MS) Teams. The Rule 6 Letter therefore provided guidance on this, but also gave the opportunity for representations to be made about the virtual nature of the meeting as well as to register for the PM.

1.4.6. Normally, the ExA's Written Questions are published a short time after the Preliminary Meeting. However, to assist parties who might have more time between Christmas and New Year on 16 December 2021 I issued a draft set of Written Questions, together with a more detailed agenda for the ISH into the draft Development Consent Order (dDCO), which was to take place on the day after the PM [PD-005].

### **The Preliminary Meeting**

1.4.7. The PM took place on 11 January 2022 on-line. A video recording [EV-003], a transcript<sup>2</sup> [EV-004] and a note of the meeting [EV-009]

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<sup>2</sup> This transcript (along with others for Hearings undertaken later in the Examination) was made automatically using artificial intelligence voice to text and is unedited. The video recordings remain as the primary record of the events.

were published on the Planning Inspectorate National Infrastructure Planning website<sup>3</sup>.

- 1.4.8. My procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-007], dated 18 January 2022. On the same date my Written Questions were published in final form [PD-008].

### **Key Procedural Decisions**

- 1.4.9. Most of the procedural decisions set out in the Rule 8 Letter related to matters concerning the procedure of the Examination and did not bear on my consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 Letter [PD-007] and so there is no need to reiterate them here.

### **Site Inspections**

- 1.4.10. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings, and its physical and spatial effects.
- 1.4.11. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.
- 1.4.12. I undertook an USI on 27 October 2021, where I viewed the Application site and the vicinity from publicly accessible land. A note of this was produced [EV-001].
- 1.4.13. I had, already, in the Rule 6 letter [PD-006] asked participants in the Examination to set out locations which they wished me to inspect. Only the Applicant responded [REP1-002]<sup>4</sup>, and this was only for two locations. Given the nature of these two locations I concluded that I was able to undertake an Access Required Site Inspection (ARSI) with access being facilitated by the landowners (one of which was the Applicant) and there would be no interaction.
- 1.4.14. I undertook this ARSI, along with a second USI where I visited locations either for a first or second time, on 29 March 2022. Again, I prepared a note reporting my visit [EV-032].

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<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/Eastern/A47-Wansford-to-Sutton/>

<sup>4</sup> Interested parties were given the opportunity at D2 to identify additional locations that they wanted me to inspect. No such representations were received.

1.4.15. I have had regard to the information and impressions obtained during my Site Inspections in all relevant sections of this report.

## Hearing Processes

1.4.16. Hearings are held in PA2008 Examinations in two main circumstances:

- to respond to specific requests from persons who have a right to be heard - in summary terms:
  - o where persons affected by compulsory acquisition (CA) and/ or temporary possession (TP) proposals (Affected Persons (AP)) object and request to be heard at a Compulsory Acquisition Hearing (CAH); and/ or
  - o where IPs request to be heard at an Open Floor Hearing (OFH).
- to address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

1.4.17. I held a number of hearings to ensure the thorough examination of the issues raised by the Application. All were held on-line through the medium of MS Teams. References for all the video recordings and computer-generated transcripts are given in Table 1: Hearing References, Topics, Dates and EL References.

1.4.18. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise at an OFH under s93 of PA2008. However, no requests were made for such a Hearing and, given the need to register for such an event which would have been held on-line, I considered that there was no need to hold an OFH.

1.4.19. ISHs were held on the subject matter of the draft DCO as follows:

- ISH1, 12 January 2022; and
- ISH4, 17 March 2022.

1.4.20. Subject matter ISHs were held as follows:

- ISH2, Environmental Matters, 15 March 2022
- ISH3, Traffic, Transport and Socio-Economic Matters, 16 March 2022.

1.4.21. A single CAH (CAH1) was held under s92 of PA2008 on 17 March 2022.

**Table 1: Hearing References, Topics, Dates and EL References**

Hearing Ref	Topic	Date	EL References
ISH1	dDCO	12 January 2022	Agenda: [EV-002] Video recordings: [EV-005], [EV-007]

Hearing Ref	Topic	Date	EL References
			Transcripts: [EV-006], [EV-008]
ISH2	Environmental Matters	15 March 2022	Agenda: [EV-011] Video recordings: [EV-015], [EV-016], [EV-017] Transcripts: [EV-018], [EV-019], [EV-020]
ISH3	Traffic, Transport and Socio-Economics	16 March 2022	Agenda: [EV-012] Video recordings: [EV-022], [EV-023] Transcripts: [EV-024], [EV-025]
ISH4	dDCO	17 March 2022	Agenda: [EV-014] Video recording: [EV-030] Transcript: [EV-031]
CAH1	CA and TP	17 March 2022	Agenda: [EV-013] Video recordings: [EV-026], [EV-027] Transcripts: [EV-028], [EV-029]

1.4.22. All persons affected by CA and/ or TP proposals (APs) were provided with an opportunity to be heard. I also used these hearings to examine the Applicant's case for CA and TP in the round.

## Written Processes

1.4.23. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All material is recorded in the EL (Appendix B) and published online. Individual document references to the EL in this report are enclosed in square brackets []. For this reason, this report does not contain extensive summaries of all documents and representations, although full regard has been had to them in my conclusions. I have considered all important and relevant matters arising from them.

1.4.24. Where documents have been provided as both 'clean' and 'tracked change' versions from earlier submissions, unless otherwise stated, for simplicity, references will only be given to the 'clean' version, and the last version submitted into the Examination.

1.4.25. Key written sources are set out further below.

### **Relevant Representations**

1.4.26. Fifty RRs were received by the Planning Inspectorate [RR-001] to [RR-050]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. I have fully considered all RRs. The issues that they raise are considered in Chapters 5 to 15 of this report.

1.4.27. Two statutory parties, the Environment Agency (EA) and the Coal Authority, did not submit RRs within the time limit but submitted representations shortly thereafter. I accepted these into the Examination as Additional Submissions. They can be found at [AS-034] and [AS-035] respectively.

### **Written Representations and Other Examination Documents**

1.4.28. The Applicant and IPs were provided with opportunities to:

- make written representations (WRs) (D2);
- comment on WRs made by the Applicant and other IPs (D3 and D4);
- summarise their oral submissions at hearings in writing (D4);
- make other written submissions requested or accepted by the ExA; and
- comment on documents issued for consultation by the ExA including:
  - o Proposed Changes to the dDCO [PD-014] published on 24 May 2022 by D8.
  - o Rule 17 letter dated 28 June 2022 [PD-018] following the acceptance of a number of changes to the Proposed Development.
  - o Rule 17 letter dated 6 July 2022 [PD-019] requesting information on outstanding Statements of Common Ground.

1.4.29. The original timetable allowed for the publication by the ExA of a Report on the Implications for European Sites (RIES) and comments thereupon. For the reasons set out in Chapter 15 I considered that no such report was necessary.

1.4.30. I have fully considered all WRs and other examination documents. The issues that they raise are considered in Chapters 5 to 15 of this report.

### **Local Impact Report**

1.4.31. A Local Impact Report (LIR) is a report made by relevant local authorities giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 of the PA2008.

1.4.32. One LIR was received from PCC [REP2-068]. I have taken this fully into account in all relevant chapters of this report.

1.4.33. HDC, the administrative area of which is located to the south of the Application site beyond the River Nene, wrote to indicate that, having

answered a small number of Written Questions, it *"does not intend to participate further in the DCO process"* [AS-042].

1.4.34. CCC as the upper-tier authority for this area did not actively participate in the Examination despite being given opportunity to do so. On a number of occasions CCC made representations acting as agent for PCC and consequently, where appropriate, I have taken that the representation is from PCC itself. CCC did, however, complete a Statement of Common Ground (SoCG) with the Applicant, see below.

1.4.35. NNC, the administrative area of which is located approximately 400m to the southwest of the application site, did not participate in the Examination although it was given opportunity so to do<sup>5</sup>.

### **Statements of Common Ground**

1.4.36. A SoCG is a statement agreed between an applicant and one or more IPs, recording matters that are agreed and not agreed between them.

1.4.37. By the end of the Examination, the following IPs and statutory bodies had concluded SoCGs with the Applicant:

- Riverford Organic Farmers (Riverford Organic) [REP8-017];
- William Scott Abbott Trust [REP8-018]<sup>6</sup>;
- Mr D Longfoot [REP8-019];
- Milton (Peterborough) Estates Co (Milton Estates) and Sir Philip Naylor-Leyland Bt [REP8-020];
- Wansford Parish Council (WPC)[REP8-021];
- Sutton Parish Council (SPC) [REP8-022];
- CCC [REP10-010];
- Historic England (HE) [REP10-011];
- PCC [REP11-009];
- Natural England (NE) [REP11-010]; and
- Anglian Water Services Limited (Anglian Water) [REP11-011].

1.4.38. In a significant number of these SoCGs not all matters were agreed. The Applicant has described some issues as *"not yet agreed"*. These matters are discussed in the relevant chapter of this report.

1.4.39. At D7 the Applicant submitted a draft SoCG between it and the EA [REP7-005]. However, in the penultimate Statement of Commonality for Statements of Common Ground [REP10-008] this was marked as "not required". I queried this in my Rule 17 letter of 6 July 2022 [PD-019]. In response at D11 the Applicant indicated that *"all matters with the Environment Agency are now agreed and the Applicant, with the agreement of the Environment Agency, no longer intends to submit a*

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<sup>5</sup> For example, a number of Written Questions [PD-008] were addressed to NNC; no replies were received.

<sup>6</sup> The Book of Reference [REP8-012] cites the land interests as being held by the 'Official Custodian for Charities on behalf of the trustees of The William Scott Abbott Trust'. For simplicity I have referred to this as the 'William Scott Abbott Trust'.

SoCG". [REP11-001]. Correspondence from the EA, contained in Annex A to [REP10-008], confirms this.

1.4.40. Similarly, at D7a the Applicant submitted a draft SoCG between it and Western Power Distribution (East Midlands) PLC (Western Power) [REP7a-006]. This, too, was marked as "not required" in the penultimate Statement of Commonality for Statements of Common Ground [REP10-008]. In response to the same query at D11 the Applicant indicated that "*a SoCG is not required with Western Power as all of the issues between the parties are agreed in principle*" [REP11-001]. Western Power wrote to concur with this position and "*acknowledge that a commercial agreement (the terms of which are confidential) has been reached with National Highways and that, once the legal formalities securing the commercial agreement between the parties have been completed, [Western Power] will be in a position to withdraw its holding objection to the Order*" [REP11-019].

1.4.41. I have taken fully into account the completed SoCGs in all relevant chapters of this report, but I have given no weight to the two draft SoCGs referred to in the preceding paragraphs.

### **Written Questions**

1.4.42. I asked three rounds of written questions.

- First Written Questions (ExQ1) [PD-008] and procedural decisions were set out with the Rule 8 letter [PD-007], dated 18 January 2022<sup>7</sup>.
- Second Written Questions (ExQ2) (Further Questions) [PD-010] were issued on 5 April 2022.
- Third Written Questions (ExQ3) (Additional Questions) [PD-015] were issued on 24 May 2022.

1.4.43. The following requests for further information and comments under Rule 17 of the EPR were issued on:

- 10 May 2022: [PD-011] asking a number of questions in relation to the Applicant's then proposed changes;
- 24 May 2022: [PD-013] requesting the submission of five specific SoCGs (whether complete or in draft);
- 26 May 2022: [PD-016] to Climate Emergency Planning and Policy (CEPP) following its letter of 24 May 2022 [AS-048];
- 28 June 2022: [PD-018] following the acceptance of a number of changes to the Proposed Development and to ask IPs whether they had any specific comments on these changes and in the light of recent events; and
- 6 July 2022 [PD-019] requesting information on outstanding letters of no impediment, SoCGs and to allow the Applicant further time to respond to the SoS's decision in relation to the A47 Blofield to North Burlingham (A47BNB) DCO.

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<sup>7</sup> As noted in paragraph 1.4.6 a draft of the first Written Questions were published on 16 December 2022. There were a small number of changes in the final version which were set out in "tracked change".

1.4.44. All responses to my written questions have been fully considered and taken into account in all relevant chapters of this report.

## **Requests to Join and Leave the Examination**

1.4.45. There were no requests to join the Examination by persons who were not already IPs at or after the PM.

1.4.46. During the Examination, as a consequence of discussion between relevant Statutory Parties and the Applicant, the following persons wrote to me to inform me that their issues were settled and their representations were withdrawn:

- National Grid Electricity Transmission [REP11-016]; and
- National Grid Gas plc [REP11-017].

1.4.47. On 24 May 2022 CEPP, which had become an IP as it had made a RR [RR-006], wrote [AS-048] to explain that due to personal circumstances<sup>8</sup> it had been unable to participate in the Examination since making that RR. It asked, effectively, to be allowed to catch-up. CEPP considered that there was sufficient time to the end of the Examination to allow these additional comments to be made and for other parties, including the Applicant, to fully respond.

1.4.48. While sympathetic to CEPP's personal circumstances, I noted that CEPP had been engaged in other NSIP Examinations in the meantime. Given the importance of ensuring NSIPs are considered within the statutory timetable of 6 months, I considered that further representations should be limited to those matters outstanding. I therefore wrote to CEPP to that effect [PD-016] and included that correspondence in the EL.

1.4.49. It is appropriate to point out that outstanding information at that point included responses to my additional written questions [PD-015] which itself included matters upon which CEPP had raised RRs. I therefore consider that CEPP has not been prejudiced by my decision on this matter. I can confirm that the RR submitted by CEPP [RR-006] together with all other communication has been taken into account.

## **1.5. THE GUIDE TO THE APPLICATION**

1.5.1. When the Application was submitted the Applicant included a document entitled "Introduction to the Application" [APP-003]. This included in Appendix A an "Application Document Tracker" which also set out the "Documents to be Certified".

1.5.2. This was replaced from D1, and thereafter, by a document entitled "Guide to the Application" [REP1-007] which was then updated through the Examination period.

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<sup>8</sup> These personal circumstances are set out in the unredacted version of [AS-048].

1.5.3. The Guide to the Application was submitted in both “clean” and “tracked change versions. There were 13 versions of the Introduction/ Guide to the Application submitted up to the close of the Examination. Table 2 sets out the version number, dates of submission and Examination event, along with the EL numbers of the clean and tracked change versions.

**Table 2: History of the Introduction/ Guide to the Application**

<b>Version</b>	<b>Date</b>	<b>Event</b>	<b>“Clean” EL Reference</b>	<b>“Tracked” EL Reference</b>
Rev 0	July 2021	Application	[APP-003]	
Rev 1	August 2021	S51 Response	[AS-003]	[AS-002]
Rev 0	January 2022	D1	[REP1-007]	[REP1-008]
Rev 1	February 2022	D2	[REP2-033]	[REP2-034]
Rev 2	March 2022	D3	[REP3-019]	[REP3-020]
Rev 3	March 2022	D4	[REP4-012]	[REP4-013]
Rev 4	April 2022	D5	[REP5-014]	[REP5-015]
Rev 5	May 2022	D6	[REP6-003]	[REP6-004]
Rev 6	May 2022	D7	[REP7-012]	[REP7-013]
Rev 7	June 2022	D8	[REP8-023]	[REP8-024]
Rev 8	June 2022	D9	[REP9-009]	[REP9-010]
Rev 9	July 2022	D10	[REP10-012]	[REP10-013]
Rev 10	July 2022	D11	[REP11-012]	[REP11-013]

## **1.6. ENVIRONMENTAL IMPACT ASSESSMENT**

1.6.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

- 1.6.2. On 6 February 2018, the Applicant submitted a Scoping Report to the SoS under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (the EIA Regulations) in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion) [APP-137]. The Applicant notified the SoS under Regulation 8(1)(b) of the EIA Regulations that they proposed to provide an ES in respect of the Proposed Development. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development is EIA development.
- 1.6.3. On 19 March 2018 the Planning Inspectorate provided a Scoping Opinion [APP-137]. The Application was accompanied by an ES [APP-039] to [APP-134] and a Non-Technical Summary of the ES [APP-135].
- 1.6.4. On 26 October 2021 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 16 of the EIA Regulations had been complied with [OD-003].
- 1.6.5. Two formal addenda to the ES were submitted to the Examination at the same time as the Proposed Changes (see paragraphs 2.3.1 to 0). These respectively dealt with these changes [REP8-030] and considered whether an extension to the proposed construction programme would lead to further or changed potential significant environmental effects and thus change the conclusions of the ES as submitted (including those in ES Addendum One) [REP8-031].
- 1.6.6. Consideration is given to the adequacy of the ES and matters arising from it in Chapters 5 to 15 of this report.

## **1.7. HABITATS REGULATIONS ASSESSMENT**

- 1.7.1. The Proposed Development is development for which a Report to Inform Habitats Regulations Assessment (HRA) has been provided. Various versions were submitted, and they are set out in paragraph 15.1.5 of this report.
- 1.7.2. Consideration is given to the adequacy of the Report to Inform HRA, associated information and evidence and the matters arising from it in Chapter 15 of this report.

## **1.8. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

- 1.8.1. By the end of the Examination, there were no matters subject to any separate undertakings, obligations and/ or agreements which had been submitted as part of the Examination.
- 1.8.2. However, as mentioned in paragraph 1.4.40 it would appear that there may be a side agreement between the Applicant and Western Power. As this has not been submitted into the Examination I have not been able to take it into account.

## 1.9. OTHER CONSENTS

- 1.9.1. The Application documentation and responses to questions during this Examination have identified the following consents that the Proposed Development has obtained or must obtain, in addition to Development Consent under PA2008. The following required additional consents have been identified thus far.
- Protected Species Licence (Wildlife and Countryside Act 1981) for great crested newts (if necessary<sup>9</sup>), water voles and bats;
  - Badger Licence (Protection of Badgers Act 1992);
  - Exemption for operations such as U1 (import of waste for use in construction) and T15 (crushing of aerosols to minimise hazardous waste) (if exemption limits can be met) (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
  - Mobile plant licences for crushing operations or site permits if not using a subcontractor with their own mobile licences (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
  - • CL:aire Materials Management Plan (CL:AIRE (2011) Definition of Waste: Development Industry Code of Practice (v.2) (DoWCoP))
  - Trade effluent consent (e.g. for welfare facilities) (Water Industry Act 1991);
  - Environmental Permit for Waste Operations (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
  - Section 61 consent for noise and vibration during the construction stage if requested by the Local Authority (Control of Pollution Act 1974);
  - Consent / licence for the felling of trees (Forestry Act 1967);
- 1.9.2. Appendix A of the Consents and Agreements Position Statement [REP3-007] includes the Applicant's latest position on each of these Consents and Agreements.
- 1.9.3. The Applicant has included two 'letters of no impediment' relating to licences in respect of badgers (dated 16 February 2022) and water voles (dated 15 March 2022) written by NE. These letters can be found in Appendix C of the Applicant's Written Summary of Oral Submissions at Hearings [REP4-018].
- 1.9.4. The Applicant indicated that it had made a 'shadow' application to NE for a bat licence. At D11 [REP11-001] the Applicant indicated that it was "*currently supplying the additional information requested*". During the Examination it had been intimated that a 'shadow' application in respect of great crested newts would also be made. In this same letter the Applicant indicated that no licence was required. These matters are considered further in Chapters 9, 16 and 19 of this report.

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<sup>9</sup> This is discussed below in Chapter 9.

1.9.5. In relation to the outstanding consents recorded above, subject to the issues relating to the bat and great crested newt licences discussed below, I have considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, have concluded that there are no apparent impediments to the implementation of the Proposed Development, should the Secretary of State for Transport (SoST) grant the Application.

## **1.10. STRUCTURE OF THIS REPORT**

1.10.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoSTs' decision.
- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination.
- **Chapter 5** deals with the principle of the Proposed Development and the consideration of alternatives.
- **Chapter 6** deals with Traffic and Transport matters;
- **Chapter 7** deals with Socio-Economic matters;
- **Chapter 8** deals with Cultural Heritage;
- **Chapter 9** deals with Biodiversity;
- **Chapter 10** deals with Air Quality and Emissions;
- **Chapter 11** deals with Geology, Geotechnical Risk and Soils;
- **Chapter 12** deals with the Water Environment and Flood Risk;
- **Chapter 13** deals with Noise and Vibration;
- **Chapter 14** deals with Landscape and Visual Effects;
- **Chapter 15** deals with effects on European sites and HRA.
- **Chapter 16** sets out the balance of planning considerations arising from Chapters 4 to 15, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 17** sets out my examination of CA and TP proposals.
- **Chapter 18** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 19** summarises all relevant considerations and sets out the ExA's recommendation to the SoST.

1.10.2. This report is supported by the following Appendices:

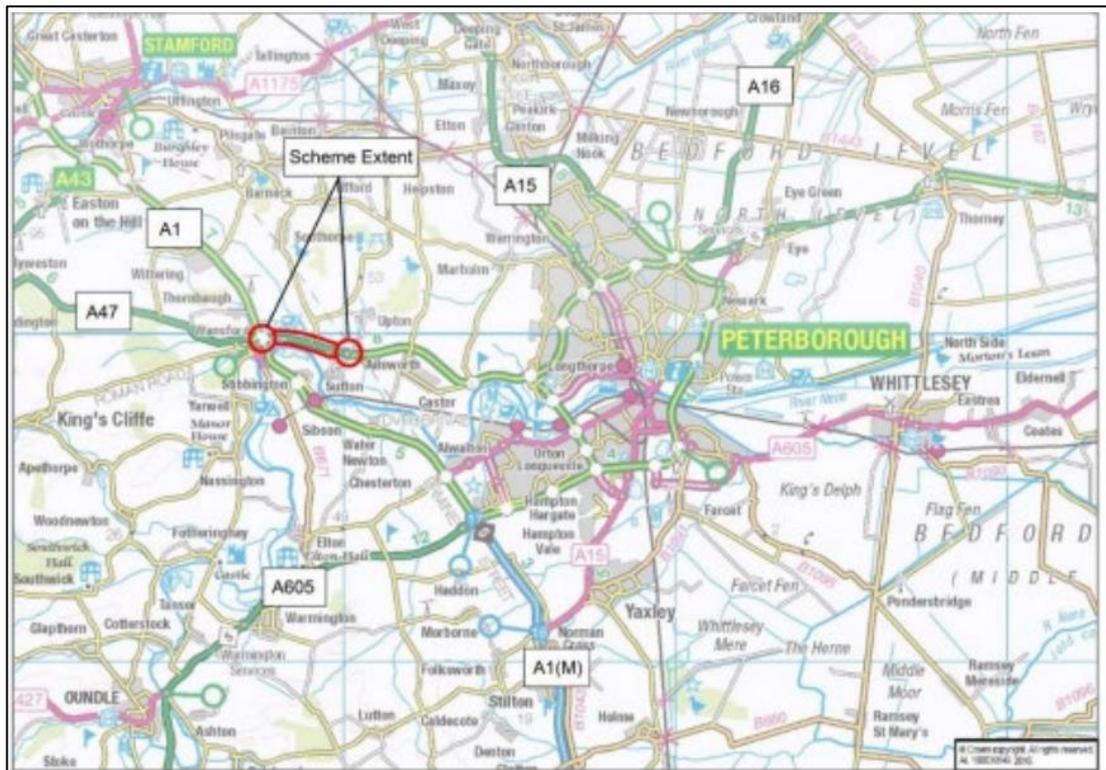
- **Appendix A** – the Examination Events.
- **Appendix B** – the Examination Library.
- **Appendix C** – List of Abbreviations.
- **Appendix D** - Documents with different versions between Examination Library and Preferred DCO.
- **Appendix E** - the Recommended DCO.

## 2. THE PROPOSAL AND THE SITE

### 2.1. THE APPLICATION AS MADE

2.1.1. The Proposed Development would provide for a new dual carriageway road between the junction of the A47 with the A1 at Wansford with the western extent of the existing A47 dual carriageway some 2.6km to the east, along with associated development. The wider location is shown in Figure 1: Locality of Scheme with a more focussed vicinity in Figure 2: Proposed Development and Application Site which includes an overall schematic of the Proposed Development.

**Figure 1: Locality of Scheme<sup>10</sup>**



2.1.2. The Application site is wholly located within the administrative area of PCC unitary authority, although it is in close proximity, to the west, to the unitary authority area of NNC and, to the south, the district authority area of HDC and the upper tier authority area of CCC.

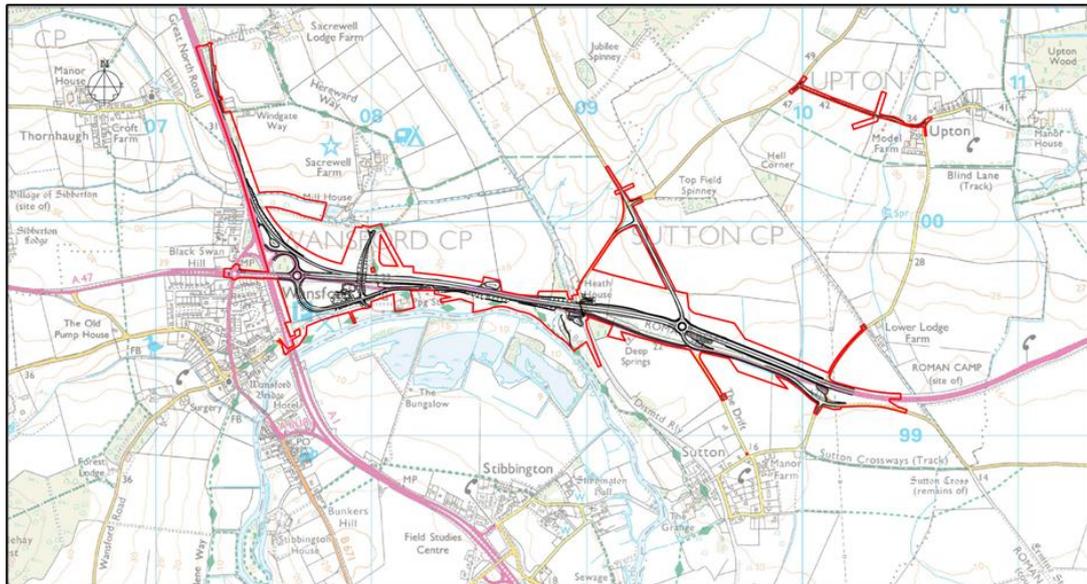
2.1.3. The area is predominantly rural in character with a number of small villages set within countryside. These include:

- Wansford, historically at a bridged crossing of the River Nene and on the junction of what is now the A1 and A47;
- Thornhaugh, a short distance to the north of Wansford on the west side of the A1;
- Southorpe, to the north-east of Wansford on the east side of the A1;

<sup>10</sup> Source: Figure 3-2 of The Case for the Scheme [AS-022]

- Sutton, to the south of the A47, adjacent to the site of an historic ford of the River Nene;
- Stibbington, to the south of the River Nene being between the opposite side of said ford and the A1;
- Ailsworth and Castor lie to the south-east<sup>11</sup>; and
- the hamlet of Upton to the north-east.

**Figure 2: Proposed Development and Application Site<sup>12</sup>**



- 2.1.4. The River Nene runs in a generally easterly direction to the south of the Application site, although in this section it forms a loop. There is a small scarp slope on the northern side a short distance away from the river. The landform slopes generally up to the north, although there is some undulation predominantly relating to the courses of waterways. To the south the landform is more open.
- 2.1.5. The main settlement in the surrounding area is Peterborough which is located approximately 9km to the east. Stamford lies a similar distance to the northwest on the eastern side of the A1.
- 2.1.6. The current junction of the A47 with the A1 is a grade separated junction. There are slip roads from the north and southbound carriageways of the A1 to the north of the A47 leading to two roundabouts in a 'dumbbell' arrangement between an overbridge on the

<sup>11</sup> As noted in the Examiner's report in to the Ailsworth Neighbourhood Plan [REP2-043] (paragraph 11) "*Castor and Ailsworth give the impression on the ground of being a single physical entity, with only a narrow undeveloped gap along Peterborough Road separating the two settlements. Despite this, and the shared community facilities ... I was able to see from my visit to the area that each village has its own distinct character, which the neighbourhood plans recognise and seek to conserve*". The same quote can also be found in the report into the Castor Neighbourhood Plan [REP2-047]. Together the settlements are sometimes referred to as "Ailsworth/ Castor".

<sup>12</sup> Source: Extracted from [REP7a-007].

A47. These two roundabouts are known as 'Wansford west' and 'Wansford east'.

- 2.1.7. The Wansford west roundabout is not signal controlled and has four arms. East and west arms are to the A47, the south arm provides access to the main part of the village of Wansford and is designated the C340<sup>13</sup>. The north arm provides the on and off slip roads to the A1 northbound on tight curves. The north and south arms are known locally as Old North Road. To the northwest of the point where the A1 slip roads join and diverge, there is a small residential area. This is known as 'Thackers Close', although some of the addresses are in Old North Road.
- 2.1.8. Wansford east roundabout is currently signal controlled in the morning (AM) peak only. It has three arms, east and west for the A47 and to the north for the slip roads to and from the A1 southbound which have tight curves.
- 2.1.9. Some 340m to the south of the A1 northbound slip roads there is a separate junction with the northbound A1 with the village of Wansford. This road is known as Peterborough Road. This is effectively a 'T' junction with very short, almost to the point of being non-existent, deceleration and acceleration lanes. An aerial photograph of this junction taken from Google Earth and submitted by WPC can be found in Figure 1 of WPC's Written Representation [REP2-072].
- 2.1.10. The existing single carriageway A47 runs eastwards from the Wansford east roundabout close to the top of a ridge, with the road level falling gently to the location of Wittering Brook which crosses under the road in a culvert. The slope in the section before Wittering Brook is noticeably steeper than that by the Wansford east roundabout. The road then rises gently and crosses the line of the former Stamford to Wansford<sup>14</sup> railway line. A Scheduled Monument<sup>15</sup> lies to the north of the A47 and to the west of Wittering Brook. The former Wansford Road Railway Station<sup>16</sup> lies immediately to the north of the existing A47, with the road crossing on a bridge. There is a junction to the north past this bridge to Sutton Heath

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<sup>13</sup> As pointed out by WPC in its D1 submission "A47 Wansford to Sutton – the Wansford Western Roundabout" [REP1-072] the road on this arm was reclassified in 2017 having previously been designated as the A6118. The Applicant's documentation until D3 refers to it by the old designation.

<sup>14</sup> The southern terminus of this former line, at Wansford Station, lies approximately 2.8km to the southeast of Wansford and to the southeast of the village of Stibbington. It remains in operation as part of the Nene Valley railway, a heritage line, which runs between Peterborough (Nene Valley) station in the east and Yarwell station in the west.

<sup>15</sup> The official designation for the Scheduled Monument is "*Cropmark site of a barrow cemetery and a quadrilateral ditched enclosure, together with pits and a pit alignment, approximately 837m south-east of Sacrewell Farmhouse (1006796)*". As this is the only Scheduled Monument affected by the Proposed Development it is generally referred to as 'the Scheduled Monument'.

<sup>16</sup> For clarity, there are two stations: 'Wansford' which lies on the Nene Valley Line, and 'Wansford Road' which lies on the former Wansford to Stamford line. Wansford Road Station lies within the Application site.

Road. The area of land between Sutton Heath Road and the former railway line, as well as part of the former railway line, is designated as a Site of Special Scientific Interest (SSSI).

- 2.1.11. Sutton Heath Road continues to the north, joining with Langley Bush Road. The Application site includes Sutton Heath Road to this junction and either side and includes a strip of land along a northwest/ southeast direction back towards the A47.
- 2.1.12. Travelling east the A47 continues, effectively on the level, with a single dwelling, Deep Springs, on the southern side. There is next a junction on the south side with The Drift leading to the village of Sutton from the north. The A47 continues to the Nene Way Roundabout with side roads north and south; north along Upton Road and Main Road to the hamlet of Upton, and south, via a short section of Peterborough Road to Nene Way to provide a second access to Sutton from the east. To the north of the existing A47 there is a row of, principally, deciduous trees which form a hedge to the existing carriageway. The Application site includes a small, discrete area of land on the northwest side of the junction of The Drift with Nene Way within the village of Sutton.
- 2.1.13. The Application site extends northwards along Upton Road to its nomenclature change to Main Road at Lower Lodge Farm/ Ermine Street (the former Roman Road). From the Nene Way Roundabout the A47 is a dual carriageway, although the Application site continues approximately 450 metres (m) to the east.
- 2.1.14. The Application site also includes the entire length of The Drift<sup>17</sup> at Upton from its junction with Langley Bush Road to that with Main Road, along with land around the two junctions and land on either side.
- 2.1.15. The Application site includes the southbound carriageway of the A1 to the north of the A47 junction up to a private access to Sacrewell Lodge Farm. This section also includes parts of the front gardens of four dwellings (6 to 12 (evens) Great North Road). Windgate Way, which provides access to a dwelling of the same name and is also a bridleway (Thornhaugh 8), lies immediately to the south of the four properties facing the A1.
- 2.1.16. The Application site includes the area of land to the south of the existing A47 to the east of the A1. This area was used as a picnic area with parking but was closed in recent times due to anti-social behaviour. To the east is a petrol filling station and an Anglian Water pumping station, the latter being in the Application site. This pumps water from the River

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<sup>17</sup> As can be seen in paragraph 2.1.10 there are two roads known as 'The Drift' within the Application site. With apologies to residents, to ensure clarity I will refer to that in Sutton as 'Sutton Drift' and that in Upton as 'Upton Drift'.

Nene to Rutland Water some 21km northwest of the Application site. The pipelines cross the existing A47 north of the pumping station<sup>18</sup>.

- 2.1.17. To the north of the A47 towards the western end of the Application site is Sacrewell Farm. This is a visitor attraction providing a rural heritage experience and camping facility. There is a Grade II\* listed mill building to the south of the main area with a mill pond and various associated buildings. The mill is fed by Mill Stream which flows from the western side of the A1. Mill Stream then flows in an easterly direction to join with Wittering Brook a short distance north of the Wansford Road Railway Station. The Sacrewell Farmhouse, which is listed Grade II, is located a short way to the north with other buildings now associated with the visitor attraction.
- 2.1.18. Access to and from the south of the village of Wansford is via the Wansford Bridge, a Grade I listed building and scheduled monument<sup>19</sup>. This has a 3 tonne weight limit and has a width that only allows traffic to travel in one direction; there are 'give way to traffic on bridge' signs at both ends.
- 2.1.19. There are a number of public rights of way within and near to the Application site. Of particular relevance are a connecting series of permissive ways that run (eastwards) from near where Peterborough Road joins with the A1, under the A1 River Nene bridges, and then alongside the River Nene<sup>20</sup>. The Rights of Way and Access Plans [REP8-004] shows this as a footpath<sup>21</sup>. This is discussed further in Chapter 6. This connects with a conventional (i.e. non-permissive) footpath<sup>22</sup> to join to the village of Sutton. The whole forms part of the Nene Way long distance route. At the western end of the Sutton 1 footpath a separate footpath<sup>23</sup> extends up to a layby beside the A47 roughly opposite the Scheduled Monument.
- 2.1.20. It should be noted that the extreme western end of the Wansford Nene Way Permissive 1 from its junction with Peterborough Road down to adjacent to the River Nene is quite steep and has been cited<sup>24</sup> as having

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<sup>18</sup> The route can be seen in Annex Q 'Water main from River Nene Extraction' in the Applicant's Response to the Examining Authority's First Written Questions (ExQ1) – Annexes [REP1-036].

<sup>19</sup> Technically the Cambridge and Peterborough sides are separate designations, so in total it has four separate designations (see paragraph 6.2.8 of [APP-085]).

<sup>20</sup> From the western end in order, 'Wansford Nene Way Permissive 1', 'Wansford Annual Maintenance 113', and 'Wansford Nene Way Permissive 4'. There is also a short spur, 'Wansford Hereward Way Permissive 2', leading from the east/west route up to the south side of the A47 to one side of the access to the pumping station and former picnic area.

<sup>21</sup> The Applicant's response to ExQ1.11.10 [REP2-035] indicates it is a footpath.

<sup>22</sup> 'Sutton 1'

<sup>23</sup> 'Wansford 4'.

<sup>24</sup> Within a number of Relevant Representations, for example Ian Auger [RR-015] and Peterborough Cycle Forum [RR-037].

a gradient of up to 20%. This section of the right of way lies within the Application site.

- 2.1.21. North of the A47 there are two permissive rights of way<sup>25</sup> which also provide the main public vehicular access to the Sacrewell Farm complex. North of them is a bridleway<sup>26</sup> to the east of Sacrewell Farm which then heads westward past the property known as Windgate Way to the A1 by 6 to 12 (evens) Great North Road. Footpaths continue to the north to Sacrewell Lodge Farm and beyond. At the northern end of Thornhaugh Permissive 1, Thornhaugh 8 continues in an east-west direction joining to the Sutton 5 bridleway<sup>27</sup> which leads to Sutton Heath Road north of its junction with Langley Bush Road.
- 2.1.22. A footpath<sup>28</sup> runs from Stibbington in a westerly direction towards the A1 and then crosses that road at grade.
- 2.1.23. There are number of bridleways and footpaths to the immediate south and to the east of Upton. These extend across the fields to the southeast to Ailsworth. There are two routes across the existing dualled A47 in this vicinity, either via the overbridge of Helpston Road, or via an at grade pedestrian crossing, through an overlapping gap in the central barrier, approximately 180m to the west.
- 2.1.24. There is a pedestrian underpass under the Wansford west roundabout on its western side, connecting the two parts of Old North Road. This route is signed that cyclists should dismount.

## **2.2. THE APPLICATION AS SUBMITTED**

- 2.2.1. The Applicant submitted an application under s37 of the Planning Act 2008 (PA2008) for an Order granting development consent for what was described as the "A47 Wansford to Sutton Scheme" (the Proposed Development). A document entitled "Introduction to the Application" [APP-003] provides an overview, which was accompanied by a covering letter [APP-002] and the Application form [APP-001].
- 2.2.2. The Applicant points out in the Case for the Scheme [AS-022] that the A47 is an important route for both commuter and longer distance traffic between Yarmouth on the east coast and the A1, connecting Norwich and Peterborough<sup>29</sup>.

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<sup>25</sup> From the south, 'Wansford Hereward Way Permissive 3' and 'Thornhaugh Permissive 1'. There is no certainty as to the status; see Chapter 6.

<sup>26</sup> 'Thornhaugh 8'.

<sup>27</sup> There are two routes for Sutton 5 creating an elongated figure of '8', but for the purposes of the Examination the differences are not material.

<sup>28</sup> 'Sibsun cum Stibbington Footpath 2'.

<sup>29</sup> There have been a series of potential other major improvements to the overall route with three being subject to applications for Development Consent Orders as follows. The distance in brackets is from the Application site.

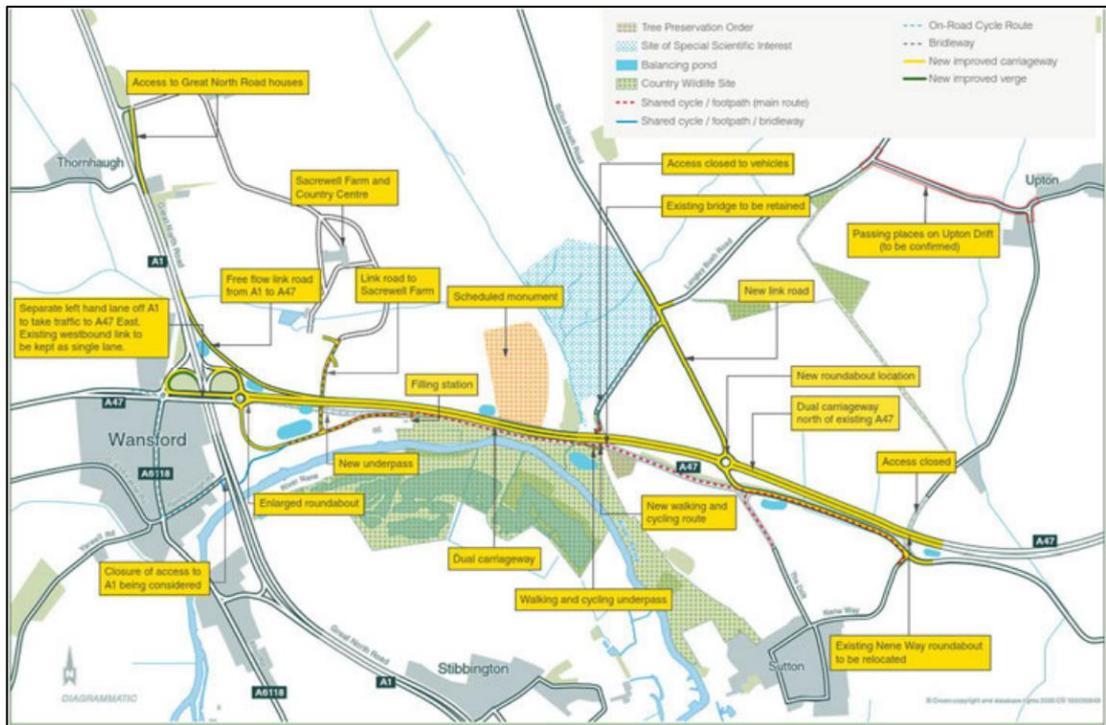
- 2.2.3. The objectives for the Proposed Development are set out in paragraph 2.2.1 of the Introduction to the Application [APP-003] as:
- **Supporting economic growth:** *The scheme will improve journey times and journey time reliability. This will help contribute to sustainable economic growth by providing benefits such as effectively bringing businesses closer together and encouraging more people to join the labour market as a result of reduced commuting costs.*
  - **Making a safer network:** *Improving road safety for all road users by designing to modern highway standards appropriate for a major A road.*
  - **Providing a more free-flowing network:** *Increasing the resilience of the A1/A47 junction to cope with incidents such as collisions, breakdowns, maintenance and extreme weather. The improved A47 section from Wansford to Sutton will be more reliable, reducing journey times and providing capacity for future traffic growth.*
  - **Creating an accessible and integrated network:** *Ensuring the proposals take into account the local communities access to the road network, and provide a safer route between communities for walking, cycling, horse riding and other road users. [Emphasis in original]*
- 2.2.4. Chapter 2 of the ES [REP2-008] provides a detailed description of the Proposed Development which is summarised below.
- 2.2.5. The Applicant points out that between the A1 and Peterborough approximately half of the A47 is single carriageway. It considers that this acts as a bottleneck, resulting in congestion, leading to longer journey times and a poor safety record. This is to be addressed by making the whole length between Wansford and Peterborough a dual carriageway.
- 2.2.6. The Applicant has identified various reasons for the delays, including development in the area, road layout with limited opportunities for overtaking, various junctions with side roads which are not to modern day standards, and traffic levels outgrowing the capacity of the road.
- 2.2.7. The key elements of the Proposed Development as originally submitted are set out in paragraph 1.1.2.
- 2.2.8. The General Arrangement Plans [APP-009], Works Plans [APP-006] and Engineering Drawings and Sections [APP-008] identified the key

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- A47 North Tuddenham to Easton (97km), the decision to grant the DCO was made on 12 August 2022;
  - A47 – A11 Thickthorn Junction (128km) (the recommendation from the ExA was sent to the SoST on 20 June 2022. A Ministerial Written Statement (HCWS297) was made on 22 September 2022 indicating that the decision deadline had been extended to 14 October 2022); and
  - A47 Blofield to North Burlingham (148km) the decision to grant the DCO was made on 22 June 2022).
- In addition, the A47 Guyhirn junction (40km) improvement was officially opened on 13 May 2022.

components and features of the Proposed Development. Further refinements, clarifications and alterations were submitted.

2.2.9. The following paragraphs describe the road alignment and principal elements of the Proposed Development as originally submitted in greater detail, moving from the western end eastwards. They are shown schematically in Figure 3: Schematic overview of Proposed Development

**Figure 3: Schematic overview of Proposed Development<sup>30</sup>**



**Wansford west roundabout**

2.2.10. The only substantive change to this roundabout is that a dedicated at-grade cycle crossing of the A47 would be provided on the western side of the roundabout. The proposed routes for cyclists/ pedestrians through this junction are shown in Annex G: Cycle Routes through Wansford West Roundabout in the Applicant’s Response to the ExA’s Further Written Questions (ExQ2) [REP5-023].

**A1/ Wansford east roundabout junction**

2.2.11. The Wansford east roundabout is to be redesigned. It would be relocated slightly to the north, and a fourth, southern, arm added. This southern arm would provide access via a side road to the petrol filling station, the

<sup>30</sup> Source: Drainage Strategy Report [APP-129]. It should be noted that two of the labels are incorrect. In the southwest corner the “Cloure of access to A1 being considered” does not form part of the Proposed Development, and conversely, in the northeast corner “Passing places on Upton Drift (to be confirmed) are part of the Proposed Development. This document was later updated with the final version being [REP5-008], although this drawing did not change.

Anglian Water pumping station and a revised access to Sacrewell Farm, via a new underpass under the new line of the A47 dual carriageway. This underpass would also include a new permissive bridleway. The area between the A47 and the side road would be used for drainage ponds and environmental mitigation. The roundabout would be no longer partially signalised with all signals removed.

- 2.2.12. Traffic travelling from the A1 southbound to the A47 eastbound would be removed from the junction via a new single carriageway free-flowing slip road. This would diverge from the current A1 southbound carriageway approximately 150m south of the junction with Windgate Way. The existing direct access for 6 to 12 (evens) Great North Road to the A1 would be closed, with a new, private, access from the north, joining with the existing access to Sacrewell Lodge Farm provided.
- 2.2.13. From the east, access to the petrol filling station would be maintained via a slip road from the westbound carriageway, which would also provide access from that direction to the pumping station and Sacrewell Farm.
- 2.2.14. The roundabout and southern side road would be at or slightly above existing road levels. The new link road would be at existing ground level, although as this is on a slight ridge, it would be above the existing level of the A47.
- 2.2.15. The existing permissive way would remain under the A1. This would link to a new permissive bridleway on the south side of the side road, and then a new shared cycle track from east of the junction to Sacrewell Farm. This would continue to the east in front of the petrol filling station.

#### **From Wansford East Roundabout to Sutton Heath Road junction**

- 2.2.16. The new dual carriageway road would follow the approximate line of the existing A47, although being wider would extend beyond the current northern boundary. Towards the eastern end of this section the proposed dual carriageway would divert slightly to the north. This is to allow the existing bridge over the disused railway line to be retained. The dual carriageway would be on a new crossing over the former railway line to the north. Underneath these two crossings would be a bridleway from the shared cycle track to the south to Sutton Heath Road. The junction of Sutton Heath Road with the A47 would be closed, and some of the existing buildings at Wansford Road Railway Station demolished.
- 2.2.17. A new section of separate, two-way cycleway would be constructed on the southern side of the dual carriageway and would link to one on the south side of the off-slip at the petrol filling station. This would link to the existing Wansford 4 footpath on the south side of the A47, the extreme northern section of which would be stopped up.
- 2.2.18. As a consequence of the proposed alignment a triangular section of the Scheduled Monument, amounting to 27 square metres (m<sup>2</sup>) in its southeastern corner, would be encroached upon. The existing Wittering

Brook culvert<sup>31</sup> under the existing carriageways would be removed and a new culvert provided a short distance to the east.

- 2.2.19. This section of the main carriageway would be slightly above existing ground levels.

#### **Sutton Heath Road to the eastern extent of the Application site**

- 2.2.20. From the Wittering Brook crossing to the location of the existing Nene Way roundabout the proposed dual carriageway would run to the north of the existing A47. A new roundabout, the Sutton Heath Roundabout, would be constructed a short way to the north-west of the northern extent of Sutton Drift. Apart from the two main east and west arms, there would be arms north and south. The new dual carriageway would link back to the existing line just to the west of the existing Nene Way roundabout location, the Nene Way roundabout being removed, tying into the existing dual carriageway.

- 2.2.21. Just to the west of the existing Nene Way roundabout the existing A47 to the east of Sutton Drift would remain, approximately parallel to the new dual carriageway, for use by local traffic. The existing row of trees/hedgerow being retained between the old and new roads. A separate bridleway would be provided on the southern side of the local road.

#### **Sutton Heath roundabout and area to south**

- 2.2.22. The southern arm of the Sutton Heath roundabout would link back to the line of the existing A47, which to the east would be used by local traffic joining with Peterborough Road near its junction with Nene Way.

- 2.2.23. Sutton Drift would be closed to most traffic for approximately 250m to the south of the Sutton Heath roundabout but would be retained as a shared cycle track to Sutton village. A turning head would be provided at what would become the northern end. Access to Sutton village would remain from the east along Nene Way. The discrete area at the junction of Sutton Drift and Nene Way would be used for a traffic sign.

- 2.2.24. To the west of Sutton Drift, the existing line of the A47 would be downgraded for use as a bridleway, and, for that section up to the entrance to the dwelling known as Deep Springs, an access to that property. This would mean that there would be a separate cycle track on the southern side of the side roads from opposite the entrance to Sacrewell Farm to just beyond the junction of Nene Way with Peterborough Road.

#### **Sutton Heath Road, Langley Bush Road and area to north**

- 2.2.25. As noted in paragraph 2.2.16 the southern end of Sutton Heath Road with its junction to the A47 would be stopped up. The section south of its junction with Langley Bush Road would become a cul-de-sac for vehicular

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<sup>31</sup> Also known as Wansford Sluice.

traffic so that access to the dwelling known as Heath House would only be from the north. A turning head would be provided at the southern end with the new bridleway route allowing for the change in levels to get to the proposed bridleway under the main dual carriageway utilising the old and new bridges south of Wansford Road Station.

- 2.2.26. A new single carriageway road would be provided to the north from the new Sutton Heath roundabout in a north-northwest direction, across an existing field. This would continue the line of Sutton Heath Road beyond its junction with Langley Bush Road. The junction of what would be the cul-de-sac of Sutton Heath Road would be reconfigured so that the cul-de-sac and Langley Bush Road would both have perpendicular junctions with Sutton Heath Road off-set by approximately 90m.

### **Access to Upton**

- 2.2.27. The proposal is to close Upton Road south of Lower Lodge Farm/ Ermine Street to all traffic including pedestrians. This would mean vehicular access to Upton, and the properties to the south on Main Road, would have to be from the west via Langley Bush Road. Non-motorised user (NMU)<sup>32</sup> access to Upton would remain to and from the east using bridleways and footpaths to Ailsworth/ Castor.
- 2.2.28. To facilitate vehicular access to Upton, works would be undertaken to Upton Drift, predominantly the provision of passing-bays along its length, and the east and west junctions with Langley Bush Road and Main Road respectively reconfigured.

### **Construction compounds**

- 2.2.29. Although not forming part of the final Proposed Development, due to their effects during the construction period, it makes sense to set out the locations of the four site compounds and storage areas.
- 2.2.30. The main compound would be to the east of Sutton Heath Road, north of the proposed line roughly opposite Heath House. There would be three smaller compounds in the western part of the Application site. One in the area to the north of the A47 to the west of the proposed Sacrewell access road, and two would be to the south, one at the former picnic area and one within the loop to be created by the southern link road. These are all shown in a plan in Annex B of Applicant's Response to the Examining Authority's First Written Questions [REP2-036].

## **2.3. THE APPLICATION AS EXAMINED**

- 2.3.1. The Applicant submitted a letter dated 6 May 2022 [AS-044] together with associated plans [AS-045], [AS-046] and [AS-047], where it

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<sup>32</sup> The Applicant has often used the acronym of 'WCH' for 'Walkers, Cyclists and Horse-riders' as this is used in the Design Manual for Roads and Bridges (DMRB). However, I will use the term "NMU" because it is more inclusive, as it includes wheelchair and buggy users and users of horse-drawn vehicles, and is the term used in the NPSNN.

indicated that it would be submitting a formal change request to the application. In response, I wrote on 10 May 2022 [PD-011] making various comments, particularly emphasising the need to ensure that any changes could be incorporated into the Examination timetable, in the event that Regulations 5 to 19 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the CA Regulations) were engaged.

- 2.3.2. The Applicant responded to this Rule 17 letter on 20 May 2022 [REP7-018] dealing with the query relating to a covenant in favour of a person unknown, and I responded with another Rule 17 letter on 24 May 2022 [PD-013].
- 2.3.3. On 14 June 2022 the Applicant submitted a formal change request [REP8-029] together with a number of associated documents which are referred to in that letter. There were three proposed changes. These are set out below (see paragraphs 2.3.7 to 2.3.9).
- 2.3.4. On 21 June 2022 [PD-017] I wrote to the Applicant rejecting the Proposed Changes. This was on the basis that one of the three Proposed Changes, Change Two, involved "additional land" as defined in the CA Regulations, and not all persons with an interest in the land had written to confirm that they had no objection to the compulsory acquisition. This meant that Regulations 5 to 19 of the CA Regulations were engaged. Therefore, as the necessary procedures could not be completed before the end of the Examination this meant that the change request had to be rejected. Because Changes One and Three were also set out in a single, comprehensive submission all three proposed changes had to be rejected.
- 2.3.5. On 24 June 2022 the Applicant wrote [AS-049] resubmitting the Change Request, but with additional information to address the reasons why the proposed changes had been previously rejected. This indicated that the Applicant had identified the "persons unknown" and were able to show that their interests would not be prejudiced by proposed Change Two.
- 2.3.6. In light of this additional information I was satisfied that all those who had a relevant interest in the land had given their consent and thus Regulations 5 to 19 of the CA Regulations were not engaged. The changes are set out below:

**Change One – realignment of side road to south of A47 Wansford east roundabout**

- 2.3.7. The realignment of the new link road from the A47 Wansford eastern roundabout to the new A47 off-bound slip to the north by approximately 14m. The Applicant indicated that this would reduce construction phasing requirements associated with utility diversions.

## **Change Two - modification of the access alignment to Sacrewell Farm**

- 2.3.8. The realignment of the access to Sacrewell Farm so that, while the terminus points would remain constant, rather than being on a north-south alignment with an east-west section at the northern end, to the north of the Sacrewell underpass the line would be northeast-southwest. There would be an associated change regarding a field entrance. The Applicant indicated this was to avoid Anglian Water assets and to improve visibility at the access to Sacrewell Farm.

## **Change Three – modification of cycle route at eastern end**

- 2.3.9. The shortening of the cycle route at the eastern end of the Proposed Development by deleting a section of cycle track on the northern frontage of Peterborough Road. This would, according to the Applicant, avoid the need for cyclists to leave Peterborough Road at the Nene Way junction. However, sections of footway would be provided on both the northern and southern frontages of Peterborough Road.

## **Conclusion on Proposed Changes**

- 2.3.10. In my letter of 28 June 2022 [PD-018] I indicated that while I considered Change Two be a “material change”, as it would require “additional land” as defined in the CA Regulations being proposed for compulsory acquisition, all the proposed changes fall within the Application site of the Proposed Development and would not result in a materially different project. I therefore accepted all three changes into the Examination.
- 2.3.11. This report is based on the Application as so amended.

## **2.4. RELEVANT PLANNING HISTORY**

- 2.4.1. The need for an upgrading of the A47 between the Nene Way roundabout and the A1 has been identified by Highways England since 2015 as part of the A47/ A12 Corridor Feasibility Study. The A47 Wansford to Sutton Dualling was included in Road Investment Strategy 1 (RIS1) in 2014.
- 2.4.2. This is the first formal proposal for a dual carriageway between Wansford and the western extent of the existing dual carriageway northeast of Sutton which has reached application stage.

## **3. LEGAL AND POLICY CONTEXT**

### **3.1. THE PLANNING ACT 2008**

- 3.1.1. The proposal is highway-related development falling within s22 of the PA2008, consequently the National Policy Statement for National Networks (NPSNN) has effect, and s104 of the PA2008 is engaged.
- 3.1.2. S104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application to which it relates. In summary, the matters set out, as relevant to this application, include:
- any relevant National Policy Statements (NPSs);
  - any LIR;
  - any matters prescribed in relation to development of the description to which the application relates; and
  - any other matters the SoS considers are both important and relevant to the decision.
- 3.1.3. S104(3) of the PA2008 requires that the SoS must decide an application for development consent in accordance with any relevant NPS, except to the extent that the SoS is satisfied that:
- doing so would lead to the United Kingdom (UK) being in breach of any of its international obligations;
  - doing so would lead to the SoS being in breach of any duty imposed on him by or under any enactment;
  - doing so would be unlawful by virtue of or under any enactment;
  - the adverse impact of the proposed development would outweigh its benefits; or
  - any condition prescribed for deciding an application otherwise than with an NPS is met.

### **3.2. NATIONAL POLICY STATEMENT FOR NATIONAL NETWORKS**

- 3.2.1. The NPSNN has been designated as the NPS for roads for which the SoST is the highway authority and remains in force. The NPSNN provides the primary basis for decisions by the SoST.
- 3.2.2. The NPSNN states that the need for development of the national networks, and the Government's policy for addressing that need, must be seen in the context of the Government's wider policies on economic performance, environment, safety, technology, sustainable transport and accessibility, as well as journey reliability and the experience of road and rail users. The Government has therefore concluded that at a strategic level there is a compelling need for the development of the National Road Network.
- 3.2.3. The NPSNN provides guidance and imposes requirements on matters such as good scheme design, as well as the treatment of environmental impacts. It also provides planning guidance for such projects and is the basis for the examination by the ExA and decisions by the SoST. It

covers a range of topics and these matters are addressed in detail in Chapters 5 to 15 of this report

- 3.2.4. On 14 July 2021 the SoST announced a review of the NPSNN. However, a Written Ministerial Statement of 21 July 2021 (HCWS235) stated: "*While the review is undertaken, the NPS remains relevant government policy and has effect for the purposes of the Planning Act 2008. The NPS will, therefore, continue to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State for Transport can make decisions on, applications for development consent*". A legal challenge<sup>33</sup> to the decision that the NPSNN should remain extant during the review was dismissed.

### **3.3. UK REGULATIONS DERIVING FROM EUROPEAN LAW**

- 3.3.1. The UK left the European Union (EU) as a member state on 31 January 2020 with the transition period concluding on 31 December 2020. EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day with certain specific exceptions.
- 3.3.2. This report has been prepared on the basis of the retained law and references in it to European terms such as 'Habitats' have also generally been retained for consistency with the Examination documents. However, where terminology has changed, for example 'national sites network' (NSN) rather than 'Natura 2000 network', the amended terminology will be utilised.
- 3.3.3. Since there may be changes in legislation between the writing of this report and the SoS's decision, it will be for the SoS to satisfy themselves as to the position on retained law and obligations at the point of decision.

#### **The Habitats Regulations**

- 3.3.4. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) transposed the Habitats Directive (Council Directive 92/43/EEC) and the Birds Directive (Council Directive 2009/147/EC) into English and Welsh domestic legislation.
- 3.3.5. The Habitats Regulations are built around two pillars, a network of protected sites (the NSN) and a system of species protection. This protects over 1000 animals and plant species and over 200 habitat types (for example: species types of forests; meadow; wetland etc.) which are of international importance. It requires designation of such areas as Special Areas of Conservation (SACs).
- 3.3.6. The Habitats Regulations are also a comprehensive scheme of protection for all wild bird species naturally occurring in England and Wales and places great emphasis on the protection of habitats for endangered as

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<sup>33</sup> *The Queen on the application of Transport Action Network Limited v SoST* [2022] EWHC 503 (Admin)

well as migratory species. The most suitable territories for these species are classified as Special Protection Areas (SPAs) and along with SACs are an integral part of the NSN.

- 3.3.7. The relevance of these Regulations to the Proposed Development is addressed in Chapter 15 of this report.

### **Ramsar Convention**

- 3.3.8. The Convention on Wetlands of International Importance (Ramsar Convention), a global treaty adopted in 1971, protects wetlands of international importance especially as waterfowl habitat. This is also discussed in Chapter 15.

### **The Water Environment Regulations**

- 3.3.9. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (as amended) (the Water Environment Regulations) transposed the Water Framework Directive (Council Directive 2000/60/EC) (the WFD) in to English and Welsh domestic legislation.
- 3.3.10. The Water Environment Regulations includes objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. It provides for the production of river basin management plans to provide for the sustainable management of rivers.
- 3.3.11. This is relevant for the Proposed Development in that there are two watercourses which are associated with the WFD in respect of surface water, the 'Nene – Islip to Tidal' and the 'Wittering Brook'. In addition there are three WFD groundwater bodies within the study area, the 'Nene Mid Lower Jurassic Unit', the 'Northampton Sands' and the 'Welland Limestone Unit A'. This is discussed further in Chapter 12 of this report.

### **The Air Quality Regulations**

- 3.3.12. The Air Quality Standards Regulations 2010 (as amended) (the Air Quality Regulations) transposed the Ambient Air Quality and Cleaner Air for Europe Directive (Directive 2008/50/EC) into, principally, English domestic legislation, although some provisions have UK extent.
- 3.3.13. The Air Quality Regulations sets limit values (LV) for compliance and establishes control actions where the LVs are exceeded for ambient air quality with respect to sulphur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>) and mono-nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>10</sub><sup>34</sup> and PM<sub>2.5</sub><sup>35</sup>), lead, benzene and carbon monoxide (CO). The LVs are set out in Table 5.1 of Chapter 5 of the ES [APP-043].

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<sup>34</sup> Where the particulate matter is 10 micrometres or less in diameter

<sup>35</sup> Where the particulate matter is 2.5 micrometres or less in diameter

## **The UK Air Quality Strategy**

- 3.3.14. The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (the UK Air Quality Strategy) sets out air quality objectives and policy options to further improve air quality in the UK into the long term. As well as direct benefits to public health, these options are intended to provide important benefits to quality of life and help to protect the environment.
- 3.3.15. Individual plans are prepared beneath this framework to provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones (CAZs) and more localised Air Quality Management Areas (AQMAs), where Air Quality Management Plans are prepared by local authorities.
- 3.3.16. The Clean Air Strategy 2019 was published by the Department for Environment Food and Rural Affairs (Defra). It sets out how all sources of air pollution would be tackled, and action plans undertaken at the local authority level continue to be produced in accordance with the Strategy.
- 3.3.17. There are no AQMAs within the application site nor within the Affected Road Network<sup>36</sup> (ARN) area. The nearest AQMA is located 6km to the east within Peterborough.

## **3.4. OTHER LEGAL PROVISIONS**

### **United Nations Environmental Programme Convention on Biological Diversity 1992**

- 3.4.1. The UK Government ratified the United Nations Environmental Programme (UNEP) Convention on Biological Diversity 1992 (the Biodiversity Convention) in June 1994. Responsibility for the UK contribution to the convention lies with Defra who promote the integration of biodiversity into policies, projects and programmes within the Government and beyond.
- 3.4.2. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (as amended) (the Decisions Regulations), the Biodiversity Convention has been taken into account in consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation. The UK EIA and Transboundary Assessment process, which is referred to below, is established to satisfy, with regard to impacts on biodiversity, the Requirements of Article 4 of the Biodiversity Convention (Impact Assessment and Minimising Adverse Impacts).

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<sup>36</sup> This is defined in paragraphs 5.6.6 and 5.6.7 of Chapter 5 of the ES – Air Quality [APP-043] and is shown in Figure 5.3 [REP2-018]. See also paragraph 10.3.20 of this report.

- 3.4.3. This is of relevance to the biodiversity and ecological considerations and the landscape and visual impacts which are discussed in Chapters 9, 14 and 15 of this report.

### **The Wildlife and Countryside Act 1981**

- 3.4.4. The Wildlife and Countryside Act 1981 (W&CA) is the primary legislation which protects animals, plants and certain habitats in the UK. It provides for the notification and confirmation of SSSIs. In England the sites are identified for their flora, fauna, geological or physiographical interest by NE. The W&CA contains measures for the protection and management of SSSIs.
- 3.4.5. The W&CA is relevant to the application in view of the sites and species identified in the ES, principally Chapter 8, Biodiversity [AS-015]. Relevant considerations are discussed in Chapter 9 of this report.

### **Natural Environment and Rural Communities Act 2006**

- 3.4.6. The Natural Environment and Rural Communities Act 2006 (NERCA) makes provisions for bodies concerned with the natural environment and rural communities in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions, have regard so far as it is consistent with the proper exercise of those functions, to the conservation of biodiversity (the biodiversity duty). In complying with the biodiversity duty regard must be had to the Biodiversity Convention. NERCA also requires that the SoS must publish a list of the living organisms and types of habitat that in the SoS's opinion are of principal importance for conserving biodiversity. The ExA has had regard to the NERCA and biodiversity duty in all relevant sections of this report.
- 3.4.7. The effects on landscape and visual receptors, as well as the effects on rights of way and the ease of movement for NMUs are considered in Chapters 6, 7 and 14 of this report.

### **The Protection of Badgers Act 1992**

- 3.4.8. The Protection of Badgers Act 1992 prescribes offences relating to badgers, including interfering with badger setts, together with provisions for exceptions, licences, enforcement and penalties. The implications of the Proposed Development for badgers are provided in ES Chapter 8 [AS-015] and the Confidential Badger Technical Report [AS-019] which has been withheld from publication on the Inspectorate's National Infrastructure website. The implications of the Protection of Badgers Act are discussed in Chapter 9 of this report.

### **The Hedgerow Regulations 1997**

- 3.4.9. The Hedgerow Regulations 1997 (as amended) protect 'important' hedgerows with licencing and enforcement and penalties. The effect of the Proposed Development on hedgerows is discussed in ES Chapter 8

[AS-015] with a Botanical and Hedgerow Update Survey Report being provided [APP-099]. The implications of the Proposed Development for hedgerows are discussed at Chapter 9 of this report.

### **Human Rights Act 1998**

- 3.4.10. The CA and TP of land can engage various relevant Articles under the Human Rights Act 1998. The implications are considered in Chapter 17 of this report.

### **The Equalities Act 2010**

- 3.4.11. The Equalities Act 2010 established a duty, the Public Sector Equality Duty (the PSED), to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share the defined protected characteristics and persons who do not. The PSED is applicable to the Applicant as a public body, the ExA in the conduct of this Examination and reporting, and to the SoST in decision making.

- 3.4.12. The application was accompanied by an Equality Impact Assessment (EqIA) [REP2-031] and the implications of the Proposed Development for the PSED are considered at Chapter 17 of this report.

### **Climate Change Act 2008**

- 3.4.13. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. Where relevant these have been taken into account in Chapter 10 of this report.

- 3.4.14. There have been a series of Statutory Instruments setting out the various 'Carbon Budgets' in different periods. The latest carbon budget deals with the period 2033-2037 and this is known as the Sixth Carbon Budget. Carbon budgets have yet to be set beyond 2037.

- 3.4.15. The Carbon Budget Order 2021 was made on 23 June 2021 and came into force the following day. This set a carbon budget for the 2033-2037 budgetary period of 965,000,000 tonnes of carbon dioxide equivalent. This requires the cutting of emissions by 78% by 2035 compared to 1990 levels, this will bring the UK to more than three-quarters of the way to net zero by 2050. This is discussed further in Chapter 10 of this report.

### **The Infrastructure Planning (Decisions) Regulations 2010**

- 3.4.16. The Decisions Regulations prescribe a list of matters to which the SoS under s103 of the PA2008 must have regard to when taking decisions on applications for NSIPs.

- 3.4.17. Regulation 3 of the Decisions Regulations requires, when deciding an application which affects a listed building or its setting, the decision-maker must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

3.4.18. Regulation 7 of the Decisions Regulations requires the SoS to have regard to the United Nations Environmental Programme Convention on Biodiversity of 1992 when making their decision on an application for development consent.

### **3.5. MADE DEVELOPMENT CONSENT ORDERS**

3.5.1. The Applicant made reference to a number of precedents in made Orders and related approvals. References were made in the final version of the Explanatory Memorandum [REP11-005]. In addition, a number of Orders made during the Examination were also referred to in Written Questions and Rule 17 letters.

3.5.2. The following made Orders were specifically referred to and have been taken into account:

- The National Grid (North London Reinforcement Project) Order 2014;
- Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014;
- The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016;
- The A19/ A1058 Coast Road (Junction Improvement) Development Consent Order 2016;
- The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016;
- The River Humber Gas Pipeline Replacement Order 2016;
- The M20 Junction 10a Development Consent Order 2017;
- The National Grid (Richborough Connection Project) Development Consent Order 2017;
- The North London Heat and Power Generating Station Order 2017;
- The A19/ A184 Testo's Junction Alteration Development Consent Order 2018;
- The Silvertown Tunnel Order 2018;
- The M42 Junction 6 Development Consent Order 2020;
- The A30 Chiverton to Carland Cross Development Consent Order 2020;
- The A303 Amesbury to Berwick Down Development Consent Order 2020<sup>37</sup>;
- The A1 Birtley to Coal House Development Consent Order 2021;
- The A38 Derby Junctions Development Consent Order 2021<sup>38</sup>;
- The A303 Sparkford to Ilchester Dualling Development Consent Order 2021;
- The M54/ M6 Link Road Development Consent Order 2022;
- The M25 Junction 10/ A3 Wisley Interchange Development Consent Order 2022; and
- The M25 Junction 28 Development Consent Order 2022.

3.5.3. The Applicant referred to provisions which are found in draft Development Consent Orders. These schemes were in Examination and

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<sup>37</sup> This reference is to the Order which was quashed by order of the High Court.

<sup>38</sup> This reference is to the Order which was quashed by order of the High Court.

at the Decision stage at the time of the preparation of the Explanatory Memorandum. These include:

- The A428 Black Cat to Caxton Gibbet Draft Development Consent Order<sup>39</sup>;
- The A47/ A11 Thickthorn Junction Draft Development Consent Order;
- The A47 North Tuddenham to Easton Draft Development Consent Order<sup>40</sup>; and
- The A47 Blofield to North Burlingham Draft Development Consent Order<sup>41</sup>.

3.5.4. The Applicant has also referred to Orders made under the Transport and Works Act:

- The London Underground (Northern Line Extension) Order 2014;
- The Midland Metro (Wolverhampton City Centre Extension) Order 2016

3.5.5. The Applicant made reference to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 which has been withdrawn.

### **3.6. TRANSBOUNDARY EFFECTS**

3.6.1. A transboundary screening under Regulation 32 of the EIA Regulations as originally enacted was undertaken on behalf of the SoS for MHCLG on 9 April 2018. Rescreening, taking account of any changes since that date, was undertaken on 29 September 2021. These can both be found at [OD-002].

3.6.2. Following the end of the transition period following the leaving of the EU by the UK, the relevant legislation has changed, but the effect has not materially altered.

3.6.3. The Regulation 32 duty is an ongoing duty, and on that basis, I have considered whether any facts have emerged to change the screening conclusions, up to the point of the closure of the Examination. No mechanisms whereby any conceivable transboundary effects could occur emerged.

3.6.4. The SoS's duty under Regulation 32 of the 2017 EIA Regulations continues throughout the application process.

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<sup>39</sup> This Order was made following the SoS's decision on 18 August 2022 as the A428 Black Cat to Caxton Gibbet Development Consent Order 2022.

<sup>40</sup> This Order was made following the SoS's decision on 12 August 2022 as the A47 North Tuddenham to Easton Development Consent Order 2022

<sup>41</sup> This Order was made following the SoS's decision on 22 June 2022 as the A47 Blofield to North Burlingham Development Consent Order 2022.

## **3.7. OTHER RELEVANT POLICY STATEMENTS**

### **Noise Policy Statement for England**

- 3.7.1. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. It applies to all forms of noise including environmental noise, neighbour noise and neighbourhood noise.
- 3.7.2. The Government's Noise Policy Vision is to promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development.

### **National Infrastructure Strategy**

- 3.7.3. The National Infrastructure Strategy notes that infrastructure underpins the economy. Transport, digital, energy and utility networks are vital for jobs, businesses and economic growth. But they also have a profound impact on people's daily lives. Investment in strategic roads is particularly identified.

### **Road Investment Strategy 2 (2020 – 2025)**

- 3.7.4. The Road Investment Strategy 2 (RIS2) was published in March 2020. It sets a long-term strategic vision for the strategic road network with the funding needed to plan ahead.
- 3.7.5. Under RIS2 the "A47 Wansford to Sutton – dualling of the A47 between the A1 and the dual carriageway section west of Peterborough" is shown as "Committed for [Road Period] 2" which covers the financial years 2020/21 to 2024/25.

## **3.8. THE NATIONAL PLANNING POLICY FRAMEWORK AND PLANNING PRACTICE GUIDANCE**

- 3.8.1. The National Planning Policy Framework (the Framework) and the Planning Practice Guidance (the PPG) set out the Government's planning policies for England and guidance on how these are expected to be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced. The Framework makes clear that it does not contain specific policies for NSIPs. These are determined in accordance with the decision-making framework in the PA2008 and relevant NPSs for major infrastructure, as well as any other matters that are relevant (which may include the Framework).
- 3.8.2. The NPSNN (paragraphs 1.17 to 1.20) describes the relationship between the Framework and the NPSNN. Together these paragraphs confirm that the overall strategic aims of the Framework and the NPSNN are consistent, however, the two have differing but equally important roles to play. It states that the Framework is likely to be an important and relevant consideration in decisions on NSIPs, but only to the extent that it is relevant to that project.

3.8.3. The NPSNN was published in December 2014 and was consistent with the Framework published in 2012. The Framework was revised in July 2018, in February 2019 and in July 2021. The NPSNN does not reflect these changes. The Application was prepared on the basis of the February 2019 version of the Framework, but IPs were given the opportunity to make representations of any implications flowing from changes in the July 2021 version. Paragraph references to the Framework within this report are to the July 2021 version.

3.8.4. The PPG provides additional information to assist in the operation of the planning system. Insofar as the categories therein are relevant to the Proposed Development, they will be material. However, they should have less weight than either the NPSNN or the Framework.

### **3.9. LOCAL IMPACT REPORTS**

3.9.1. A single LIR was submitted by PCC [REP2-068].

3.9.2. Where relevant considerations arising from the LIR are identified they are dealt with in the specific chapters of this report. The issues set out by PCC in the LIR are given in section 4.3 of this report.

### **3.10. THE DEVELOPMENT PLAN**

3.10.1. The Development Plan, as identified by PCC, consists of:

- Peterborough Local Plan 2016 to 2036 – adopted 24 July 2019
- Cambridge and Peterborough joint Minerals and Waste Plan – adopted 28 July 2021

3.10.2. Table 3 provides details of the relevant sections of the Peterborough Local Plan within the EL.

**Table 3: Peterborough Local Plan 2016 to 2036 and Policies map provided to Examination**

<b>Version</b>	<b>EL Reference</b>
Local Plan (Part 1)	[REP2-057]
Local Plan (Part 2)	[REP2-058]
Local Plan (Part 3)	[REP2-059]
District Policies Map	[REP2-049]
Sutton Inset Policies Map	[REP2-050]
Thornhaugh Inset Policies Map	[REP2-051]

<b>Version</b>	<b>EL Reference</b>
Upton Inset Policies Map	[REP2-052]
Wansford Inset Policies Map	[REP2-053]
Key to Inset Policies Maps 3 to 28	[REP2-056]

3.10.3. PCC has identified in the LIR [REP2-068] a number of policies in the Local Plan which it considers to be particularly relevant to this Proposed Development. They are set out below. The import of the policies is set out in the individual chapters of this report where they are discussed, and compliance or otherwise assessed.

- Policy LP1: Sustainable Development and the Creation of the UK's Environment Capital
- Policy LP7: Health and Wellbeing
- Policy LP11: Development in the Countryside (part F)
- Policy LP13: Transport
- Policy LP16: Design and the Public Realm
- Policy LP17: Amenity Provision
- Policy LP19: The Historic Environment
- Policy LP22: Green Infrastructure Network
- Policy LP24: Nene Valley
- Policy LP27: Landscape Character
- Policy LP28: Biodiversity and Geological Conservation
- Policy LP29: Trees and Woodland
- Policy LP32: Flood and Water Management
- Policy LP33: Development on Land Affected by Contamination

3.10.4. There are no Neighbourhood Plans covering the area of the Application site. However, there are Neighbourhood Plans for the Parishes of Ailsworth [REP2-044] and Castor [REP2-048] (both made on 13 December 2017) to the southeast of the Application site.

3.10.5. The Examination was also provided with the Huntingdonshire Local Plan [AS-039] to 2036 and its Policies Map [AS-038]. This relates to land immediately to the south of the Application site on the south of the River Nene and is a material consideration insofar as the Proposed Development may affect that area.

### **3.11. CONSERVATION AREA APPRAISALS**

3.11.1. PCC has provided the following Conservation Area Appraisals for land either within or close to the Application Site:

- Ailsworth (adopted March 2009) [REP2-042];
- Castor (adopted February 2008) [REP2-046];
- Southorpe (adopted July 2017) [REP2-063];
- Sutton (adopted June 2015) [REP2-064];

- Thornhaugh (adopted November 2019) [REP8-042], [REP8-040] and [REP8-041]; and
- Wansford (PCC Section)<sup>42</sup> (adopted March 2008) [REP2-066].

### **3.12. DESIGN MANUAL FOR ROADS AND BRIDGES**

3.12.1. The Design Manual for Roads and Bridges (DMRB) contains information about current standards relating to the design, assessment and operation of motorway and all-purpose trunk roads in the UK. This is a National Highways technical document rather forming part of national policy.

3.12.2. DMRB was updated during the preparation of the Application prior to submission. The Applicant took this into account in the final Application submission and explained, in particular, whether this has affected the Application in the various chapters of the ES.

### **3.13. CONCLUDING ExA COMMENT**

3.13.1. I can confirm that I have taken into account all of the above legislation, policy, standards and guidance set out in this chapter in coming to my conclusions.

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<sup>42</sup> A contiguous Conservation Area lies within the North Northamptonshire Council area.

## 4. THE PLANNING ISSUES

### 4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. A number of the RRs and the LIR from PCC [REP2-068] revealed support for the principle of the dualling of the A47 from its junction with the A1 to the western extent of the dual carriageway at the Nene Way roundabout. The following all specifically indicated their support for the principle of the development:

- Jane Reid [RR-019]
- John Stannage [RR-022]
- Michael Grange [RR-029]
- PCC [RR-036] and [REP2-068]
- Peterborough Cycle Forum [RR-037]
- Rachel Clarke [RR-038]
- Robert Reid [RR-039]
- SPC [RR-043]
- The Campbell Household [RR-044]
- WPC [RR-050]

4.1.2. However, some of these were caveated by objections. The objections set out in all the RRs are given in Table 4: Summary of RRs<sup>43</sup>. As can be seen these concentrate on a number of themes, although some are cross cutting.

**Table 4: Summary of RRs**

RR No	Topic	Issue Raised
006, 008, 009, 012, 020, 021, 024, 029, 030, 038, 039, 041, 043, 044, 050	General	<ul style="list-style-type: none"><li>▪ Lack of consultation with hamlet of Upton regarding proposals</li><li>▪ Lack of consultation generally</li><li>▪ Failure to take account of the effects of the Covid-19 pandemic</li><li>▪ Route should be further north to minimise effects, particularly on the Scheduled Monument and geotechnical risk and create room for NMU route</li></ul>
001, 002, 003, 004, 005, 008, 009, 010, 011, 015, 016, 017, 019, 020,	Traffic & Transport	<ul style="list-style-type: none"><li>▪ Capacity issues at Wansford west Roundabout</li><li>▪ Route for NMUs between two sides of A1 (including the PSED issue)</li><li>▪ Access to/ from Upton and suitability of Langley Bush Road</li><li>▪ Longer journey distances</li></ul>

<sup>43</sup> I have not included in this table the RR from Peterborough City Council [RR-036] as the comments are taken forward in its Local Impact Report [REP2-068] and are reported more fully below.

RR No	Topic	Issue Raised
021, 022, 023, 026, 027, 028, 029, 030, 033, 034, 037, 039, 040, 041, 042, 043, 044, 046, 049, 050		<ul style="list-style-type: none"> <li>▪ Crossing of A47, particularly for NMUs</li> <li>▪ No need to move Nene Way roundabout</li> <li>▪ Upton Drift should be single carriageway (rather than with passing places)</li> <li>▪ Need to resolve Old North Road/ Thacker Close junction</li> <li>▪ Need input into design at entrance to Sacrewell Farm</li> </ul>
004, 008, 009, 011, 012, 020, 021, 024, 025, 030	Socio-Economic	<ul style="list-style-type: none"> <li>▪ Severance of Upton from other villages</li> <li>▪ Effect on farming business</li> </ul>
007, 014, 039, 050	Cultural Heritage	<ul style="list-style-type: none"> <li>▪ Not shown that Scheduled Monument is of archaeological value</li> <li>▪ Effect on Scheduled Monument</li> <li>▪ Scheduled Monument already compromised – no need to avoid further</li> <li>▪ Need to ensure proper recording of assets to be demolished – relocation would reduce loss</li> <li>▪ Relocation of Wansford Road Railway Station buildings should be secured in DCO</li> </ul>
024, 045	Biodiversity	<ul style="list-style-type: none"> <li>▪ Satisfied no adverse effect on European sites</li> <li>▪ Line should be further north in light of ecology of area</li> <li>▪ General effects on biodiversity not outweighed by benefits</li> <li>▪ Issues re Sutton Heath and Bog Site of Special Scientific Interest (SSSI)</li> <li>▪ Various species licences to be agreed</li> <li>▪ Effect on UK Priority Habitat minimised</li> <li>▪ Need for Soil Handling expertise</li> <li>▪ Loss of veteran tree not justified</li> </ul>
006, 047	Air Quality and Emissions	<ul style="list-style-type: none"> <li>▪ Lack of cumulative assessment on emissions and in-combination effects (ES deficient)</li> <li>▪ Lack of assessment in relation to Paris Climate Agreement</li> </ul>

RR No	Topic	Issue Raised
		<ul style="list-style-type: none"> <li>▪ Assessment omits various matters</li> </ul>
019	Geology, Geotechnical Risk and Soils	<ul style="list-style-type: none"> <li>▪ Line at western end should be further north in light of geology of area</li> </ul>
021	Water Effects and Flood Risk	<ul style="list-style-type: none"> <li>▪ Line should be further north in light of flood risk in area</li> </ul>
002	Noise and Vibration	<ul style="list-style-type: none"> <li>▪ Generalised concern over noise</li> </ul>
044	Landscape and Visual	<ul style="list-style-type: none"> <li>▪ Landscaping on southern side required to minimise effects</li> </ul>
031, 035	Draft DCO	<ul style="list-style-type: none"> <li>▪ Seeking agreement on protective provisions</li> </ul>

4.1.3. As set out at paragraph 1.4.46 one RR from National Grid [RR-031] was withdrawn during the Examination.

## 4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

4.2.1. The issues set out in the WRs closely followed the RRs, although they were provided with more detail. Further, as the Applicant responded to both the RRs and WRs some IPs took the opportunity to rebut those comments, to which the Applicant then responded.

4.2.2. I have carefully read all the written submissions to the Examination and the remainder of this report sets out the cases as examined. That I have not specifically referred to a particular document does not mean that I have not taken it into account.

## 4.3. ISSUES ARISING IN LOCAL IMPACT REPORT

4.3.1. PCC identified the following important and relevant matters in its LIR [REP2-068] and subsequent SoCG with the Applicant [REP11-009]. Not all matters were agreed, and this report concentrates on those matters which remain in dispute. PCC's position is set out in each chapter as relevant to that issue.

- Context of Peterborough
- Local Plan policy framework
- Traffic and Transport
  - o Generally
  - o Wansford west roundabout
  - o Rights of Way

- Cultural Heritage
  - o Archaeology
  - o Built Environment including Conservation Areas
- Biodiversity
- Air Quality
- Noise and Vibration
- Landscape and Visual Effects
- Drainage
- Draft DCO

4.3.2. It is conclusion in the LIR PCC indicated it *"remains supportive of the A47 Wansford to Sutton dualling scheme. The scheme will support economic growth, improve journey times, improve safety, provide capacity for future growth and provide a safer route between the communities for walking, cycling horse-riding and other road users"*.

#### **4.4. THE RULE 6 LETTER**

4.4.1. Annex B to my Rule 6 letter [PD-006] outlined my Initial Assessment of the Principal Issues (IAP). These were:

- Air Quality and Emissions (including Greenhouse Gas emissions);
- Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment);
- CA and/ or TP;
- Cultural Heritage;
- Draft Development Consent Order;
- Geology and Soils;
- Landscape and Visual;
- Noise and Vibration;
- Socio-Economic Matters;
- Traffic and Transport;
- Water Environment and Flood Risk; and
- Cumulative and Cross-cutting effects.

4.4.2. At the PM concerns were raised, principally by WPC, that Geotechnical Risk should also be a principal issue. Following consideration, I concluded that it should be so included and this was set out in Annex B of the Rule 8 letter [PD-007].

#### **4.5. THE STRUCTURE OF THIS REPORT**

4.5.1. Chapters 5 to 15 are structured to firstly examine the matters of principle including the need for the Proposed Development and the alternatives sought, followed by an assessment of the effects of the Proposed Development. Then I consider the issues, dealing first with those that were generally the most contentious. Thus, for Chapter 5 to 15, the structure is as follows:

- Principle and Consideration of Alternatives (Chapter 5)
- Traffic and Transport (Chapter 6)
- Socio-Economic matters (Chapter 7)

- Cultural Heritage (Chapter 8)
- Biodiversity (Chapter 9)
- Air Quality and Emissions (Chapter 10)
- Geology, Geotechnical Risk and Soils (Chapter 11)
- Water Effects and Flood Risk (Chapter 12)
- Noise and Vibration (Chapter 13)
- Landscape and visual effects (Chapter 14)
- Habitats Regulations Assessment (Chapter 15).

4.5.2. In each section, I will identify the policy position for each followed by a summary of the case for the Applicant either through the findings in the ES or otherwise, and the comments and representations of the IPs, principally where a dispute remains. I then report on the main issues and draw findings and conclusions for each.

4.5.3. I have included the effects on Rights of Way and users thereof within the Traffic and Transport chapter because of the interaction with the overall design of the Proposed Development and how NMUs would be routed through the Proposed Development.

## **4.6. CONFORMITY WITH THE NATIONAL POLICY STATEMENT**

4.6.1. Chapter 3 of this report identifies the NPSNN as the relevant NPS for this Proposed Development. Chapter 3 also identifies the Framework and a number of road strategy documents. Each topic section in Chapters 5 to 15 of this report will consider the important and relevant paragraphs from the NPSNN (if applicable) and determine whether the scheme, with mitigation, would accord with it.

## **4.7. CONFORMITY WITH THE DEVELOPMENT PLAN**

4.7.1. Chapter 3 of this report sets out those plans and documents which comprise the development plan covering the Order limits. The LIR [REP2-068] sets out which policies PCC identified as being relevant to the Proposed Development. PCC does not set out in the LIR any particular areas where it considers that there is conflict with the development plan. However, there are a number of situations where PCC considers compliance would occur only following clarification by the Applicant, or with the provision of appropriate mitigation secured by Requirements in the draft DCO.

4.7.2. The LIR identifies a number of Local Plan policies which are said to be material but does not refer to them again. This includes Policy LP1 which is a general policy referring to the presumption in favour of sustainable development in the Framework and with working with applicants to find solutions.

## **4.8. APPLICATION OF OTHER POLICIES**

4.8.1. The legislative and policy framework applicable to the assessment of this Application is summarised in Chapter 3. Individual references to relevant legislation and policy detail are drawn out in the relevant sections of

Chapters 5 to 15 of this report were required. One RR [RR-033] did indicate the view that the right of way under the A1 was "*inaccessible to people with disabilities*" and thus by implication whether the Proposed Development would accord with the PSED as set out in the Equality Act 2010. This is discussed in Chapter 17.

## **4.9. ENVIRONMENTAL IMPACT ASSESSMENT**

4.9.1. As recorded in Section 1.6 of this report, and for the reasons set out there, the Proposed Development is EIA development. The documents which comprise the ES and the various addenda to that are given in the EL set out at Appendix B of this report. It also records the environmental management documents proposed to be used by the Applicant, secured through the DCO, to secure the construction and operation of the Proposed Development within the worst-case parameters (the Rochdale envelope) assessed in the ES.

4.9.2. During the course of the Examination there were various changes to some of the documents that make up the ES. These were predominantly to deal with typographic or similar issues. These are all set out in the final 'Guide to the Application' [REP11-012].

4.9.3. The Applicant submitted two formal 'addenda' to the ES at D8. The first [REP8-030] considered whether the three changes (set out in paragraphs 2.3.7 to 2.3.9) would result in any different significant effects from those originally assessed. The second [REP8-031] dealt with whether, in the event that the construction period for the Proposed Development exceeded that originally assessed (18 months<sup>44</sup>), this would result in any different significant effects. These were accepted into the Examination at the same time as were the three changes.

4.9.4. Neither addendum concluded that there was a material difference from the original assessment.

4.9.5. Given that IPs were able to make representations on the two addenda following their inclusion into the Examination, I consider that no party would be prejudiced by their inclusion and consideration in this report.

## **4.10. HABITATS REGULATIONS ASSESSMENT**

4.10.1. The application was accompanied by a document [APP-140] entitled 'Report to Inform Habitats Regulations Assessment'. This was updated at D3 and D5 (see Chapter 15).

4.10.2. The Applicant submitted a draft SoCG with NE [REP7a-003]. While agreement with NE had not been achieved on all matters, it had been agreed that the Proposed Development would not have an adverse effect on the Nene Washes Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site.

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<sup>44</sup> Confirmed in response to ExQ1.0.11 [REP2-034].

- 4.10.3. A final signed SoCG between the Applicant and NE was submitted at D11 [REP11-010].
- 4.10.4. As the agreement between the Applicant and NE on this issued had been foreshadowed in previous documentation and the discussions at ISH2, I concluded that there was no need to issue a RIES as had originally been identified in the Examination Timetable. This decision was communicated in a letter dated 24 May 2022 [PD-013].
- 4.10.5. The effect of the Proposed Development on European sites is discussed further in Chapter 15 of this report. Consequently, the consideration of and conclusions on HRA are dealt with in that chapter.

## **5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PRINCIPLE AND CONSIDERATION OF ALTERNATIVES**

### **5.1. INTRODUCTION**

5.1.1. This chapter deals with the issue of the principle and scope of the Proposed Development, and the consideration of alternatives.

### **5.2. THE PRINCIPLE OF THE PROPOSED DEVELOPMENT**

5.2.1. The NPSNN includes the following statements regarding the general need for development of the national networks:

- *"Well-connected and high-performing networks with sufficient capacity are vital to meet the country's long-term needs and support for a prosperous economy."* (paragraph 2.1);
- *"There is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth."* (paragraph 2.2);
- *"Whilst advances in mobile technology are important and will influence travel demand, it is difficult to predict by how much. It is expected that technology, both from better information and data and in vehicles (e.g. autonomous cars) to have a significant effect on how the network performs. However, we do not expect this to remove the need for development of the networks. In recent years advances in mobile IT, teleconferencing, email, the internet and social media have occurred alongside growth in travel demand on the national networks."* (paragraph 2.5);
- *"There is also a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas."* (paragraph 2.6); and
- *"The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The Examining Authority and the Secretary of State should therefore start their assessment of applications for infrastructure covered by this National Policy Statement (NPS) on that basis."* (paragraph 2.10).

5.2.2. The Applicant assessed the Proposed Development at high level against the NPSNN in its document 'National Policy Statement for National Networks Accordance Tables' [AS-023]. This notes that the Proposed Development is part of a package of proposals for the A47 corridor to achieve a modern standard dual carriageway. The proposal would, according to the Applicant, create appropriate capacity to cope with peak demand and growth in this vicinity, improving traffic flow, reduce journey times and increase route safety and resilience. The Proposed Development was identified in the RIS1 2015 – 2020 and repeated for the RIS2 (2020 – 2025).

5.2.3. As noted below, there was little objection to the principle of the Proposed Development and, subject to consideration of the individual planning issues set out in this report, I am satisfied that it complies with the overall principles of the NPSNN.

### **5.3. THE SCOPE OF THE PROPOSED DEVELOPMENT**

5.3.1. During the Examination there was considerable debate as to whether the Proposed Development would meet the Scheme Objectives as set out in paragraph 2.2.3.

5.3.2. Other than the objection from CEPP [RR-006] based on the effect on carbon emissions, no other party objected to the construction of a dual carriageway between the A1 junction and the existing dual carriageway to the east of the Nene Way roundabout. There was, however, debate as to whether the route was in the correct location and details of the design, some being of quite fundamental concern. I set out by conclusions on this below.

5.3.3. There was also an objection from WPC [RR-050] and SPC [RR-043] as to whether the Proposed Development would meet its objectives as set out in paragraph 2.2.3 of this report. This focussed principally on the Wansford west roundabout<sup>45</sup>. The Proposed Development would make no substantive changes to the roundabout beyond providing an at grade cycle and pedestrian crossing of the island on the west side.

5.3.4. WPC [RR-050] argues that without substantive changes to the Wansford west roundabout the Proposed Development would breach "all 4 of [the] key objectives for the scheme". It also states in its WRs [REP2-072] "*the decision to make no significant modifications to the Wansford Western Roundabout as part of the A47 Wansford to Sutton Dualling is a mistake that will remove many of the benefits resulting from the rest of the scheme*". Other IPs, for example Andy Tonkin [RR-002], Graham Garner [RR-010], John Stannage [RR-022], Richard Clarke [RR-038] and Steve Woods [RR-041] make reference to this roundabout, and further IPs, including David Johnson [RR-007] and Norman Green [RR-034] make reference to issues relating to the access and egress to Thacker's Close/ Old North Road area and the interaction with the Wansford west roundabout.

5.3.5. The IPs considered that the Wansford west roundabout would remain a pinch-point, with existing substantial queues, particularly on the A47 eastbound approach, only getting worse as traffic increases and increasing difficulties for those entering the roundabout from the south

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<sup>45</sup> WPC considers ([REP2-072] at point 4 on page 6) "*The only long term solution to the problems of the A1/A47 junction is to realign the A1 with a completely new junction*" but recognises that is beyond this proposal as "*an important outcome of this DCO process could be a recommendation that the upgrading of this stretch of the A1 is brought forward in the national roads programme*".

from Old North Road (C380). They consider substantive works to the roundabout are required.

- 5.3.6. The Applicant's response was that "*Modifications to the Western Roundabout are a significant proposition, and outside the scope of the Scheme.*" (Applicant's response to Written Representations, 4, 1.1 [REP4-015]). The Applicant considers, as discussed more fully in Chapter 6, that the Proposed Development would improve the operation of the roundabout.

## **5.4. CONSIDERATION OF ALTERNATIVES**

- 5.4.1. Paragraphs 4.26 and 4.27 of the NPSNN deal with the assessment of alternatives. Paragraph 4.26 states the following: "*The EIA Directive requires projects with significant environmental effects to include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects.*"
- 5.4.2. Paragraph 4.27 of the NPSNN states: "*All projects should be subject to an options appraisal ..... Where projects have been subject to full options appraisal in achieving their status within Road or Rail Investment Strategies ..., option testing need not be considered by the Examining Authority or the decision maker. For national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process. It is not necessary for the Examining Authority and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken.*"

### **The Case for the Applicant**

- 5.4.3. Chapter 3 of the ES [AS-014] sets out the Applicant's overall approach. It looked at three alternative routes, known as Options 1, 2 and 3. These are shown in Figures 2.1, 2.2 and 2.3 of the Consultation Report [AS-011].
- 5.4.4. Option 1 allowed for the proposed realigning of the southbound slip road from the A1 to provide a free flow link between the A1 southbound carriageway and the proposed new eastbound carriageway of the A47. The slip road from the A1 would have also been connected to the existing roundabout to accommodate A47 westbound traffic. The proposed A47 dual carriageway would have been 2.5km in length and would have been constructed on the line of the existing A47. It would have tied into the existing carriageway at the Wansford east roundabout and at the Nene Way roundabout at the eastern end of the scheme. To the west of Sutton Heath Road, the route would have encroached on the Scheduled Monument by approximately 3m over a length of 180m.
- 5.4.5. Option 2 included the southbound slip road at the western end of the routes set out for Option 1. However, the 2.5km dual carriageway would have been constructed part off-line to the north and part off-line to the south of the existing A47. It would have been off-line to the north for the

first 25% of the route. The route would then cross over the existing carriageway and go off-line to the south of the existing A47 through Sutton Meadows County Wildlife Site to a point approximately 25m from the River Nene. The route would have then passed 45m south of the existing A47/ Sutton Heath Road junction and south of the property called Deep Springs. It would have then crossed at Sutton Drift approximately 60m south of the existing A47 and across agricultural land before tying in to the existing A47 at the Nene Way roundabout. This would eventually be the basis of 'The Preferred Route'.

- 5.4.6. Option 3 again included the southbound slip road at the western end of the routes set out for Option 1. However, the dual carriageway would have been constructed off-line to the north of the existing A47. It would pass 46m to the north of the existing petrol filling station and would have run across agricultural land towards Sutton Heath Road. The proposed route would have gone through the Scheduled Monument and the northern boundary of the route would be up to 50m inside the boundary of the Scheduled Monument over a distance of 200m and would have just crossed the southern tip of the SSSI. After passing Sutton Heath Road the route would have continued at grade 60m to the north of the existing A47 and across agricultural fields until tying in with the existing at grade A47 roundabout at Nene Way.
- 5.4.7. Following 'options consultation' in March and April 2017 (see Table 1.1 of the Consultation Report [APP-023]) Route 2 was chosen as the Preferred Route as it was said to have significant advantages in terms of environmental impacts when compared to Option 3 and would have less impact during construction when compared to Option 1. This resulted in changes so that the dual carriageway would be moved as close as possible to the southern edge of the existing A47 at the eastern end of the Scheme with an update sent to stakeholders and local people. The figure in the ES (Figure 3-4 in [AS-014]) shows two areas entitled "Proposed Junction": one around the existing A1/ A47 junction and the other an elongated rectangle from the western end of the existing dual carriageway along the proposed line but not extending as far west as the property known as Deep Springs.
- 5.4.8. Statutory consultation was undertaken between September and November 2018.
- 5.4.9. The responses to this consultation resulted in a design review dated October 2020. The Consultation document (Annex F to the Consultation Report [APP-029]) does not set out reasoning for the modifications to the design at that stage. However, the modifications included:
- moving the alignment of the eastern portion of the scheme from the south of the A47 to the north;
  - relocating the eastern roundabout to the west to link with Sutton Heath Road and Langley Bush Road;
  - closing the existing junctions with Sutton Heath Road, Sutton Drift and Upton Road;

- changes to NMU routes, providing a new crossing using the railway bridge to the south of the Wansford Road Railway station;
- alterations to Upton Drift; and
- provision of a separate access to the properties facing the A1.

5.4.10. The Applicant took the view that as Statutory Consultation had taken place in 2018 that this did not need to be repeated, but rather a 'Project Update' made with a Project Update brochure. However, it is stated "A *focused statutory consultation was then undertaken between 11th September and 9th October 2020 to consult newly affected parties of the Scheme*" (paragraph 3.4.3 of [AS-014]). This related to those 34 people with Category 1 and 2 land interests. This included some people with land interests in Upton.

5.4.11. There were then further changes which the Applicant describes as "*further refinements*" and a further consultation exercise in May and June 2021 for those whose land interests would be differently affected. These changes related to further water vole mitigation areas, removal of the A1 northbound slip road changes (north of Wansford west roundabout) and realignment of the carriageway so as to encroach into the southeast corner of the Scheduled Monument, allowing for a reduction in the amount of land required for flood compensation adjacent to the River Nene.

5.4.12. In response to representations made (see below) and the discussions at ISH3 as to why the Applicant considered substantial works to the Wansford west roundabout were 'out of scope' the Applicant confirmed in response to Action Point 28 in the Applicant's Further Response to Actions from Hearings [REP5-022]:

*"Out of scope in context means simply that it does not form part of the Scheme for which the Applicant has applied for development consent, and the Applicant has submitted the Application for the Scheme which it considers to be appropriate and cost effective for this stretch of road. Plainly, there may be other improvements and upgrades in the immediate area which the Applicant might have included within the Scheme, but it has brought forward the Scheme for which it seeks development consent.*

*"There are no public documents that specifically limit the Scheme to not include works to the Wansford western roundabout and give reasons for it not being included in the Scheme, although none include the works to the Wansford western roundabout."*

5.4.13. The Applicant then went on to reference a plan in the 2018 Road Investment Strategy East Area Strategy Report A47 Wansford to Sutton [AS-030] which shows the area outlined between the Wansford east roundabout and the Nene Way roundabout.

## **The Case for Interested Parties**

- 5.4.14. In neither its RR [RR-036] nor LIR [REP2-068] does PCC make comment about the overall design of the Proposed Development, although it has made various detailed comments.
- 5.4.15. Other IPs made two major criticisms in relation to the design and how consultation was handled. The first relates to the route of the dual carriageway in the vicinity of the Scheduled Monument, and secondly to consultation with the residents of and businesses in Upton relating to the closure of Main Road.
- 5.4.16. WPC set out its case in its WRs (The Alignment of the A47 Dualling Between the Wansford Eastern Roundabout and the Old Railway [REP2-072]). Essentially WPC is of the view that the line of the dual carriageway should run further to the north and bisect the Scheduled Monument. I will consider the effects of this option in Chapter 8. It considers that while this would have effects on the Scheduled Monument it *"would take the road away from the river bank making construction much cheaper and less risky, minimize disruption and traffic management during construction, allow the existing road to be used for non-motorised traffic, reduce the spread of noise and remove the disturbance of the sensitive wildlife corridor along the river"*.
- 5.4.17. This point of view is supported by SPC (Ref 1 in Statement of Common Ground (SoCG) with SPC [REP8-022]).
- 5.4.18. In respect of Upton, local residents and businesses (Fight4Upton [RR-008], Cllr Gavin Elsey [RR-009], Helen Daly [RR-011], Jenna Baker [RR-020], John Hodder [RR-021], Lorraine Turnell [RR-024], Milton Estates [RR-030], Upton Community Council [RR-048]) all consider that they were not properly consulted on this and that the meeting held in late 2020 was inadequate by allegedly restricting attendance and having no display material to allow a proper consideration.
- 5.4.19. In response to this criticism the Applicant notes (Common Response E – Consultation with Upton in the Applicant’s Response to Relevant Representations [REP1-010]) that the residents of Upton were within the overall consultation zone. As a result of the meeting, it made changes to Upton Drift in the provision of passing places, which was included in the Application as submitted. Once submitted, residents of Upton (as with others elsewhere) had the opportunity to comment.

## **5.5. ExA’S CONSIDERATIONS**

### **Overall scope of Proposed Development**

- 5.5.1. In my view there are two alternative approaches as to what should represent the scope of the Proposed Development and it is for the SoST to decide which to follow.
- 5.5.2. The first, which is promoted by the Applicant, is that the extent of the Application is limited to that applied for (see response on Action Point 28

in the Applicant's Further Response to Actions from Hearings [REP5-020]). The Applicant indicates that there might have been other improvements and upgrades, but it is the Application as submitted that is for consideration. In this case, in my view, the Proposed Development should be assessed and the benefits/ disbenefits, including the effects at the Wansford west roundabout which falls in the Application site, weighed appropriately.

- 5.5.3. The second is that substantive works to the A1/A47 junction should fall outside of the scope of the assessment of the Proposed Development. As set out in paragraph 3.7.4 the project title in RIS2 is "A47 Wansford to Sutton – dualling of the A47 between the A1 and the dual carriageway section west of Peterborough". Unlike some other RIS2 projects there is no reference to a 'junction' within the scheme title and thus any works to the Wansford west roundabout would be outside the scope of the project. However, this does not explain the proposed changes within the Proposed Development to the A1 southbound/A47 junction particularly in the provision of the proposed free-flow link road, since this is not referred in the RIS2 project title either.
- 5.5.4. I consider that the first approach is the correct one since, following the logic of paragraph 5.5.3, the link road element should otherwise be excluded. Consequently, my approach will be to consider the effect of the Proposed Development as including the effect on eastbound traffic on the A47 at the western extent of the Application site. I do not consider that the plan referenced by the Applicant in paragraph 5.4.9 should limit the extent of the Proposed Development since it shows neither the extension of the site to east nor west nor to the north along the A1 to provide the link road. On this logic those elements of the Proposed Development also should not be taken into account.
- 5.5.5. If the effect on the Wansford west roundabout were to be excluded from consideration then the new cycle crossing point on the western arm (within Work 12) should also be excluded<sup>46</sup>.

### **Main line in vicinity of Scheduled Monument**

- 5.5.6. The High Court in the case of *R (on the application of Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161 (Admin) made clear that proper consideration should be taken of alternatives that are neither vague nor inchoate, particularly in a case where it is agreed that there would be some harm to a scheduled monument which then needs to be balanced.
- 5.5.7. The effect of the Proposed Development on the Scheduled Monument is discussed more fully in Chapter 8. In my view, on the evidence in front of me, when the Applicant made its decision as to the route of the main line in this vicinity it made it against the wrong test.

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<sup>46</sup> A crossing would remain through the existing underpass.

- 5.5.8. In the Minutes of the Meeting held on 15 June 2017 set out in Appendix O of the Scheme Assessment Report 2018 – Appendices Preferred Route Decision in relation to Option 3 [AS-031] in paragraph 7.0 it is stated that Option 3 was rejected because *"we [the now Applicant] cannot demonstrate a wholly exceptional case for progressing with Option 3"*. Option 3 being a route through the Scheduled Monument.
- 5.5.9. At ExQ3.4.1 [PD-015] I pointed out *"NPSNN paragraph 5.131 indicates that the "wholly exceptional" test applies when there would be "substantial harm", (this test does not apply to less than substantial harm) and it must therefore be assumed that this must have been the judgement in question"* and asked for contemporaneous evidence from 2017 as to the decision making processes, and particularly how and why a judgement of 'substantial harm' had been made.
- 5.5.10. The response from the Applicant [REP8-027] was unconvincing. First, it indicated that it could not locate any other contemporaneous documents but went to seek to justify that substantial harm would be occasioned. For the reasons set out in Chapter 8 I do not find that routing the main line through the Scheduled Monument would reach anything like substantial harm to the significance of it as a heritage asset. The only conclusion I can come to from the evidence in front of me was that in June 2017 the Applicant wanted to try to avoid an objection from HE.
- 5.5.11. Having utilised avoiding an objection from HE for the choice of route, the assessment of alternatives at that time did not include an assessment of different options such as the extent of encroachment on Scheduled Monument, the River Nene and its flood plain or Wittering Brook and its flood plain, or what effects alternative alignments may have had on the Sutton Heath and Bog SSSI.
- 5.5.12. It was only when negotiations with the EA as to the extent of the flood mitigation that was necessary had concluded (see Chapter 12) that the Applicant realised, very late in the day, that some encroachment into the Scheduled Monument was required. It then sought, effectively, to re-open its own decision making and approach HE with that proposal.
- 5.5.13. This means that the assessment of alternatives is flawed as it did not properly consider another, potentially, viable alternative in the correct terms.
- 5.5.14. Having said that, again as set out in Chapter 8, I do find that routing the main line through the Scheduled Monument in Option 3 would result in less than substantial harm but at a greater level than the less than substantial harm than would be caused by the Proposed Development as submitted.
- 5.5.15. I therefore conclude in this regard that although the decision making in the choice of alternatives was flawed, the Proposed Development would result in less harm to heritage assets than Option 3 and consequently the most appropriate option was chosen for this part of the Proposed Development.

## **Upton**

- 5.5.16. As can be seen from the above, it was only relatively late in the design process that a decision was made to relocate the eastern Nene Way roundabout to the west. While the residents and business of Upton would have been consulted up to that point, it can readily be seen that they could have taken the view that as the access arrangements to the A47 would not change, they did not need to become active participants.
- 5.5.17. When the Applicant re-located the proposed roundabout and the revised proposal (July 2020) this had implications for the residents of Upton and the Applicant arranged a meeting in Upton. The reports of the meeting from local residents, for example from Fight4Upton [RR-008], and Councillor Gavin Elsey [RR-009], which the Applicant does not rebut (see Common Response E in the Applicant's Response to Relevant Representations [REP1-010]), indicate there was a lack of presentational material.
- 5.5.18. In October and November 2020 the Applicant undertook "Targeted Consultation" (see Common Response D to the Applicant's Response to Relevant Representations (RR) [REP1-010]) in relation to this change. However, it does appear that this only related to those who would have Category 1 or Category 2 interests and not the community more widely.
- 5.5.19. It is a matter of judgement as to whether an amendment to any scheme during its gestation represents such a fundamental change as to mean that the programme should go back to an earlier stage in the overall process, or it can continue as long as prejudice does not occur.
- 5.5.20. On balance, I consider that in this case the Applicant's approach was reasonable. Prejudice was avoided by the statutory consultation that took place as part of this Examination. This allowed residents and businesses to put forward their cases as to why the closure of Main Road/ Upton Road was inappropriate and for it to be considered in this report and in the SoS's ultimate decision.

## **5.6. CONCLUSIONS**

- 5.6.1. Ultimately, it is for the Applicant to put forward the Application that it considers best meets the relevant legal, policy and guidance tests. In this case, I do think that the merits/ de-merits of the Proposed Development should include an assessment of the Wansford west roundabout and the proposals as it affects that roundabout.
- 5.6.2. While identification of the most appropriate option in the vicinity of the Scheduled Monument was flawed, had it taken place on a correct basis the same solution would have been chosen.
- 5.6.3. Residents and businesses in Upton were not engaged as effectively as they should have been, given the change of the design quite late in the design process. However, the statutory processes involved in considering an application for a Development Consent Order meant they were able to

engage. Consequently, I consider that they would not be prejudiced by the SoS considering the Proposed Development as submitted.

- 5.6.4. Subject to these caveats, in accordance with paragraph 4.26 of the NPSNN, the Applicant has included within the ES an outline of the main alternatives studied and provided an indication of the main reasons for choice of the preferred route, taking into account the environmental effects.
- 5.6.5. In accordance with paragraph 4.27 of the NPSNN, I am satisfied that the Proposed Development has been subject to a full options appraisal in achieving its status within RIS2, and that proportionate consideration of alternatives will have been undertaken as part of the investment decision making process.
- 5.6.6. Taking all these matters into account, I am satisfied for the reasons given above that while the criticisms of the evaluation of alternatives are valid, they do not weigh against the Order being made.

## **6. FINDINGS AND CONCLUSIONS IN RELATION TO TRAFFIC AND TRANSPORT**

### **6.1. INTRODUCTION**

- 6.1.1. This chapter considers the traffic and transport issues in relation to the Proposed Development. It also deals with public rights of way issues because of the interaction between different modes of transport.
- 6.1.2. Before coming to this, however, I do feel that I need to make a comment about the term 'severance' as used in the NPSNN. To my mind this can have two meanings both of which are material in the context of this Examination. Firstly, it can be a separation where there is a physical gap in provision, for example, a route does not travel from point 'A' to point 'B' or the route between the two points is made materially longer. This relates to the consideration of Traffic and Transport. The second is more philosophical, in that it relates to a separation of communities which have previously had connections between them, often through familial links or facilities being shared between them, whereby it would be made materially more difficult to travel between the two points. This relates to Socio-Economic matters.

### **6.2. POLICY**

#### **National Policy Statement for National Networks**

- 6.2.1. The NPSNN sets out the Government's vision and strategic objectives for National Networks. These include networks which support and improve journey quality, reliability and safety; as well as which join up communities and link them to each other.
- 6.2.2. Paragraph 2.2 of the NPSNN notes "*there is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. Improvements may also be required to address the impact of the national networks on quality of life and environmental factors*".
- 6.2.3. Traffic congestion is noted as constraining the economy and impacts negatively the quality of life by, among other matters, leading to a marked deterioration in the experience for road users, frustration and stress, and can cause environmental problems with problems of blight and intrusion for people nearby particularly especially where traffic is routed through small communities (paragraph 2.16).
- 6.2.4. Paragraph 3.17 of the NPSNN is clear that the Government expects applicants to identify opportunities to invest in infrastructure in locations where the national road network severs communities and acts as a

barrier to cycling and walking, by correcting historic problems and retrofitting the latest solutions.

- 6.2.5. Paragraphs 5.211 and 5.212 of the NPSNN both note that due consideration should be given to impacts on local transport networks and on policies in local plans.
- 6.2.6. Applicants should seek to deliver improvements that reduce community severance and improve accessibility and provide evidence that they have used reasonable endeavours to address any existing severance issues that act as a barrier to NMUs. The NPSNN states "*Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible. There is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated*" (paragraph 5.216).

### **National Planning Policy Framework**

- 6.2.7. The policies within the Framework generally reflect the policies within the NPSNN, in so far as they encourage a high-quality environment for pedestrians, easy connections for cyclists and seek to facilitate social interaction between communities.
- 6.2.8. Paragraph 111 indicates that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

### **Local Plan**

- 6.2.9. Local Plan Policy LP13 deals with Transport. This deals predominantly with ensuring the new development makes appropriate provision for transport needs. It indicates that development proposals should meet a number of criteria including making journeys on foot, cycle or water the more attractive option, and assist those with access and mobility difficulties.
- 6.2.10. Local Plan Policy LP7 dealing with Health and Wellbeing notes that proposals should promote, support and enhance physical and mental health. This includes facilitating participation in physical activity.

### **Local Transport Policy**

- 6.2.11. The Cambridgeshire & Peterborough Local Transport Plan February 2020 describes how transport interventions can be used to address current and future challenges and opportunities for Cambridgeshire and Peterborough. It is recognised that the private car remains a key mode for many residents across the region and the Plan supports targeted highway infrastructure and enhancement schemes such as: "*Dualling of the A47 between Wansford and Sutton along with junction improvement*". The Plan states that this "*would improve journey times and reduce congestion along a key strategic route from Peterborough to*

*the A1 corridor, and the wider North of England, as well as improving road safety along a route with a history of fatal and serious collisions”.*

## **6.3. THE CASE FOR THE APPLICANT**

### **The General Transport Case**

- 6.3.1. The Applicant indicates in the Case for the Scheme [AS-022] that modelling analysis indicates that forecasted local and regional traffic growth will cause the single carriageway of the A47 to be at over capacity, leading to congestion, delays, extended journey times and accidents.
- 6.3.2. Eastbound traffic levels exceed the capacity by up to 15% in the AM peak on a typical weekday. This delay is independent of the junction delays on the A47. Westbound traffic is highest in the PM peak where on a typical weekday it reaches 95% of the road’s capacity. This assessment, in each case, does not take account of local factors such as horizontal or vertical curvature and poor forward visibility.
- 6.3.3. The existing single carriageway has a poor safety record and acts as a bottleneck. During the period October 2011 to September 2016 there were 2 fatal accidents, 5 serious accidents and 34 slight accidents along the Application site route. Due to multiple casualties in these accidents 3 people were killed, 10 suffered serious injuries and 51 suffered slight injuries. The Applicant notes the A47 is ranked second worst for fatalities on A roads with an accident severity ratio above average.
- 6.3.4. As part of its case, the Applicant prepared a Transport Assessment (TA) [APP-143] which was subsequently revised on three occasions with the last being submitted at D4 [REP4-008].
- 6.3.5. The Applicant also prepared a strategic model of traffic movements in the area called the Wansford Traffic Model (WTM). The WTM covers movements across the A47 corridor between Wansford and Peterborough. This has been used to derive forecasted traffic impacts and has been developed in line with Department for Transport (DfT) Transport Appraisal Guidance (TAG). In addition, a local micro-simulation model of traffic in the A47 single carriageway section and the village of Wansford has also been created. This is referred to as VISSIM<sup>47</sup>.
- 6.3.6. The modelling shows that without works the Wansford east roundabout will be at over capacity, but the Applicant indicates that the Proposed Development would provide the required capacity improvements to allow for forecasted traffic growth on the A47/ A1 junction as well as along the A47 along this section.
- 6.3.7. According to the Applicant, the Proposed Development would improve the overall operation of the network as well as improving the A47 AM peak hour journey times and would remove the majority of the Wansford east

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<sup>47</sup> VISSIM is a proprietary micro-simulation software package.

roundabout and A47 single carriageway overcapacity delays. In terms of the Annual Average Daily Traffic (AADT) this would allow an increase in the order of 14% to 16% in this section.

6.3.8. Table 7-12 of the TA [REP4-008] sets out the journey time savings over the three routes shown in Figure 7-1 when comparing the Do-Minimum (DM) and Do-Something (DS), that is with the Proposed Development, scenarios in the AM peak, Inter-peak (IPe) and PM peak timeframes. These are set out in Table 5.

**Table 5: Journey Time Comparisons** (minutes: seconds)

Direction	Scenario	2025			2040		
		AM	IPe	PM	AM	IPe	PM
A47 EB	DM	7:42	4:12	4:34	10:17	4:27	5:48
	DS	6:06	3:28	3:52	8:32	3:38	4:57
	DS-DM	-1:38	-0:46	-0:42	-1:45	-0:51	-0:51
A47 WB	DM	4:31	4:10	5:18	4:53	4:20	6:43
	DS	3:42	3:41	4:51	3:48	3:45	6:32
	DS-DM	-0:49	-0:29	-0:27	-1:05	-0:35	-0:11
A1 (S) to A47 EB	DM	18:04	15:13	17:08	20:27	15:57	19:07
	DS	14:53	14:22	16:16	15:47	15:02	18:00
	DS-DM	-3:11	-0:51	-0:52	-4:40	-0:55	-1:07
A1 (S) to A47 WB	DM	18:14	15:08	16:11	19:24	15:41	17:38
	DS	15:50	14:44	15:17	16:35	15:09	17:30
	DS-DM	-2:24	-0:24	-0:54	-2:49	-0:32	-0:08
A1 (N) to A47 EB	DM	15:27	12:41	13:04	16:25	13:17	13:55
	DS	13:55	11:58	12:15	15:04	12:27	12:56
	DS-DM	-1:32	-0:43	-0:49	-1:02	-0:50	-0:59
A1 (N) to A47 WB	DM	14:07	13:45	16:15	15:02	14:33	18:03
	DS	13:14	13:14	15:45	13:54	13:57	17:49
	DS-DM	-0:53	-0:31	-0:30	-1:08	-0:36	0:14

- 6.3.9. The Applicant maintains that the Proposed Development would support walkers, cyclists and other vulnerable users by providing safe, convenient, accessible and attractive routes for pedestrians, cyclists and equestrians. The de-trunked sections of the current A47 would either be used as a local road or utilised as a cycleway, which the Applicant maintains would provide safer routes away from the new dual carriageway.
- 6.3.10. The Applicant believes that the Proposed Development will save a total of 265 accidents and 42 people 'killed or seriously injured' during its 60 year life and will reduce delays as dual carriageways are more reliable than single carriageway roads.
- 6.3.11. In response to CCC's representations set out in the relevant SoCG [REP10-010] see paragraph 6.4.5, the Applicant notes that the London Road link to the A1 in the AM peak would have an increase of approximately 130 PCUs (passenger car units) in 2025 and 150 PCUs in 2040, with increases of 20 PCUs in both year PM peaks. For Elton Road in the AM peak these increases would be 130 PCUs in 2025 and 20 PCUs in the 2040.
- 6.3.12. The Applicant agrees with CCC that the proposals would not result in the roads exceeding their link capacities and considers that the increases in traffic levels would not be such that any improvements to NMU routes are necessary.

### **Wansford west roundabout**

- 6.3.13. The Applicant considers the Wansford west roundabout to be "*out of scope*"<sup>48</sup> of the Proposed Development. It accepts that the modelling has identified ongoing issues with the operation of this roundabout, which would occur in both the DM and DS scenarios (see Table 5).
- 6.3.14. The Applicant explains (in paragraph 8.2.2 of the TA [REP4-008]) that in the westbound direction, the delays and backing up of traffic at the Wansford west roundabout together with the constraint of the A1 overbridge impact westbound traffic at the exit from the Wansford east roundabout. The modelling shows there would be some time savings in the AM peak but only minimal time savings in the PM peak due to the constraints of the Wansford west roundabout and the bridge.
- 6.3.15. In the eastbound direction in the DS scenario, there would still be a two-lane exit for eastbound traffic on the A47. This, according to the Applicant, would result in a reduction in traffic on the A47 eastbound approach arms in both the AM and PM peaks, but there would still be delays on the A47 eastbound approach arm in the AM peak.
- 6.3.16. The Applicant indicates in paragraph 8.2.4 of the TA "*the pre-existing issue at the A1/A47 roundabouts will be raised with the Highways*

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<sup>48</sup> See response to Action Point 28 in the Applicant's Further Response to Actions from Hearings [REP5-020].

*England Operations team for consideration as a future improvement project during the identification and prioritization process for future road periods.”*

6.3.17. Notwithstanding this, in light of numerous representations about the Wansford west roundabout and the lack of proposals for substantive change within the Proposed Development, the Applicant has undertaken an analysis of the operation of the Wansford west roundabout. This was undertaken using the VISSIM model. The results are shown in Table 7-16 and Figures 7-11 and 7-12 of the TA [REP4-008] and show the projected delays on all four arms of the roundabout in the AM and PM peaks respectively.

6.3.18. The current and forecast queue lengths for the Wansford west roundabout can be found in Table 7-17 of the TA [REP4-008]. These are set out in relation to average queue lengths in Table 6.

**Table 6: Queue lengths Wansford west Roundabout** (average in metres)

Time Period	Link	Base	DM	DS	DS-DM
AM	A1 southbound <sup>49</sup>	8	5	55	50
	A47 westbound	4	7	30	23
	Old North Road northbound	39	166	31	-135
	A47 eastbound	369	1,229	888	-341
PM	A1 southbound	2	10	12	2
	A47 westbound	3	3	19	15
	Old North Road northbound	80	34	14	-20
	A47 eastbound	48	433	22	-411

6.3.19. This shows that by 2040 on the A47 eastbound and Old North Road (northbound) arms there would be improvements, but conversely increases in delay on the other two arms.

6.3.20. WPC, in particular, criticises the results of the VISSIM model on the basis that it assumes that quantum of traffic on Old North Road (northbound) would decrease while the real world situation has shown that it increased in the period since the 2015 base data upon which the VISSIM model is

<sup>49</sup> This nomenclature is slightly counterintuitive in that it relates to traffic which has been travelling north on the A1

based. Other IPs, such as SPC, also criticise the lack of proposals for the Wansford west roundabout.

6.3.21. Figure 7.8 in the TA [REP4-008] shows for the Old North Road south of the Wansford west roundabout a DM 2025 figure of 390 vehicles in the AM Peak. Table 4.1 in the D3 submission [REP3-026] for the observed figures, in 2019 the AM peak two-way, shows 536 movements<sup>50</sup>. This 536 figure is also above the 2040 DM figure as modelled. Turning to the PM peak figures, the TA shows 220 two-way movements in 2025 and 320 in 2040 (both DM), while the 2019 observed figures are 391.

6.3.22. WPC therefore requested that the model be 'sensitivity tested'.

6.3.23. Annex C to the Applicant's Further Response to Actions from Hearings [REP5-021] provides a 'Wansford Traffic Model Calibration and Peterborough Road Sensitivity Test Technical Note'. The Applicant takes the view that *"Overall, it is considered that both the base year Wansford Traffic Model and the local area VISSIM model demonstrate a good representation of traffic behaviour for the A47 Wansford to Sutton Scheme and form a robust basis for the future year assessment"*.

6.3.24. In response [REP6-008], WPC note:

*"From the table it can be seen that between the base year and the end of the modelling period all the flows on the A47 and the A1 have increased by between 40 and 80%. The flow on Old North Road is shown as reducing by nearly 40% over the same period.*

*"This completely atypical change results from the use of a very crude algorithm that states that driver behaviour is completely driven by distance and speed limits. Anyone looking at this with an analytical mind would say "what happens if this algorithm is wrong?". The response, using normal engineering judgement, would be to do a simple check run of the model using traffic numbers for Old North Road that increase in line with other flows.*

*"In their sensitivity analysis, NH have used slightly higher flows for Old North Road than in the base case but they are still significantly lower than the flows in the base year."*

### **NMU Routes in southwest part of Application Site**

6.3.25. While the Proposed Development would make a significant number of changes to the Public Rights of Way (PRoWs) network throughout the Application site, it is those at the western end, including the PRoWs under the A1 (the A1 underpass), that have been most contentious.

6.3.26. The overall proposals for the Rights of Way network are shown in the Rights of Way and Access Plans [REP8-004]. For NMUs, the Proposed Development would provide a new separate cycle way from the Nene

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<sup>50</sup> The observed figures for 2021 have been discounted due to the effects of the Covid-19 pandemic.

Way junction, with Peterborough Road to the south of the location of the existing Nene Way roundabout, to beyond the proposed access to Sacrewell Farm on the southern link road at point SU3 as shown on the Rights of Way and Access Plan.

- 6.3.27. Thereafter, to the west there would be no changes to the PRow network, and the route under the A1 would remain. The Applicant maintains it is a permitted bridleway (see Rights of Way and Access Plans [REP8-004]) while the rights of way section of the PCC website<sup>51</sup> indicates it is a permitted footpath.
- 6.3.28. Representations were made that while pedestrians can walk under the A1 and up the steep slope to Peterborough Road in Wansford (and in reverse) this does not provide a commodious route for cyclists and equestrians. Effectively the representations indicate that there is 'severance' between Wansford and the point SU3.
- 6.3.29. The Applicant points out that this route is currently used by cyclists and is, in fact, signposted for this use<sup>52</sup>. The Applicant therefore sees no impediment to this continuing to be used. That the extreme western end up to Peterborough Road is very steep (cited as being up to 20% (see paragraph 2.1.20)) and is not suitable for many cyclists and for those with disabilities using, for example, recumbent cycles, is of limited weight.
- 6.3.30. Whether a footpath or a bridleway, as this route is 'permissive' there is the possibility that the right may be revoked and the route under the A1 would no longer be available for any NMUs. In this scenario under the Proposed Development, the separate PRow network would effectively cease at point SU3.
- 6.3.31. The Applicant indicated that it takes the view (Refs 3.9 and 3.10 of the Applicant's Written Summary of Oral Submissions at Hearings [REP4-018]) that it is extremely unlikely that any person with a right to withdraw permission would be found; it considered that the owner would have identified themselves when the route was upgraded recently. Mr Robert Reid, as owner of the eastern end of the permissive routes, indicated at ISH3 that the route has been there for at least 32 years.
- 6.3.32. The Applicant accepted at ISH3 that cycling or riding a horse on a footpath is illegal and this was confirmed by PCC as the authority responsible for the Rights of Way Network<sup>53</sup>. The logic therefore would be that if this route were to be a footpath, cyclists and equestrians would

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<https://peterborough.maps.arcgis.com/apps/webappviewer/index.html?id=6aa2abf2743a4a5db2c6827a03be9d60>

<sup>52</sup> As I understand it, this sign was installed by the then Highways England when the route was resurfaced in the last few years.

<sup>53</sup> From 1:25 to 4:00 in the "Recording of Issue Specific Hearing 3 (ISH3) on Traffic, Transport and Socio-Economics – Session 2 – Wednesday 16 March 2022 [EV-023].

therefore, if starting at point SU3 on the Rights of Way and Access Plans [REP8-004] and wishing to travel west, have to utilise the carriageway on the southern slip road, negotiate the Wansford east roundabout, cross the overbridge, negotiate the Wansford west roundabout and then travel onwards.

- 6.3.33. However, the Road Safety Audit [REP2-040], which in response to 'Problem 13' relating to "*Poor cycle facilities*" at the A1/ A47 junction, states: "*No cyclists are intended to travel east along A47 past the west roundabout*". That is cyclists are not intended to use the overbridge between the two Wansford roundabouts.
- 6.3.34. The Applicant makes clear "*Construction of the Proposed Scheme would permanently remove the cycle facilities at the A47/A1 roundabouts*" (paragraph 12.10.45 of Chapter 12 of the ES [REP4-004]). The Applicant maintains that these routes are not well used and is anticipating that users would travel via the A1 underpass. The Applicant considers that the benefits to amenity and potential road safety of removing NMUs from the A47 would be insufficient to mitigate the increase in distance to be travelled. It therefore considers that this would be a moderate adverse effect.
- 6.3.35. The Applicant included a 'Legal Submission in response to ISH2' in Annex E of its 'Applicant's Further Response to Actions from Hearings – Annexes' [REP5-021]<sup>54</sup> (the Legal Submission). This sought to show that it was "*unclear whether the A1 underpass is a permitted footpath or bridleway*". The Applicant considers whether a permitted footpath or bridleway "*makes little difference to the position in law*" (paragraph 3 of the Legal Submission).
- 6.3.36. The Applicant indicates in paragraph 6 of the Legal Submission that "*the public's right to use the permissive path is not protected in law. It is not a criminal offence to exceed a right granted on a permissive path. At the most, the use of a permissive path for a purpose not granted by the landowner is an alleged trespass against the landowner, which is a civil matter*".
- 6.3.37. The Applicant then goes on to assert that due to effluxion of time public use of the A1 underpass may have led to the creation of public rights of way that exceed the permission granted by the landowner and thus it may be a conventional (that is non-permissive) bridleway.
- 6.3.38. In response to the issue of severance, the Applicant takes the view that there is an existing route, albeit less than commodious due to its steep slope, which will be maintained from the junction of Peterborough Road by the A1 to point SU3 on the Rights of Way and Access Plans [REP8-004].

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<sup>54</sup> The drawing referred to in this document in paragraph 25 was omitted and can be found at Annex B to the 'Applicant's Response to the Examining Authority's Third Written Questions (ExQ3)' [REP8-027].

6.3.39. The Applicant makes the point that, while the NPSNN makes reference to severance in paragraphs 3.22 and 5.205, the NPSNN is silent on the extent to which issues of severance or NMU improvement should form part of the decision making. It refers to paragraph 5.214 of the NPSNN which indicates:

*"Provided that the applicant is willing to commit to transport planning obligations and, to mitigate transport impacts identified in the WebTAG transport assessment (including environment and social impacts), with attribution of costs calculated in accordance with the Department's guidance, then development consent should not be withheld. Appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure."*

6.3.40. The Applicant also references paragraph 5.216 of the NPSNN relating to mitigation (see paragraph 6.2.6).

6.3.41. The Applicant takes the view that:

- there is no severance due to the permissive route which is being used by cyclists and equestrians as well as footpath users;
- the Proposed Development will not change matters;
- if the landowner were to withdraw permission for use of the route and it were found that there were no higher rights of way, this does not make the matter materially worse than the current situation;
- in any event there is no evidence that the rights would be withdrawn; and
- it is not reasonable or appropriate for public money to be spent in addressing a theoretical severance issue which does not currently arise.

6.3.42. Consequently, the Applicant considers that the question which should be considered is whether the A1 underpass is suitable for retrofitting improvement and whether the Applicant should be required to implement further improvements.

6.3.43. In this regard, the Applicant has gone on in the Legal Submission [REP5-021] to address whether it would be reasonable or appropriate to seek to improve either the A1 underpass or provide further connectivity for NMUs in the area.

6.3.44. The Applicant maintains that permanent acquisition would be difficult since, having undertaken diligent inquiries, it has failed to identify some of the owners. In any event to improve it would require further land acquisition including residential property and the Applicant does not consider that to be reasonable or appropriate.

6.3.45. In relation to the alternative route to and across the A1 overbridge, the Applicant notes, notwithstanding the comment in the Road Safety Audit [REP2-040], there is nothing to prevent cyclists using this route, but accepts there is no dedicated segregated cycleway.

- 6.3.46. In light of the NPSNN expectation that reasonable opportunities to improve ease and safety for cyclists (paragraph 4.64) the Applicant has identified two alternatives, Options 1a and 1b which are shown in the relevant drawing<sup>55</sup>. These are both costed. Option 1a is the more expensive, but Option 1b would reduce the carriageway width and, the Applicant maintains, could lead to conflict with the scheme objective of providing a more free-flowing network (see paragraph 2.2.3).
- 6.3.47. In light of the number of cycle trips across the A1 identified in the weekday surveys undertaken and the improvements completed in relation to the A1 underpass, the Applicant considers the costs would be disproportionate to the benefit. On that basis the creation of a separate cycleway across the A1 overbridge would not be a 'reasonable opportunity' within the terms of the NPSNN.

### **Routes to and from Upton**

- 6.3.48. Under the Proposed Development the existing access to the hamlet of Upton from the south would be closed at Lower Lodge Farm. This would involve those leaving the hamlet travelling west along Upton Drift and then travelling north or south along Langley Bush Road. Works would take place on Upton Drift to provide passing places.
- 6.3.49. Traffic travelling to the south to the A47 would utilise Langley Bush Road and then the realigned Sutton Heath Road to the new Sutton Heath roundabout.
- 6.3.50. This section of the report will consider the traffic and transport implications of this part of the Proposed Development; matters relating to separation of communities will be dealt with in Chapter 7.
- 6.3.51. The TA [REP4-008] sets out that traffic surveys were undertaken at the Nene Way roundabout. These included a 12-hour Manual Classified Turning Count (MCTC) in June 2015, Automated Traffic Counts (ATC) in May, June and July 2016, and in October 2019. In addition, the Applicant utilised data from a MCTC undertaken in November 2015 on behalf of PCC.
- 6.3.52. It should be noted that there were no surveys undertaken of traffic on Langley Bush Road north of its junction with Sutton Heath Road and nor do either of the traffic models include this road. It is also the case that the Applicant had not undertaken any surveys of the width or condition of this section of Langley Bush Road. This was confirmed by the Applicant at ISH3 (see points 3.13, 3.14 and 3.15 of the Applicant's Written Summary of Oral Submissions at Hearings [REP4-018]).
- 6.3.53. Local residents and businesses in the Upton area expressed concern about the highway aspects of the development (see for example, the Post Hearing submissions from Fight4Upton [REP4-036]). These related to whether, as proposed, Upton Drift and Langley Bush Road were both

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<sup>55</sup> See footnote 54.

suitable for the traffic, particularly as there is agricultural traffic in the village including that associated with "*one of the largest grain stores in the area*" (Comments on Action list following Hearing by Milton Estates [REP4-028] regarding Action Point 37) at Manor Farm in Upton.

- 6.3.54. In light of these representations as part of the 'Applicant's Further Response to Actions from Hearings' (Action Point 37 at [REP5-020]) information was submitted on traffic surveys undertaken in October 2019 on Upton Road and on Sutton Heath Road.
- 6.3.55. To further address this issue the Applicant then interrogated the traffic models to estimate the traffic on Langley Bush Road (see Annex G of 'Applicant's Further Response to Actions from Hearings - Annexes' [REP5-021]). This showed that the percentage of heavy goods vehicles (HGVs) expected was similar to that on other local roads. The Applicant indicated that PCC has confirmed that Langley Bush Road is physically comparable to other similar roads in the area and suitable for the level of HGV traffic anticipated to use it (see also PCC's Issue Specific Hearing Action points [REP4-040]).

## **6.4. THE CASE FOR INTERESTED PARTIES**

### **Peterborough City Council**

- 6.4.1. PCC generally supports the Proposed Development and does "*not have any technical engineering objections to the plans*" (LIR [REP2-068]).
- 6.4.2. The LIR [REP2-068] did set out a single outstanding issue relating to the precise details of the southern end of the proposed vehicular cul-de-sac of Sutton Heath Road at the Wansford underpass. The Applicant's view (see reference RR-036-3 in [REP1-010]) was "*that this 'dead end' would not attract anti-social behaviour*".
- 6.4.3. In relation to PRowS, PCC welcomes the new routes between Wansford and Sutton and the provision of the Wansford Road underpass. It sought reassurance that the Sacrewell underpass would be open 24 hours 7 days a week and clarification on which body would be responsible for maintenance of the new routes and adjacent verges. The Applicant confirmed (see reference RR-036-6 in [REP1-010]) that the permissive right of way through the Sacrewell underpass would be open at all times but would "*be closed at night for vehicles*".
- 6.4.4. Finally, PCC looked at the existing bridges on the PRow between Sutton and Wansford (Sutton 1 footpath) be replaced/ upgraded to accommodate their increased use. The Applicant responded [REP1-010] by indicating that, in its view, the Proposed Development did not impact this route and thus these works would not, in its view, be necessary.

### **Cambridgeshire County Council**

- 6.4.5. The SoCG between the Applicant and CCC [REP10-010] notes that while the main effects of the Proposed Development would be in the PCC area there would be effects within Cambridgeshire.

- 6.4.6. CCC notes that most noticeably, flows on London Road (Site 6 in the TA [REP4-008]) and Elton Road (Site 4) to the south of Wansford Bridge are expected to increase. And while this would not result in the roads exceeding their link capacities there would be a perceptible increase in flows in areas with retail facilities and CCC therefore seeks mitigation in the form of further pedestrian and cycle facilities in the area.

### **Wansford Parish Council**

- 6.4.7. WPC's fundamental concern is that the proposal would not adequately deal with the traffic issues in the area, particularly in relation to the Wansford west roundabout. These are set out in [REP2-072].
- 6.4.8. As set above, there are existing traffic delays eastbound on the Wansford west roundabout. These come from two elements:
- Traffic preventing access from the west by movements from the eastern and southern arms travelling across this line; and
  - Traffic 'backing-up' across the existing A47 overbridge from the Wansford east roundabout.
- 6.4.9. WPC takes issue with the VISSIM traffic model based on, as it is, an equilibrium model. The equilibrium model being:
- 'Traffic arranges itself on congested networks such that the cost of travel on all routes used between each origin-destination pair is equal to the minimum cost of travel and unused routes have equal or greater costs.'*  
(See Applicant's Response to Deadline 6 Submission [REP7-016]).
- 6.4.10. WPC makes two particular points about this. Firstly, as set out above in paragraphs 6.3.21 the actual traffic counts show traffic volumes travelling northwards on Old North Road are above the modelled values, and secondly the model relies on traffic utilising the A1/ Peterborough Road junction to the south of the A47/ A1 junction. WPC makes the point that this junction is not safe due to the short slip-roads to access the A1.
- 6.4.11. On this basis, rather than reduce delays for traffic travelling east at the Wansford Road roundabout, the Proposed Development would increase delays as there would be more turning traffic preventing access to the roundabout from the west.
- 6.4.12. WPC suggest that the Wansford west roundabout should be reconfigured, suggesting 'intelligent' traffic signals which would allow for different flows throughout the day.

### **Sutton Parish Council**

- 6.4.13. SPC supports the overall proposal. However, it considers that the proposal would increase severance between Upton and the villages to the southeast and consider that cross-route (across the A47) provision should be made in the vicinity of the Nene Way roundabout.

- 6.4.14. SPC considers that improvements should be made to Langley Bush Road as part of the Proposed Development and should not be left to PCC should issues arise in the future.
- 6.4.15. SPC also supports the objections made by WPC as to the Wansford west roundabout and considers that as the VISSIM traffic model is flawed it also underestimates the levels of traffic that would be on Langley Bush Road.

### **Other Interested Parties**

- 6.4.16. There were three main themes from RRs from other IPs. Those relating to the NMU route under the A1, the Thackers Close/ Old North Road junction, and those relating to the suitability of Upton Drift, Langley Bush Road and Sutton Heath Road in providing access to and from Upton.

#### **A1 Underpass**

- 6.4.17. The essential case put in by IPs is that the route under the A1 is not suitable for cyclists. From the point effectively by the River Nene the way rises steeply, and is, it is stated, not suitable for cycling, either uphill due to the steepness, or downhill due to a combination of the gradient, the need to be in control and a sharp right-angled bend at the bottom. The inappropriateness of the route for recumbent cyclists is specifically mentioned.
- 6.4.18. This means that cyclists, going westwards, from point SU3 on the Rights of Way and Access Plans [REP8-004] would have to travel on the side road to the Wansford east roundabout and then across the bridge on the carriageway in close proximity to vehicular traffic.

#### **Thackers Close/ Old North Road junction**

- 6.4.19. A short way to the north of the Wansford west roundabout, at the point where the A1 slip roads join and diverge is Thackers Close. There are no proposals to alter this arrangement. Local residents in their RRs, including David Johnson [RR-007] and Norman Green [RR-034] consider that this should be enhanced to improve highway safety and accessibility.

#### **Roads to and from Upton**

- 6.4.20. The main point raised by IPs relates to the suitability of the network to take the traffic which would be required to utilise this route. This is because there have been no surveys, both of the physical condition of Langley Bush Road and of the quantum of traffic. Consequently, it cannot be assumed that the road is suitable to take the traffic, including large agricultural vehicles.
- 6.4.21. Milton Estates in its Comments on Action list following Hearing [REP4-028], as landowner on either side of Upton Drift, also indicate that it would be content to allow Upton Drift to be widened to be single carriageway (that is with two-way traffic) rather than a single track road with passing places.

## 6.5. ExA'S CONSIDERATIONS

### Introduction

6.5.1. This section of the report will deal with the following main issues:

- the overall case for the Proposed Development;
- the appropriateness of the traffic model, and therefore whether the Transport Assessment has appropriately considered the effects of the Proposed Development, particularly in relation to the operation of the Wansford west roundabout, and therefore whether the predicted time savings set out in Table 5 can be considered to be accurate;
- whether the proposed NMU routes would "*address the needs of cyclists and pedestrians*" (paragraph 3.17 of the NPSNN),
- the effect on routes to and from Upton; and
- other transport matters which are not in dispute

### The Overall Case for the Proposed Development

6.5.2. It is not in dispute that the single carriageway section of the A47 east of the Wansford east roundabout and the location of the Nene Way roundabout would be enhanced in traffic terms by the Proposed Development. It would provide a more resilient highway, reduce the number of junctions and be likely to improve highway safety and thus reduce accidents. As a dual carriageway it would allow for easier and safer overtaking of slower moving traffic and thus reduce driver frustration.

6.5.3. Similarly, the provision of the free-flowing link road between the A1 southbound and the A47 eastbound would improve congestion on the Wansford east roundabout as it would remove traffic associated with this manoeuvre.

6.5.4. These benefits should, in my view, be given substantial weight.

### The Traffic Model

6.5.5. As set out in the TA [REP4-008] there are effectively two highway models that have been used, a more strategic one, the WTM and a more local one dealing with the area around the village of Wansford and along the single carriageway section of the existing A47, the VISSIM model.

6.5.6. There was no dispute that the WTM appropriately modelled traffic in the area, but there was a dispute about the VISSIM model, particularly about the fundamental assumption upon which it is set up. This is that '*Traffic arranges itself on congested networks such that the cost of travel on all routes used between each origin-destination pair is equal to the minimum cost of travel and unused routes have equal or greater costs.*'.

6.5.7. It seems to me that this equilibrium model in the particular instance of Wansford is flawed. There are two reasons for this, one being a deficiency in the model itself and the other being specific to Wansford.

- 6.5.8. The deficiency in the model is that it assumes that users will know the current conditions on the roads, generally and specifically, through which they will pass before they set off so that they choose and use the most cost effective route. Of course, traffic conditions change, not only on a regular pattern depending on the day or time but dynamically. The model also assumes that all routes are equally safe.
- 6.5.9. In principle, when looking at the model, it does seem to me that road conditions will follow patterns depending on the time of year, day of the week and hour of the day. The VISSIM model, in this respect is the only model in front of the Examination and in that context can be utilised.
- 6.5.10. However, the model assumes that users will use, effectively, the least congested part of the network, not necessarily the most safe. In fact, it could be argued that it is more rational to use a route which is more congested, and thus take longer to pass through the area, if it is perceived to be safer and the user less likely to be involved in an accident.
- 6.5.11. The issue relates to the routes for local traffic travelling from or through Wansford or the villages to the south and wishing to travel north, principally on the A1. For a user there are three options, using the Wansford west roundabout, the Peterborough Road/ A1 junction or the next A1 junction to the south, the junction of the B671 with the A1, known as the London Road junction.
- 6.5.12. As described in paragraph 2.1.9, at the Peterborough Road/ A1 junction the two slip roads on and off the A1 are effectively non-existent. Having driven out of this junction on the A1 in the USI, I can fully understand local users, who know the junction, considering it not to be safe, and preferring to use the Wansford west roundabout. The VISSIM model, of course, assumes that the Peterborough Road/ A1 junction would be used when it was more cost effective than the Wansford west roundabout.
- 6.5.13. That the accident record for the Peterborough Road/ A1 junction is not poor (see data in Annex D 'A1 Northbound Weaving Collision Analysis' of the Applicant's Further Response to Actions from Hearings – Annexes [REP5-021]) is, in my opinion, likely to be an adjunct of local behaviour of preferring not to use it.
- 6.5.14. This means that I consider that the VISSIM model is likely to underestimate the quantum of traffic that will travel north out of Old North Road onto the Wansford west roundabout. This would lead to increased queues (in both length and time) on the eastbound entry to this roundabout, which is already the most congested, as more northbound traffic crossing would prevent eastbound traffic accessing the roundabout.
- 6.5.15. Following the representations the Applicant undertook a sensitivity test of the closure of the Peterborough Road/ A1 junction. This can be found in section 6 of the 'Wansford Traffic Model Calibration and Peterborough Road Sensitivity Test Technical Note' at Annex C of Applicant's Further

Response to Actions from Hearings – Annexes [REP5-021]. This would show a 'worst case' scenario as none of the traffic currently assigned to the Peterborough Road/ A1 junction would utilise it.

- 6.5.16. This proposes that the traffic would utilise two alternative routes onto the A1, the Wansford west roundabout and via London Road to the south. The sensitivity test concludes that the largest changes would be in the AM peak, where there are already the longest delays for eastbound traffic on the A47. This would add approximately 100 PCUs in the DS scenario to the traffic at the Wansford west roundabout and 350 to the London Road junction.
- 6.5.17. These figures, are, of course estimates, and the split in reality may be different. In my view the model overestimates those likely to travel south. This is because the model assumes that users in Wansford village would first head south across Wansford Bridge to then travel back north on the A1 via the London Road junction. I consider this unlikely for two reasons. Firstly, Wansford Bridge is essentially single carriageway as traffic is required to wait at either end for that on the bridge to pass, resulting in delay. Secondly, most users would find travelling south to then travel north counterintuitive. Therefore I consider that users within Wansford are more likely to travel initially north utilising the Wansford west roundabout.
- 6.5.18. In view of this, I consider that CCC's concerns about traffic levels increases to the south at the London Road junction with the A1 would not occur and, irrespective of whether the increases are material, there would therefore be no need to improve NMU facilities in this area.
- 6.5.19. Going back to the data in paragraph 6.3.21, not using the Peterborough Road junction and the not travelling to the south would increase the quantum of traffic travelling north on to the Wansford west roundabout closer from that modelled (390) to that observed (536) and would explain the difference. In other words, the VISSIM model in this vicinity does not take sufficiently into account the nature of the Peterborough Road/ A1 junction, the restrictions at the Wansford bridge and human behaviour based on alternative routes.
- 6.5.20. The sensitivity test is modelled using the WTM rather than the VISSIM model and is thus at a higher level. However, with that caveat, the Applicant concludes not using the Peterborough Road/ A1 junction would *"have a negligible impact on the [Annual Average Daily Traffic] and the overall operation of the scheme in the DS scenario"*. As the WTM is at a higher level it will be less robust and therefore I give it lesser weight.
- 6.5.21. For the reasons explained, in the specific scenario of Wansford, I consider that the VISSIM model does not accurately model the DS traffic scenarios and the Proposed Development would result in more traffic travelling north on to the Wansford Road roundabout than forecast.

## Wansford west roundabout

### Roundabout function

- 6.5.22. This increase in traffic from the south would have an effect on traffic approaching the Wansford west roundabout from the west. This is because that traffic would have to wait for anyone coming out of Old North Road travelling either north or east. This was not modelled by the Applicant in the Sensitivity test referred to in paragraph 6.5.15.
- 6.5.23. Figure 7-8 in the TA [REP4-008] shows the AM Peak Side Road Flows (PCU two-way). There is no information on direction of travel, but if this were to be divided 50:50, which is probably an underestimate in the AM peak for northbound traffic, then my conclusion would increase the traffic heading north on to the Wansford west roundabout from Old North Road by around 50%.
- 6.5.24. I therefore conclude that the estimate of time savings shown for traffic travelling eastbound along the A47 would not occur. There would be the savings identified from the by-passing of the Wansford east roundabout by the free-flow slip road, but these would be off-set by the delays caused by the traffic which would utilise the Old North Road southern arm.
- 6.5.25. In response to WPC's request the Applicant did provide a study into 'reverting' the Wansford west roundabout into a more conventional, turning junction but being signalised. This was submitted as 'A47/ A1 Western Roundabout Traffic Signal Option Assessment Technical Note' (as Annex E to the Applicant's Response to the Examining Authority's Further Written Questions (ExQ2) [REP5-023]).
- 6.5.26. This concluded that a signalised junction, as shown within Figure 2.2 of that document, is not an appropriate solution to resolve the traffic congestion issues at Wansford west roundabout.
- 6.5.27. I followed this up, in ExQ3.11.1 [PD-015], in querying whether the Applicant had considered a signal controlled roundabout, either part- or full-time. The response from the Applicant [REP8-027] was that DfT guidance currently discourages part-time signals and, in any event, the Wansford west roundabout was too small (by a circle diameter of 5m) to allow for this<sup>56</sup>.
- 6.5.28. In this regard, I therefore conclude that the Proposed Development would fail to provide a more free-flowing network (the third of the Scheme Objectives) as regards the Wansford west roundabout, and the shortening of the queue lengths into the roundabout set out in Table 6 would not be realised. I will consider this within the context of all the other elements of the Proposed Development below.

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<sup>56</sup> The Applicant explained that a larger roundabout could not be achieved within "existing land constraints".

### **Thackers Close/ Old North Road junction**

- 6.5.29. The Applicant responded to the RRs dealing with the Thackers Close/ Old North Road junction in its Common Response D in the 'Applicant's Response to Relevant Representations (RR)' [REP1-010].
- 6.5.30. The Applicant indicated that consideration had been given to widening the northbound off-slip from the A1 to two lanes and providing a dedicated left turn slip road from the A1 to the A47 eastbound to reduce queue lengths to the Wansford west roundabout. However, a safety review highlighted a greater level of risk for the Old North Road junction users who would be required to cross an additional level of traffic.
- 6.5.31. In light of further information provided during the Examination on other topics, this was the subject of ExQ3.11.2 [PD-015]. The Applicant's response [REP8-027] in turn referred to the 'Wansford Western Roundabout Safety Assessment' which can be found as Annex H to the Applicant's Response to the Examining Authority's Further Written Questions (ExQ2)' [REP5-023].
- 6.5.32. Point 2.4 to Table 3-8 deals with this and notes that the risk level was increased from 3 to 6 based on the criteria used (Figure 3-1). This was due to the likelihood of the event occurring changing from 'very unlikely: highly improbable, not known to occur' to 'unlikely: less than 1 per 10 years'. It should be noted that both are considered to be 'low' risk. I accept that revising this arm/ junction would increase highway risk.

### **Conclusions in relation to Wansford west roundabout**

- 6.5.33. Effectively, no major works are proposed to the Wansford west roundabout and, due to the deficiencies of the local traffic model identified above, the incidental improvements to traffic conditions from the remainder of the Proposed Development, both in terms of delay and queue length, would not be realised.
- 6.5.34. I have considered whether it would be possible to add an additional requirement into the DCO to mitigate this. I accept the reasoning of the Applicant as to why a signal controlled junction would not be possible, and why, due to land constraints within the current Application site, it would not be possible to reconfigure the roundabout with traffic signals.
- 6.5.35. It would be possible to impose a requirement requiring changes to the northbound approach, which would have an effect on the Thackers Close/ Old North Road junction to provide two lanes into the roundabout as this has been designed. However, in my view, the benefits would be off-set by the increase in accident risk. Were the SoST to take a contrary view to me on this, I have set out a potential requirement in Table 17: DCO Provisions not Recommended to be Changed, but provided in case the SoST takes a contrary view in Chapter 18.
- 6.5.36. The works here would be outside the Application site. However, previous DCOs have required works outside the Application site (for example, both the A303 Sparkford to Ilchester DCO and the M54 to M6 Link Road DCO)

so I do not believe there is any legal impediment to this, providing the drafting was appropriate. I also understand that the land in question forms part of the highway and thus there should be no impediment from a landownership point of view.

- 6.5.37. The introduction of this second lane from the north would not, in my view, make a material difference to the queues approaching the Wansford west roundabout from the west. This is because traffic approaching from the west would still be prevented from joining the roundabout by traffic travelling past this junction either from the east or south, neither of which would be affected by a change on the northern arm.

## **NMU routes**

### **Introduction**

- 6.5.38. This section of the report will deal with the overall proposals for users of the NMU network in the Application site and its vicinity. It will look at the question of whether there is or would be severance of communities in traffic and transport terms which should be mitigated and weigh the overall effect.

### **Wider scheme**

- 6.5.39. Currently, from the point where Sutton Drift joins the A47 up to the west to the Anglian Water pumping station there are no separate facilities for NMUs. While pedestrians can utilise the various footpaths between Sutton and Wansford, these encroach into the floodplain of the River Nene (see the Flood Risk Assessment [REP3-014]) which means that it will be unpassable at times. Other NMUs cannot use the footpaths at any time and are required to share the A47 carriageway with all other users.
- 6.5.40. The Proposed Development would provide a route separate from main-line traffic using the A47, and while some of the route would be shared with local traffic, this would represent a major enhancement for users.
- 6.5.41. With the exception of users in Upton, which I will discuss later, there would be a separate crossing under the A47 at the site of the Wansford Road Railway Station. This would allow users to more easily cross the A47 should their start or finish point be to the northwest and would improve safety.
- 6.5.42. For NMUs with Upton as a starting point or destination, the PRow network to the east, including Ailsworth and Castor would not change. However, distances to the south and west would increase considerably. As at present NMUs are required to share the carriageway with all road users, and this would not change, I will therefore deal with the effect on NMUs in relation to this below from paragraph 6.5.58.
- 6.5.43. As the proposal would not directly affect the PRow adjacent to the River Nene from just west of Wittering Brook and would not, of itself, increase

use, I consider it is not necessary to improve the bridges on this section of the route.

### **NMU routes in western part of Application Site**

- 6.5.44. At present there are no PRowS which the public can definitively use as of right in the southwest part of the Application site. The western extent is where Wansford 4 footpath meets the A47 at the layby a short distance to the west of the Wansford Road Railway Station site. Thereafter all NMUs are required to utilise the A47. Given the quantum and type of existing traffic on the A47 this is not safe.
- 6.5.45. Whether the permissive route between Peterborough Road close to the junction with the A1 to the western extent of the Sutton 1 is a bridleway or footpath is in one sense not material. This is because it is permissive and for the reasons explained by the Applicant in the Legal Submission it is for those granting the permission to enforce. However, to my mind and without prejudice to any separate decision making, it is more likely that it would be a footpath as that is what continues to the east towards Sutton and would otherwise be a cul-de-sac from the west. Equally the section of the route between the River Nene and Peterborough Road is steep and is not suitable for cyclists, and this reinforces my view.
- 6.5.46. In my view, the Applicant's conjecture that the permissive route may have become available as of right is just that, conjecture. Unless until such a right has been proven then I consider that this should not be given material weight.
- 6.5.47. For the reasons set out in paragraph 6.3.41 the Applicant considers that there currently is no severance, nor would there be as a result of the Proposed Development in this vicinity. In my view this cannot be the case. Firstly, the route is only permissive and thus could be withdrawn, and secondly, any analysis of 'severance' should be made against rights known to exist in perpetuity.
- 6.5.48. Even if I were to accept the Applicant's view that there was no severance, due to the steep slope this would only apply to pedestrians, and even then, a sub-set of pedestrians, since it is not suitable for those using wheelchairs and is less than ideal for those pushing buggies. The Applicant's view, set out in Common Response A in its Response to RR [REP1-010], that the 50m length would not be sufficient of a deterrent to dissuade NMUs from using the route, does not sit happily with the NPSNN requirement in paragraph 3.22 to deliver improvements.
- 6.5.49. The proposal could have been designed to ensure the delivery of a conventional footpath as part of the scheme, and probably a cycleway, and the issue of landownership could have been resolved through compulsory acquisition.
- 6.5.50. The alternative route for NMUs is, from point SU3 on the Rights of Way and access plans, to utilise the link road to the Wansford east roundabout and then cross the overbridge. However, the Applicant makes clear "*Construction of the Proposed Scheme would permanently remove the*

*cycle facilities at the A47/A1 roundabouts*” (paragraph 12.10.45 of Chapter 12 of the ES [REP4-004]).

- 6.5.51. In my view, the Proposed Development would not resolve the issue of severance in this location, and this must weigh significantly against it.
- 6.5.52. The Applicant’s alternative suggestions for providing a separate route on the A1 overbridge are less than ideal. Option 1b would reduce the carriageway width for motorised vehicles and would therefore restrict movements, Option 1a, however, would be DMRB compliant. The priority, to my mind, would be to ensure connectivity in line with NPSNN requirements.

### **Conclusions on NMU routes**

- 6.5.53. The Proposed Development would make a substantial improvement to users of the PRow network for the majority of the length of the Proposed Development. However, at the western end the Proposed Development does not make adequate provision for NMUs, nullifying the benefits as they would not provide a connected network, and would not resolve the issue of severance for those on the PRow network. As paragraph 5.205 of the NPSNN makes clear an applicant should use reasonable endeavours to address any existing severance issues that act as a barrier to NMUs.
- 6.5.54. While I would accept that this section of the NPSNN does not include reference to the issue of severance in the ‘Decision making’ section, it would seem to be perverse for such an issue to be raised in the Applicant’s assessment section but then not form part of the overall decision making. The reference quoted by the Applicant to paragraph 5.214 of the NPSNN relates to Strategic Rail Freight Interchanges not to Road and Rail Developments.
- 6.5.55. Consequently, as applied for I only give the NMU provision within the Proposed Development moderate beneficial weight.
- 6.5.56. However, were the Option 1a provision included, and in my view, it is necessary, then this would mitigate to a greater degree the issue of severance. This would not be as beneficial as a dedicated route southwest of point SU3 as users would have to share the carriageway on the link road with other vehicles. Consequently, to deliver this, I am recommending a change to the dDCO that this be included as an addition Requirement.
- 6.5.57. This route should be provided as a cycleway and thus the Rights of Way and Access Plans (currently Rev 3 [REP8-004]) will need to be updated. Such a change is provided for in Article 49(2) of the preferred DCO so further drafting alterations should not be necessary. The whole of this area would appear to be within land which would be subject to CA and thus there should be no impediment to its delivery.

## **Upton**

### **Introduction**

- 6.5.58. This part of the report deals with the Applicant's proposals in respect of Upton. It looks at the suitability of the proposals and the additional distances that would need to be travelled.

### **Suitability of routes**

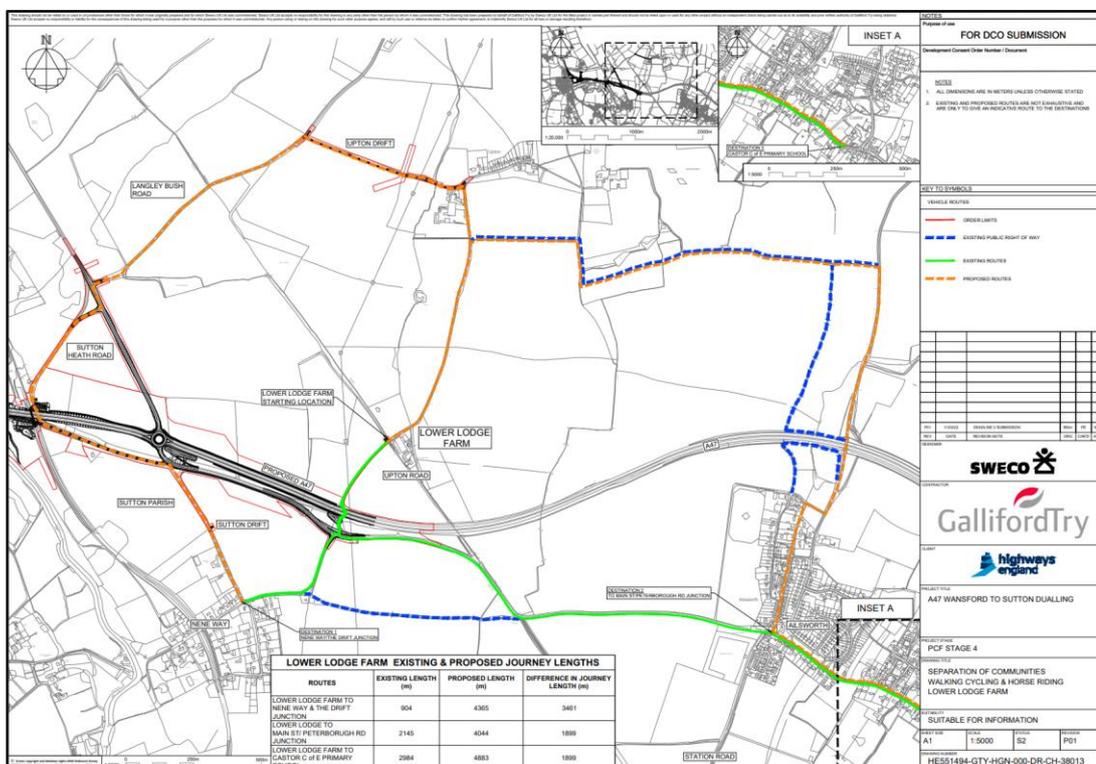
- 6.5.59. At present, residents of and businesses in Upton wishing to travel south or east are able to travel along Main Road/ Upton Road to the A47 Nene Way roundabout. Main Road/ Upton Road is a single track road with passing places, and, from my viewing of the road at the USIs, if two HGVs were to meet there would not be room for them to easily pass.
- 6.5.60. The proposal is that by closing the Main Road/ Upton Road at Lower Lodge Farm, traffic would have to travel to the west along Upton Drift and then along Langley Bush Road and the relocated Sutton Heath Road. Upton Drift would be widened with passing places and the rationalisation of junctions.
- 6.5.61. No physical surveys of the condition of Langley Bush Road have been undertaken by the Applicant. However, my observations show it to be a single carriageway road (two-way) and generally wider than Main Road/ Upton Road.
- 6.5.62. Traffic surveys are limited to those undertaken at the Nene Way roundabout and on Upton Road, the latter being in October 2019. This is outside the harvest season, which as Milton Estates point out, is material due to the grain stores in Upton. There was also a survey undertaken at the same time on Sutton Heath Road. The Applicant confirms that "*there is no traffic survey data available for Langley Bush Road between the junction of Sutton Heath Road and the Upton Drift*" (response to Action Point 37 in the Applicant's Further Response to Actions from Hearings [REP5-020]).
- 6.5.63. Therefore, the only forecast as to what traffic would be accessing Upton is based on the traffic models. While I have criticised the traffic model above, this was to do with the situation in Wansford, and I do not have any evidence to show that the model for Upton is inaccurate.
- 6.5.64. The estimate for HGV numbers that would use Langley Bush Road and Upton Road are given by the Applicant in its response to Action Point 37 in the Applicant's Further Response to Actions from Hearings [REP5-020]. This shows an estimated daily total of 53 HGVs, which would represent approximately 2.4% of the total traffic on Langley Bush Road, and would be commensurate with the proportion of HGVs on other roads in the vicinity.
- 6.5.65. I note that PCC as local highway authority has no objection to this, and for the non-harvest season I consider that both Upton Drift and Langley Bush Road would be suitable for use.

6.5.66. During the harvest season it is likely that there will be additional traffic using Upton Drift. The issue here being whether the traffic is such that it would result in an unacceptable impact on highway safety. Given that there would be intervisibility between the various passing places on Upton Drift, I am satisfied that the Proposed Development would be safe and that such conditions would not occur.

### Travel distances

6.5.67. Annex M of the Applicant’s Responses to the Examining Authority’s First Written Questions (ExQ1) [REP2-036] show the increased distances that users would need to travel to get to locations from Upton. These show the existing and proposed distances for both vehicle users and the public rights of way network. Figure 4: Journeys to and from Upton shows the distances to and from Lower Lodge Farm.

**Figure 4: Journeys to and from Upton<sup>57</sup>**



6.5.68. The greatest additional distance is for those relating to Lower Lodge Farm, where the largest increase is over 3.6km. This applies to both vehicle users and users of the PRow network. This additional distance could well result in modal shift to a motor vehicle. This is the most extreme example, but with increases in distance of approximately 1.0km

<sup>57</sup> Source: Annex M of 'Applicant’s Responses to the ExA’s First Written Questions (ExQ1) – Annexes’ [REP2-036]. Annex M shows existing and proposed journey lengths three different start/ finish points with each being both for motorised vehicles and use of the PRow network.

for the residents in Upton, I consider that the additional distance would be make a material difference for users.

- 6.5.69. Clearly the number of vehicle movements associated with the properties in Upton will be small compared with the number of movements on the A47, but notwithstanding that, the Proposed Development would result in severance for those living in Upton.
- 6.5.70. In my view the additional distance is of a markedly greater materiality than that ascribed to it by the Applicant.

### **Conclusion in relation to traffic and transport in Upton**

- 6.5.71. Although there were shortcomings in the evidence presented in relation to the suitability of the highways in the vicinity and, due to the time of year, as to the surveys on traffic numbers, I am satisfied that the Proposed Development would not harm highway safety nor give rise to any severe residual effects.
- 6.5.72. However, the proposals would increase severance for the community in Upton, to which I give significant weight against the Proposed Development, and would be likely to lead to modal shift towards less sustainable forms of transport.

### **Other Traffic and Transport matters**

- 6.5.73. The above sections of this report have dealt with the main areas of dispute. During the course of the Examination there was discussion between the Applicant and various IPs on several matters.
- 6.5.74. Of the matters set out in Table 4: Summary of RRs, the discussions between the Applicant and the William Scott Abbott Trust, which runs the Sacrewell Farm visitor attraction, agreed that design of the Sacrewell underpass would be sufficient for all vehicles and that the area would be landscaped. They also agreed that the permissive route would be reinstated in a different location.
- 6.5.75. Similar comments to those set out above can be made about the provision of this north/ south route as that through the A1 underpass as this would only be permissive. However, in this case an alternative bridleway route would be available along the Wansford 8 bridleway. For those travelling to/ from the south this would be less commodious, being across a field rather than on a tarmacked way and would be materially longer. However, the provision of a new route separate from the main line along the section to the south of the A47 would mitigate the closure of the permissive route to some degree, were that to occur.
- 6.5.76. Having said all that, for users of the A47 more generally, the Proposed Development would bring substantial benefits. It would provide a dual-carriageway to modern standards, and would particularly benefit those travelling south along the A1 to the east, and thus East Anglia, by removing this traffic from the Wansford east roundabout. This would be a significant benefit both in travel time and resilience.

## **6.6. CONCLUSIONS**

6.6.1. Taking all the relevant documentation and policies into account, I conclude as follows:

- the Proposed Development would substantially improve the situation for the vast majority of users of the highway to the east of Wansford east roundabout and for those travelling from the A1 southbound to the east;
- it would not address the issues related to the Wansford west roundabout which are likely to continue. This means it would not fulfill one of the objectives for the Proposed Development in this area, and I give this significant weight against the Proposed Development;
- the Proposed Development would result in severance for those travelling to and from Upton through materially further journeys, to which I give significant weight against the development; this may lead to modal shift. However, the roads which would then be used would be fit for purpose;
- for NMUs the Proposed Development would not mitigate the existing severance that exists between either side of the A1. The provision of a separate route across the A1 overbridge would not mitigate this fully but is necessary as a minimum. I would therefore give this significant weight against the Proposed Development reducing to limited weight against the Proposed Development if the separate route were to be secured. Because of this I only give the overall NMU works moderate positive weight.

6.6.2. The Proposed Development, as submitted, would not comply with Local Plan Policies LP7 and LP13 as it would not, at the western end, make journeys on foot or cycle the more attractive option, and assist those with access and mobility difficulties. However, with my recommended change for a cycleway across the A1 overbridge there would be compliance with the NPSNN. As regard the eastern end, the Proposed Development would be contrary to both Local Plan policies as it would create a barrier to movement across the main line meaning that users may choose to use less sustainable modes of transport and would fail to comply with the NPSNN as regards severance.

## **7. FINDINGS AND CONCLUSIONS IN RELATION TO SOCIO-ECONOMIC MATTERS**

### **7.1. INTRODUCTION**

- 7.1.1. This chapter considers the economic and social effects of the Proposed Development, including the effects on local businesses and communities.

### **7.2. POLICY**

#### **National Policy Statement for National Networks**

- 7.2.1. The NPSNN promotes the delivery of environmental and social benefits as part of new schemes. It requires any adverse impacts to be mitigated in line with the principles set out in the Framework and the Government's planning guidance (paragraph 3.3).
- 7.2.2. It also states *"severance can be a problem in some locations. Where appropriate applicants should seek to deliver improvements that reduce community severance and improve accessibility"* (paragraph 3.22).
- 7.2.3. Paragraphs 4.3 and 4.4 of the NPSNN explain that the potential benefits of any proposed development, including the facilitation of economic development, will be taken into account as part of the overall balance. It advises that environmental, safety, social and economic benefits and adverse impacts, should be considered at national, regional and local levels.

#### **National Planning Policy Framework**

- 7.2.4. The Framework requires significant weight to be afforded to the need *"... to support economic growth and productivity, taking into account both local business needs and wider opportunities for development"* (paragraph 80).
- 7.2.5. Paragraph 204 of the Framework makes clear that policies should safeguard mineral resources by defining Mineral Safeguarding Areas. It indicates that policies should ensure that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development. This paragraph also encourages the prior extraction of minerals where practical and environmentally feasible, if it is necessary for non-mineral development to take place.

#### **Local Plan**

- 7.2.6. The Local Plan allocates land for over 16,000 dwellings in the period 2018 – 2036 and over 160ha of employment land for development which will increase the population significantly.
- 7.2.7. The Applicant has asserted (for example in paragraph 6.4.3 of the Case for the Scheme [AS-022]) *"land is safeguarded for future key*

*infrastructure adjacent to the roundabouts at the A47/A1 junction under Policy LP15 of the Plan*". However, the current proposal is not one of the schemes set out in that policy nor is any of the land within the Application site shown within the safeguarded land pursuant to this policy on the Policies Map.

## **Local Transport Policy**

- 7.2.8. The Peterborough Long Term Transport Strategy 2011-2026 sets out a high-level transport strategy which is required to deliver the local growth agenda.

## **7.3. THE CASE FOR THE APPLICANT**

- 7.3.1. The Applicant has set out an economic appraisal of the Proposed Development over its lifetime in the Case for the Scheme [AS-022]. This sets out what are seen as the benefits of the Proposed Development both in user benefits and disbenefits, accident savings, monetised estimates of greenhouse gas differences, air quality and noise effects, indirect tax revenue based on fuel used, journey time reliability and wider economic impacts. These are set out in Table 5.1 of that document.
- 7.3.2. In a similar way the Applicant has looked at social impacts, including the effect of accidents, security of those using the Proposed Development, journey quality, the amount of physical activity, and accessibility between destinations, severance of communities and the personal affordability of transport. These are set out in Table 5.2 of The Case for the Scheme [AS-022].

## **Effect on Agricultural Holdings**

- 7.3.3. I discuss the effect of the Proposed Development on the Best and Most Versatile Agricultural Land (BMV Land) in Chapter 11 of this report.
- 7.3.4. Agricultural holdings in the area are shown in Figure 12.4 [APP-078]. This shows seven holdings within the Application site. The holdings vary in size considerably, and two are fragmented. Figure 12.4 does not set out information of other holdings outside the Application site which may be indirectly affected by the Proposed Development, for example by increasing or decreasing distances between land parcels, or where some parts of a holding are in the Application site, and some are outside.
- 7.3.5. The Applicant has identified three of the agricultural holdings as being of very high sensitivity due to being predominantly in grassland use, that is for grazing. The remaining four are used for arable or vegetable production and thus the Applicant considers them to be of moderate sensitivity, although this would increase in the harvest season.
- 7.3.6. The Applicant has set out its assessment of temporary and permanent construction impacts on the seven agricultural holdings directly affected by the Proposed Development. These are set out in Tables 12-13 and 12-14 of Chapter 12 of the ES [REP4-004]. Prior to mitigation, the Applicant considers that there would be moderate adverse temporary

effects on three of the holdings, but this would reduce to not significant once the Proposed Development was operational. One of these holdings would, however, have moderate adverse permanent effects due to the effects of the Proposed Development on turnover and profitability from the permanent removal of land. However, the Applicant considers that this would not affect the long-term viability of the wider holding.

## **Community severance**

7.3.7. Chapter 6 of this report considers the traffic and transport aspects of the Proposed Development; this chapter deals with the societal effects.

7.3.8. There are two main aspects to this, firstly relating to those living and working in Upton and secondly, for those using the PRoW network.

### **Upton**

7.3.9. Anyone living or working in Upton and wishing to travel to or from the east, west or south would be required to travel further since they would not be able to travel via the A47 Nene Way roundabout. The Applicant set out the distances for those living in Church Walk in Upton as an increased distance between 0.9km and 1.1km. However, these distances only are to the A47 roundabouts (old and new) (see Applicant's response to ExQ1.10.8 [REP2-035]) and do not include any difference from longer or shorter journeys on the A47 itself depending on whether the journey is to east, west or south. The distance between the sites of the existing Nene Way roundabout and the proposed Sutton Heath roundabout is approximately 0.7km. Travellers to and from the west would also be affected by the closure of the junction of Sutton Heath Road with the A47.

7.3.10. Those travelling to and from Lower Lodge Farm would be most affected by increased journey distances. In response to ExQ1.10.22 the Applicant [REP2-036] in Annex M prepared a drawing showing the distances to key facilities. This drawing sets out increased distances for NMUs, but also clearly shows the additional distances which all road users would have to travel. One of the eight drawings in this Annex is given as Figure 4.

7.3.11. The local community in Upton have expressed concerns about loss of the historic connections with the villages to the south, Sutton, Castor and Ailsworth, with residents and workers being required to travel via Langley Bush Road and crossing the line of the proposed A47 either via the Sutton Heath Roundabout or via the bridleway crossing at the site of the Wansford Road railway station, to join the NMU network to the south.

7.3.12. The Applicant acknowledges this and in response to ExQ1.10.22 states:

*"The Applicant has considered ways to deliver improvements that reduce community severance and improve accessibility and has used reasonable endeavors [sic] to address any existing severance issues that act as a barrier to non-motorised users, considering what opportunities there maybe to improve access. However, an applicant is not required to address all of the issues with the wider [Walkers, Cyclists and Horse*

*Riders (WCH)] network in the local area as part of its application, especially where the termini lie some distance from the Scheme: the improvement of the network in general is a matter for the local highway authority. This applies to enhancements of WCH connectivity between the villages of Upton and Sutton and improve the cycling route between Ailsworth and Sutton.*

*"A separate Designated Funds study looking into the feasibility of opportunities to further enhance WCH connectivity in the wider area is currently ongoing. It is understood that opportunities to enhance WCH connectivity between the villages of Upton and Sutton and improve the cycling route between Ailsworth and Sutton would be evaluated as part of this separate study. However, there is no guarantee that funding will be secured, and these potential improvements do not form part of the Applicant's Case for the Scheme (AS-022)."*

- 7.3.13. The Applicant accepts that the community of Upton would experience a degree of severance due to the closure of Upton Road/ Main Road with the A47. However, it maintains that due to the distances involved this would only have a slight adverse effect.
- 7.3.14. Similarly, due to the downgrading of part of Sutton Drift to a cycle-track, the Applicant acknowledges that the community of Sutton and, particularly, the two dwellings on Sutton Drift, would have longer journeys as a result. It has classified this as slight adverse. This would also apply to users of St Michaels and All Angels Church in Sutton.
- 7.3.15. Conversely, the Applicant maintains that the new Sacrewell underpass and the changes there would have a slight beneficial effect on the occupiers at Mill House. However, due to the increase in distance for NMU from the side road those using the facilities at the visitor attraction would experience a slight adverse effect.
- 7.3.16. There are various businesses in the area; these are set out in paragraph 12.7.13 of Chapter 12 of the ES [REP4-004]. The changes to the highway network would result in effects for some of these, principally due to the changes in distances to be travelled. This is set out in detail in paragraph 12.10.21 to 12.10.27 of Chapter 12 of the ES. For many the Applicant considers the residual effect would be 'no change', but for some it would be 'slightly beneficial' and others 'slightly adverse'.

### **NMU Routes**

- 7.3.17. The Applicant undertook surveys of the PRow network as a whole, that is footpaths, bridleways, permissive routes and footways associated with the carriageways. Survey locations are shown in Figure 5-7 of the Transport Assessment [REP4-008]. These were carried out over seven days for 12 hour periods in May and June 2018<sup>58</sup>.
- 7.3.18. Having identified the various routes, the Applicant assessed their sensitivity based on Table 3.11 of LA 112 of DMRB and magnitude of

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<sup>58</sup> This included a Bank Holiday.

impact from Table 3.12 of the same document. This predominantly uses difference in distance to be travelled as a proxy for the degree of effect.

- 7.3.19. During construction there would be effects from temporary diversions or stopping up of NMU routes, and permanent constructions and diversions, together with the stopping up of the Wansford 4 footpath.
- 7.3.20. There would be substantial changes for NMU on the south side of the route, and these would involve the separation from traffic on the A47 itself, either onto side roads or a separate cycle track.
- 7.3.21. There would be two separate NMU routes across the main line. One through the Sacrewell underpass, which the Applicant acknowledges would be sub-standard in width as a bridleway. In response to ExQ1.11.9 querying how this would be the substandard the Applicant indicates that standard would be 3.0m width, but the proposal would be 2.0m wide, and there would be no separation to the carriageway, while DMRB recommends 0.5m. The Applicant considers that as the *"access road would be a lightly trafficked private means of access, where vehicle speeds are anticipated to be very low"* this would provide a safe environment.
- 7.3.22. The second crossing would be at the site of the Wansford Road Railway Station where the existing (disused railway) route under the main carriageway would be utilised as a bridleway with a second bridge to the north to carry the new dual carriageway.
- 7.3.23. Otherwise, with a new dual carriageway, opportunities to cross the A47 at grade would be limited, and in highway safety terms should be discouraged.
- 7.3.24. The effects for those using the new permissive bridleway through the Sacrewell underpass would depend on the direction of travel. From the west the difference in travel distance would only be small, at less than 50m, so overall the Applicant considers that this would be 'moderately beneficial'. However, from the east, where the travel distance would increase by 120m, the effect is considered to be 'slight adverse'.
- 7.3.25. In looking at the overall NMU route between Wansford and Sutton, the Applicant maintains that due to the benefits to amenity and potential road safety as the distance would not change overall there would be a 'slight beneficial' effect.
- 7.3.26. The loss of the Nene Way roundabout would affect users, and cyclists in particular. Whether they would need to travel further (see paragraphs 7.3.9 and 7.3.10) would depend on the journeys being undertaken. Whatever route, the Applicant maintains there would be amenity and potential road safety benefits. The Applicant also maintains that between Ailsworth and Upton when looked at together the Proposed Development would have a 'moderate adverse' effect while between Ailsworth and Southorpe this would be a 'large beneficial' effect.

- 7.3.27. The Applicant maintains that the permanent stopping up of the Wansford 4 footpath and its replacement would have a 'slight beneficial' effect.

### **Effect on dwellings**

- 7.3.28. The proposal would involve the demolition of a single dwelling, Station House. However, this would not involve the loss of anyone's home on the basis that the dwelling has not been occupied since 2019 (see paragraph 8.3.71). There would, nevertheless, be a reduction in the total stock of dwellings in the area.
- 7.3.29. Deep Springs would be bypassed by the Proposed Development and as explained elsewhere in this report would be affected by construction activity. However, when operational, the living conditions of the dwelling should improve due to the relocation of the main line further to the north.
- 7.3.30. Four dwellings, 6 to 12 (evens) Great North Road, would all have parts of their curtilages removed as part of the Proposed Development and would also lose direct access to the A1, with a barrier installed on what is now the verge of the A1 (see Annex O of the Applicant's response to the Examining Authority's First Written Questions [REP2-036]). All of the areas which would be lost would be parts of the front gardens which can be readily seen from the public domain with the more private rear gardens unaffected. Annex L of the Applicant's response to the Examining Authority's First Written Questions [REP2-036]) shows the remaining garden sizes.

## **7.4. THE CASE FOR INTERESTED PARTIES**

### **Peterborough City Council**

- 7.4.1. PCC supports the scheme on the basis that it will help boost economic prosperity both in Peterborough and regionally and help deliver planned growth. It does, however, raise concerns and indicates "*it is important the right mitigation is put in place to ensure that Upton [is] not negatively impacted*" (LIR [REP2-068]).

### **Sutton Parish Council**

- 7.4.2. While SPC welcomes the NMU provision adjacent to the new road and under the A1 and the Wansford underbridge, it is concerned about the loss of connectivity north and south at the eastern end between Upton and the communities in Sutton, Castor and Ailsworth. It considers that a new crossing should be made in the vicinity of the Nene Way roundabout (see, for example, [REP4-033]).
- 7.4.3. It also welcomes the closure of Sutton Drift to through traffic (see [REP3-029]). This is evidenced in the minutes of the Parish Council meeting held on 20 April 2022 [REP6-012] and comment at [REP6-013])

that this has been utilised as part of a “drag track” (see response to ExQ1.4.12 in [REP3-032]<sup>59</sup>).

## **Other IPs**

- 7.4.4. As set out in Table 4: Summary of RRs there are a considerable number of objections to the proposed closure of the direct road between Upton and the A47, and consequently the increased distance to the communities in Sutton, Castor and Ailsworth.
- 7.4.5. The campaign group Fight4Upton note that the “*five parishes (Upton, Sutton, Castor, Ailsworth, Marholm) have had historical links as communities together with Milton since the 16th century*” [REP1-013]. It suggests that an overbridge should be provided across the A47 in the vicinity of the existing Nene Way roundabout [REP4-036].
- 7.4.6. There was also a specific objection from Mr David Longfoot [RR-004] concerning the effect on his farming business. His landholding is in the vicinity of Upton along Upton Drift and is Area 3 in Figure 12.4 [APP-078]. The concerns are two-fold, from both the physical loss of land and from the closure of Main Road/ Upton Road resulting in longer journeys between that land and the majority of his landholding at Castor.

## **7.5. ExA’S CONSIDERATIONS**

As with other Chapters, this section of the report will deal with those issues in dispute before dealing with other matters that are material to the SoST’s decision making.

### **Upton**

- 7.5.1. Upton does not have its own representative body (see Table 3.1 of the Consultation Report [APP-023]). I have discussed in Chapter 5 why I can understand that residents and businesses did not get involved in the pre-application process until late in the day.
- 7.5.2. From what I have read and heard there have clearly been links between the hamlet of Upton and the villages of Sutton, Ailsworth and Castor to the south of the A47 for many years. The Proposed Development will sever those links to a significant extent. Not only will the Proposed Development close Main Road/ Upton Road but also the downgrading of Sutton Drift to a cycleway will have the effect of further extending the distances to be travelled. While the number of residents and businesses affected is numerically limited, this does not mean that this issue should not been seen as highly important to them.
- 7.5.3. The closure of Main Road/ Upton Road with the A47 would result in severance between the community the Upton with those in Sutton, Ailsworth and Castor. This should be given significant weight against the Proposed Development.

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<sup>59</sup> On page 52 of that document.

- 7.5.4. There was discussion during the Examination about whether it might be possible to mitigate this in some way. Suggestions of an underpass or bridge in the vicinity of the current Nene Way roundabout (see for example, [REP4-033]) or linking the Main Road/ Upton Road to the new Sutton Heath roundabout from the east ([REP4-023] and [REP4-024]).
- 7.5.5. This followed the Applicant's acknowledgement in its Common Response C in its Response to Relevant Representations [REP1-010] that it was investigating utilising Designated Funds to enhance NMU connectivity in this area. The Applicant did, however, make it clear that this was not part of the Application and no route had been determined (response at 4.2 of the Applicant's Written Summary of Oral Submissions at Hearings [REP4-018]).
- 7.5.6. I have considered whether the imposition of a requirement within the DCO could be utilised to provide mitigation in the form of a NMU crossing but have rejected this. Firstly, no design is in front of me, nor has it been assessed, and it might have significant environmental effects, for example in landscape terms. Secondly, there would also be uncertainty as regarding landownership and thus deliverability. I therefore consider such a requirement would not meet the relevant tests.
- 7.5.7. I therefore conclude that the Proposed Development would result in material severance between Upton and the communities to the south of the A47, to which for a long period Upton has had strong links, which continue today. This weighs significantly against the Proposed Development.

### **Agricultural Holdings**

- 7.5.8. The single dispute relates to the holding farmed by Mr Longfoot (Area 6). I also note that Mr Longfoot's landlord, Sir Philip Naylor-Leyland Bt and Milton Estates, has suggested that more of Mr Longfoot's land should and would be available to further widen Upton Drift, as it contends should occur.
- 7.5.9. I have not been provided with precise details of the extent of Mr Longfoot's holding in Castor<sup>60</sup>. However, Table 12-4 of Chapter 12 of the ES [REP4-004] indicates this holding (reference 3) is an Arable land holding, which does indicate that visits to the area would be less frequent than were it to be grassland.
- 7.5.10. Having said that, Mr Longfoot's address is in Upton. Consequently, he would be subject to the approximately 1.7km additional journey to get to the remainder of the holding in Castor. This would undoubtedly add to the costs of the business. This, in my view, adds to the harm identified

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<sup>60</sup> I note in Figure 12.4 [APP-078] that 'Area 3' represents two areas of land, one at Upton and one south of the A47 to the east of the A1. However, in the Book of Reference [REP10-007], Mr Longfoot is not shown as having an interest in this land, this is owned by the Executors of Mary Gilbert Estate. It may be let to Mr Longfoot, but not on such terms as to qualify as an interest as set out in Section 57 of the PA2008.

by the Applicant. This means rather than having a 'non-significant effect' in the operational phase, this would increase to 'minor adverse'.

- 7.5.11. Other than in this case, I would agree with the Applicant's assessment of the effect on the holdings as set out in Chapter 12 of the ES [REP4-004]. I therefore consider that the Proposed Development would have a moderately harmful effect on agricultural holdings.

### **Other matters**

- 7.5.12. The proposal would result in the loss of a single dwelling. This would be contrary to the aims of the Framework of boosting housing. However, given the public benefits of the Proposed Development discussed elsewhere in this report, I am content that the benefits outweigh the harm in this regard.
- 7.5.13. The four properties at 6 to 12 (evens) Great North Road would all lose part of their curtilages. However, in no case would this result in the dwelling having insufficient private amenity space, and as the areas in question are already in the public domain when viewed from the A1 or the Windgate Way PRow this would not affect their living conditions in respect of privacy.

## **7.6. CONCLUSIONS**

- 7.6.1. Taking all the relevant documentation and policies into account, I conclude as follows:
- The Proposed Development would result in significant severance between Upton and the communities to the south of the A47. This weighs, in my view, significantly against the development; it may have been that through better design mitigation could have been provided.
  - There would also be some greater harm than that identified by the Applicant in respect of landholdings. However, this should only be given moderate weight against the Proposed Development in the final balance.
  - While there would be a loss of a single dwelling and a loss of parts of the curtilages to four other dwellings, I am satisfied that the benefits would outweigh the harms.
  - Overall the socio-economic issues weigh significantly against the Proposed Development.
- 7.6.2. In this respect the Proposed Development would not comply with paragraphs 3.3 and 3.22 of the NPSNN in that it would not mitigate existing severance and would introduce additional severance for the community in Upton.

## **8. FINDINGS AND CONCLUSIONS IN RELATION TO CULTURAL HERITAGE**

### **8.1. INTRODUCTION**

8.1.1. This chapter considers the effect of the Proposed Development on cultural heritage and archaeology. In particular it deals with:

- designated heritage assets including scheduled monuments, listed buildings and conservation areas;
- non designated heritage assets, including locally listed buildings; and
- archaeological remains.

8.1.2. Where I find that harm would be occasioned to any heritage asset, I will make a finding in this chapter and take this through to my conclusions for this issue. However, the balancing exercise will principally be undertaken in Chapter 16 relating to my overall conclusion in relation to the Case for Development Consent.

### **8.2. POLICY**

#### **National Policy Statement for National Networks**

8.2.1. Paragraph 5.121 in the NPSNN states *"the historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora."*

8.2.2. Paragraph 5.122 goes on to state that *"Heritage assets may be buildings, monuments, sites, places, areas or landscapes. The sum of the heritage interests that a heritage asset holds is referred to as its significance. Significance derives not only from a heritage asset's physical presence, but also from its setting".* Footnote 96 relates to setting and states *"Setting of a heritage asset is the surroundings in which it is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements which make a positive or negative contribution to the significance of an asset may affect the ability to appreciate that significance or may be neutral."*

8.2.3. Paragraphs 5.126 and 5.127 provide advice on the Applicant's assessment, with the latter paragraph noting that the level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on the asset's significance. It goes on to state *"where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, the applicant should include an appropriate desk-based assessment and, where necessary, a field evaluation."*

- 8.2.4. NPSNN paragraphs 5.128 to 5.142 identify the historic environment decision-making considerations to be taken into account by the SoS and advice on recording of assets.
- 8.2.5. Paragraph 5.130 states *"the SoS should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution that their conservation can make to sustainable communities – including their economic vitality. The SoS should also take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment"*.
- 8.2.6. Paragraph 5.131 states that when considering the impact of a proposed development on the significance of a designated heritage asset, the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. It continues to state *"significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given that heritage assets are irreplaceable, harm or loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a Grade II Listed Building or a Grade II Registered Park or Garden should be exceptional. Substantial harm to or loss of designated assets of the highest significance, including World Heritage Sites, Scheduled Monuments, Grade I and II\* Listed Buildings, Registered Battlefields, and Grade I and II\* Registered Parks and Gardens should be wholly exceptional"*.
- 8.2.7. Paragraph 5.132 states *"any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss"*.
- 8.2.8. Paragraphs 5.133 and 5.134 deal with the approaches that should be undertaken depending on the level of harm. The former paragraph states *"where substantial harm or total loss of significance of a designated heritage asset, the SoS should refuse consent unless it can be demonstrated that the substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm"*, or four specific criteria collectively apply. The latter paragraph states *"where the proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use"*.
- 8.2.9. Paragraph 5.142 states *"where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest, the Secretary of State should consider requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction."*

## National Planning Policy Framework and Planning Practice Guidance

- 8.2.10. The Framework sets out broadly similar policies to the NPSNN for the conservation of the historic environment in section 16 'Conserving and enhancing the historic environment'. Paragraph 189 advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so they can be enjoyed for their contribution to the quality of life of existing and future generations.
- 8.2.11. The Framework also deals with non-designated heritage assets, at paragraph 203, and states "*The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*"
- 8.2.12. The Glossary to the Framework defines significance for heritage policy as "*The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting*".
- 8.2.13. The PPG states<sup>61</sup>: "*Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the ... Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. ... It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.*" It goes on: "*While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all. ... Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm, depending on the nature of their impact on the asset and its setting*".
- 8.2.14. As these matters relate to the consideration on significance, I take the view that these are an appropriate way in which to assess the heritage aspects of the Proposed Development.

### Local Plan

- 8.2.15. Local Plan Policy LP16 indicates that all development should positively contribute to character and local distinctiveness of an area, respect the site and respond appropriately to various matters including historic and built assets.

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<sup>61</sup> Reference ID: 18a-018-20190723

- 8.2.16. Policy LP19 deals with the Historic Environment. This refers to using:
- Conservation Area Appraisals to ensure the preservation and where possible enhancement of the various Conservation Areas;
  - the protection of heritage assets and their settings; and
  - the identification and protection of significant non-designated heritage assets and their settings.
- 8.2.17. The Policy references the tests in the Framework relating to harm and the public benefits required. In relation to non-designated heritage assets the policy indicates that there is a presumption in favour of retention.
- 8.2.18. In relation to archaeology, Policy LP19 requires the carrying out of preliminary desk-based assessments and where the desk-based assessment does not provide sufficient information, field evaluations are required.
- 8.2.19. Huntingdonshire Local Plan Policy LP 34 has similar provisions relating to that area.

### **8.3. THE CASE FOR THE APPLICANT**

- 8.3.1. Chapter 6 in the ES addresses Cultural Heritage. The originally submitted chapter [APP-044] was updated at D2 [REP2-010] to deal with typographical errors and clarifications. The original chapter was supported by various Appendices and Figures.
- 8.3.2. The Applicant indicates that its assessment has been undertaken in accordance with DMRB LA 106 and has considered designated and non-designated heritage assets. The approach was updated following the revision of DMRB in 2019 and 2020 which led to a wider consideration than originally indicated in the Scoping Report.
- 8.3.3. The Applicant asserts that its approach for assessment and mitigation for scheduled monuments, Grade I, II\* and II listed buildings was agreed with HE, with HE also expressing an interest in the non-designated former Wansford Road Railway Station.
- 8.3.4. As also agreed with HE the Applicant assessed each heritage asset for value and sensitivity on a five point scale from 'negligible' to 'very high', utilising the relevant designation criteria for the asset in question. The sensitivity to change of a setting was also taken into account. This was based on professional judgement.
- 8.3.5. The Applicant then judged the magnitude of the impact on each asset, on a nine-point scale from 'major adverse' via 'no change' to 'major beneficial'. This is set out in Table 6-3 of Chapter 6 of the ES [REP2-010].
- 8.3.6. These two criteria were then combined to determine whether, in environmental assessment terms, the effects would be significant with moderate or major effects being deemed to be material.

- 8.3.7. Where a single asset was subject to beneficial and adverse effects from different aspects of the Proposed Development it was agreed with PCC and HE that these would be reported separately. However, where this was from a single aspect they would be 'balanced'.
- 8.3.8. The Applicant noted that due to Covid-19 restrictions in-person visits to data archives was not possible. The Applicant considers that this was largely mitigated by the archaeological field surveys that took place, and on-line records. Because of these restrictions and consequent reductions in traffic noise effects on assets were not judged from the site visit, but from the specialist noise assessment.
- 8.3.9. The Applicant utilised a study area based on a Zone of Visual Influence<sup>62</sup> from the Application site and a site inspection with specific weight given to those assets identified as being potentially affected by noise.
- 8.3.10. This long list of assets was then screened for potential impacts and excluded assets where:
- upstanding remains within the Zone of Theoretical Visibility (ZTV)<sup>63</sup> could only be seen from inaccessible locations;
  - archaeological remains outside the Application site, as the Applicant considers they cannot be affected by the Proposed Development, although they were still used in the assessment for previous unknown archaeological remains within the Application site; and
  - findspots of artefacts that have been removed from their original location.
- 8.3.11. The Application site was subject to a geophysical survey in 2017 by Headland Archaeology which can be found at [APP-089]. This report will be referred to as "the Headland Report".
- 8.3.12. In undertaking the design, the Applicant indicates that it was amended during the design process to avoid effects where possible. The construction process would be carried out using industry best practice and in accordance with implementation of an Environmental Management Plan (EMP).
- 8.3.13. Having undertaken the above, the Applicant identified 12 key assets (or groups of assets) which have the potential to experience significant

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<sup>62</sup> This was based on a Zone of Theoretical Visibility (ZTV) (Figure 6.1 of the ES [APP-058]) modified using site observations to account for vegetation or other factors. The Applicant considers that the ZVI does not have a mappable output, as it is based partly on professional judgement and changes with season and weather. Figure 6.1 also identifies the individual designated heritage assets; non-designated heritage assets are shown on Figure 6.2 of the ES [APP-058].

<sup>63</sup> A Zone of Theoretical Visibility (ZTV) based on digital surface modelling data was undertaken (see Figure 7.4 [APP-059]) taking into account vegetation and topography, with some limitations of view afforded by built form. This analysis was undertaken using a viewer height of 1.6m and 4.0m high HGVs on the main carriageway. This is discussed further in Chapter 14.

effects as a result of the Proposed Development (see Section 6.6 of Chapter 6 of the ES [REP2-010]). Six of these:

- the Scheduled Monument;
- the group at Wansford Road Station;
- Sacrewell Mill and Farm;
- Sutton Conservation Area;
- Model Farm and associated walls, Upton; and
- Stibbington Conservation Area

are considered to be subject to specific effects. All but the group at Wansford Road station are designated heritage assets.

8.3.14. The remainder of designated heritage assets of high value in the study area, which are set out below, could derive effects from the presence of a new road. The assets are:

- Thornhaugh Conservation Area and listed buildings therein;
- Church of St John the Baptist, Upton;
- Church of St Mary the Virgin, Wansford;
- Church of St Michael and All Angels, Sutton;
- Wansford Bridge;
- Stibbington Hall, gateway and boundary wall.

The Applicant considers that any effects from the Proposed Development would be minimal due to the relatively small change to the existing road corridor and the low visibility of the proposed junctions from those assets and this report does not concentrate on them.

8.3.15. The Applicant also identified 256 non-designated heritage assets together with "*numerous anomalies and archaeological remains identified from geophysical survey and archaeological trial trenching*" (third bullet following paragraph 6.6.55 of Chapter 6 of the ES [REP2-010]).

8.3.16. It has also identified 138 parcels of Historic Landscape Characterisation landscape types within the Study Area. These are set out in paragraph 6.6.56 of Chapter 6 of the ES [REP2-010]. Other than identifying the potential for archaeological remains and sensitivity to change, the Applicant considers these landscape types are fairly common throughout England. Therefore they are assessed of being of 'negligible' value apart from the waterway and "Ancient" Woodland type which are assessed as being of 'low value'.

#### **Nature of effects**

8.3.17. The Applicant has identified temporary construction impacts as being short-term and reversible. These include noise from construction work, the movement of construction plant, siting of construction compounds and siting of haul routes and associated traffic. The Applicant considers that none of these would lead to significant residual effects.

8.3.18. Permanent construction impacts identified as likely include:

- earthworks, which the Applicant limits to the effect on the setting of heritage assets;
- structural damage, from vibration due to demolition in proximity of works;
- excavation for the Proposed Development, site compounds and haul roads which have the potential to remove archaeological remains, and;
- the appearance of the Proposed Development including associated landscaping schemes, structures and signage.

8.3.19. Operational effects are seen as including changes to traffic movements leading to noise and visual intrusion, and road lighting affecting the setting of heritage assets.

### **Mitigation and Enhancement**

8.3.20. The Applicant has proposed generic mitigation measures, with specific measures in certain locations set out below. Paragraph 6.8.13 of Chapter 6 of the ES [REP2-010] sets out a strategy. This would be complemented by a Written Scheme of Investigation, to be agreed with PCC and HE, to ensure that any previously unidentified features found are dealt with appropriately. This was agreed by HE in the SoCG [REP10-011] and would be secured in the dDCO [REP11-002] at Requirement 10.

8.3.21. The landscape and planting design has, according to the Applicant, been drawn up to help minimise effects on heritage assets. This includes reinstatement of hedgerows to ensure that field patterns are maintained. Specific planting to mitigate effects on specific assets is set out below.

8.3.22. The Applicant has suggested that heritage measures, principally in the form of directional signs and information boards, could be introduced but specifically indicates this does not represent a commitment. In light of this no weight has been given to this.

### **Designated Heritage Assets**

#### **Cropmark site of a barrow cemetery and a quadrilateral ditched enclosure, together with pits and a pit alignment, approximately 837m south-east of Sacrewell Farmhouse (1006796), Scheduled monument**

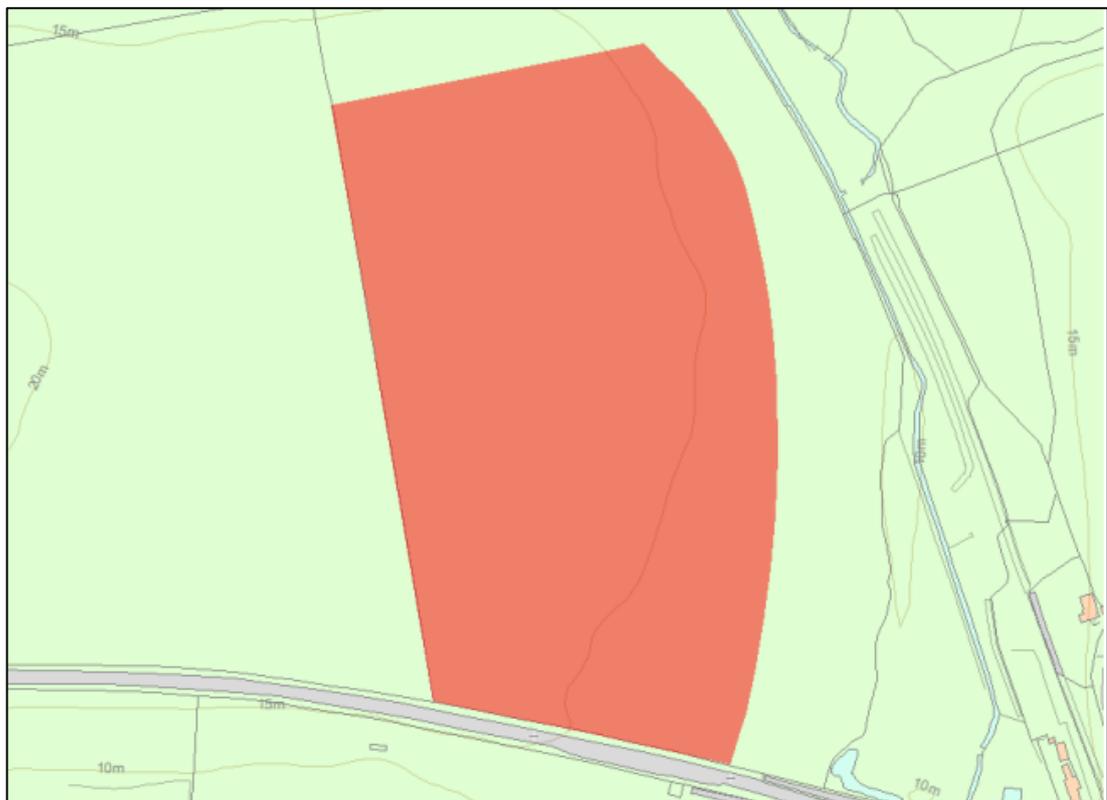
8.3.23. As an aid to the understanding of this chapter, in respect of the Scheduled Monument it should be noted that the asset was first designated in 1962. This related to the area immediately to the north of the existing A47 and, while not square, the dimension north-south was similar to that east-west. This area can be seen, for example on page 10 of [APP-089].

8.3.24. The most recent amendment to the designation was in 2018 when the area was extended. Principally, this was to the north so that the north-south dimension approximately doubled. In addition, the eastern boundary was moved west by approximately 15m. A plan showing the current designated area can be seen in Figure 5.

8.3.25. The list entry for the Scheduled Monument can be found at [REP2-073]. As there is some dispute as to the historic significance of the asset, I put the official list summary here in full:

*The buried remains of seven ring ditches, a quadrilateral, single-ditched enclosure interlinked with a smaller, single-ditched enclosure, a pit alignment and pits, all visible as cropmarks on aerial photographs. The ring ditches are thought to represent the buried remains of a Bronze Age round barrow cemetery while the enclosure is believed to have originated as a prehistoric enclosed farmstead which was later reused in the Romano-British period. The features lie 837m south-east of Sacrewell Farmhouse, in a field known as Toll Bar Field, which rises gently from the River Nene in the south to the Sacrewell stream in the north.*

**Figure 5: Map showing extent of Scheduled Monument<sup>64</sup>**



8.3.26. The Proposed Development would follow the monument's southern boundary for 110m from east to west. It would then encroach into the southeastern corner by a triangular area measuring 6m by 9m (and thus having an area of 27m<sup>2</sup>)<sup>65</sup>.

8.3.27. The Scheduled Monument falls within Sector 10 in Figures 31 to 33 of the Headland report. The area is sometimes known as "Toll Bar Field".

<sup>64</sup> Source: Extracted from [REP2-073].

<sup>65</sup> There are some references within the documentation to the area being directly affected as 28m<sup>2</sup>. In my view the difference is not material.

- 8.3.28. The Headland Report determined that the southern area of the Scheduled Monument had been quarried, but the quarrying area had not affected the then above ground traces of archaeology. It was therefore concluded that the quarrying could have taken place at any time between the Bronze Age and the modern period. However, within the 20th century the field had been deep ploughed so that any above ground traces had been lost.
- 8.3.29. The Applicant considers that the asset has high heritage value from its evidential potential. The Applicant is of the view that its setting can be informed by the topography of the surrounding landscape. From within the field, the appreciation of landform to the south has been visually obstructed by the existing A47. The Applicant concludes "*the contribution of setting to the monument's value cannot be accurately determined at this stage*" (paragraph 6.6.12 of Chapter 6 of the ES [REP2-010]).
- 8.3.30. As set out in paragraphs 8.4.18 to 8.4.22 below WPC considers that the Scheduled Monument should be considered as two separate assets, with particular reference to a "blank space" running through the middle of the asset.
- 8.3.31. The Applicant makes the point in its Written Summary of Oral Submissions at Hearings Point 3.1 [REP4-018], that a "blank space" on geophysical results cannot be confirmed as of being no archaeological interest until it has been excavated, and that has not happened. Even then space may still be an important point for laying out of burials and settlements. It also makes the case at Point 3.3 that locating the road through this "blank space" would result in more harm to the Scheduled Monument than the Proposed Development.
- 8.3.32. The Applicant accepts that 27m<sup>2</sup> of this asset would be removed, taking the view that the land-take "*was the maximum reasonably allowable*". It does however note that the main area of the Scheduled Monument is further to the north.
- 8.3.33. In respect of residual effects, the Applicant notes that the potential archaeology within the area to be removed would no longer be preserved for future generations who may have enhanced analytical techniques to better understand the remains. The Applicant continues "*this loss of protection and future potential means that the magnitude of impact will be reduced from minor adverse to negligible adverse rather than no change, giving a **slight adverse** significance of impact*" (emphasis in original) in relation to permanent construction effects. The Applicant maintains that the magnitude of effect is reduced due to the likely nature of the potential remains. This reduction, based on the likely nature of the potential remains, has been agreed with HE and PCC.

### **Sacrewell Farm and Mill**

- 8.3.34. The overall Sacrewell Farm complex includes two designated heritage assets. The Sacrewell Mill and Mill House and Stables at Grade II\* and the Sacrewell Farmhouse at Grade II.

- 8.3.35. Sacrewell Farmhouse dates from the mid-18th century. The main body of Sacrewell Mill slightly pre-dates this, having been constructed in the early 18th century, and the adjoined watermill is dated to 1755. Both buildings are built in coursed stone with a steeply pitched Collyweston stone roof with gabled ends.
- 8.3.36. The mill includes complete mill machinery and is in working order with a cast iron overshot wheel and pit wheel. There is a great spur wheel and a timber main drive shaft and crown wheel. Two of the original three sets of stones remain. Other milling equipment remains in place. These assets form part of the Sacrewell educational tourist attraction and are considered by the Applicant to have high community value.
- 8.3.37. The setting is considered by the Applicant to be relatively secluded due to topography and planting. However, the surrounding land which was historically associated with these assets is less shielded from the A47 and A1. Road noise from both roads can be heard throughout the farm, and some vehicles can be seen from more elevated areas such as the main car park and approach road from the south. Vehicles can also be seen on the Wansford east roundabout.
- 8.3.38. The Applicant considers the assets have a high level of heritage value and the setting of the assets makes a large positive contribution to the value of the farm and mill. The living history elements of the assets are an important factor in their value.
- 8.3.39. The Applicant accepts that harm could be caused to the setting of these heritage assets due to the loss of associated land to the south and west. The Applicant considers that the new drainage ponds to the west, and upstream, of the existing Mill Pond will not have an effect as they would be in keeping with the established landscape and would not affect existing water levels in the existing Mill Pond.
- 8.3.40. Intermittent tree planting along the proposed free-flow lane at the A1/A47 junction and the proposed block of woodland planting north of the Wansford east roundabout may, the Applicant asserts, provide more screening than the current environment. It takes the view that as the current intrusion from built elements is minimal the effect of the landscaping is not large enough to be recorded as a 'significant positive' impact.
- 8.3.41. The Applicant's view is it is unable to ascertain the magnitude of impact on these assets before mitigation, but there will be no change after mitigation leading to a neutral significance of temporary construction effect. Regarding permanent construction effect this would be of neutral significance for Sacrewell Mill, but of minor adverse effect on the setting of Sacrewell Farmhouse due to the loss of land associated to the south; this would be "softened" by sympathetic landscaping. No operational effects have been identified.

### **Sutton Conservation Area and listed buildings therein**

- 8.3.42. Sutton Conservation Area was designated in 1979 and lies between 320m and 520m south of the main part of the Application site and east of the River Nene. The Conservation Area is tightly drawn around the settlement, but the parish includes riverside water meadows. The Parish of Upton extends north of the A47.
- 8.3.43. The Conservation Area includes 11 listed buildings, the Grade I Church of St Michael and All Angels and 10 Grade II listed buildings. These are individually identified in paragraph 6.6.47 of Chapter 6 of the ES [REP2-010].
- 8.3.44. The Applicant considers that a settlement existed in this area in the Bronze Age, but it was not until the Roman period that this can be evidenced. A Roman Villa was discovered east of Sutton Heath Road and a settlement in this area can be surmised from the Roman road network. It is stated that the current form is reminiscent of a typical Anglo-Saxon form of settlement with a central rectangular stockade bordered by tracks and enclosed by hurdles in which livestock could be protected.
- 8.3.45. The Applicant considers modern day Sutton has a rural and tranquil character from its agricultural legacy. Trees and hedgerows shield the village from the A47. Nearly half of the buildings pre-date the 20th century. Buildings face the main roads.
- 8.3.46. The disused railway line between Wansford and Stamford is not accessible from the village and the Applicant considers it to be highly screened apart from the bridge for the A47. The Applicant notes that the Nene Way passes through the western end of the village but considers that the river is not part of the setting. The Applicant notes the long-distance views of the buildings at Sacrewell Farm from the path outside the Conservation Area in winter. Notwithstanding this, the Applicant considers that the impression of the settlement is one of a strong inward focus, but with accessibility to both the rural landscape and the major routes of the Nene Way, A1 and A47.
- 8.3.47. The Applicant considers that the Conservation Area has a medium heritage value with the elements of the setting of the asset making a large positive contribution to its value.
- 8.3.48. The Applicant acknowledges that the permanent construction effects of the Proposed Development the proposed severance of Sutton Drift may have an adverse impact on the Conservation Area and its links to the A47. However, it takes the view that as the road would be left intact for the majority of its length, with the cycleway, the notional link would remain, with an actual link via Nene Way.
- 8.3.49. During operation of the Proposed Development the Applicant states that the Conservation Area could experience change to its rural setting with the introduction of lighting at the new Sutton Heath Roundabout. However, it maintains that this would be limited to the rear of properties on Nene Way and Sutton Drift, where there is intervening vegetation. It

additionally considers that during winter it could also be visible from within the Conservation Area on Sutton Drift.

- 8.3.50. The relocation of the carriageway to the north of the existing line would result, according to the Applicant, in a reduction in noise and light present, but as some would remain any change is considered to be 'negligible'.
- 8.3.51. The Applicant considers the proposed landscaping between the current A47 (to remain as a local road) and the dual carriageway would complement existing screening and reduce the visibility of the proposed Sutton Heath roundabout, Sutton Heath link road and the additional lighting, both that proposed for the roundabout and from vehicles using the roundabout.
- 8.3.52. In relation to the operational effect of the removal of vehicular traffic along Sutton Drift, the Applicant acknowledges that this will change the character of the historic links, reducing the effect of traffic but reinstating more of the rural character. This is seen as both a 'minor adverse' and a 'minor beneficial' effect leading to a balance of 'no change'.

#### **Model Farm and wall to east of Model Farm, Upton**

- 8.3.53. The Model Farmhouse is Grade II listed and dated to 1685. The northern boundary of the curtilage abuts the Application site. The farmhouse is square in plan and is constructed in coursed stone with a steeply pitched Collyweston stone roof.
- 8.3.54. The associated, but listed in its own right, Grade II listed wall fronts the junction of Main Road and Upton Drift, turning the corner. The listing entry indicates that it is probably 18th century. It is a tall, coursed stone rubble boundary wall with a string course near the top with about six diminishing courses above with stone capping and stone quoins. Other walls around the farm buildings to south and west are considered by the Applicant to be curtilage listed.
- 8.3.55. The setting of these assets links to the village of Upton and its surrounding agricultural landscape. The Applicant notes *that "the assets are located on the western edge of Upton and mark the outer boundary of the settlement, making them a focal point when approaching the settlement from the south or west"*. In light of this, the Applicant gives these assets medium heritage value, with the settings providing a large positive contribution to their value.
- 8.3.56. The works at the junction of Main Road and Upton Drift would be in close proximity to the wall. The wall is therefore at risk of vibration or ground movement during construction. The potential effect to Model Farm itself would be to its setting should the wall be damaged.
- 8.3.57. To mitigate the effects of the Proposed Development the Applicant is proposing that a full structural survey and construction risk assessment would be carried out to allow appropriate protective measures. This is secured in references CH2, CH4 and CH9 of the Record of Environmental

Actions and Commitments (REAC) which can be found in Table 1.5 of the EMP [REP6-001] and would be agreed with PCC.

- 8.3.58. There would be the removal of trees on the verge to the north of Model Farmhouse which would affect the setting. However, these would be replaced with trees of similar species as close as possible to maintain the partial screening adding to the transition at the edge of the settlement (see reference CH1 in the REAC).
- 8.3.59. The Applicant takes the view that there would only be an effect on the setting of Model Farm if the associated wall were to be damaged. It acknowledges that unmitigated there could be 'major adverse' effects from collision, vibration or other ground movement to that wall and a 'slight adverse' effect from the loss of planting, but with mitigation there would be 'no change' leading to a 'neutral' effect.

### **Stibbington Conservation Area and listed buildings therein**

- 8.3.60. The Stibbington Conservation Area lies between 600m and 1050m to the south of the Application site to the south of the River Nene and lies in the eastern part of the village. The settlement is referred to in the Domesday Book. The Grade II\* listed church of St John the Baptist is located in the vicinity of the old ford. It has seven listed tombs in its graveyard. The earliest parts of the church may date to the Norman conquest.
- 8.3.61. The Grade I listed Stibbington Hall is located in this area, and has an associated Grade I listed gateway and boundary wall, as well as Grade II listed stable block, coach house and a further wall and gate piers. Other listed buildings within the Conservation Area are the Grade II Stibbington Manor, Granary and Stables and Old Castle Farmhouse. The Hall and Manor date to around the 16th and 17th centuries.
- 8.3.62. The Applicant sees the character of the village as being inward-focussed with large walls separating the Hall and its grounds from the rest of the village. Stibbington has an historic link with Sutton via the former ford. There is a large number of mature trees planted within the village. The village was bypassed by the Great North Road, and this led, the Applicant considers, to a 'downgrading' of the village, which pre-dated Wansford, in the overall hierarchy of settlements in the area.
- 8.3.63. In light of all these factors, the Applicant considers that the strong character and depth, together with the group value of the listed buildings, gives the Stibbington Conservation Area a moderate heritage value, with its setting making a moderate positive contribution.
- 8.3.64. Once operational the Applicant considers that the rural setting of the Conservation Area would change due to the introduction of new lighting and vehicle lights on the new Sacrewell access. The Applicant maintains this would be "*virtually identical*" to the existing lighting at the junction, and that any light would be directed to the northwestern side of the Conservation Area which is largely screened by the more modern part of Stibbington and intervening vegetation. In addition, distance would further reduce the impact. As this effect would only be during the hours

of darkness and from the edge of the inwardly-looking Conservation Area, the potential impacts are seen as very small by the Applicant.

- 8.3.65. Landscaping on the proposed Sacrewell access road would seek to mitigate these effects. Unmitigated the Applicant considers that the Proposed Development would have a 'minor adverse' impact, but with the landscaping this would be 'no change' and thus a 'neutral' overall significance of effect.

### **Non-designated heritage assets**

- 8.3.66. The Applicant has identified three specific non-designated heritage assets which it considers would be significantly affected by the Proposed Development. These are:

- Wansford Road Railway Station (as a group of individual assets);
- Royal Observer Corps Bunker; and
- Mile marker.

#### **Wansford Road Railway Station (as a group of individual assets)**

- 8.3.67. The ES made clear it considered the various buildings making up the railway station should each be considered to be non-designated heritage assets<sup>66</sup>. These are:

- the former Station Building (since converted into a dwelling);
- a Linesman's Hut;
- the Platform;
- two cast iron gate posts and gate.

- 8.3.68. In addition to these assets the bridge carrying the A47 over the former railway line is on PCC's local list of non-designated heritage assets. This is a skew arch bridge with five-ring brick barrel. The Applicant considers it holds group and setting value with the other features relating to the railway.

- 8.3.69. From the documentation submitted it was not clear whether the Applicant considered the railway line should be considered to be a non-designated heritage asset in its own right. In response to ExQ1.4.4 (at [REP2-035]) the Applicant confirmed that it considered it to be a non-designated heritage asset and indicated it considered this to be the whole 8.5 mile extent from Stamford East Station to Wansford Station on the Nene Valley line (shown in Annex E to [REP2-036]).

- 8.3.70. The line closed to passengers in 1929 and to freight in 1931. The Applicant considers its significance to be as an historic travel route across the area intersecting with numerous settlements. It had many bridges and embankments. At D2 [REP2-067] PCC also indicated that it considered the former railway line to be a non-designated heritage asset

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<sup>66</sup> PCC has confirmed in the LIR [REP2-068] that the station is locally listed.

but at that stage was not on the formal 'local list'. It has been included for potential designation as part of a current review.

- 8.3.71. The former Station Building is located within the Application site. It was constructed in 1867 and in the line 'house-style' and is a single storey central stone building with side extensions towards the platform. According to the Applicant it was converted to a dwelling in around 1930 and last used as such in August 2019 (response to ExQ1.10.17 at [REP2-025]) although the Council indicates Council Tax was paid until 31 December 2021 (response to ExQ1.10.17 at [REP2-067]). PCC confirmed it is a locally listed building<sup>67</sup>.
- 8.3.72. This residential conversion led to internal changes to the property. The main entrance to the ticket hall blocked and uPVC glazing was installed at some point. A number of other external changes were made, for example, a later timber conservatory was constructed on the platform side, preserving elements of the former platform canopy.
- 8.3.73. As well as the former station building the original platform remains as well as a linesman's hut, this hut being of the same materials as the station building. There are two cast iron gate posts (generally referred to as 'gate piers') and a steel gate at the entrance to the site from the A47.
- 8.3.74. It should be noted that the station elements were considered for listing by HE in 2018 as a group together with the former station master's house (Heath House, a short distance to the northeast off Sutton Heath Road). It was not listed as there are other, better preserved examples in the region.
- 8.3.75. The Applicant considers that the group as a whole is of local to regional historic and architectural interest and holds medium value. This assessment includes that three of the assets are locally listed. The Applicant considers the setting is principally defined by their relationship one with another, and the relationship between the assets makes a moderate positive contribution to their setting.
- 8.3.76. The Proposed Development would result in the demolition of the Station Building along with the part of the platform and the gate piers and gate but not the linesman's hut<sup>68</sup>. For clarity, the reason for the demolition is:

*"Station House will need to be demolished as the new carriageway alignment will have the Earthworks embankment through the location of the existing building. There will also be no safe access to the building in future so the building will be demolished to prevent future maintenance requirements."* (paragraph 6.7.14 of Chapter 6 of the ES [REP2-010])

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<sup>67</sup> A cartoon of the Station Building with the artist's impression of the Examination, is given at [REP11-018].

<sup>68</sup> See response at Ref 3.4 of Applicant's Written Summary of Oral Submissions at Hearing [REP4-018].

- 8.3.77. The Applicant also accepts that the railway bridge, Heath House and the railway line would also be affected by this loss of group value.
- 8.3.78. The Applicant indicates that recording of the station building, the linesman's hut, platform, cast iron gate piers, and the railway earthworks within the Proposed Scheme boundary and bridge would be carried out at Level 3 of HE's guidance for investigating and recording historic buildings. This would be secured via references CH2, CH3, CH4 of the REAC in the EMP [REP8-014]. In addition, Heath House would be included but only for context as it is physically unaffected by the Proposed Development.
- 8.3.79. The Applicant confirms that the station building itself and gate piers would need to be removed, but there is "*a potential for the linesman's hut and elements of the platform to be retained*". This would be the subject of detailed design.
- 8.3.80. As set out below there was discussion about the buildings being relocated to the south of the Application site as part of a Designated Funds environmental improvement. However, the application as it stands is for the original building to be demolished and the resultant materials made available for the purposes of historic building restoration and reclamation<sup>69</sup>.
- 8.3.81. At ISH2 (see point 3.4 of the Applicant's Written Summary of Oral Submissions at Hearings [REP4-018]) the Applicant confirmed that "*Station House is to be removed, the linesman's hut is to be retained and the platform will be removed to the extent that it lies within the footprint and immediate working area of the Scheme. ... The Applicant also clarified in a later submission that the gate piers will also be removed*" and with them the gates.
- 8.3.82. The Applicant acknowledges that the recording of the former railway station building would not fully mitigate the physical loss of the building, the loss of group value and context for the railway line, Heath House and the railway bridge. The Applicant in paragraph 6.9.4 of Chapter 6 of the ES [REP2-010] was of the view that this will lead to a 'moderate adverse' significance of effect, with a 'slight adverse' effect on the group.
- 8.3.83. In its response to ExQ1.4.20 c) [REP2-035] the Applicant takes the view that the levels of harm in the PPG in relation of substantial harm and less than substantial harm "*do not map directly to the categories of significance of effect and are a matter of the decision-maker's judgement. However, the assessment of impact in ES Chapter 6 ... states that the magnitude of impact is reduced from Major to Moderate through the proposed mitigation. The Applicant suggests that, in this particular*

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<sup>69</sup> The Applicant confirmed in response to ExQ3.4.3 [REP8-027] that the Nene Valley Railway has been chosen by the Applicant to take forward the relocation of the Station Building; the funding has been provided by National Highways Designated Funds.

*case, Major adverse would be equivalent to substantial harm, and Moderate adverse to less than substantial harm.”*

8.3.84. The Applicant continued to set out its assessment for each asset as follows (response to ExQ1.4.20 d) [REP2-035]):

- *Former Wansford Road Railway Station. ... - Moderate Adverse = Less Than Substantial Harm*
- *Wansford to Sutton Railway Bridge No.6 ... - Minor Adverse = Less Than Substantial Harm*
- *Heath House. ... - Minor Adverse = Less Than Substantial Harm*
- *Former Stamford and Wansford Railway ... Moderate Adverse = Less Than Substantial Harm*

*Cumulatively = Less Than Substantial Harm*

8.3.85. The Applicant did not separately assess the effect on the gate-piers, gate or linesman's hut.

### **Royal Observer Corps Bunker**

8.3.86. This is a small concrete bunker located approximately 20m north of the existing A47 to the west of the existing entrance to Sacrewell Farm. It falls in an area excluded from the Application site. It was identified by the Applicant from Ministry of Defence (MoD) records and likely dates from the Second World War. The bunker is partially buried in an embankment and screened on all side by trees.

8.3.87. The Applicant considers that the asset holds medium value due to its local to regional historic and architectural interest. It is considered to be of group value with other Defence of Britain assets in the region. The setting is camouflaged from casual observation and access to the highway network. The Applicant is of the view it makes a 'moderate positive' contribution to the asset.

8.3.88. The Applicant is of the view that without mitigation there is a prospect that the assets may be physically harmed by accidental damage or possible site clearance. However, by use of appropriate fencing this would be avoided therefor there would be 'no change' of effect on the bunker from permanent construction effects which would therefore be 'neutral'.

### **Mile marker**

8.3.89. Although not originally identified by the Applicant PCC noted its existence in its RR [RR-036]. This is currently situated on the north verge of the A47 slightly to the east of the petrol filling station. The Applicant in its Response to Relevant Representations (RR) [REP1-010] stated that the site had been noted in Appendix 6.1 [APP-085] but it had not identified the mile marker in the site walkover. No assessment of its significance was made by the Applicant, but it agreed to amend the REAC to include measures to record, protect, remove if necessary, conserve/ restore and re-install. It then suggests (reference CH4 in the REAC in the EMP [REP6-001]) putting the marker forward for listing.

## Other heritage assets

Known archaeological remains, geophysical anomalies, cropmarks and findspots

- 8.3.90. The Applicant notes that notwithstanding the archaeological surveys undertaken to date, the precise extent of these assets is unknown. Therefore, the Applicant has grouped the assets and survey results by location and character. The Applicant has identified nine zones from west to east set out in paragraph 6.6.73 of Chapter 6 of the ES [REP2-010]. Most of these zones are of medium heritage value, although Zone 5, which encompasses the scheduled barrow cemetery and quadrilateral ditch area abutting the Application site directly north of the A47 to the Stamford and Wansford railway line to the east and north-east is of high value, and Zone 3, a field directly south of the A47 and east of Wansford, has been also assessed as being of high value due to evidence of the Roman to Anglo-Saxon transition period which is rare throughout England.
- 8.3.91. The archaeological trenching undertaken shows a good correlation with the previous geophysical survey. However, a number of features were found during the trenching that had not been previously identified. Consequently, the Applicant considers it must be assumed that there is the potential for further finds in both the surveyed and unsurveyed area.
- 8.3.92. The greatest quantity of identified remains come from Roman and early-medieval times and therefore, the Applicant surmises, similar is likely to be uncovered in the remaining areas, notwithstanding that they may be less substantial than the known remains. The Applicant also suggests that it is possible that the area may also include the potential for the discovery of downed World War II aircraft due to the proximity of RAF Wittering approximately 5km to the northwest of the Application site. While such a find would elevate the heritage value of these undiscovered assets, the Applicant considers that the overall area has potential low heritage value.
- 8.3.93. The Applicant has committed to undertake further archaeological investigation to be agreed with PCC. Paragraph 6.8.13 of Chapter 6 of the ES [REP2-010] sets out a strategy. This would be complemented by a Written Scheme of Investigation, to be agreed with PCC and HE, to ensure that any previously unidentified features found are dealt with appropriately. The signed SoCG with PCC [REP11-009] indicated that it was agreed that the second iteration of the EMP would include a detailed Heritage Written Scheme of Investigation (Heritage Mitigation Strategy) and this was also to be the subject of Requirement 10<sup>70</sup> in the dDCO. This was also agreed in the SoCG with HE [REP10-011].
- 8.3.94. The Applicant acknowledges that construction works would physically remove large parts of these assets which would have a 'major adverse' permanent construction effect. However, through the programme of

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<sup>70</sup> The SoCG incorrectly refers to Requirement 9.

archaeological recording to be agreed with PCC *"to preserve the assets by record and contribute to regional research framework objectives"*. The Applicant indicates that such significance of effect could be 'neutral' or 'slight' and had chosen neutral on the basis that recording and dissemination of information would add significantly to understanding of archaeology in the area. This applies both in the zones with architectural potential and outside.

## **8.4. THE CASE FOR INTERESTED PARTIES**

### **Peterborough City Council**

#### **Scheduled Monument**

- 8.4.1. PCC made no comment in either its RR or the LIR about any effects of the Proposed Development on the Scheduled Monument. At ISH2 ([EV-015] from 54:01 onwards) PCC concurred with the views of HE and noted that cremation burials may have taken place in the 'blank space' which would not be picked up by the investigations to date.

#### **Archaeology**

- 8.4.2. PCC in the LIR [REP2-068] notes that *"the programme of archaeological work has not been completed, namely targeted area excavations, including the area of the Scheduled Monument which will be obliterated"*. PCC considers *"it is difficult to assess significance with a reasonable degree of confidence"*.
- 8.4.3. PCC also notes that in the wider Application site *"there are outstanding areas of the revised route and there are now Zones which have not been investigated"*. The 'revised route' being the current Application as opposed to that consulted on.

#### **Mile Marker**

- 8.4.4. PCC requested that the Mile Marker should be re-laid as close to its original position as possible.

#### **Conservation Areas**

- 8.4.5. In relation to the nearest Conservation Areas, PCC considers that those at Thornhaugh and Wansford would not be materially affected. However, in relation to Sutton Conservation Area, it notes that this has become more isolated over the course of the 20th Century through the loss of the active ford and the previously upgraded A47. PCC considers that there does not appear to be any justification for Sutton Drift being downgraded to a cycle track in historic terms. If the route is amended then it needs to be clear that Sutton Drift was the main historical route to the village.

#### **Model Farmhouse and wall**

- 8.4.6. PCC considers that the proposed level of recording, Level 2 on the HE's Mitigation Strategy, may not be sufficient if surveys indicate it to be unstable; this eventuality should be provided for.

## **Wansford Road Railway Station**

- 8.4.7. PCC objects in principle to the demolition of any buildings and structures. It accepts that due to other factors it may be necessary to demolish the buildings. Appropriate mitigation, in the form of a Level 4 survey should be undertaken, while the Applicant is only proposing a Level 3 survey. PCC also notes a lack of clarity regarding the gate piers and gates.

## **Historic England**

### **Scheduled Monument**

- 8.4.8. HE confirmed that it considered the impact on the Scheduled Monument would be acceptable. The proposed encroachment avoids areas of very high significance and considers the Proposed Development would represent less than substantial harm to the significance of the asset.
- 8.4.9. The works would avoid the southernmost of the ring ditches, which is one of the more important features in the cemetery group. HE indicates that there are no known features of high evidential or archaeological significance in the area to be directly affected by the Proposed Development.
- 8.4.10. The Proposed Development would also result in a small change to the significance of the heritage asset due to the effects of development within its setting. This is through the erosion of the rural setting of the Scheduled Monument and the increase in separation between it and the River Nene. This, however, would represent less than substantial harm and at the lower end of the spectrum.
- 8.4.11. There were discussions at ISH2 in relation to the Scheduled Monument and its nature (see below in the comments on behalf of WPC), HE emphasised the importance of 'blank space' in relation to a heritage asset and its setting.
- 8.4.12. In relation to the alternative alignment proposed by WPC, HE was of the view that this would cause a greater level of harm. When asked about the level of harm that "Option 3" (see paragraph 5.4.6) would cause (ExQ3.4.1) HE [REP8-037] indicated that this would represent substantial harm.
- 8.4.13. HE acknowledged this assessment was not based on a full scheme proposal and needed to be caveated in these terms. However, the reason for this being substantial harm was that it *"would result in the loss of important elements and features that contribute to the overall significance of the assets. ... A new double carriageway would result in the total loss of a number of key burial features that make up the late Neolithic and early bronze age burial cemetery. These features particularly the barrows and ring ditches are an important part of its designation. They have high archaeological and historic interest and therefore removal of these features would severely compromise the integrity of the cemetery as a whole and diminish the heritage values of the remaining part of the monument"*.

## **Wansford Road Railway Station**

- 8.4.14. HE considers that the former station, although not a designated asset, has a high degree of significance for its function. The demolition would *"result in a very high degree of harm and total loss of significance."*
- 8.4.15. HE considers that Heath House, the station and the bridge together form a good grouping of railway related infrastructure. As well as the direct effect there would be harm to the setting of the retained assets. HE considers that this is regrettable but unavoidable.
- 8.4.16. In relation to recording, this should include not only the buildings, but also the gate piers and gates. HE notes the negotiations that were taking place for relocation of the assets and hoped they would prove successful.

## **Mile Marker**

- 8.4.17. In response to ExQ2.4.2 HE indicated [REP5-030] that it was not clear as to whether the mile marker would meet the criteria to be added to the national list as it has not been put forward. It therefore considers that for this Examination it should be considered to be a non-designated heritage asset.

## **Wansford Parish Council**

### **Scheduled Monument**

- 8.4.18. WPC makes a number of points about the Scheduled Monument and its significance. It notes that the field was deep ploughed until at least the early 1980s. This was confirmed at ISH3 by Mr Grange who is a trustee of the William Scott Abbot Trust and by Mr Robert Reid who was a student at Sacrewell Farm at this time<sup>71</sup>. This lessens the historic evidence physically available.
- 8.4.19. WPC refers to the Headland Report [APP-089] and notes that this relates to the original (pre-2018) extent of the designation. It notes that Toll Bar Field has been described over time as a Roman settlement, an iron age settlement reused in Roman times and a series of bronze age burial mounds.
- 8.4.20. WPC notes [REP2-071] that the only surveys of the Scheduled Monument have been non-intrusive and thus the only factual evidence is in the form of pottery fragments, coins, arrow heads and the like.
- 8.4.21. While the magnetic surveys are clear that human activity has taken place, there is a lack of certainty as to what they represent. WPC notes this site is near the crossing point of two droving routes and the Wansford to Stamford railway was well known for carrying livestock. WPC

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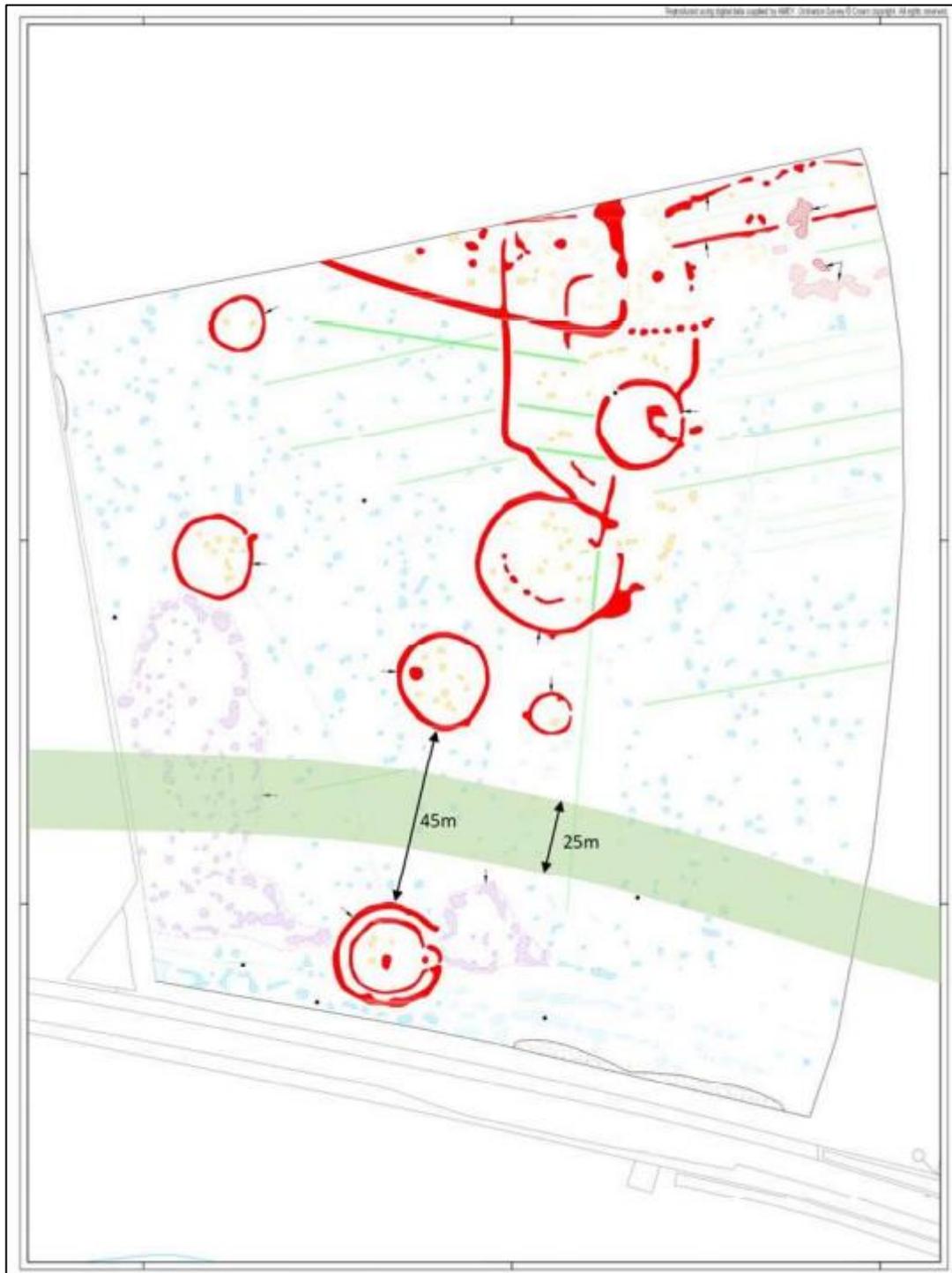
<sup>71</sup> Although the majority of the Scheduled Monument is outside the Application site the land parcel directly affected, plot 4/2f on the Land Plans [REP8-002], is owned, according to the Book of Reference [REP10-007] on behalf of the William Abbott Trust and occupied by Riverford Organic, who operate Sacrewell Lodge Farm.

hypothesizes that the southern anomaly may be a drovers' pen to contain animals, which would be much more modern than the up to the Roman period assumptions of the designation.

8.4.22. WPC maintains that the lack of documentary evidence about the southern portion of the Scheduled Monument, together with the 'gap' between the southernmost magnetic anomaly and the more closely aligned anomalies slightly to the north, could lead to the conclusion that the Scheduled Monument is in fact two assets, one being the southern anomaly and the remainder a group to the north. WPC also queries the interpretation of the anomalies within the rings. Figures 11 and 12 of [REP2-071] shows WPC's potential analysis of the assets within Toll Bar Field.

8.4.23. WPC also suggests that there is sufficient space between the separate ring feature in the southern portion of the site and the other features, particularly noting the lack of anomalies in this area, that there would be sufficient space to insert the dual carriageway. The proposed line, which is similar to Option 3, is shown on Figure 6: Alternative line of Proposed Development in vicinity of Scheduled Monument, which was put in by WPC and SPC.

**Figure 6: Alternative line of Proposed Development in vicinity of Scheduled Monument<sup>72</sup>**



### **Sutton Parish Council**

8.4.24. SPC believe that although the Railway Station would, inevitably, be demolished, it should be rebuilt within the Parish [REP3-030]. This should

<sup>72</sup> Source: Figure 8 of 'A47 Wansford to Sutton Alternative Visions 4 July 2018' which can be found at Annex A to the Applicant's Response to Relevant Representations [REP1-010].

be at a site around 100m from the existing site, immediately to the south of the existing railway bridge, which the landowner has agreed to facilitate.

- 8.4.25. In relation to the closure of part of Sutton Drift to vehicular traffic, SPC considers that this would enhance the setting of Sutton Conservation Area as it would remove noise and disturbance in this area.

### **Other Interested Parties**

- 8.4.26. Mr David Johnson [RR-007] considers that the evidence as to the importance of the scheduled monument and whether of any archaeological value is not proven.
- 8.4.27. Mr Robert Reid [RR-039] indicates that details of what is in the southern area of the scheduled monument needs to be resolved. He considers [REP2-081] it more likely to be a round house with a ring ditch and fire pit, which he notes are quite numerous in the area.

## **8.5. EXA'S CONSIDERATIONS**

### **Designated Heritage Assets**

#### **Scheduled Monument**

- 8.5.1. Issues as to whether the site should have been designated, or the extent of the designation are not something that can be part of my consideration. The site has been so designated, and this has not been challenged in the Courts. However, it is necessary for me to judge the extent of any harm that may occur. To undertake that exercise, it is necessary to analyse the evidence that is available.
- 8.5.2. Apart from during periods of dry weather when the field is differently coloured (see photograph in Figure 3 of [REP2-071]), there are no above ground marks to indicate that this field is of any greater archaeological or historic interest than any other in the area.
- 8.5.3. The main evidence on the archaeology of the field is the Headland Report from 2017 [APP-089]. This deals with the extent of the scheduled monument as it existed at that date. The Geophysical Survey Report [APP-087] does not cover this area with the information shown in purple being "AP Transcribed Data", although it states "*Roman shards are visible in large quantities on the surface of the ploughed field*" for Toll Bar Field.
- 8.5.4. There are two main issues to deal with, that relating to the Proposed Development and to consider the analysis put forward by WPC as part of its contention that the route of the proposed road should be further to the north.
- 8.5.5. The significance of the asset is in dispute, and this could only be resolved by an excavation of the field. There are seven rings. The Applicant, HE and the formal designation identify them as "ring ditches". The northern six have varying discrete anomalies within them that may indicate burial

pits, cremations and/ or inhumations<sup>73</sup>. There are a number of straighter features, described as a quadrilateral, which may be indicative of Roman habitation.

- 8.5.6. The seventh ring to the south is discrete from the other features. This is a double ring with the outer being approximately 30m in diameter and the inner approximately 20m in diameter. The designation identifies an internal cut feature that *"may represent the grave of a primary burial while a further cut feature at the eastern edge of the outer ditch line could be that of a secondary interment"*<sup>74</sup>.
- 8.5.7. However, the dating of this is conjecture simply because no intrusive investigations have taken place. WPC's hypothesis of it being a drovers' pen with remnants of a fire pit and buried bones, or Mr Robert Reid's that it is a round house with a ring ditch and fire pit, would be as valid.
- 8.5.8. WPC has shown (see Figures 5 and 6 of [REP2-071]), through the results of the field walks undertaken in the 1970s and 1980s that the vast majority of pottery is in the, now, centre of the scheduled monument. Consequently, I give less weight to the comment in the Geophysical Survey Report [APP-087] about the large quantities of Roman shards as this report does not identify the location(s). In fact these two figures, along with Figure 7, showing building materials, samian ware and tiles show effectively no Roman evidence in the southern part of the scheduled monument.
- 8.5.9. It is also the case that the significance of the scheduled monument has been degraded by the deep ploughing that occurred in the post-World War II period until the early 1980s, and by the introduction of field drains.
- 8.5.10. To my mind, the significance of the scheduled monument relates to the interconnection of a number of features in close proximity. There would appear to be an overlapping of ring and Roman features, but this is limited since the ring features are generally further to the south. This tends to show the sequential nature of occupation of the sites, given it is on higher ground between two waterways, the River Nene and Wittering Brook.
- 8.5.11. From the evidence in front of me, it would appear that the six more northerly ring features have some sort of connection. The fact that the southern ring is a double ring indicates to me that it is of a different period. This is not to decry its importance in the overall scheduled monument since it demonstrates the importance of the site over time, and, if WPC is correct, into post-Roman times.

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<sup>73</sup> Full body burials.

<sup>74</sup> Taken from the formal designation [REP2-073].

- 8.5.12. Nevertheless as a scheduled monument it is of the highest importance nationally and harm should be minimised, as great weight should be given to its conservation.
- 8.5.13. The Proposed Development would result in works to 27m<sup>2</sup> of the area with the scheduled monument. A significant proportion of this would be in the area of "magnetic disturbance" as shown on "Illus 6 'Interpretation of magnetomer data" in the Headland Report. The report indicates that "*magnetic disturbance around the field edges is due to ferrous material within or close to the adjacent field boundaries and is of no archaeological interest*". There is no technical evidence to dispute this.
- 8.5.14. Thus while there would be encroachment into the scheduled monument, this would be limited, and in an area of limited, if any, archaeological importance. This would, in agreement with HE, give rise to less than substantial harm to the asset and, to my mind, be at the lower end of such harm for an asset of this importance.
- 8.5.15. The introduction of a dual carriageway road in this location would result in harm to the setting of the scheduled monument because of the increase of an 'urban' setting and separation from the River Nene, which would have been one of the reasons for the choice of the site in pre-history times. However, I judge that the harm would be less than substantial.
- 8.5.16. Turning to WPC and SPC's alternative vision for a line running through the scheduled monument this would bifurcate the asset. As I have set out above, it is not for me to go behind the designation. This proposal would cause direct harm to the scheduled monument in that it would physically affect the designated area. However, I am far from convinced by the views of both the Applicant and HE that it would result in substantial harm.
- 8.5.17. While it is clearly a matter of planning judgement as to where the line between substantial and less than substantial harm is to be drawn, there is guidance set out in the PPG. This makes it clear that substantial harm is a high test depending on whether the works seriously affect a key element of the interest. I do note that minor works do have the potential to cause substantial harm. Clearly, this is an asset with the highest level of significance.
- 8.5.18. Here the alternative route would avoid all the known features within the site. None of the seven ring features nor the quadrilateral enclosure would be directly affected; they would all be physically preserved. None of the key features would be lost. However, the insertion of a dual carriageway would intrude into the overall asset and, to my mind would give rise to less than substantial harm, and in the middle of the range of this harm.
- 8.5.19. In similar way, the setting of the asset would be adversely affected. Again this would represent less than substantial harm as it would not seriously affect any of the key elements of the scheduled monument.

This would be at a slightly higher degree of harm when compared with the Proposed Development since it would affect the rural setting to a greater degree, but it would result in lesser harm elsewhere as the relationship of the scheduled monument with the River Nene would be enhanced through the loss of intervening highway infrastructure.

### **Sacrewell Farmhouse and Mill**

- 8.5.20. The significance of the Sacrewell Farmhouse and Mill relate to their historic connections to the farming of the area, combined in the Mill with the fact that it remains with working wheels. The Mill pre-dates the farmhouse and demonstrates how some of the early industrial process integrated with agriculture. Particularly around the mill the other agricultural buildings provide part of the setting. The mill ponds and race to the west also form an important part of the setting.
- 8.5.21. Currently the setting is partially compromised by the noise and views of traffic on the A1, A47 and the Wansford east roundabout.
- 8.5.22. The Proposed Development would bring the noise and intrusion, particularly from the free-flowing link road between the A1 south and A47 closer to the Mill increasing, if imperceptibly, noise levels. During construction and during the first years of operation there would be significant visual intrusion, and this would be only partially mitigated over time as the landscaping matures.
- 8.5.23. The proposed drainage ponds to the west of the mill ponds would also have a negative effect on the setting of the mill. The new ponds, of a more 'natural' design cause harm as they do not relate well to the slightly more formal setting of the mill created by the existing man-made ponds.
- 8.5.24. In terms of the NPSNN there would be less than substantial harm to the settings of both buildings. Due to its distance from the highways and the higher importance of the Grade II\* listed mill, this would be more significant for the mill than the farmhouse. I therefore consider that the harm would fall within the moderate range for the Mill but limited for the farmhouse.

### **Model Farmhouse and wall**

- 8.5.25. There are two designated heritage assets in this locality. The Model Farmhouse itself, and associated structures, and the separate listed wall. The significance of the assets derives from its date, 1685, and from materials and features. The significance of the listed wall derives from its date, being similar to the Farmhouse, and is a rubble wall. The wall is listed for its group value with the Farmhouse.
- 8.5.26. Neither asset should be directly affected by the Proposed Development. However, the proximity of the works at the junction of Upton Drift and Main Road could lead to harm, principally through damage by accidental striking or vibration.

- 8.5.27. Damage should be avoided to the listed and curtilage walls since the REAC CH4 in [REP6-001] indicates a full survey and construction risk assessment is to be undertaken. This would ensure appropriate preventative measures to avoid damage. With this commitment I am satisfied that the setting of the wall and Farmhouse would be preserved.

### **Conservation Areas and listed buildings therein**

#### Sutton

- 8.5.28. In looking at the Sutton Conservation Area Appraisal [REP2-064] it is clear that the significance of the Area relates to its position as a river crossing and its links to nearby villages. There are two main approaches, from the east along Nene Way, and from the north along Sutton Drift. The latter being the more historic. As the Conservation Area Appraisal makes clear, from all approaches the village is barely visible until the viewer is almost upon it. There are, of course, additional accesses along the Nene Valley long distance footpath, and from the north along the former railway line.
- 8.5.29. The closure of Sutton Drift would result, to my mind, in some harm to the setting of the Conservation Area as it would result in the loss of the historical route to the village from the north to all traffic. The retention of the route as a cycle-track would allow the historical approach to be still appreciated by those who could use this facility. Overall, I conclude this would result in less than substantial harm to the setting of the Conservation Area.
- 8.5.30. I am satisfied that the Proposed Development would not result in any harm to the settings of any of the listed buildings within the Sutton Conservation area which would thereby be preserved.

#### Stibbington

- 8.5.31. The significance of the Stibbington Conservation Area relates to its history and its function as a crossing point for the River Nene at the ford that connected it to Sutton. I would agree with the Applicant that it is an inward looking settlement, but as the settlement relates to the river to the north the setting is affected by the landscape to and beyond the river.
- 8.5.32. During construction and in early years of operation the Proposed Development would be clearly seen from within the Stibbington Conservation Area to the south of the River Nene leading to some harm. The proposed landscaping along the southern side of the Proposed Development would mature over time and this would mitigate this to some degree. However, the proposed landscaping would remove the views of the ridge to the north of the River Nene and would lead to some harm to the setting of the Conservation Area. Consequently, there would be less than substantial harm to the significance of the Conservation Area, although this would be towards the lower end.

8.5.33. Due to the distance involved and landscaping I am satisfied that the settings of the various listed buildings within this vicinity would be preserved.

Other settlements

8.5.34. I would agree with the Applicant that there would be no adverse effect on the other Conservation Areas in the area, those in Thornhaugh and Wansford, from the Proposed Development and these and their settings would therefore be preserved.

## **Non-designated Heritage Assets**

### **Wansford Road Railway Station and Wansford to Stamford railway line**

8.5.35. The significance of the Railway Station buildings derives from their relationship to this part of the Wansford to Stamford railway line and to each other. In my view, the group is made not only of the buildings at the station, that is the station building, the linesman's hut and platform, but also the gate and gate piers, the bridge and Heath House as the former station master's residence. The railway line itself exhibits industrial development in the area and highlights the importance of connections between communities over time.

8.5.36. Individually, the buildings vary in quality. The station building itself has been subject to considerable works to facilitate its use as a dwelling. These have reduced its importance as a piece of architecture. It, however, still clearly retains its character as a former station building. The linesman's hut has also been the subject of various works but, constructed out of similar materials to the station building, is clearly part of a coherent whole.

8.5.37. The platform evidently sets out its history and is readily readable as such. The bridge is also an important structure in its own right allowing two different modes of transport to intersect. The gate and gate-piers are not obviously related to the station, but plainly date from the same historical period.

8.5.38. Heath House is located to the northwest, slightly separate from the other structures and does not readily read as part of the group of railway architecture. Its significance derives principally from the historical connection to the station, which is not obvious to the non-informed viewer.

8.5.39. The Proposed Development would result in the demolition of the station building, the linesman's hut and the removal of the gate and gate piers. Contrary to the Applicant's assertion, in my view, this would result in the permanent loss of these assets and the complete loss of their significance. In my view there would be substantial harm to all. Recording does not change this degree of harm.

- 8.5.40. In relation to the platform the intention of the Applicant not clear. It appears that part of this would be outside the area for the embankment for the main line, but some would be within. While it is possible that the area under the embankment could be covered over, this is not clear and to all intents and purposes this would be lost. Even if a remaining section of the platform were to be left, it would be so removed from the context of a station that here the Proposed Development would result in substantial harm.
- 8.5.41. The re-use of the bridge would allow members of the public to appreciate it better as it would become more visible in the public domain from the proposed bridleway. The relationship with the railway line itself would be preserved. However, its setting would be harmed through the location of the dual carriageway to the north and from the disconnection from the railway buildings at the station. In my view, taking these harms and benefits together would result in less than substantial harm.
- 8.5.42. The loss of the buildings in particular would have a direct effect on the Wansford to Stamford railway line as a non-designated heritage asset in its own right harming its significance. The setting of the line would also be harmfully affected from the loss of rural setting and loss of tranquillity from an increase in noise. In both cases, direct effect and to setting, I consider this would represent less than substantial harm as the vast majority of the railway line would not be affected by the Proposed Development.
- 8.5.43. In relation to Heath House, the loss of the station buildings as a whole would remove the historical relationship. However, the building would remain, and in my mind, the Proposed Development would result in less than substantial harm to the setting of the building.
- 8.5.44. The Proposed Development does not involve the relocation of any of the buildings. The REAC CH3 in [REP6-001] indicates the building materials will be made available for the purposes of historic building restoration and reclamation with a preference for local railway organisations or projects. However, although this is secured in the REAC, no alternative location is confirmed and ensured through the documentation forming part of the Application, this cannot count in any meaningful way as mitigation for the harms occasioned. Consequently, in my view, the harms identified do not change.
- 8.5.45. That a site has been identified and provision under Designated Funds secured, does not alter this; the location being some distance from the Application site.

### **Mile Marker**

- 8.5.46. The mile marker was not originally identified as an asset. However, once identified, arrangements have been made for its removal, care and re-location. Its significance relates to being a piece of road architecture in relation to the A47. At present it should be considered to be a non-designated heritage asset.

8.5.47. PCC indicates that the mile marker has been moved over the years as the road has been altered. While the mile marker would be less visible to those travelling on the opposite carriageway, the intrinsic relationship of the mile marker to the road would remain. This would therefore lead to less than substantial harm and at the lowest end of such harm.

### **Royal Observer Corps Bunker**

8.5.48. The bunker is currently well concealed in vegetation by the entrance to the Sacrewell Farm complex. Its significance relates to history and that this area was considered important in the defence of the Realm. Part of its setting relates to the access to the Farm.

8.5.49. The Proposed Development would remove the access road to the west and disconnect the Observer Bunker from this. I would therefore disagree with the Applicant which considers that its setting would not be affected. This, however, is not to say that harm would result as the main relationship would remain with the east-west line of the A47 and the new access to the Sacrewell Farm complex provided. I am therefore satisfied that the setting of the bunker would be preserved.

### **Archaeology**

8.5.50. As a full archaeological survey has not been completed it is not possible to say for certain as to the extent of archaeology that would be affected by the Proposed Development or its significance. However, the information provided, absent the site of the scheduled monument, does indicate that it is unlikely to be of high worth. I am therefore satisfied that a proportionate analysis, in line with paragraph 5.127 of the NPSNN, has been carried out.

8.5.51. The Proposed Development in Requirement 8 would make provision for a Written Scheme of Investigation to be drawn up, submitted and approved by the SoS. This would ensure that a full archaeological investigation would take place as appropriate.

8.5.52. While it is inevitable that any archaeology found would be lost from its location through the construction of the Proposed Development, the Requirement does ensure that any finds are properly recorded, reported and where appropriate archived.

8.5.53. Overall, I am satisfied that the Proposed Development, taken with the draft DCO, makes adequate provision for the investigation and recording of any archaeology within the Application site.

## **8.6. CONCLUSIONS**

8.6.1. I have considered the effect of the Proposed Development on designated and non-designated heritage assets including archaeology and have concluded that there would be less than substantial harm to a number of designated heritage assets and both substantial harm and less than substantial harm to non-designated heritage assets. These conclusions

will feed into the overall assessment and planning conclusions at Chapter 16 of this report.

8.6.2. Great weight should be given to any heritage asset's conservation, with the more important the asset the greater the weight, in accordance with paragraph 5.131 of the NPSNN and paragraph 199 of the Framework, and great weight and importance should be given to any harm to a heritage asset in the overall balance in line with Regulation 3 of the Decisions Regulations and this is done in Chapter 16 below.

8.6.3. In the context of this chapter and the issues related to cultural heritage, taking all relevant documents and policies into account, I conclude that the Proposed Development:

- would result in less than substantial harm to the following designated heritage Assets:
  - o the Scheduled Monument (direct effects and effect on setting);
  - o Sacrewell Farm (Grade II) and Mill (Grade II\*) (effect on setting);
  - o The Sutton Conservation Area (effect on setting); and
  - o The Stibbington Conservation Area (effect on setting);
- would preserve the following designated heritage assets and their settings:
  - o Model Farmhouse and Wall (Grade II);
  - o Listed buildings within the Sutton and Stibbington Conservation Areas;
  - o Thornhaugh Conservation Area and associated listed buildings; and
  - o Wansford Conservation Area and associated listed buildings.
- would result in substantial harm and total loss of significance to the following non-designated heritage assets:
  - o Wansford Road Railway Station, linesman's hut, gate and gate piers and platform (direct effect);
- would result in less than substantial harm to the following non-designated heritage assets:
  - o Wansford to Stamford railway (direct effect and effect on setting);
  - o Wansford Railway bridge (effect on setting);
  - o Heath House (effect on setting); and
  - o Mile Marker (direct effect).
- would preserve the following non-designated heritage asset:
  - o Royal Observer Corps Bunker (effect on setting).
- as detailed surveys have not been completed it is not possible to be certain as to the effect on unidentified archaeology, but I consider that there is adequate information and appropriate mitigation in place to ensure any such archaeology is properly considered (direct effects and effect on setting); and

- that all other heritage assets not specifically referred to in this paragraph would be preserved as would be their settings (direct effects and effect on setting).

8.6.4. The Proposed Development would, subject to the balancing exercise in Chapter 16, comply with the relevant decision making policies set out in the NPSNN. Similarly subject to the balancing exercise to be carried out in Chapter 16, it would also comply with Local Plan Policy LP19 relating to heritage assets and archaeology and Huntingdonshire Local Plan Policy LP 34.

## **9. FINDINGS AND CONCLUSIONS IN RELATION TO BIODIVERSITY**

### **9.1. INTRODUCTION**

9.1.1. This chapter considers the effect of the Proposed Development on biodiversity, ecology and the natural environment. In particular it deals with:

- Habitats:
  - o International - Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites;
  - o National - Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNRs); and
  - o Local - including designated County Wildlife Sites (CWS);
- Ancient woodland and protected trees (including veteran trees); and
- Protected species.

9.1.2. Matters relating to international sites and HRA are set out in Chapter 15 of this report. Discussion over air quality effects is undertaken further in Chapter 10, those relating to the effect on BMV agricultural land are dealt with in Chapter 11, and those relating to the Water Environment are dealt with in Chapter 12.

### **9.2. POLICY AND LEGAL CONTEXT**

#### **National Policy Statement for National Networks**

9.2.1. The NPSNN at paragraph 5.25 indicates *"as a general principle, and subject to the specific policies below, development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives"*. The Applicant *"may also wish to make use of biodiversity offsetting in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated. Where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought"*.

9.2.2. In taking decisions, paragraph 5.26 of the NPSNN indicates the SoS *"should ensure that appropriate weight is attached to designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity, and to biodiversity and geological interests within the wider environment"*.

9.2.3. Specifically, in relation to ancient woodlands and veteran trees, paragraph 5.32 of the NPSNN states the SoS *"should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location,*

*clearly outweigh the loss. ... Where such trees would be affected by development proposals, the applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons for this”.*

- 9.2.4. As far as mitigation is concerned paragraph 5.36 of the NPSNN indicates *“applicants should include appropriate mitigation measures as an integral part of their proposed development”.*

## **National Planning Policy Framework and Planning Practice Guidance**

- 9.2.5. The Framework emphasizes (paragraph 174) that sites of biodiversity or geological value and soils should be protected and enhanced by, amongst other matters, net gains for biodiversity.
- 9.2.6. Paragraph 180 of the Framework notes that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated then planning permission should be refused. Similarly, development within or outside a SSSI which is likely to have an adverse effect on it should not normally be permitted, unless the benefits of the development in the location clearly outweigh both its likely impacts on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs.
- 9.2.7. Paragraph 180 of the Framework goes on to state that development resulting in the loss of veteran trees should be refused unless there are wholly exceptional reasons, and a suitable compensation strategy exists. Footnote 63 gives examples of wholly exceptional circumstances including NSIPs where the public benefit would clearly outweigh the loss or deterioration of habitat.
- 9.2.8. The PPG explains<sup>75</sup> biodiversity net gain as delivering measurable improvements by creating or enhancing habitats. The PPG also indicates<sup>76</sup> the Defra biodiversity metric can be used to demonstrate whether or not biodiversity net gain will be achieved<sup>77</sup>. The PPG also

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<sup>75</sup> Reference ID: 8-022-20190721

<sup>76</sup> Reference ID: 8-025-20190721

<sup>77</sup> The Applicant utilised Defra Biodiversity Metric version 2.0. Versions 3.0 and 3.1 were published before the Examination opened and during the Examination respectively. NE guidance at the time of the publication of version 3.0 indicated *“Users of the previous Biodiversity Metric 2.0 should continue to use that metric (unless requested to do otherwise by their client or consenting body) for the duration of the project it is being used for as they may find that the biodiversity unit values metric 2.0 generates will differ from those generated by Biodiversity Metric 3.0”.* I consider that the use of Biodiversity Metric 2.0 for the consideration of this Proposed Development would be appropriate as NE are satisfied it can continue to be used in existing projects. Should the SoST consider that the Biodiversity Metric 3.0 or 3.1 should be used, then this may require further consultation.

states<sup>78</sup> "it is good practice to establish a detailed management plan to ensure appropriate management of the habitat in the long term".

## **Local Plan**

- 9.2.9. Local Plan Policy LP22 on the Green Infrastructure Network seeks to maintain and improve the existing green infrastructure network. Strategic and major developments should incorporate opportunities for green infrastructure to reverse the decline in biodiversity and restore ecological networks at a landscape scale, reverse habitat fragmentation and increase connectivity of habitats.
- 9.2.10. Local Plan Policy LP24 on the Nene Valley requires development to protect and enhance biodiversity and contribute to linking surrounding habitats through habitat creation and improved green infrastructure.
- 9.2.11. Local Plan Policy LP28 specifically deals with Biodiversity and Geological Conservation. The policy sets out, insofar as is material to the Proposed Development, that developments should:
- aid the management, protection, enhancement and creation of priority habitats; and
  - promote an effective, functioning ecological network of core sites, buffers and wildlife corridors to link to green infrastructure.
- 9.2.12. The policy sets out the hierarchy of international, national and local sites and habitats and species of principal importance. All development should conserve and enhance this network commensurate to their status, and should deliver a net gain in biodiversity.
- 9.2.13. Policy LP29 deals with Trees and Woodland. It sets out an overall principle that existing tree and woodland cover is maintained, improved and expanded and opportunities for expanding woodland are actively considered. The policy makes clear that a proposal that would result in the loss of ancient woodland or the loss of aged or veteran trees outside ancient woodland will be refused unless there is an exceptional basis based on need outweighing the loss. Specific standards are set out for tree and woodland compensation.

## **9.3. THE CASE FOR THE APPLICANT**

### **Introduction**

- 9.3.1. Chapter 8 of the ES addresses Biodiversity. The originally submitted Chapter [APP-046] was updated in August 2021 [AS-015] in response to s51 advice when the Application was accepted. The original chapter was supported by various Appendices and Figures including a confidential badger appendix [APP-114] which was not published on the Planning Inspectorate website. The summary set out below derives from the public version of the ES.

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<sup>78</sup> Reference ID: 8-027-20190721

## **Biodiversity**

### **General Approach**

- 9.3.2. The Applicant has set out its overall approach. It initially identified a Zone of Influence (ZoI) for the Proposed Development within which receptors could be significantly affected, and then identified and described the baseline ecological conditions and valued each biological receptor on a geographic scale. It then went on to look at potential development activities that might affect these receptors, mitigation and compensation measures where necessary. It then went on to look at enhancement opportunities to result in an assessment of the significance of residual effects.
- 9.3.3. Only receptors of local or greater value or those with legal constraints (for example, badgers and invasive non-native species (INNS)) were taken forward for assessment.
- 9.3.4. The Applicant's assessment was undertaken in reference to DMRB LA 108 Biodiversity. If an activity was considered not to have any observable effects (either positive or negative) then it was not taken forward. Impacts were considered for two categories, construction and operation. The former includes permanent effects caused by construction and the latter includes activities which would arise as a result of the use of the Proposed Development.
- 9.3.5. Activities in both construction and operation were assessed against a number of parameters:
- whether positive or negative;
  - whether of temporary or permanent duration;
  - reversibility;
  - extent;
  - magnitude; and
  - timing and frequency.
- 9.3.6. Mitigation measures were developed as part of an iterative process to reduce effects both during construction and operation.
- 9.3.7. Cumulative impacts from multiple sources can make habitats and species more sensitive to effects. Consequently, the Applicant has considered cumulative effects of the Proposed Development in combination with all other developments within the ZoI.
- 9.3.8. The Applicant considers that no in-combination effects should be anticipated from the other A47 corridor schemes due to the distances involved (see footnote 29} and thus these were scoped out from further assessment.
- 9.3.9. Consultation was undertaken with NE, and various resource depositories and biodiversity groups in both Cambridgeshire and Northamptonshire with specific consultation relating to specific sites where appropriate.

- 9.3.10. DMRB LA 108 indicates that the importance of designated sites depends on the geographical level to which they are protected, from international through national, regional, county<sup>79</sup> to local, which is taken as the scheme and vicinity. For species, the importance is determined by their level of protection and relative rarity, population size, how easily they spread or disperse and whether they are threatened.
- 9.3.11. INNS were considered due to the legal requirement to control or manage them, and badgers were considered because of the legal requirement set out in the Protection of Badgers Act 1982.
- 9.3.12. Table 8-1 of Chapter 8 of the ES [AS-015] sets out a matrix determining the significance of effect depending on the importance of the resource against the level of impact.
- 9.3.13. The Applicant indicates that mitigation was deemed as being required either where there is a legal obligation to ensure an offence was not committed, or where impacts have been identified, with mitigation proposed (if practicable) using a hierarchy of avoid, mitigate, compensate and enhance.
- 9.3.14. Constraints on surveys are set out in the relevant studies, but notwithstanding this, the Applicant considers none represent a significant limitation, barrier or gap in assessing a base-line robustly. However, it should be noted that Environmental DNA (eDNA) surveys of ponds could not be undertaken in 2020 due to the pandemic. The Applicant has undertaken its analysis of this on a precautionary basis.
- 9.3.15. Due to the variety of biological receptors, different distances were considered in relation to different receptors. This was based on the Chartered Institute of Ecology and Environmental Management (CIEEM) Guidelines for Ecological Impact Assessment in the UK and Ireland, LA 108 and professional judgement. They are set out in Table 8-2 of Chapter 8 of the ES [AS-015]. Table 8-3 of Chapter 8 of the ES sets out the surveys undertaken.

### **Construction and operational effects**

- 9.3.16. The Applicant has identified a list of potential impacts that may occur during the construction stage. These are set out in paragraph 8.8.6 of Chapter 8 of the ES [AS-015]. These effects include not only direct effects, such as site clearance and land take, but indirect effects such as the creation of barriers. Similarly operational impacts are set out in paragraph 8.8.8 of Chapter 8 of the ES and include effects from air quality and noise and mortality from road traffic collisions.
- 9.3.17. Tables 8-9 and 8-10 respectively set out predicted construction impacts and operational impacts, in each case prior to mitigation for each of the habitats and species set out below.

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<sup>79</sup> The Peterborough City Council area.

## **Design, mitigation and enhancement**

- 9.3.18. The Applicant sets out its overall approach to avoid or reduce the ecological effects associated with the Proposed Development and to maximise any benefits. This would be secured via the REAC in the EMP [REP6-002] secured through Requirement 4 in the dDCO [REP11-002].
- 9.3.19. Table 8-11 in Chapter 8 of the ES [AS-015] sets out specific ecological design and mitigation measures during construction relating to individual habitats and species. Where necessary, these are set out below against the relevant resource.

## **Habitats**

- 9.3.20. Table 8-4 of Chapter 8 of the ES [AS-015] identifies ten statutory designated sites were identified from on-line resources (MAGIC<sup>80</sup>). However, this includes the Nene Washes SAC/ SPA/ Ramsar site/ SSSI, which is in fact four separate designations. Three sites, the Nene Washes SAC, SPA and Ramsar site were identified of international importance. Ten SSSIs, including the Nene Washes SSSI, were assessed as biodiversity resources of national importance and two NNRs were assessed as biodiversity resources of national importance.
- 9.3.21. As a result of the information provided within the ES and following responses from IPs to ExQ1.2.18 and the discussions at ISH2 the Applicant also considered potential effects on the Rutland Water SPA and Ramsar site. As this relates to the potential need for a Habitats Regulations Assessment this is considered further in Chapter 15.
- 9.3.22. The Applicant notes that there are no statutory designated sites notified for bats within 30km of the Proposed Development.
- 9.3.23. In addition to the statutorily designated sites, the Applicant identified 52 non-statutory designated sites within 2km of the Application site. These comprise:
- 31 County Wildlife Sites (CWS);
  - 6 Ancient Woodlands (consisting of 11 parcels);
  - 1 Local Geological Site (LGS);
  - 7 Wildlife Trust Reserves (WTR) and Local Wildlife Sites (LWS); and
  - 7 Potential (Local) Wildlife Sites (PWS).
- 9.3.24. These are also set out in Table 8-5 of Chapter 8 of the ES [AS-015]. The CWSs are considered by the Applicant to be of county importance and the ancient woodland sites as being of national importance. The nearest area of ancient woodland is Abbots/ Lounds Wood approximately 0.7km north of the site north of Thornhaugh.

## **Botanical surveys**

- 9.3.25. An extended Phase 1 survey was undertaken in September 2016, with subsequent surveys undertaken in April 2017, May 2019 and June/ July

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<sup>80</sup> The Multi-Agency Geographic Information for the Countryside.

2020 to update information and in response to the Scoping Opinion. The habitats identified are set out in paragraph 8.7.18 of Chapter 8 of the ES [AS-015].

- 9.3.26. Botanical surveys were undertaken in July 2016 with updates in July 2017, June 2018 and June/ July 2020. These surveys focussed on areas where the Applicant considered habitat was of particular biological interest or a priority habitat identified in the Phase 1 surveys. Hedgerow surveys were undertaken by the Applicant, who recorded the number of different species in 30m blocks.
- 9.3.27. Of the important habitats identified by the botanical survey, two, which would be directly affected, were deemed by the Applicant to be of importance at county level. These were both near Sacrewell Farm, one a unit of unimproved neutral grassland to the east of the Farm, and one of semi-improved neutral grassland between the A1 and the entrance to the Farm.
- 9.3.28. Those receptors considered by the Applicant to be potentially affected are described below. This includes, taken from Table 8-14 of Chapter 8 of the ES [AS-015], the Applicant's assessment of effects both without and with mitigation.

#### **Sutton Heath and Bog SSSI**

- 9.3.29. Sutton Heath and Bog SSSI supports mire and calcareous grassland of the Jurassic limestone type and neutral grassland of the base-poor marsh type. The full citation can be found in [REP5-031]. It is considered to be of national value.
- 9.3.30. The Applicant asserts that there would be no direct impacts from the Proposed Development but acknowledges that there may be indirect impacts through the pollution of habitat from the effect on air quality and surface water run-off, water level or drainage changes, sedimentation and accidental spillages.
- 9.3.31. Mitigation during construction would take the form of the utilisation of best practice techniques secured in the EMP and the implementation of a construction phase drainage system.
- 9.3.32. The Applicant does not believe it is possible to mitigate any operational effects of the Proposed Development, particularly in relation to air quality effects.
- 9.3.33. The Applicant believes that there would be a temporary 'moderate adverse' effects that would take place during construction but, in operation the Proposed Development would result in 'no change' leading to a 'neutral' effect.

### **Sutton Meadows North, Sutton Meadows South and South Dismantled Railway CWSs**

- 9.3.34. The first two of these CWSs lie within the Application site, with the third 0.5km to the south. Without mitigation here there would be direct impact on the first two sites through land-take and indirect impacts on all three from surface water run-off, sedimentation, water level changes and air pollution gradually degrading habitats.
- 9.3.35. To mitigate the effects the Applicant proposes utilising best practice techniques secured in the EMP and the implementation of a construction phase drainage system. To compensate for the partial loss (approximately 1.2ha) of the Sutton Meadows North CWS a new area (approximately 2.6ha) of restored species rich grassland/ wildflower meadow would be established and managed.
- 9.3.36. Trees lost would be compensated for and there would be further enhancement planting. Specific construction techniques would be used to maintain the existing seedbank which would be set out in the EMP. The flooding compensation storage area would be planted back to pre-existing flood meadow habitat, similar to Sutton Meadow South.
- 9.3.37. To mitigate the operational effects of surface water run-off, sedimentation and water level changes the Proposed Development would include the provision of attenuation ponds to reduce run-off and filter contaminants. This would apply to all other CWSs in the area.
- 9.3.38. The Applicant acknowledges that the Proposed Development would, without mitigation, have a 'major adverse' effect during construction and a 'minor adverse' effect when in operation. However, it believes that through mitigation this would be a 'minor beneficial' effect during construction and 'neutral' in operation.

### **Woodland and hedgerows**

- 9.3.39. Woodland units within the Application site comprise, according to the Applicant, plantation or secondary woodland, but are considered to be of enhanced value given the scarcity of woodland in Cambridgeshire. It is therefore considered to be of local value. Two units would be directly affected by the Proposed Development.
- 9.3.40. Four units of species-rich hedgerow were identified by the Applicant on site and as being of county importance. One unit would be removed by the Proposed Development. Four species-poor hedgerows, one species-poor defunct hedgerow and one species-poor hedgerow with trees would be directly affected by the Proposed Development. These are considered to be of local importance.
- 9.3.41. The biological assemblages on site have been assessed by the Applicant as being a resource of local level biodiversity importance. The hedgerows were assessed as a resource of county importance.

- 9.3.42. To mitigate the operational effects of surface water run-off, sedimentation and water level changes the Proposed Development would involve the provision of attenuation ponds to reduce run-off and filter contaminants.
- 9.3.43. Without mitigation the Applicant considers that there would be a 'major adverse' effect on hedgerows and deciduous woodland. With mitigation the Applicant believes that this would reduce to a residual 'moderate adverse' effect on hedgerows and deciduous woodland with a residual 'moderate adverse' effect on hedgerows and deciduous woodland.

### **Veteran Tree**

- 9.3.44. In response to the RR from the Woodland Trust [RR-045] which pointed out that oak tree T20 in the Arboricultural Impact Assessment [APP-096] was a veteran tree which was due for removal the Applicant acknowledged that the tree would be removed. This was not assessed in the original or revised version of Chapter 8 of the ES [AS-015].
- 9.3.45. However, in its response to the RR [REP1-010] the Applicant takes the view that as the proposal is for a NSIP its loss would be acceptable provided it was mitigated. This mitigation is shown in the EMP [REP8-014] as part of the planting proposals.
- 9.3.46. In ExQ2.2.1 the Applicant was asked [PD-010] whether the revised standing advice from NE and the Forestry Commission published in January 2022 made any difference to its response. The response from the Applicant [REP2-022] did not answer this question in respect of veteran trees. In ExQ2.2.3 [PD-010] the Applicant was asked to "*explicitly set out those parts of the planting proposals that would have been omitted had there not been a veteran (or locally notable) tree to compensate for*".
- 9.3.47. The Applicant responded [REP5-022] by saying:
- "One tree that is required to be removed has been identified as possibly being a veteran tree (T20) though this has not been confirmed and would make no difference to the scale of compensatory planting proposed.*
- "The Applicant is in the process of organising a survey to determine the veteran status of T20 and will provide further information in due course*
- "The landscaping scheme proposed includes hundreds of new trees including individual trees and areas of new woodland planting. Planting is proposed to mitigate a number of effects including biodiversity and landscape. No specific trees have been identified to compensate for the loss of T20, however proposed tree planting has been selected in areas most suitable for new planting." [my emphasis].*

### **Terrestrial and aquatic invertebrates**

- 9.3.48. During the 2017 surveys 81 species of terrestrial invertebrates were found. Of these, nine were of conservation concern, two designated as Near Threatened, and two species specified under the NECRA. Further

surveys in 2020 recorded 341 species. Of these, 18 were of importance due to their conservation status including phoenix fly (*Dorycera graminum*) which is listed under the NERCA. The Applicant has assessed the terrestrial invertebrate assembly as being of local level importance.

- 9.3.49. Turning to aquatic invertebrates, 64 species were identified by the Applicant in the surveyed area of the River Nene during the baseline surveys undertaken in 2017, including one regionally notable species. In the 2018 update 87 species were identified in the same area including five locally notable species. The 2020 survey update identified at least 124 taxa of aquatic invertebrate, of which 104 were identified to species. This included three regionally notable, ten locally notable, and two red-list species, a bi-valve and dragonfly. As the Applicant attributes the increase in species diversity to improvements in water quality, it can be assumed that these figures are not cumulative.
- 9.3.50. A specific survey at Sutton Heath and Bogs SSSI was also completed in June and August 2020. The Applicant identified at least 62 taxa of aquatic invertebrates, with 40 identified to species level. One red-list species, a snail, and one species of local biodiversity resource importance, a backswimmer, were recorded.
- 9.3.51. Overall, the Applicant considers that the aquatic invertebrate assembly is a biodiversity resource of local level importance.
- 9.3.52. Mitigation for terrestrial and aquatic invertebrates from harm caused during construction would be achieved by minimising permanent habitat loss by design and introducing compensatory planting. Pollution events would be managed by the use of best practice techniques and continual monitoring within the EMP.
- 9.3.53. To mitigate the operational effects of surface water run-off, sedimentation and water level changes the Proposed Development would involve the provision of attenuation ponds to reduce run-off and filter contaminants.
- 9.3.54. Without the mitigation the Applicant considers that the Proposed Development would have 'minor adverse' effects during construction and operation, but these would be reduced to 'neutral' through mitigation.

### **Great crested newts**

- 9.3.55. Targeted surveys for great crested newts (GCN) were undertaken at Stage 1 (2016) by the Applicant with negative results to eDNA surveys in 15 waterbodies. Further surveys in 2020 identified 40 waterbodies within the survey area. Nine were to the south of the River Nene which was therefore scoped out as the river provides a barrier. Fourteen were found to be dry, one no longer existed and five others were not suitable for GCNs as they contained running water.
- 9.3.56. From this, Habitat Suitability Index assessments were undertaken in five of the remaining 11 waterbodies and in four of the five, eDNA surveys (the last being too shallow). Of those waterbodies subject to Habitat

Suitability Index assessments one was considered to be 'good', two as 'below average' and one as 'poor'.

- 9.3.57. Six waterbodies were not accessible during the 2020 update surveys, and the Applicant considers that further survey work is required.
- 9.3.58. If GCNs were to be found within 500m of the Application site in the remaining surveys, then relevant works would need to be the subject of NE licences. This would require enhancement or the creation of new sites to be secured. Enhancement measures would include the creation of tree lines, hedgerows, copses, species-rich grassland and attenuation ponds.
- 9.3.59. To mitigate the operational effects of surface water run-off, sedimentation and water level changes the Proposed Development would include the provision of attenuation ponds to reduce run-off and filter contaminants.
- 9.3.60. The Applicant acknowledges that if GCNs are found, the Proposed Development has the potential for a 'major adverse' effect during construction and operation without mitigation. However, with mitigation this would reduce to a 'neutral' effect in both situations.

### **Reptiles**

- 9.3.61. Reptile surveys undertaken by the Applicant in 2018 and 2020 identified two areas within the Application site where common lizards were found. One location northeast of the A1/ A47 junction and a field southeast of the petrol filling station adjacent to the A47. These were identified as breeding sites due to the presence of juveniles. While this population has been classified as 'low', the Applicant considers it to be a biodiversity resource of county importance.
- 9.3.62. As part of the mitigation strategy for construction effects suitable habitats would be searched prior to works and species translocated if necessary. Site clearance would take place when reptiles are active. Tool-box talks would take place and replanting undertaken where appropriate. Excavations would be covered at night or ramps provided.
- 9.3.63. To mitigate the operational effects of surface water run-off, sedimentation and water level changes the Proposed Development would involve the provision of attenuation ponds to reduce run-off and filter contaminants.
- 9.3.64. Here the Applicant believes that, without mitigation, there would be 'minor adverse' effects both during construction and operation, but with mitigation this would reduce to 'neutral'.

### **Birds**

#### Breeding birds

- 9.3.65. The Applicant undertook an initial breeding bird survey in April to June 2018 when 70 species were recorded, including six in the Birds Directive Annex 1, three in Schedule 1 of the Wildlife and Countryside Act, 14

species on the red-list of conservation concern and 20 species on the amber list.

- 9.3.66. Follow-up surveys in April, May and June 2020 recorded 84 species. Forty-one of these were confirmed as breeding, 22 as probably breeding, 11 were possibly breeding and 10 species as non-breeders.
- 9.3.67. The Applicant considers that the overall assemblage of bird species on-site was typical of this range of habitats and overall, as a biodiversity resource it is of regional importance.
- 9.3.68. Vegetation clearance would take place outside the bird nesting seasons, taking into account the species concerned. Bird boxes would be installed on remaining trees to provide nesting opportunities to mitigate for those lost, with a range of appropriate sizes. In addition, construction techniques, such as noise barriers and lighting direction would be utilised.
- 9.3.69. In relation to operational effects to minimise the risk of mortality, new continuous habitats of hedgerows, woodland, wetland areas and scattered broadleaved trees would be provided. This would then be managed in the EMP. Lighting would be provided with backlight screens to reduce light spill.
- 9.3.70. The Applicant accepts that during construction, without mitigation, the proposal would have a 'major adverse' effect and similarly during operation there would be a 'minor adverse' effect. However, with the mitigation proposed the Applicant maintains that there would be a 'neutral' effect.

#### Barn owl

- 9.3.71. The Applicant identified 10 potential barn owl roosts/ nest sites during the July 2020 site walkovers. Of these, one confirmed nest site was identified and there were two further sightings. The Applicant has assessed the barn owl assemblage as of county level importance.
- 9.3.72. Mitigation for construction effects would be in the form of the creation of rough grassland to provide foraging habitat. In addition, scattered trees would be provided along the new carriageway to encourage barn owls to fly at a suitable height. This, the Applicant believes, would also address the operational effects.
- 9.3.73. In terms of overall effect, the Applicant considers that without mitigation both during construction and in operation there would be a 'major adverse' effect on barn owls. However, the Applicant believes that with the identified mitigation there would be a 'neutral' effect.

#### Wintering birds

- 9.3.74. An initial survey of wintering birds was undertaken in October 2017 and March 2018. Sixty-two species were identified, including five in

Schedule 1 of the Wildlife and Countryside Act and 12 on the red-list and 15 on the amber-list of conservation concern.

- 9.3.75. In a follow-up survey in the first three months of 2020 a total of 71 species were recorded. Table 8-7 of Chapter 8 of the ES [AS-015] sets out the species recorded against the various designations.
- 9.3.76. The Applicant considers that the overall assemblage of bird species on-site was typical of this range of habitats and overall, as a biodiversity recourse, is of regional importance.
- 9.3.77. Mitigation for the loss of species by site clearance, collisions with construction traffic and loss of key foraging areas would take the form of early planting to minimise the period of loss, and new habitat would be created. Further, night-time construction would take place away from key areas for these species. The Applicant considers that this would mitigate the construction effects.
- 9.3.78. In its assessment the Applicant considers that without mitigation during construction there would be a 'major adverse' effect and during operation a 'minor adverse' effect from the Proposed Development. It concludes that with mitigation this would be 'neutral' in both scenarios.

### **Bats**

- 9.3.79. Bat hibernation surveys were undertaken in 2019 and 2020. This identified species and locations (trees and buildings) with hibernation potential.
- 9.3.80. Summer bat surveys identified eight buildings and structures suitable for roosts. Both Station House and Heath House were identified, four buildings at Sacrewell Farm, at Deep Springs House and a maternity roost for a minimum of 60 bats was identified in the A1 bridges. Four trees were noted as roosts.
- 9.3.81. The list of species recorded can be found in paragraph 8.7.62 of Chapter 8 of the ES [AS-015]. Of these the Applicant notes that Barbastelle bats are classified as 'rare', but the surveys only noted these on different days and different locations. Consequently, the Applicant assumes that they are part of the wider bat assemblage and did not consider it a concern.
- 9.3.82. Bat activity surveys undertaken in 2020 by the Applicant included transect surveys both as a whole and crossing point surveys at the disused railway bridge on the former Wansford to Stamford line. There was more commuting activity over the bridge, but there was foraging beneath as well. These surveys identified, overall, more activity north of the A47 than south. Species found in 2020 are recorded in paragraph 8.7.66 of Chapter 8 of the ES [AS-015] with Natterer's bat also found in 2018.
- 9.3.83. The Applicant considers bats within the study area as being of county importance.

- 9.3.84. Harmful effects of the construction of the Proposed Development from loss of roosts, both in trees and buildings, noise, vibration and light would be mitigated by provision of bat boxes and the use of licenced operatives and the use of noise barriers, quieter plant and minimising the time spent undertaking the works. Compensation for loss of habitat would be provided and the appropriate planting would be used to encourage bats to fly through the disused railway bridge to avoid collisions.
- 9.3.85. Harm from light pollution is identified as an operational effect. The Applicant proposes that lighting would be directional and positioned to minimise light spill.
- 9.3.86. The Applicant acknowledges that, without mitigation, there would be a 'major adverse' effect on bats during both construction and operation. With mitigation the Applicant believes that there would be a 'neutral' residual effect in operation.
- 9.3.87. The reason for the 'minor adverse' construction effect is through the time lag between the operations and the delivery of the mitigation. It is only when the planting has matured that the higher flight path from the woodland at Station House would be such that it would encourage bats to fly above traffic reducing casualties.

### **Otters**

- 9.3.88. Otter surveys undertaken in 2017 identified 11 potential holt locations, but none were confirmed. However, a single holt was identified on the banks of the River Nene in 2018.
- 9.3.89. Later surveys in 2020 identified otter activity on Wittering Brook, with five potential otter holts identified, but none confirmed. A further otter laying-up area and one feature with otter holt potential was identified on the River Nene.
- 9.3.90. In light of the above, the Applicant considers the importance of otter within the Application site as a resource of county level biodiversity importance.
- 9.3.91. To avoid mortality or injury from works or pollution, either directly or from disturbance, the Applicant is proposing that the relevant areas would be fenced off and either covered or exit ramps provided. Best practice techniques would be utilised to avoid pollution. In relation to operational effects the Applicant considers that the badger fencing proposed (see paragraph 9.3.98) would indirectly assist otters. Attenuation ponds would aim to treat run-off and the new culvert on Wittering Brook would have an otter ledge.
- 9.3.92. The Applicant considers that in both construction and operation the Proposed Development, without mitigation, would have a 'major adverse' effect. However, with the mitigation proposed this would reduce to a 'neutral' significance of residual effect.

## **Water vole**

- 9.3.93. Surveys were undertaken by the Applicant in September 2020 and identified a population on a 100m section of Wittering Brook, although of low overall density as identified by a latrine and two sets of footprints. Further potential water vole field signs, a potential burrow and latrine, were recorded by Wittering Brook, and potential water vole footprints have been observed on the north bank of the River Nene.
- 9.3.94. Water voles are protected under the NERCAs, are in the Cambridgeshire Biodiversity Action Plan and are on the East of England Priority Species list. This assemblage has been assessed as of county importance.
- 9.3.95. To avoid mortality or injury from works or pollution, either directly or from disturbance, a NE licenced operative would be used and licence obtained to allow for translocation to an existing wetland habitat to the west of Sacrewell Farm, which would then be managed. Best practice construction techniques would also be used. To mitigate the operational effects of surface water run-off, sedimentation and water level changes the Proposed Development would involve the provision of attenuation ponds to reduce run-off and filter contaminants.
- 9.3.96. The Applicant considers that in both construction and operation the Proposed Development, without mitigation, would have a 'major adverse' effect. However, with mitigation this would reduce to a 'neutral' significance of residual effect.

## **Badgers**

- 9.3.97. As set out in paragraph 9.3.1 the relevant information was provided in a confidential badger report. In light of the information in that report, the Applicant considers that the badger population is a biodiversity resource of local importance.
- 9.3.98. The Applicant indicates that the Proposed Development would result in the loss of a single badger sett, and this would require a licence from NE. A new badger sett would be provided in newly planted woodland. The former railway bridge would allow badgers to cross the main line along with badger fencing. Fences would be utilised to direct badgers to this crossing, and this would also provide operational mitigation. Ramps would be provided during excavations and lighting controlled.
- 9.3.99. Once operational the new sett would be monitored. It is also maintained by the Applicant that there is sufficient existing planting to provide a habitat while the new planting matures.
- 9.3.100. In light of the loss of a sett, the Applicant considers that, without mitigation, there would be a 'major adverse' effect both in construction and operation on badgers. However, it concludes that with the mitigation that there would be a 'neutral' significance of residual effect in both situations.

### **Invasive non-native species**

- 9.3.101. Paragraphs 8.7.77 and 8.7.78 of Chapter 8 of the ES [AS-015] set out invasive non-native species that have been identified on site. An invasive non-native species management plan would be implemented to ensure that the introduction and spread of species and diseases did not take place. These would be secured in the EMP.
- 9.3.102. Without the mitigation set out the Applicant is of the view that there would be a 'major adverse' effect from invasive non-native species during the construction period. With the mitigation this, in the Applicant's view, would be a 'neutral' significance of residual effect.

### **Other notable species**

- 9.3.103. The Applicant noted spined loach and bullhead during the aquatic invertebrate species surveys along the River Nene. Both fall within Annex II of the Habitats Directive. Brown hares were recorded and hedgehogs are likely to be present; both of these are s41 species under the NERCA. The European eel, again a s41 species under the NERCA is presumed to be present within the River Nene as eel screens have been installed at the water treatment site "*towards the eastern extent of the Proposed Scheme*"<sup>81</sup>.
- 9.3.104. To avoid and mitigate adverse construction effects habitat would be created, with vegetation clearance being appropriately supervised. Best practice construction techniques would also be used. The operational mitigation measures set out above for other species would, the Applicant believes, provide appropriate mitigation for these species as well.
- 9.3.105. The Applicant believes that the construction and operation of the Proposed Development would, without mitigation, have a 'minor adverse' effect on other notable species. However, it also believes that with mitigation there would be a 'neutral' significance of residual effect.

### **Biodiversity metric**

- 9.3.106. Table 8-13 of Chapter 8 of ES sets out the Applicant's calculations for the gains and losses of various habitat types. Originally no Biodiversity metric was submitted, although paragraph 8.4.15 indicated that it had been prepared. In response to ExQ1.2.4 the results of the use of the Defra Biodiversity metric 2.0 were submitted [REP2-037]. However, as a result of questioning at ISH2 this was effectively withdrawn as it did not include a calculation for hedgerows.
- 9.3.107. Revised Defra Biodiversity metric 2.0 results were submitted at D6 [REP6-005]. Table 7: Results of Defra Biodiversity metric calculation sets out the overall results. There were no river units calculated or off-site effects, so these have been omitted.

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<sup>81</sup> There is a waste water treatment works to the south of Stibbington.

**Table 7: Results of Defra Biodiversity metric**

	<b>Habitat Units</b>	<b>Hedgerow units</b>
On-site baseline	197.78	37,906.88
On-site post intervention	269.68	64,080.53
Total net unit change	74.90	26,173.65
Total net %age change	+38.45%	+69.05%

## **9.4. THE CASE FOR INTERESTED PARTIES**

### **Peterborough City Council**

- 9.4.1. PCC indicates, with the exception of those relating to GCNs, that it is content with the surveys undertaken. As the mitigation that would be necessary is well understood, once the survey results for GCNs are known, then mitigation and compensation can readily be resolved, and PCC is content this is dealt with in the EMP.
- 9.4.2. In respect of the effects on the CWSs, and particularly the Sutton Meadows CWS, the creation of compensation grassland will be detailed in the EMP. PCC indicates that the seed mix should be from cuttings or from botanical species found on site.
- 9.4.3. PCC considers that translocated hedgerows should be considered to be compensation rather than mitigation, with appropriate risk assessments undertaken to avoid failure after translocation. Should there be failure then alternative strategies should be in place.
- 9.4.4. PCC is concerned about the dual use of the Wansford tunnels both as a wildlife corridor and as a bridleway.
- 9.4.5. Overall, PCC is content with the proposal which it considers would comply with Local Plan policies LP22 and LP28.

### **Natural England**

#### **Habitats**

- 9.4.6. NE notes that the Sutton Heath and Bog SSSI is located approximately 40m north of the Proposed Development. NE was initially concerned that there was insufficient information to rule out a likely significant effect in relation to air quality. This is because nitrogen deposition from the Proposed Development would exceed the 1% critical load threshold for this SSSI.
- 9.4.7. In the SoCG between the Applicant and NE [REP11-010] agreed with the Applicant's proposition that "*there was no species sensitive to nitrogen deposition within the southern extent of the SSSI*".

9.4.8. NE notes that there are a number of SSSIs within proximity of the Application site. These are set out in Table 8. In each case NE is satisfied that there would be no direct impact on the SSSI features and that indirect effects from matters such as oil or chemical spills, dust and silt which could result in the loss of plants can be mitigated.

**Table 8: SSSIs in proximity where NE has no objection**

<b>SSSI</b>	<b>Distance to Application site (approx.)</b>
Wansford Pasture	350m
West Abbot's and Leigh Woods	600m
Old Sulehay Forest	1100m
Castor Haglands (also National Nature Reserve)	1100m
Castor Flood Meadows	2300m
Southorpe Roughs	2100m
Southorpe Paddock	1700m
Bedford Purlieus (also National Nature Reserve)	2200m

**Species**

Bats

9.4.9. As set out in paragraph 1.9.4 the Applicant indicated that it had made a 'shadow' application to NE for a bat licence. At D11 [REP11-001] the Applicant indicated that it was "*currently supplying the additional information requested*".

Great crested newts

9.4.10. Although additional surveys have been undertaken in 2022 the results are not known to NE and consequently at this stage it is not possible to rule out adverse effects.

Otters

9.4.11. NE is content with the Applicant's proposals as regards otters, which are that pre-construction surveys would be undertaken to allow for any necessary licences to be obtained. It therefore has no objections in relation to otters.

#### Badgers

- 9.4.12. NE has issued a letter of no impediment in relation to badgers. This can be found in Appendix C to the Applicant's Written Summary of Oral Submissions at Hearings [REP4-018].

#### Water voles

- 9.4.13. NE has issued a letter of no impediment in relation to water voles. This can be found in Appendix C to the Applicant's Written Summary of Oral Submissions at Hearings [REP4-018].

#### Wintering and breeding birds, including barn owls

- 9.4.14. Although NE agrees with the Applicant that prior to mitigation there would be a 'major adverse' effect on wintering and breeding birds, including barn owls, through temporary loss of habitat/ nesting habitat and disturbance, NE is content that the mitigation measures set out, including habitat creation and enhancement, if implemented, would satisfactorily reduce the residual effect.

#### Reptiles

- 9.4.15. NE agrees with the Applicant that there would be a 'minor adverse' effect on reptiles. However, NE is content that the mitigation measures set out including habitat creation and enhancement, if implemented, would satisfactorily reduce the residual effect.

#### **Biodiversity Net Gain**

- 9.4.16. NE recommended the use of version 3.0 of the Defra Biodiversity Metric, and initially considered that further information was necessary to show Biodiversity Net Gain and that this should be an aim of the Proposed Development. It made no further comment in relation to the metric submitted at D6.

#### **Other Interested Parties**

- 9.4.17. The Woodland Trust [RR-045] objected to the loss of tree T20 which is identified in the Arboricultural Impact Assessment [REP4-007] as a veteran tree. It requests that this tree, and others showing similar qualities, should be retained with appropriate buffer zones.
- 9.4.18. Lorraine Turnell [RR-024] objects to the Proposed Development on the basis of the effect on wildlife generally.

### **9.5. EXA'S CONSIDERATIONS**

- 9.5.1. There are two areas of dispute relating to the Proposed Development. The first relates to the potential effects on the Sutton Heath and Bog SSSI and the second relates to the effect on the veteran tree, T20. In addition, there are three areas where matters are unresolved. These

relate to the effect on bats and on GCNs, and Biodiversity Net Gain. I also want to comment on the effects on the three CWSs.

- 9.5.2. Other than these concerns, also taking into account the general objection based on the effect on biodiversity, I am satisfied that the Proposed Development taken as a whole, including the provisions set out in the dDCO, is sufficient to mitigate its effects on both habitats and species.

### **Sutton Heath and Bog SSSI**

- 9.5.3. The extent of the SSSI can be found in Figure 8.2 of the ES, 'Designated Sites and Priority Habitats' [APP-072]. A more detailed drawing showing the relationship of the SSSI to the Proposed Development can be found in Annex H to the Applicant's Response to the Examining Authority's First Written Questions (ExQ1) [REP2-036]<sup>82</sup>.
- 9.5.4. These show that the majority of the SSSI lies to the north of Sutton Heath Road and covers a field. The SSSI includes part of the line of the former railway line and part of the course of Wittering Brook.
- 9.5.5. The topography of the SSSI is important in considering this matter. The SSSI is principally on an east to west downward slope towards Wittering Brook. The field is open but there is woodland along the valley floor and at the southern end of the SSSI. The watercourses which rise on the site flow down to the Brook.
- 9.5.6. NE's concern relates to the deposition of nitrogen within the SSSI and it exceeding the 1% critical load threshold. The Applicant's response is that while parts of the SSSI are within 40m of the main line, and thus subject to air quality effects, there are no qualifying species for which the SSSI is designated in this area and consequently there would be no harm to the SSSI. Rather this area is largely deciduous woodland.
- 9.5.7. This matter was discussed at ISH2 and subject to ExQ2.2.2 and as a result NE provided two drawings, dating from July 1982 and July 1985. These provide habitat mapping across the SSSI and can be found at [REP5-031]. As I understand it, there have been no more recent detailed surveys of the SSSI to discover whether the composition of the habitat has changed.
- 9.5.8. These drawings show that the southern parts of the SSSI closest to the main line of the Proposed Development is largely deciduous woodland. This is confirmed in the cover letter from NE [REP5-031]. The cover letter goes on, "*whilst this does not definitively clear up the reason for designation of this area of woodland, the applicant may consider this useful in supporting their position that it was included because of its hydrological importance*".
- 9.5.9. NE confirmed in [REP5-031] that the hydrological connection between the affected area and the designated feature provides an additional

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<sup>82</sup> The southern extent of the SSSI is the purple line, the Application site is the red line.

pathway for pollutants. However, NE is of the view that this is unlikely to be sufficient to cause an adverse effect on the SSSI.

- 9.5.10. In my view, there is sufficient separation between the qualifying features and the main line for the Proposed Development not to adversely affect the overall integrity of the SSSI from additional nutrients caused by air pollution. Furthermore, as the section of Sutton Heath Road between the existing A47 and the junction with Langley Bush Road would be turned into a cul-de-sac for motorised vehicles, there is likely to be a reduction in pollutants as vehicles are diverted. This section of Sutton Heath Road is within 40m of the qualifying features. The amount of traffic on Sutton Heath Road northwest of the junction with Langley Bush Road is not likely to change other than in line with overall changes in traffic in the area.
- 9.5.11. Therefore, there may be a 'minor benefit' to the SSSI from the Proposed Development rather than any adverse effect. Taking into account the matrix in Table 8-1 of Chapter 8 of the ES [AS-015] as the SSSI is of national resource importance this would give a 'slight positive' effect which would not be significant.

### **Veteran Tree**

- 9.5.12. Despite having identified Tree T20, a Pedunculate Oak, in the Arboricultural Impact Assessment [REP4-007] as a 'veteran tree' the Applicant does not necessarily accept this designation. This is because a full survey has not been undertaken and this is not due to take place until the post-consent stage (see LV3 in the REAC within the EMP [REP6-001]). The Applicant maintains it has been assessed as a 'veteran tree' due to its girth as a 'worse-case scenario'.
- 9.5.13. The Proposed Development means that the loss of tree T20 would be inevitable. A detailed plan showing the location of the T20 in relation to the Proposed Development can be found in Annex H to the Applicant's Response to the Examining Authority's First Written Questions (ExQ1) [REP2-036].
- 9.5.14. In response to ExQ1.2.11 which asked the Applicant to set out its justification for the loss of this tree in light of paragraph 5.32 of the NPSNN, the Applicant indicated [REP2-035] that compensation has been provided as part of the Environmental Masterplan. The Applicant also referred to the Framework which does indicate that veteran trees can be lost where the public benefits of a NSIP would clearly outweigh the benefits.
- 9.5.15. As a follow up to this, I asked in ExQ2.2.3 the Applicant to identify the specific compensatory planting for the loss of this tree. The Applicant indicated [REP5-022] that whether the tree is veteran or not "*would make no difference to the scale of compensatory planting*" and "*no specific trees have been identified to compensate for the loss of T20*".
- 9.5.16. From what I have read, the Arboricultural Impact Assessment [REP4-007] gives no qualification that tree T20 may not be a veteran

tree other than through the general assumptions and limitations of the overall assessment. The information came from a Highways England survey in 2018 and in my view, it is more than reasonable to treat the tree as 'veteran' rather than this being a 'worst-case' situation.

- 9.5.17. The loss of the tree would be inevitable given the route of the main line, and in line with the Framework this may be possible if the benefits outweigh the harms. I will consider this in Chapter 16.
- 9.5.18. However, if the tree were to be removed then compensation should be provided. As a specific item in need of compensation, it should be possible to identify this, but the Applicant is unable to do so. However, given the overall quantity of planting I am satisfied that there is sufficient 'headroom' to ensure proper compensation.

### **Bats**

- 9.5.19. As can be seen from paragraphs 9.3.79 to 9.3.87 the Applicant acknowledges that the Proposed Development would have an adverse effect on bats, and that bat licences under the Wildlife and Countryside Act are required, and has put in a 'shadow' application to NE.
- 9.5.20. NE has requested additional information and the fact that the shadow application was originally made before ISH2 in March 2022 and was still outstanding at the end of the Examination in July 2022 is, to my mind, cause for concern whether this matter is capable of resolution. With appropriate safeguards I would have considered that it would be likely that the proposal would meet the relevant tests set out in legislation. However to be certain on this matter I would recommend that the SoST enquire of the Applicant and NE as to the latest position before making a decision on the overall DCO.
- 9.5.21. Paragraph 5.35 of the NPSNN makes clear that the SoST should refuse consent where harm to species and their habitats would result, unless the benefits of the development outweigh that harm. Should the SoST not receive confirmation that a bat licence is likely to be issued then the Applicant concedes that the Proposed Development would have a 'major adverse' effect on bats both during construction and operation. I will consider the implications of that in Chapter 16.

### **Great crested newts**

- 9.5.22. When the Applicant submitted the Application, it had not completed surveys of all the waterbodies with potential to provide a habitat for GCNs. This was for various reasons principally to do with the pandemic and lack of access. It was indicated that these surveys would take place in 2022 and would form part of the post-consent arrangements.
- 9.5.23. In ExQ1.2.4 I asked a series of questions about this and was advised by the Applicant [REP2-035] *"where survey results are available prior to the close of the Examination an update will be provided to the environmental information. Prior to commencement of construction surveys will be updated as appropriate and will inform detailed design"*.

- 9.5.24. The Applicant's response to my Rule 17 letter of 6 July 2022 [PD-019] querying the latest position on the shadow application in respect of GCNs [REP11-001] was that "*further surveys have concluded that GCN are absent from the site and surrounding area of the Scheme. Therefore no licence is required from [NE] and a [letter of no impediment] has not been applied for*".
- 9.5.25. It can therefore be reasonably assumed that the latest surveys have indicated an absence of GCNs and therefore that the Proposed Development would not affect this species.
- 9.5.26. For completeness, Tables 8-11 and 8-12 of Chapter 8 of the ES [AS-015], dealing with ecological design and measures respectively during construction and operation, both dealt with mitigation measures on a precautionary basis. However, this was not by providing mitigation as part of the EMP, but rather by finding, creating and managing suitable receptor sites at the detailed design stage if necessary.

### **Biodiversity Net Gain**

- 9.5.27. The provisions in respect of Biodiversity Net Gain as set out in the Environment Act 2021 have not yet come into force in respect of NSIPs. It therefore cannot be a mandatory requirement.
- 9.5.28. However, I am pleased to note that according to the undisputed analysis in the Defra Biodiversity Matrix 2.0 that the Proposed Development would result in an increase of 38.4% in relation to habitat units and 69.05% for hedgerow units.
- 9.5.29. While this analysis was not undertaken using the most recent model (Matrix 3.1) and therefore will be less accurate than had this methodology been used, I am satisfied that there is sufficient margin to conclude that the Proposed Development would result in a Biodiversity Net Gain and this should be given moderate weight in favour of the Proposed Development.

### **Sutton Meadows North, Sutton Meadows South and South Dismantled Railway CWSs**

- 9.5.30. There is no dispute that the Proposed Development would result in direct effects on these CWSs. Equally, it is not disputed that the mitigation proposed would not ameliorate this effect. The only dispute is whether part of this site should be utilised as the site for the reconstruction of the Wansford Road Railway Station buildings as is promoted by SPC and Mr Robert Reid (see for example [REP3-030] and [RR-039]). However, this does not form part of the Proposed Development.
- 9.5.31. The Applicant is of the view that the mitigation would lead to a 'minor beneficial' effect during construction. However, I believe that this would only be the case by the end of the construction period since in the meantime the works would have to take place involving the loss of resource.

## 9.6. CONCLUSIONS

9.6.1. Taking all the relevant documentation and policies into account, I conclude as follows:

- there would be no significant adverse effects on nationally designated sites (SSSIs) and locally designated sites;
- there would be the loss of a veteran tree (T20), the effect of this will be considered in Chapter 16;
- it is not possible to be satisfied on the basis of information provided that the necessary bat licences from Natural England will be forthcoming, and the SoST should satisfy themselves in this regard. Without being satisfied in this regard, my view is that consent should be withheld;
- moderate weight should be given to the net gains for biodiversity as evidenced in the Biodiversity matrix;
- while there would be harm to the County Wildlife Sites, appropriate mitigation would be in place to ensure there was no significant effect by the end of the construction period. In the meantime there would be limited harm; and
- subject to appropriate mitigation secured in the dDCO there would not be harm to any other species protected at international, national or local level, which would therefor be preserved and would be neutral in the balance.

9.6.2. Subject to clarification that the necessary bat licence would be forthcoming from NE, and consideration of the effect on International sites in Chapter 15, I am satisfied that the Proposed Development would comply with the decision making criteria set out in the NPSNN in respect of biodiversity and ecological conservation.

9.6.3. The Proposed Development would comply with Local Plan Policy LP22 in that it would enhance biodiversity within the Application site. It would also comply with Policy LP24 relating to the biodiversity of the Nene Valley, and subject to confirmation relating to bat licences would comply with Policy LP28 dealing with Biodiversity and Geological Conservation. Were the SoST to consider that the DCO should be granted, I would conclude there would be an exceptional basis for the Proposed Development and therefore the proposal would comply with Local Plan Policy LP29 in respect of the effect on the veteran tree.

# 10. FINDINGS AND CONCLUSIONS IN RELATION TO AIR QUALITY AND EMISSIONS

## 10.1. INTRODUCTION

10.1.1. This chapter considers the effect of the Proposed Development on air quality matters. In particular it deals with:

- Nitrogen Dioxide (NO<sub>2</sub>), Nitrogen Oxide (NO<sub>x</sub>) and particulate emissions; and
- construction emissions with a bearing on air quality including dust.

10.1.2. This chapter of the report will also consider carbon emissions on the basis that, while it does not affect air quality of itself, it should form part of the report. This includes consideration of the effect of the Proposed Development on the ability of the UK to meet its international obligations in relation to climate change.

10.1.3. The High Court's decision in *The Queen (on the Application of (1) Friends of the Earth, (2) Client Earth, (3) Good Law Project and Joanna Wheatley v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin) (the Net Zero case) relating to the Government's Net Zero Strategy (NZZ) was handed down on 18 July 2022 following the closure of the Examination. I was therefore not able to ask questions about any implications. I will discuss this further below.

## 10.2. POLICY

10.2.1. The NPSNN paragraphs 5.3 to 5.15 deal with air quality and paragraphs 5.16 to 5.19 deal with carbon emissions. Paragraphs 5.81 to 5.89 deal with dust, odour, artificial light, smoke and steam.

### **Air Quality**

#### **National Policy Statement for National Networks**

10.2.2. Paragraph 5.3 of the NPSNN sets out "*increases in pollutants during construction or operation phases can result in the worsening of local air quality*", and "*increased emissions can contribute to adverse impacts on human health, on protected species and habitats*".

10.2.3. Paragraph 5.7 of the NPSNN indicates that the ES should describe existing air quality levels, forecasts of air quality at the time of opening, assuming that the Proposed Development is not built and taking account of the impact of the Proposed Development, and "*should describe any significant air quality effects, their mitigation and any residual effects, differentiating between the construction and operational phases, taking account of road traffic generated by the project*".

10.2.4. For decision making, paragraph 5.10 of the NPSNN indicates that the SoS *"should consider air quality impacts over the wider area likely to be affected as well as in the near vicinity of the scheme"*. Account must be taken of air quality thresholds in domestic and European derived legislation.

10.2.5. Paragraph 5.12 of the NPSNN states the SoS *"must give air quality considerations substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact in relation to Environmental Impact Assessment (EIA) and/or where they lead to a deterioration in air quality in a zone/agglomeration"*.

### **National Planning Policy Framework**

10.2.6. Paragraph 174 of the Framework advises *"Planning policies and decisions should contribute to and enhance the natural and local environment by: ... e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of ..., air ... pollution ... . Development should, wherever possible, help to improve local environmental conditions such as air ... quality"*.

10.2.7. The Framework emphasizes in paragraph 186 that planning decisions should sustain and contribute towards compliance with relevant limit values (LVs) or national objectives for pollutants, taking into account the presence of AQMAs and CAZs, and the cumulative impacts from individual sites in local areas.

### **Local Plan**

10.2.8. Local Plan Policy LP13 dealing with transport notes that major development adjacent to internationally or nationally designated biodiversity sites will require an air quality assessment. Policy LP17 indicates that new development should not result in an unacceptable impact on the amenity of existing occupiers including adverse impacts on air quality from odour, fumes, dust, smoke or other sources. Policy LP33 indicates that development must take account of the potential environmental impacts on people, buildings, land air and water from the development itself.

### **Clean Air Strategy**

10.2.9. The UK Clean Air Strategy 2019 includes within it actions to reduce emissions from transport. It references the 'Road to Zero' document relating to the sale of conventional petrol and diesel cars.

10.2.10. PCC is noted as not being among those local authorities who are required to conduct a feasibility study under the Government's July 2017 UK plan for tackling roadside NO<sub>2</sub> concentrations. It should be noted that this requirement does not relate to roads managed by what is now National Highways.

## **Carbon Emissions**

### **National Policy Statement for National Networks**

- 10.2.11. The NPSNN notes in paragraph 5.16 that *"the impact of road development on aggregate levels of emissions is likely to be very small"*. The ES should describe an assessment of any likely significant climate factors and, for road projects, should provide evidence of the carbon impact of the project and an assessment against Government carbon budgets.
- 10.2.12. For decision making paragraph 5.18 of the NPSNN indicates the Government's overarching carbon reduction strategy *"includes a range of non-planning policies which will, subject to a very unlikely event occurring, ensure that any carbon increases from road development do not compromise overall carbon reduction commitments. Therefore, any increase in carbon emissions is not a reason to refuse development consent unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets"*.
- 10.2.13. Paragraph 5.19 of the NPSNN notes that evidence of appropriate mitigation measures in both design and construction should be presented. The SoS *"will consider the effectiveness of such measures in order to ensure, in relation to design and construction, the carbon footprint is not unnecessarily high"*.

### **Carbon Budget**

- 10.2.14. The Climate Change Act 2008 (2050 Target Amendment) Order raised the legally binding framework to cut greenhouse gases from 80% to 100% of the 'net UK carbon account' (the amount of net UK emissions of targeted greenhouse gases for a period adjusted by the amount of carbon units credited or debited to the account) for the year 2050. The duty is now to ensure that the net UK carbon account is lower than the '1990 baseline'.
- 10.2.15. Achieving this will require future greenhouse gas emissions to be aligned with any future new or revised carbon budgets that may be set out by Government to achieve the target of net zero carbon by 2050.
- 10.2.16. The Government announced its Sixth Carbon Budget (the greenhouse gases emitted over a 5-year period from 2033-2037) in April 2021 with the associated Carbon Budget Order 2021 coming into force in June 2021. This is the latest of a series of carbon budgets. No Carbon Budgets have been published beyond 2037. Table 9: UK Carbon Budgets sets out the periods, carbon limits and per centage reductions below 1990 levels up to 2037.

**Table 9: UK Carbon Budgets**

<b>Budget</b>	<b>Period</b>	<b>Carbon limit (Million tonnes CO<sub>2</sub> equivalent) (MtCO<sub>2</sub>e)</b>	<b>Reduction below 1990 levels</b>
Third (3CB)	2018 – 2022	2,544	37%
Fourth (4CB)	2023 – 2027	1,950	50%
Fifth (5CB)	2028 – 2032	1,725	68%
Sixth (6CB)	2033 – 2037	965	78%

- 10.2.17. In July 2021 the SoST published 'Decarbonising transport: a better, greener Britain' as part of the government response to the Sixth Carbon Budget. This includes that the sale of petrol and diesel cars and vans will cease by 2030, and from 2035 all new cars and vans must be zero emission at the tailpipe. This would also apply to the sale of HGV up to 26 tonnes by 2035 and larger HGVs by 2040.

### **10.3. THE CASE FOR THE APPLICANT**

#### **Air Quality**

- 10.3.1. Chapter 5 of the ES [APP-043] deals with air quality. It is supported by three appendices setting out the Air Quality Modelling process [APP-082], Verification model [APP-083] and Receptor results [APP-084]. There are also eight relevant figures set out in [REP2-018] and [REP2-019].
- 10.3.2. The Applicant explains that air quality is assessed by measuring concentrations of selected pollutants in the air and the impact that these have on sensitive receptors of a human and ecological import. The Applicant has looked at NO<sub>x</sub>, NO<sub>2</sub> and particulate matter of 10 or 2.5 micrometres or less in diameter (PM<sub>10</sub>, and PM<sub>2.5</sub> respectively). The Applicant notes that all of these pollutants originate from vehicle exhaust emissions.
- 10.3.3. The Applicant utilised the methodology in DMRB LA 105 Air Quality from the Defra Local Air Quality Management technical guidance (LAQM.TG(16)).
- 10.3.4. This meant the Applicant sought to identify all roads triggering the highest change to receptors within 200m of the Application site. Sensitive human receptor sites include dwellings, schools and hospitals. Sensitive human receptors and designated sites within this distance of the road links triggered by the screening criteria were selected by the Applicant.
- 10.3.5. The assessment was undertaken in two parts relating to the construction and operational phases, with the former considering both dust and traffic effects. For the operational assessment the Applicant used four scenarios, taking 2015 as the baseline year, a projected based year of

2025 for long-term trends and also 2025 in both the DM and DS situations as the 'opening year'.

- 10.3.6. The Applicant notes that LA 105 states that there is no need to model PM<sub>2.5</sub> as the UK currently meets its legal requirements for the PM<sub>2.5</sub> air quality annual mean objective. This means that PM<sub>10</sub> can be utilised to demonstrate that the project does not impact on the PM<sub>2.5</sub> air quality objective. Thus, if there are no exceedances of the PM<sub>10</sub> objective it can be assumed that there is no risk of the PM<sub>2.5</sub> threshold being exceeded and therefore no assessment is required.
- 10.3.7. The Applicant indicates that the local air quality assessment has been undertaken in the opening year (2025) on the basis that it is expected that air quality will improve over time. Consequently this would represent a 'worst-case' scenario.
- 10.3.8. The Applicant utilised outputs from the strategic transport model which is explained in the Transport Assessment [REP4-008]. This provided data on vehicle flows, speed bands and the percentage of Heavy Duty Vehicles (HDV) in the AM peak, Inter-peak (IPe), PM peak periods and Off-peak periods.
- 10.3.9. The Applicant utilised meteorological data from the Wittering Airfield to the northwest. NO<sub>2</sub> annual mean concentrations were derived from the modelled NO<sub>x</sub> concentrations using Defra's NO<sub>x</sub> to NO<sub>2</sub> calculator with the City of Peterborough being selected as the local authority data as this was where most selected receptors were located.
- 10.3.10. The Model was verified utilising the guidance outlined in LAQM.TG(16) with the 2015 base year annual mean NO<sub>2</sub> concentrations compared against available data. The full model is set out in Appendix 5.2 of the ES [APP-083]. There were no sites which monitored PM<sub>10</sub> concentrations in the study area. Consequently the adjustment factor derived from the modelled road NO<sub>x</sub> was applied to the modelled PM<sub>10</sub> concentrations, consistent with the guidance in LAQM.TG(16).
- 10.3.11. The Applicant has undertaken a 'gap analysis' as outlined in LA 105 to ensure that modelled roadside NO<sub>2</sub> concentrations are not too optimistic, and to account for uncertainties in future roadside NO<sub>2</sub> concentrations. This is to take account of assumed roadside rates of reduction in NO<sub>x</sub> and NO<sub>2</sub> within Defra's modelling tools when compared to observed roadside monitoring trends.
- 10.3.12. To assess the compliance risk with EU Directive LVs, the Applicant has assessed public access and sensitive receptors within 15m of a running lane but not within 25m of a junction.
- 10.3.13. The Applicant explains that it has only assessed sensitive receptors where the outputs from the air quality modelling predict an exceedance in the DM or DS scenarios. Twenty-two locations were modelled, and these are mapped in Figure 5.4 [REP2-019]. These are 'representative' since in some locations a single receptor provides a proxy for a number

of receptors in a locality, for example there are seven receptors which cover the village of Wansford.

10.3.14. Table 5.4 of Chapter 5 of the ES [APP-043] sets out the criteria to assess the magnitude in change in concentration, on a:

- large, greater than 4 micrograms per cubic metre ( $\mu\text{g}/\text{m}^3$ );
- medium, between  $2\mu\text{g}/\text{m}^3$  and  $4\mu\text{g}/\text{m}^3$ ; and
- small, between  $0.4\mu\text{g}/\text{m}^3$  and  $2\mu\text{g}/\text{m}^3$  basis.

Significance is then determined by the number of receptors with either a worsening or improvement of air quality which is already above the objective or, respectively, creation or removal of an existing exceedance.

10.3.15. The Applicant indicates it would conclude that there would be no significant effect for human health receptors if the modelled concentrations for human health are less than the air quality thresholds, and the difference between the DM and DS scenarios is imperceptible, that is less than  $0.4\mu\text{g}/\text{m}^3$ .

10.3.16. In relation to ecological receptors, in line with LA 105, all designated sites within 200m of the ARN have been identified. Using professional judgement, the Applicant has then identified which of these habitats are sensitive to nitrogen deposition.

10.3.17. In accordance with LA 105 transects were created by the Applicant on the roads triggering the highest changes in flows with the Proposed Development. These were at 10m intervals from 10m from the roadside up to 200m. A significant impact occurs where the nitrogen deposition with and without the Proposed Development would be greater than 1% of the lower critical load. The modelled road NO<sub>x</sub> concentration was converted to NO<sub>2</sub> for each point along the transect base, and this was converted to dry nutrient nitrogen deposition rate in kilograms of nitrogen per hectare per year (kg N/ha/yr) and assessed.

### **Study Area**

10.3.18. The Applicant, following LA 105, considered that the Proposed Development should be considered 'large' due to its nature. The sensitivity of the receiving environment was also considered to be high due to the presence of receptors within 50m and 100m of construction activities. Figure 5.1 [REP2-018] shows buffer zones up to 200m from the Application site and the sensitive receptors.

### **Construction effects**

10.3.19. In relation to dust, due to the nature of the scheme, in line with LA 105, the potential of dust risk depending on proximity to the site was assessed. The dust risk potential and receiving sensitivity was then used by the Applicant to inform proposed mitigation measures.

### **Operational effects**

- 10.3.20. In relation to local air quality, in line with LA 105, the Applicant has used the following criteria to assess what represents the ARN:
- an annual average daily traffic (AADT) flow change of 1,000 or more;
  - a HDV flow change of 200 or more;
  - a change in speed band; and
  - a change in carriageway alignment by greater than 5m.
- 10.3.21. From these road links all adjoining roads within 200m of the Proposed Development with modelled traffic data were assessed. This allowed locations for human exposure to be identified, mostly dwellings, but also schools and hospitals.
- 10.3.22. In relation to ecological sites all sites within the NSN along with local wildlife sites, ancient woodland and veteran trees within 200m of triggered links were identified.

### **Baseline conditions**

- 10.3.23. Baseline conditions were assessed from the published sources set out in paragraph 5.7.2 of Chapter 5 of the ES [APP-043]. It is noted that the ARN extends beyond the host authority of the Proposed Development, PCC, and also includes land within the areas covered by NNC and HDC.

### **Air Quality monitoring**

- 10.3.24. In the base year of 2015 there were no automatic monitoring stations within close proximity to the Proposed Development. However, in that year PCC, HDC and East Northamptonshire Council<sup>83</sup> had undertaken some monitoring using non-automatic diffusion tubes. The nearest were adjacent to the A1 at 7 Great North Road in Stibbington in the HDC area and another in Wittering to the north. Both sites reported a concentration below the annual mean objective of 40µg/m<sup>3</sup>.
- 10.3.25. To provide greater detail as to the baseline conditions, the Applicant undertook a six month NO<sub>2</sub> survey from 4 September 2019 to 5 March 2020<sup>84</sup>. A total of three locations were measured and reported, two roadside and one urban background. The results were bias adjusted and annualised in line with LAQM.TG(16) to provide a 2019 annual mean NO<sub>2</sub> concentration. This concluded that there were no exceedances of the 40µg/m<sup>3</sup> annual mean objective; the highest concentration being 25.6µg/m<sup>3</sup> just north of the Wansford west roundabout. These results were then factored back to 2015 to comply with the base year of analysis, so that the annual mean NO<sub>2</sub> concentration for this location was then 39.4µg/m<sup>3</sup>.

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<sup>83</sup> The predecessor to NNC.

<sup>84</sup> In response to ExQ1.1.4 the Applicant indicated [REP2-035] that it considered that the results were not affected by any early effects of the Covid-19 pandemic as the survey was completed before any lockdowns.

- 10.3.26. The Applicant has looked at the Defra base background pollutant maps for concentrations of NO<sub>x</sub>, NO<sub>2</sub> and PM<sub>10</sub>. The latest data comes from 2017 and again this was factored back to 2015. The Applicant considers that these are robust.
- 10.3.27. For modelling purposes the Applicant identified 20 residential properties, two schools and one hospital as exemplars for sensitive receptors. These were chosen to be the most sensitive to changes in air quality concentrations and the highest road traffic emissions.
- 10.3.28. Four ecological sites within 200m of a triggered link were considered sensitive to nitrogen deposition. These are:
- Thorpe Wood – Ancient Woodland
  - Sutton Heath and Bog - SSSI
  - Sibson Flood Meadows – CWS
  - Roadside Nature Reserve – CWS

### **Potential Impacts**

- 10.3.29. The Applicant has undertaken modelling based on the Interim HA Long Term Gap Analysis Calculator v1.1 (LTTE6). This compares Defra's modelling tools to observed roadside monitoring trends. The Applicant considers this to be robust in projecting concentrations of NO<sub>x</sub> and NO<sub>2</sub> for the assessment year of 2025 given the uncertainties of long-term trends.
- 10.3.30. The modelled results are set out in Table 5.14 of Chapter 5 of the ES [APP-043]. These show, according to the Applicant, that there would be no exceedances of the annual mean objectives for any of the selected sensitive human receptors in the opening year in both the DM and DS scenarios.
- 10.3.31. The highest modelled annual mean NO<sub>2</sub> concentration was 27.93µg/m<sup>3</sup> on the Great North Road in Stibbington. The greatest increase related to a receptor on Apsley Way, Peterborough, which is some way to the east of the Application site, where it is calculated that there would be an increase of 1.13µg/m<sup>3</sup> from 19.70µg/m<sup>3</sup> (DM) to 20.83 µg/m<sup>3</sup> (DS). The greatest improvement would be at Black Swan Spinney, a short distance south of the Wansford west roundabout, where a decrease of 0.24µg/m<sup>3</sup> is anticipated from 21.80µg/m<sup>3</sup> to 21.56µg/m<sup>3</sup>.
- 10.3.32. Overall, of the 22 receptors chosen 14 would show a deterioration and 7 an improvement when comparing the DS scenario to that at DM with the last being 'no change'.
- 10.3.33. In relation to PM<sub>10</sub> there were no predicted exceedances in the baseline year. The highest concentration being 18.87µg/m<sup>3</sup> at Great North Road in Stibbington. As set out above, the Applicant maintains that if it is assumed that all the PM<sub>10</sub> particulates are in fact PM<sub>2.5</sub> then there would be no exceedance of the PM<sub>2.5</sub> air quality objective of 25µg/m<sup>3</sup>.

- 10.3.34. Turning to ecological receptors, based on NO<sub>x</sub> levels, an analysis was undertaken which showed that the total nitrogen deposition rate was only exceeded for the Sutton Heath and Bog SSSI. Here nitrogen deposition was greater than 1% of the critical load for the first four modelled transect points.
- 10.3.35. As set out in Chapter 9 of this report Sutton Heath and Bog SSSI supports grassland communities of two main types, calcareous grassland and neutral grassland of the base-poor marsh type, both of which are uncommon in Cambridgeshire. The Applicant maintains that the southern part of the SSSI comprises semi-natural broadleaved woodland, where none of the main species are nitrogen-sensitive or vulnerable, with the core grassland habitat being approximately 150m to the northeast. Consequently, the Applicant considers that the Proposed Development would not have a significant effect on the SSSI.
- 10.3.36. As construction of the Proposed Development is scheduled to take less than two years the Applicant initially screened out air quality effects or the ability to comply with the UK's obligations under the Air Quality Directive. However, as a result of discussions during the Examination explored elsewhere in this report, the Applicant undertook an assessment based on a construction period of up to 28 months. This can be found in the ES Addendum Two [REP8-031]. This stated that the conclusions in Chapter 5 of the ES [APP-043], and set out here, remained unchanged on the basis that it "*would not change the receptors identified, the buffer identified or increase the risks*".
- 10.3.37. As explained above, in relation to the operational effects, the Applicant maintains that the air quality objective was not exceeded at any receptors in the opening year. Consequently, all modelled receptors have predicted annual mean NO<sub>2</sub> concentrations below the objective and the change in nitrogen deposition between the DS and DM scenarios would be less than 1% of the lower critical load for the Sutton Heath and Bog SSSI, there would be no significant effects.
- 10.3.38. However, notwithstanding this, to ensure best practice the Applicant is proposing to incorporate a dust management plan within the EMP.
- 10.3.39. In response to the UK Health Security Agency's (UKHSA) comments set out below, the Applicant, in its Response to Relevant Representations [REP1-010] and Response to Written Representations [REP3-026], notes that it followed the guidance set out in LA 112 and LA 105. Its analysis does not show any significant effects, and it is not aware of any missing information. Because all modelled concentrations of both NO<sub>2</sub> and PM<sub>10</sub> are well below the air quality objectives there was no requirement to model short-term effects, including for NMUs. It emphasizes that it considers there is no need to model PM<sub>2.5</sub> as the UK currently meets its legal obligations.
- 10.3.40. It has confirmed that the analysis does include the village of Wansford, being within the Wittering ward shown in Figure 12.1 [APP-078], which is covered in the human health assessment.

10.3.41. The Applicant indicates it chose 2025 for the 'worst case' modelling assessment across all the A47 RIS schemes, because the vehicle fleet will, thereafter, become more electrified reducing emissions. The number of receptors was chosen in line with LA 105 which indicates that there is no need to model all receptors within 200m or an excessive number to determine whether there are exceedances.

## **Carbon emissions**

10.3.42. The Applicant has provided information on carbon emissions as part of the Application documents and in response to questions raised during the Examination.

10.3.43. The three main documents were:

- ES – Chapter 14 – Climate [APP-052]
- The Case for the Scheme [AS-022]
- Annex D of the Applicant's Response to the Examining Authority's First Written Questions (ExQ1) [REP2-036]

10.3.44. In response to ExQ3.1.1 [REP8-027] the Applicant emphasised that the submissions served different purposes.

10.3.45. Chapter 14 of the ES [APP-052], according to the Applicant, forms part of the information required by the EIA Regulations and the NPSNN to identify and assess likely environmental effects. The Case for the Scheme sets out the need for the Proposed Development and considers its conformity with planning policy and transport plans including the effect in terms of the climate. Annex D of the Applicant's Response to the Examining Authority's (ExA's) First Written Questions [REP2-036] explains how this assessment meets the legal and policy requirements for the cumulative effects of greenhouse gases, confirms the geographic scale is 'national', explains how it complies with the various carbon budgets and wider carbon policies, and explains how the assessment undertaken evaluates impacts and complies with the EIA Regulations.

10.3.46. The Applicant in Chapter 14 of the ES [APP-052] relies on DMRB LA 114 which notes that "*The assessment of projects on climate shall only report significant effects where increases in [carbon] emissions will have a material impact on the ability of Government to meet its carbon reduction targets*".

10.3.47. The Applicant has assessed the following:

- an estimate of carbon emissions involved in the construction of the Proposed Development;
- an estimate of the carbon emissions from the operation of the Proposed Development itself, principally any lighting;
- an estimate of the end user carbon emissions from the use of the Proposed Development;
- a comparison between estimated carbon emissions from the Proposed Development and the UK carbon budgets; and
- opportunities for mitigation in the design.

- 10.3.48. The Applicant has also assessed the vulnerability of the Proposed Development to climate change but maintains that during the construction period<sup>85</sup> this will not be noticeable. Therefore, only normal site practices are required. For the long term because the effects of climate change are more certain only on a global scale rather than local there is uncertainty as to any effects on the Proposed Development.
- 10.3.49. The Applicant has estimated carbon emissions from construction traffic using the Highways England Carbon Tool (v2.3). This was limited to site clearance, earthworks and drainage.
- 10.3.50. The assessment also includes an estimate on carbon emissions from the replacement of the surface course (five times) and binder course (once) over the 60 year assumed life span of the Proposed Development. This accounts for approximately 4,963 tonnes CO<sub>2</sub> equivalent (tCO<sub>2</sub>e).
- 10.3.51. The Applicant has assumed that lighting will be utilised for 4,380 hours per year (that is 12 hours per day on average) with an estimated load of 4.8 kilowatts (kW). This was estimated to produce 285tCO<sub>2</sub>e over the 60 year appraisal period.
- 10.3.52. The Applicant indicates that there is no guidance on how national net zero targets should be applied in assessing the significance of carbon emissions in relation to the Proposed Development.
- 10.3.53. The Applicant has used the Application site as the study area for construction effects but also included the ARN for the assessment of operational effects. This led to the establishment of the DM scenario effects set out in Table 14-6 of Chapter 14 of the ES [APP-052], for the baseline year (2015), opening year (2025), design year (2040) and cumulatively for the whole 60 year design period.
- 10.3.54. The Applicant looked at the UK Climate Projections from 2018 for the East of England Administrative Region, and also in response to ExQ1.1.13, given the proximity, that for the East Midlands Region.
- 10.3.55. As originally assessed the Applicant looked at the 18 month construction period and noted that embedded carbon emissions from construction materials would be the main contributor to climate change, with additional emissions from the direct use of plant and transport of materials.
- 10.3.56. The Applicant has estimated that over the 60 year appraisal period the total emissions based on the DS scenario would be 84,838,049tCO<sub>2</sub>e, which would be 61,021tCO<sub>2</sub>e greater than the DM Figure. Adding this to the emissions from lighting would result in a total increase in carbon emissions from the operation of the development as 61,306tCO<sub>2</sub>e.

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<sup>85</sup> This is both in the period originally assessed (18 months) and the longer period assessed in Addendum Two to the ES [REP8-031] (28 months).

- 10.3.57. Tables 14-9 and 14-10 of Chapter 14 of the ES [APP-052] set out the estimated construction and operational effects over the Fourth, Fifth and Sixth Carbon Budget periods. As the 60 year appraisal period extends beyond the end of the Sixth Budget period in 2037 the Applicant has only utilised emissions to that date in the first of these tables.
- 10.3.58. The Applicant notes that the carbon emission would represent approximately 0.0078% of the UK's Fourth, Fifth and Sixth Carbon budgets, and that approximately 45% of the emissions would occur prior to 2037 with the rest thereafter.
- 10.3.59. The Applicant has looked to see where it could minimise carbon emissions. This resulted in changes during the design process. It argues that the free-flow lane from the A1 southbound to the A47 eastbound would result in lower emissions than would have otherwise been the case. The Applicant also indicates that minimisation of emissions would be sought during the construction phase where possible. This would be secured in the EMP (see references C1 and C2 in the REAC) [REP6-001].
- 10.3.60. Overall, the Applicant considers that the Proposed Development would not be vulnerable to the effects of climate change.
- 10.3.61. In ExQ1.1.10 [PD-010]) I asked the Applicant for comments in light of the quashing of the A38 Derby Junctions DCO by the High Court. I asked for its response to have particular emphasis on the carbon impact, if any, in relation to the Paris Agreement and the UK's Nationally Determined Contribution (NDC) under that agreement, whether the emissions would be so significant as to have a material impact on the ability of the Government to meet its carbon reduction targets, and the direct, indirect and cumulative likely significant effects. I indicated that this should be done on a local, regional and national level on a consistent geographical scale.
- 10.3.62. Annex D of [REP2-036] set out the Applicant's response. In this the Applicant indicated it has followed the advice in DMRB, particularly LA 104 and LA 114.
- 10.3.63. It is stated that the traffic model is 'inherently cumulative' in that the Applicant used data relating to the Proposed Development. For example in the Transport Assessment [REP4-008] and other schemes promoted by National Highways in the near vicinity (that is those which have proceeded beyond preferred route announcement stage), discussions with the relevant planning authority as to where third party development is to be located, and national government regional growth rates, excluding known planning developments, are already included.
- 10.3.64. The Applicant confirms that the DM and DS scenarios set out in Chapter 14 of the ES [APP-052] take account of all developments likely to have an influence on the Proposed Development and this follows the Planning Inspectorate advice in its Advice Note 17 'Cumulative effects assessments relevant to nationally significant infrastructure projects'.

- 10.3.65. In relation to the appropriate geographic scale the Applicant notes that the Climate Change Act 2008 does not impose a legal duty to set carbon budgets on a smaller than national scale. This was confirmed in the case of *R (Transport Action Network) v SoST* [2021] EWHC 2095 (Admin). Further, a net increase in emissions from a particular policy or project is managed within the Government's overall strategy for meeting carbon budgets.
- 10.3.66. Thus, the Applicant maintains, there is no legal requirement to assess the impact of the Proposed Development against the total carbon emissions from RIS1 or RIS2.
- 10.3.67. The Applicant continues that without a target at local or regional level it is not possible to provide a budget on such levels, and thus not able to assess the effects of the Proposed Development on such a scale.
- 10.3.68. The Applicant confirms that it still considers the approach set out in Chapter 14 of the ES [APP-052] to be appropriate, and its conclusions of no significant effect are still valid. The approach followed is all that the Applicant can reasonably be required to do having regard to current knowledge. Here the Applicant refers to *R(Khan) v London Borough of Sutton* [2014] EWHC 3663 (Admin) and *Preston New Road Action Group v SoS Communities and Local Government* [2018] Env L R 18.
- 10.3.69. Following the decisions of the SoST in relation to carbon emissions as set out in the Decision Letters in respect of the M54/ M6 Link Project, the M25 Junction 10/ A3 Wisley Interchange Project and the M25 Junction 28 Improvement Project I asked all IPs whether they wished to make any representations (EXQ3.1.2 in [PD-015]). The Applicant responded [REP8-027] that the documents referred to in paragraph 10.3.43 and summarised above show that the Proposed Development would not "*lead to a breach in any international obligations that result from the Paris Agreement or [the] Government's own policies and legislation relating to Net Zero*".
- 10.3.70. In response to the comments of CEPP below, the Applicant indicated [REP9-015] that it agreed with the SoST's approach, that there is no local or regional basis on which the Applicant can assess the carbon emissions impacts. The Applicant specifically refers to paragraph 55 of the A47 North Blofield to North Burlingham project decision letter (this post-dated CEPP's comments) which had considered similar arguments from CEPP.
- 10.3.71. The Applicant noted at D9 that the decision in the High Court claim where Friends of the Earth, Client Earth and the Good Law Project were challenging the decision of the SoS of Business, Energy and Industrial Strategy to publish the 'Net Zero Strategy: Build Back Greener' document was due, and this may have a number of potential outcomes. The Applicant considered this is not in the scope of this Examination. The Applicant also refers to the publication by what was then Highways England in July 2021 of "Net Zero Highways: our 2030/ 2040/ 2050 plan" as setting out the key role of the Strategic Road Network in net zero

Britain. Approving the Proposed Development would not be contrary to any international obligations.

## **10.4. THE CASE FOR INTERESTED PARTIES**

### **Peterborough City Council**

- 10.4.1. In relation to air quality, PCC indicated that it believed that there would be no significant effects on air quality for any human and ecological receptors [RR-036] and [REP2-068].
- 10.4.2. PCC made no comments in respect of carbon emissions.

### **Cambridgeshire County Council**

- 10.4.3. CCC in the SoCG with the Applicant [REP10-010] supports the position of PCC.

### **Natural England**

- 10.4.4. In relation to the effect on ecological receptors NE initially concluded [RR-032] that it had insufficient information to determine the location and distribution of the qualifying features of the Sutton Heath and Bog SSSI that are sensitive to nitrogen deposition.
- 10.4.5. In the SoCG between the Applicant and NE [REP11-010] agreed with the Applicant's proposition *that "there was no species sensitive to nitrogen deposition within the southern extent of the SSSI"*.

### **UK Health Security Agency**

- 10.4.6. The UKHSA set out its concerns in relation to air quality in both its RR [RR-047] and response to ExQ1.1.2 and ExQ1.1.8 [REP2-077]. These included that the short-term impacts on air quality should be considered rather than just long-term effects.
- 10.4.7. It noted that the study area did not include the village of Wansford, and there should be consistency with the choice of receptors in relation to the effects on Population and Human Health considered in Chapter 12 of the ES [REP4-004] and in Chapter 5 [APP-043] dealing with Air Quality.
- 10.4.8. The UKHSA sought further information on effects during the construction phase, particularly the modelling of the effects of traffic diversions, and why there was no assessment of the effects of the Proposed Development upon the community at Upton.
- 10.4.9. In relation to the operational phase, the UKHSA sought short-term and long-term modelling for PM<sub>10</sub> and PM<sub>2.5</sub> in the DM and DS scenarios. It considered that the scoping out of PM<sub>2.5</sub> should have been supported by reliable data and modelling and predictions. This is because the source of PM<sub>2.5</sub> and PM<sub>10</sub> particles are different and have different health effects. This should, therefore, have been sensitivity tested.

- 10.4.10. The UKHSA has referred to recent evidence from an expert committee of the Department of Health and Social Care which indicates that there is no threshold below which there is no harm, nor should a lower threshold be utilised. Emphasis of the importance of the amount of PM<sub>2.5</sub> in the air is therefore made.
- 10.4.11. The UKHSA also refers to the new guideline from the World Health Organisation (WHO) for PM<sub>2.5</sub> of 5µg/m<sup>3</sup> rather than the 10µg/m<sup>3</sup> utilised at present. The UKHSA has also emphasised the morbidity and mortality impacts of the long-term exposure of man-made air pollution, particularly for PM<sub>2.5</sub> and NO<sub>2</sub>.
- 10.4.12. While the implementation of Net Zero will, in the opinion of the UKHSA, lead to a decrease in certain pollutants, particularly those associated with combustion, particulates associated with brake and tyre wear will still continue and may increase with heavier cars and any overall increase in vehicle miles.
- 10.4.13. The UKHSA queried the choice of the opening year 2025 for the worst-case assessment, on the basis that:
- other years may be less good, particularly through cumulative impacts;
  - the choice of locations for scheme specific monitoring and whether it is representative of 'worst-case' scenarios; and
  - the location of co-location sites 1-3, relative to scheme monitoring; and
  - how findings, which show close to or an exceedance in the Air Quality Standards, inform the risk assessments.
- 10.4.14. The UKHSA expressed concern that 14 out of 22 receptors showed a predicted worsening in air quality. In addition, it queried whether the choice of receptors as single points had underestimated the number of humans affected by the Proposed Development. It also recommended that further details are provided in relation to additional mitigation to prevent a deterioration in air quality.

### **Climate Emergency Planning and Policy**

- 10.4.15. CEPP's RR [RR-006] considered that the Application did not comply with the EIA Regulations in that no cumulative assessment of carbon emissions had been made with other existing or approved projects. This was said to be across all types of emissions including construction, embedded, operation, both of itself and from users, and maintenance, with guidance indicating that it should be done regionally or locally.
- 10.4.16. These emissions should be tested, according to CEPP, against the UK's NDC under the Paris Agreement on Climate Change, the obligations under Climate Change Act 2008 and the UK's Sixth Carbon Budget, and paragraph 152 of the Framework, which refers to "*radical reductions in greenhouse gas emissions*".

10.4.17. In its responses to ExQ3.1.1 and ExQ3.1.2 in [REP8-043] and [REP8-044] relating to the Transport DCO decisions made in April and May 2022<sup>86</sup> CEPP stated it had found "10 key errors" in the decisions relating "to wrong assumptions". These are:

- that the decisions rely upon the "inevitable success" of the Transport Decarbonisation Plan (TDP) and the NZS, these:
  - o have not been quantitatively designed to secure carbon budgets and targets; and
  - o are based on assertion, are not secured and need to be tested in the High Court,
- an incorrect reliance on the inevitable success of meeting the UK's NDC being based itself on the NZS, with the Climate Change Committee indicating that the UK is not keeping up with its obligations;
- the giving of negative weight for increasing carbon emissions:
  - o this relies on the success of the TDP, NZS and NDC, see above, and
  - o positive weight should not be given to the climate adaptation of the Proposed Development as these are separate matters;
- latest scientific evidence requires urgent action now, as a world "we are near to the limit of carbon emissions" and allowing the Proposed Development would not be consistent with this;
- the quotations from the Institute of Environmental Management and Assessment (IEMA) in the three decisions are selective, with that relating to 'Contextualising a project's carbon footprint' not included, and no local or regional assessment has been undertaken;
- the emissions from the Proposed Development are underestimated on the basis that the transport model is not 'inherently cumulative':
  - o LA 104 of DMRB requires a cumulative assessment of, in addition to the Proposed Development, other road projects confirmed for delivery, other development projects with planning permission or consent which were 'EIA development' and proposals in adopted development plans, and
  - o the assessment should be based on a cumulative assessment of all relevant developments in the study area;
- including the 'influence' of all other developments is not the same as 'quantifying' their environmental effects;
- no cumulative assessment for the Proposed Development has been undertaken by the Applicant; and
- the IEMA guidance strongly advocates a smaller than national approach which has not been completed.

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<sup>86</sup> M54 to M6 Link, M25 Junction 10/ A3 Wisley and M25 Junction 28.

10.4.18. CEPP indicates that it would have provided more information on these asserted failings but was prevented from expanding on them in light of [PD-016]. This is discussed in paragraphs 1.4.47 to 1.4.49 of this report.

## **10.5. ExA'S CONSIDERATIONS**

### **Air Quality**

10.5.1. It is not in dispute that the Proposed Development would result in a deterioration in air quality for 14 of the 22 receptor locations chosen and that there would be improvements at 7 locations with the last receptor being subject to no change. What is less clear is, since these are representative locations, is what this means in terms of the number of persons affected by the Proposed Development.

10.5.2. However, at none of the locations where there would be a deterioration would there be an exceedance of the limit values for NO<sub>2</sub>. I am therefore satisfied that the Proposed Development would not have a significant adverse effect on human population health in respect of NO<sub>2</sub>.

10.5.3. NE did not put forward any information to show that the air quality effects of the Proposed Development had been incorrectly modelled. I have dealt with the effect of emissions on the Sutton Heath and Bog SSSI in Chapter 9, as the issue relates to the effect on biodiversity.

10.5.4. It is clear that there is currently a scientific debate as to what quantum of particulates is considered to be acceptable', with the WHO publishing new Global Air Quality Guidelines in September 2021. However, at this stage, the UK Government (in respect of England) has not incorporated this into any regulatory or policy framework. Should this matter change then the SoST may need to consider that in their decision making.

10.5.5. In my view, while the UKHSA may advocate for a lower threshold in quantitative terms, until there is a regulatory change, the air quality objectives set out in Table 5.1 of Chapter 5 of the ES [APP-043] should provide the base for any analysis.

10.5.6. PM<sub>2.5</sub> is a sub-set of PM<sub>10</sub>, that is all particulates categorised as PM<sub>2.5</sub> will be part of those categorised as PM<sub>10</sub>. Therefore, if the PM<sub>10</sub> figure meets the criterion for PM<sub>2.5</sub> then there would be compliance. That different sized particulates will have different effects is recognised by the annual mean concentrations set out in the Limit Values. That they will be from different sources is not material in this regard.

10.5.7. While indicating that it considers that the modelling for particulates should have been sensitivity tested UKHSA does not indicate the results provided are likely to be materially inaccurate. In any event the highest PM<sub>10</sub>/ PM<sub>2.5</sub> figure is 18.87µ/m<sup>3</sup>. This is materially lower than the PM<sub>2.5</sub> LV of 25µ/m<sup>3</sup>. I am therefore satisfied that there would be a sufficient margin of error to ensure compliance with this LV.

10.5.8. Notwithstanding this, as set out in paragraph 10.5.1 as there would be, overall, a worsening of air quality as a result of the Proposed

Development, this should be given negative weight in the overall balance.

- 10.5.9. The choice of any year for the purpose of analysis is a matter of judgement. Given that there is an overall improvement of air quality conditions over time, utilising the opening year (2025) as a base year is, to my mind, a reasonable approach.
- 10.5.10. I am satisfied given the geography of Upton, the nature of the works there, and the increase in traffic levels upon Upton Drift were the Proposed Development to be operational, that there is no need to specifically model the effects of the Proposed Development in this locality. The proposed works relate predominantly to Upton Drift, where there are no sensitive receptors apart from at the eastern end in the vicinity of Model Farm. Here the works for the reconfiguration of the junction are minor, would be of very short duration and would not have a significant effect. The increase in traffic on Upton Drift would be less than that set out in paragraph 10.3.20 and therefore there is no need for it to be specifically modelled.
- 10.5.11. In relation to dust during construction, I am satisfied that subject to appropriate measures secured through the dDCO that there would not be any significant harmful effects in this regard.

## **Carbon Emissions**

- 10.5.12. This section of the report deals with carbon emissions and their implications for the UK's ability to meet its international obligations under the Paris Agreement on Climate Change.
- 10.5.13. Given the timing of this report, and assuming that the SoST makes their decision in accordance with the normal statutory period, and then allowing for any consequential matters, if permission were granted then works would not commence before 2023. Consequently, even with the worst-case scenario of construction taking 28 months and given that the Proposed Development falls in the RIS2 programme until 2025, construction works (other than on-going maintenance once operational) would take place wholly within the Fourth Carbon Budget period (2023 – 2027).
- 10.5.14. Although I would accept that the IEMA guidance does indicate that any analysis should be undertaken at the smallest geographical area possible, I have not been directed to any legislation or policies that indicate that carbon emissions should be assessed at anything less than national level. For example, I am not aware of any indicators set in the Local Plan. Unlike in other subject areas in the environmental assessment process, there are no geographical boundaries against which to judge significance. Rather carbon budgets and the 2050 target relate to the whole of the UK economy and society and not to sectors. Achievement of those targets requires a multiplicity of policy measures addressing the UK as a whole, individual sectors, and factors set out within the Climate Change Act 2008.

- 10.5.15. I also consider that any analysis should be undertaken based on the difference between the Proposed Development happening and it not happening. There is nothing to indicate that were the Proposed Development to be refused that the existing road network would not continue to be utilised.
- 10.5.16. Clearly Carbon Budgets have yet to be set beyond 2037 and it is conjecture as to the levels that will be legislated for. It is also uncertain as to the extent of carbon emissions from traffic as these will be dependent on a multitude of factors, including the take up of electric vehicles both before and after sales of internal combustion engines cease. However, I do consider it reasonable to assume that there will be a reduction in emissions as a residue of combustion over time.
- 10.5.17. The RIS documents are high level documents and have not been assessed for carbon emissions and thus their effect on meeting the UK's Carbon Emission obligations. It seems to me, as the SoST decided in the A47BNB decision, that there is more than one way in which to consider cumulative emissions, not necessarily at RIS level.
- 10.5.18. The Applicant's overall approach is to assess the effects cumulatively in respect of the other schemes promoted by National Highways in the near vicinity, discussions with the relevant planning authorities as to where third party development is to be located, and national government regional growth rates, excluding known planning developments already included. While CEPP considers that this should go beyond this to include all relevant developments in the area, to my mind any assessment needs to be undertaken in relation to a degree of certainty. Given the English planning system is a plan based system, and the plan has been included within the assessment, I consider that the Applicant's approach is reasonable and proportionate.
- 10.5.19. There is no set significance threshold for carbon, and in light of that I consider that it is reasonable to assess the project against NPSNN paragraph 5.18 as set out above. As the decision making for nationally significant transport infrastructure projects is principally based on this document I give less weight to the Framework, while not in any way minimising the need to reduce greenhouse gases.
- 10.5.20. During the Examination the Government published a new version (version 11) of the Emissions Factor Toolkit, which included data relating to the UK vehicle fleet and associated emissions for the period 2031 to 2050 inclusive. I queried with the Applicant the model used for assessing emissions as it had not used version 10 but rather used its own model. This was a manual assessment using data from the traffic model and WebTAG data tables. Then the Applicant added the projections for the different fuel sources (petrol, diesel, electric) and looked at the projections in the design year of 2040. The 2040 vehicle mix was then utilised for the remainder of the 60 year life span of the Proposed Development, meaning it would over-estimate emissions over later years

(see response 6.5 in the Applicant's Written Summary of Oral Submissions at Hearings [REP4-018]).

- 10.5.21. The Applicant explained in response to ExQ2.1.1 [REP5-022] it considers that its model now aligns with the Defra version 11 model and it expects that the two would give similar results, if not identical because the models will have utilised different mixes of vehicles and fuel types.
- 10.5.22. There were no representations that using the Applicant's own model would make a material difference to the consideration of the Proposed Development and I have no reason to take a different view as to the overall approach.
- 10.5.23. However, in looking at emissions during construction, my view is that the Applicant's position is not as accurate as it may otherwise have been. This is for two reasons.
- 10.5.24. Firstly, as discussed in Chapter 11, the construction of the section of the main line and link road between the Wansford east roundabout and Wittering Brook is subject to geotechnical risk. As I have concluded in that chapter, for the purposes of the determination of this Application, the Applicant has taken sufficient cognisance of the risks and has solutions to resolve them. However, some solutions would inevitably result in greater quantities of concrete being used. The manufacture and laying of concrete emits considerable quantities of CO<sub>2</sub> through its exothermic reaction and I have seen no evidence to show that this has been assessed.
- 10.5.25. In paragraphs 11.5.11 and 11.5.12 of this report I note that the Applicant has commissioned a further ground investigation report, but I have not been appraised of its conclusions. It may be from this the Applicant may be able to confirm or otherwise the construction emission figure cited above and thus whether my concerns are unfounded.
- 10.5.26. Secondly, paragraph 14.5.1 of Chapter 14 of the ES [APP-052] indicates that plant emissions during construction only include those for site clearance, earthworks and drainage and that the Applicant considers that construction emissions beyond that could not be estimated due to uncertainties about fuel use. In ExQ1.1.11 I queried why remaining construction emissions could not be estimated from information such as that on construction noise contained in Appendix 11.5 of the ES [APP-127], on the basis that this includes a list of vehicles to be used.
- 10.5.27. The Applicant indicated [REP2-035] that fuel use, and thus emissions, could not be derived from this document on the basis that the 'on time' had been set as a 'worst case' for noise purpose and would not make an accurate assessment for emissions purposes. The Applicant also indicated that noise was based on sound data<sup>87</sup> and did not provide information on fuel use. The Applicant finally indicated that while there is variation from

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<sup>87</sup> Utilising BS 5228-1: 2009 – Code of practice for noise and vibration control on construction and open sites – Noise.

project to project, the emissions from plant that have been included would typically be the largest sources of plant emissions.

- 10.5.28. In my view, this analysis does not adequately deal with the matter. While information may not be accurately available as to the 'on time' for construction vehicles, in the same way as for noise, a 'worst case' estimate could reasonably be made, and fuel use provided from manufacturers' information.
- 10.5.29. A similar issue relates to emissions that may be released during maintenance, including resurfacing the road, over time, although with the decarbonisation of vehicles, which will include construction vehicles, this is less likely to be material.
- 10.5.30. I therefore consider that for these two reasons the Applicant's carbon emission estimate for construction is likely to be an underestimate.
- 10.5.31. As set out above, the Applicant notes that the Proposed Development would produce less than 0.001% (0.0078%) of the UK's Fourth, Fifth and Sixth carbon budgets. However, this statement deserves further analysis.
- 10.5.32. This 0.0078% relates to the whole of the net estimated construction and operational emissions for the 60 year operational life-time of the Proposed Development (2025 to 2084) divided by total budgets for the Fourth, Fifth and Sixth Carbon Budget Periods (2023 to 2037). It is therefore not comparing equivalent timeframes. Effectively, the Applicant is indicating for this calculation that all the emissions from the Proposed Development will have been produced by 2037. It is also the case the Applicant is not suggesting that the road will be in operation until 2025, the third year of the five year Fourth Budget period, and operational emissions should therefore not be commenced until 2025.
- 10.5.33. If the net operational emissions (16,432tCO<sub>2</sub>e) are divided equally over the 60 year life-span, then each operational year would result in 274tCO<sub>2</sub>e. This is likely to be an underestimate in the early years of the operation due to there being fewer electric vehicles on the road and Table 14-10 in Chapter 14 of the ES [APP-052] shows that the Applicant confirms this as it assumes that CO<sub>2</sub> emissions will reduce over time.
- 10.5.34. Table 10 shows the emissions over the life span of the development assuming that operational emissions are constant.

**Table 10: Net emissions over life-span of development<sup>88</sup>**

	<b>Fourth Carbon Budget Period (construction: whole budget period, operation: 3 years)</b>	<b>Fifth Carbon Budget Period (operation: 5 years)</b>	<b>Sixth Carbon Budget Period (operation: 5 years)</b>	<b>Post 2037 (operation: 47 years)</b>
Construction tCO <sub>2</sub> e	19,823			
Amount in budget period tCO <sub>2</sub> e	822	1,369	1,369	12,872
Total in Budget period tCO <sub>2</sub> e	20,645	1,369	1,369	12,872
% of relevant carbon budget	0.00101%	0.000079%	0.000142%	Budget not set

- 10.5.35. Therefore, even if the construction emissions as set out by the Applicant do prove to be underestimates, the percentage of the Fourth Carbon Budget will still represent a very small percentage of the carbon emissions allowed for.
- 10.5.36. In this regard I also note that the Committee on Climate Change has indicated that the UK is on track to exceed the targets set out for the Fourth Carbon Budget which is the budget period against which the construction underestimate would be counted.
- 10.5.37. While the percentages in the early years of the operation of the Proposed Development set out in Table 10 will be underestimates in my view, utilising this analysis, I am satisfied that the Proposed Development is consistent with the existing and emerging policy requirements to achieve the UK’s trajectory towards net zero.
- 10.5.38. The Application was submitted prior to the publication of the NZS in October 2021 and therefore will not have relied upon it. I also note that there is no reference to it in the Applicant’s response to ExQ1.1.10 [REP2-036].
- 10.5.39. While it will be for the SoS to consider the implications of the Net Zero Case, I am satisfied that from the information in front of me that it can be reasonably concluded that the Proposed Development will not result in

<sup>88</sup> Figures have been rounded.

emissions that would prejudice meeting the UK Government's international obligations under the Paris Agreement.

10.5.40. Having said that, it is clear that the Proposed Development would give rise to an increase in carbon emissions. This should be given moderate negative weight in the planning balance.

## **10.6. CONCLUSIONS**

10.6.1. Taking all the relevant documentation and policies into account, I conclude as follows:

- until there is any policy or regulatory change in assessing air quality the existing limit values derived from EU legislation represent the appropriate level against which to assess the Proposed Development;
- there would be:
  - o a reduction in air quality in the opening year in 14 of the 22 receptors modelled, none would exceed the relevant limit values;
  - o dust emissions can be resolved through operation of an EMP secured through the dDCO;

consequently, the effect on air quality should be given moderate negative weight;

- while there are a number of deficiencies in the Applicant's modelling of carbon emissions, given the degree of the underestimate, these would not, in my judgement, affect the overall materiality of the predicted quanta of emissions produced by the Proposed Development;
- the Proposed Development would not affect the UK Government's ability to meet its obligations under the Paris Agreement on Climate Change;
- as the Proposed Development would result in a predicted increase in carbon emissions this should be given moderate negative weight in the planning balance; and
- it is for the SoST to consider any implications that flow from the decision of the High Court in the Net Zero case.

10.6.2. The Proposed Development would not lead to a significant air quality impact nor would it have a material impact on the ability of the Government to meet its carbon reduction targets. Therefore, the Proposed Development would comply with the relevant policies set out in the NPSNN.

10.6.3. The Proposed Development would comply with Local Plan Policy LP13 as an air quality assessment has been provided near to a nationally designated site. Even with the measures secured in the dDCO and associated documents the Proposed Development would not comply with Policy LP17 as there would be a deterioration in air quality affecting existing occupiers.

# **11. FINDINGS AND CONCLUSIONS IN RELATION TO GEOLOGY, GEOTECHNICAL RISK AND SOILS**

## **11.1. INTRODUCTION**

11.1.1. This chapter considers geology and geotechnical risk in relation to the Proposed Development. It also deals with soils and the effect on the BMV agricultural land.

## **11.2. POLICY**

### **National Policy Statement for National Networks**

11.2.1. The NPSNN notes in paragraph 5.116 that land instability may result in landslides, subsidence or ground heave and *"failing to deal with this issue could cause harm to human health, local property and associated infrastructure, and the wider environment. They occur in different circumstances for different reasons and vary in their predictability and in their effect on development"*.

11.2.2. The NPSNN in paragraph 5.117 refers specifically to the Framework and indirectly to the PPG and indicates a development to which the NPSNN applies should be considered in a similar way. It advises applicants to *"seek appropriate technical and environmental expert advice to assess the likely consequences of proposed developments on sites where subsidence, landslides and ground compression is known or suspected"*.

11.2.3. Mitigation is referred to in paragraph 5.119 of the NPSNN where applicants are advised to mitigate and minimise risks of land instability.

11.2.4. Paragraph 5.168 of the NPSNN indicates applicants should take into account the economic and other benefits of BMV agricultural land. Where significant development of agricultural land is demonstrated to be necessary, applicants should seek to use areas of poorer quality land in preference to that of a higher quality.

11.2.5. Paragraph 5.168 of the NPSNN also indicates that applicants should ensure that they have considered the risk posed by land contamination and how it is proposed to address this.

### **National Planning Policy Framework and Planning Practice Guidance**

11.2.6. Paragraph 174 of the Framework indicates that the wider benefits from natural capital, including the economic and other benefits of BMV land should be recognised. It also refers to decisions contributing to remediating and mitigating unstable land.

11.2.7. Paragraph 183 of the Framework indicates that planning decisions should ensure a site is suitable for its proposed use and should take account of

ground conditions and risks from land instability. Paragraph 184 states that responsibility for a safe development lies with the developer.

- 11.2.8. There is a whole section of the PPG on land stability<sup>89</sup>. It reminds that land instability can result in landslides, subsidence or ground heave which could lead to harm to human health and the wider environment. Thus, the planning system has an important role in minimising the risk of land instability on infrastructure.
- 11.2.9. The PPG indicates that a preliminary ground instability assessment should be carried out where appropriate. This should include a comprehensive desk-study and site inspections but may require intrusive site investigations. The report should include mitigation measures.

### **Local Plan**

- 11.2.10. Local Plan Policy LP11 deals with development in the countryside. It includes in Part F that BMV land should be protected for food production and the continuance of the agricultural economy. Consequently, development affecting BMV land will only be permitted where there is insufficient lower grade land available, the impacts of the proposal have been minimised through design solutions, and if feasible, after use the land restored to its former use at least at the level of equal quality.
- 11.2.11. The Cambridge and Peterborough Minerals and Waste Local Plan (2021) (the Waste Local Plan) was adopted on 28 July 2021 after the submission of the Application. This sets out the minerals and waste policies for the area. PCC indicates [REP2-067] that the Waste Local Plan "*has, to all intents and purposes, the same requirements for mineral safeguarding as the previous ... Minerals and Waste Core Strategy*".

## **11.3. THE CASE FOR THE APPLICANT**

- 11.3.1. Chapter 9 of the ES addresses Geology and Soils. This was originally submitted as [APP-047] and then updated at D1 in response to RRs [REP1-003] and amended again at D2 [REP2-012] to deal with typographic errors and further information on surface water extractions within the Application site. Again this was accompanied by Appendices and Figures and was supplemented at D1 by a Ground Investigation Report [REP1-009].

### **Best and most versatile agricultural land**

- 11.3.2. The Applicant undertook an Agricultural Land Classification (ALC) survey in July 2020. Within the Application site, the agricultural land was a mixture of Grade 2, Grade 3a and Grade 3b. Together the Grade 2 and 3a land which represents the BMV land, make up some 49.5% of the Application site, with approximately 36.6% representing non-agricultural land. This non-agricultural land is made up of existing roads, a residential property, some wooded areas and other amenity land. This is set out in

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<sup>89</sup> <https://www.gov.uk/guidance/land-stability>

Table 9-10 of Chapter 9 of the ES [REP2-012], and Table 9-11 sets out the land-take of agricultural land both permanently and temporarily during construction.

- 11.3.3. Due to the importance of BMV land, the Applicant acknowledges that there would be a 'very large adverse' effect from the permanent loss of 11.0 ha of Grade 2 BMV land, and 'moderate adverse effects' from both the temporary loss of Grade 2 BMV land and permanent loss of Grade 3a land. The Applicant considers that the temporary loss of Grade 3a land would only result in 'slight adverse' effects. As the remaining agricultural land is Grade 3b the Applicant considers this to be of 'moderate adverse' effect in respect of that permanently lost, while there would be 'minor adverse' effects from the temporary loss.

### **Minerals and Waste**

- 11.3.4. The Applicant, in Chapter 10 of the ES [APP-048] undertook an assessment of materials assets and waste. This was in accordance with DMRB LA 100 which indicates this should report on the construction phase and first year of operation.
- 11.3.5. Estimates for earthwork quantities and suitability of excavated materials for retention within the Proposed Development were considered. The Applicant acknowledges that there is a degree of uncertainty in its assessments. This is because the materials found on site may be different from those which the Applicant anticipates finding. Therefore, this may affect the quantity of materials that could be re-used on site.
- 11.3.6. The Applicant utilised a first study area of the Application site of areas where works would take place. This includes the areas where temporary works, such as site compounds, would be constructed.
- 11.3.7. It also looked at a wider, second study area for the source of material assets and looked at the East of England. However, as there are no hazardous waste landfill sites in the East of England the Applicant utilised the proximity principle; the nearest such site being within North Northamptonshire.
- 11.3.8. Given the proximity of the Application site to the East Midlands Region, the Applicant was asked (ExQ1.5.9) to consider whether material assets and waste disposal should be considered in relation to this region. The Applicant, in its response [REP2-035] explained that, as there would be sufficient capacity to dispose of non-hazardous waste within the East of England, there was no need to look further afield.
- 11.3.9. The Applicant notes that the baseline target in the EU Waste Framework Directive for construction and demolition waste (CDW) is 70% by weight<sup>90</sup>. In addition, the National and Regional Guidelines for Aggregates Provision in England 2005 to 2020 sets a baseline target for

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<sup>90</sup> The 70% target does not include uncontaminated, excavated soils and stones won during the construction phase.

alternative aggregates comprising both secondary aggregates, which are by-products from industrial and mining operations, and recycled aggregates, of 31% for the East of England region.

- 11.3.10. The Proposed Development was assessed against the Cambridgeshire and Peterborough Minerals and Waste Core Strategy (2011). This included policies safeguarding minerals sites and mineral resources. This does not prevent other forms of development, but rather ensures that this material consideration is taken into account. In this regard, the Application site intersects sand and gravel deposits.
- 11.3.11. The Applicant has set out the likely potential impacts of the Proposed Development during construction as:
- depletion of natural resources through the use of primary aggregates and use of recycled or secondary aggregates below the 31% regional target;
  - depletion of natural resources by failure to recycle or recover CDW below the 70% target;
  - sterilisation of mineral safeguarding sites; and
  - reduction in the capacity for inert, non-hazardous and hazardous waste landfill.
- 11.3.12. The Applicant does not anticipate (paragraph 10.12.2 of Chapter 10 of the ES [APP-048]) that there would be any significant effects in relation to minerals and waste from the operation of the Proposed Development; that being from the maintenance activities.
- 11.3.13. In order to mitigate the potential impacts the Applicant has included various matters within the EMP [REP6-001] which would be secured in the dDCO. These include:
- re-use and recovery of materials either from the Application site or from other projects. A CDW recovery and/ or recycling rate of 70% has been set;
  - off-site construction where possible;
  - design for future disassembly or recycling;
  - design for waste efficient procurement; and
  - utilising proximity for waste management.
- 11.3.14. The EMP also includes a Site Waste Management Plan (SWMP) to provide an auditable record of the management of wastes during the construction phase. In addition there would be a Materials Management Plan to ensure materials can be re-used on or off the Application site. This will also ensure that materials are not contaminated and thus fit for future use.
- 11.3.15. While the Applicant has identified enhancement measures, that is the reuse of suitable surplus excavated materials on local developments, these have not been assessed as they have not been secured.
- 11.3.16. The Applicant has estimated the main categories of materials to be used in site preparation, earthworks and construction in Table 10-4 of Chapter 10 of the ES [APP-048], and through this it has estimated the main types

and quantities of CDW which are set out in Table 10-5. It is estimated that some 45,453m<sup>3</sup> (or 90,906 tonnes) of excavation arisings would be surplus to requirements or unsuitable for reuse.

- 11.3.17. The Applicant has assessed potential effects both prior to mitigation and similarly any residual effects with the mitigation in place. It concluded that there would be slight adverse residual effects arising from all of the potential construction impacts set out in paragraph 11.3.11 and therefore assessed them as not significant.
- 11.3.18. The Applicant indicates that it believes that with good practice techniques some 54% of materials used would be recycled content, compared with the 31% regional target, and a recovery rate of 93%, against the 70% target. The Applicant considered that the Proposed Development would not be likely to result in a greater than 1% reduction or alteration in the landfill capacity of the East of England region.

### **Land Stability**

- 11.3.19. The Applicant did not explicitly consider land stability in the original Application but submitted a Ground Investigation Report (GIR) at D1 [REP1-009]. This covered the whole of the Application site.
- 11.3.20. The GIR explains that in line with British Standard 1997-1:2004, Eurocode 7 – Geotechnical design, Part 1, the Proposed Development is classified as a Geotechnical Category 2 Project, which encompasses conventional types of structure and foundation with no exceptional risk, or difficult ground or loading conditions.
- 11.3.21. The Highways England, Geotechnical Data Management System<sup>91</sup> notes that there are two main types of superficial deposit in the area and two areas, west of the petrol filling station and around Sutton Heath Road, where there are none. Those that exist range in thickness between 1.6m and 5.9m. Bedrock is principally Whitby Mudstone Foundation, overlaid by Grantham Formation, Lower Lincolnshire Limestone and Upper Lincolnshire Limestone, and finally Rutland Formation.
- 11.3.22. The British Geological Society (BGS) Memoir<sup>92</sup> indicates that approximately 230m north of the main alignment at chainage<sup>93</sup> 1300 there is a fault orientated northeast to southwest. Chainage 1300 is approximately in the location of the Wansford Road Railway Station. The southern end of the fault is around 50m north of the proposed Sutton Heath Road link to the new Sutton Heath Roundabout.
- 11.3.23. Three existing areas of landslip are shown on BGS sheet 157 between chainages 300 and 600. This is between the line of the proposed

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<sup>91</sup> Referenced at section 1.4 and endnote 4 of the GIR [REP1-009], and can be found at [www.hagdms.co.uk](http://www.hagdms.co.uk)

<sup>92</sup> Referenced in paragraph 2.3.3 and endnote 9 of the GIR [REP1-009]

<sup>93</sup> Chainages along the main line can be found in the Engineering Drawings and Sections [REP2-005]

Sacrewell underpass and a short distance to the east of the Anglian Water pumping station. The Applicant indicates: "*the landslip was first identified during construction works at the Wansford pumping station in 1972, when material at the toe of a slope was excavated, which caused mass movement of the landslide downslope towards the pumping station. Movement was also recorded upslope of the excavation, and cracking was noted in the agricultural land, approximately 20m north of the existing A47 carriageway. The events that occurred are detailed in a report by Chandler (1979)*"<sup>94</sup>. Figure 3 of the GIR [REP1-009] shows the areas which are considered to be at risk of bulging and cambering.

- 11.3.24. Measures, in the form of sheet piling, were undertaken at the time of the construction of the pumping station. However, this resulted in a slight crack in the A47 carriageway and slightly beyond. The sheet pile deflected and was left in place.
- 11.3.25. At the time of a walkover survey in 2018 a further previously unidentified area of potential historical slope failure was observed between chainages 700 and 900 (approximately from the eastern extent of the petrol filling station to the western extent of the site of the Scheduled Monument). This was evidenced by a cusped depression in the field north of the A47, the line of overhead wooden electricity poles which are no longer vertical<sup>95</sup>, and areas of coarse grass that potentially show linear areas for seepage.
- 11.3.26. The Applicant notes that limestone is susceptible to dissolution by acidic groundwater potentially leading to cavities, caves, and subsurface streams. The Applicant has noted three locations where evidence of sinkholes was observed:
- southwest of Sacrewell Farm, between Mill House and the A1 (a depression and the sound of running water);
  - in an area of woodland south of the junction of Sutton Heath Road with the A47; and
  - a 5-6m deep depression 100m west of the existing Nene Way roundabout<sup>96</sup> – this may be a human-made feature as mapped as a 'gravel pit'.
- 11.3.27. Table 2.14 of the GIR sets out a summary of ground stability. Table 11 sets out these results for locations where ground stability is higher than 'very low'.

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<sup>94</sup> This is the Dr Chandler who is referred to in various documents from WPC such as [REP2-071]. It should be noted that the author of the WPC representation on this matter worked with Dr Chandler early in his professional career.

<sup>95</sup> Examples can be seen in Figure 7.6.13A – Viewpoint E2 [APP-069], where the poles are stayed.

<sup>96</sup> The GIR incorrectly refers to this as the Sutton roundabout.

**Table 11: Summary of Ground Stability where risk is above very low<sup>97</sup>**

Criteria	Classification
Potential for Compressible Ground	Moderate over area of historical landslip in the area of pumping station and fuel filling station.  Low risk south of the site, along northern bank of River Nene, west of the pumping station. East of pumping station between chainages 700 and 900 identified as area of potential historical landslide.
Potential for Ground Dissolution	Low associated with limestone to the west of the site and railway cutting at White Water Brook Valley.
Potential for Shrinking or Swelling Clay	Low where Alluvium is mapped.

- 11.3.28. Having undertaken surveys on site and laboratory analysis of the samples, the Applicant in the GIR [REP1-009] provides an analysis of their properties. It then goes on to look at potential contamination of the existing site, the risks from construction activities and materials management. This is not in dispute and therefore has not been summarised in this report.
- 11.3.29. Using the results of this analysis the Applicant sets out a geotechnical risk register, along with a risk rating based on probability and effect in terms of increase in duration or cost to the project. This is set out in full in Table 7.3 of the GIR [REP1-009]. This table also sets out the specific control measures that would be undertaken in order to mitigate risk.
- 11.3.30. The Applicant acknowledges that there are a number of high and medium risk matters but considers that these can be mitigated "*provided control measures are implemented*".
- 11.3.31. The GIR [REP1-009] concludes in section 8 with a preliminary engineering assessment relating to the main geotechnical challenges across the site. This was undertaken in June 2020 and therefore does not include any design changes after that date<sup>98</sup>.
- 11.3.32. The design assumption of slopes of 1 vertical to 3 horizontal (1V:3H) was assessed for cuttings. For the Sacrewell Farm Access Road this showed that the stability of the cutting would be compromised by existing groundwater levels. The Applicant is therefore proposing to reduce

<sup>97</sup> Taken from Table 2.14 of the GIR [REP1 009]

<sup>98</sup> The relocation of the main line north of the tree belt and the relocation of the roundabout are included in this analysis.

groundwater levels by a minimum of 1.5m below the finished cut level by the installation of appropriate drainage at the slope crest and toe.

- 11.3.33. For embankments, the high-level stability analyses indicate that the proposed embankments, including mainline embankments at 1V:2.5H, and 1V:2H adjacent to the scheduled monument, returned a factor of safety greater than unity. The Applicant therefore concluded that the design was likely to remain stable over the design life.
- 11.3.34. The GIR indicates that where material is cut on site it generally will be suitable for re-use as fill. However, based on the level of testing to June 2020 when the report was prepared, further testing was considered necessary to confirm suitability.
- 11.3.35. Following invasive ground surveys the Applicant assessed ground conditions for the most appropriate design for the foundations of the two proposed structures, the Sacrewell Bridge and the Wansford bridge. The most suitable options to meet ground conditions are considered to be:
- conventional reinforced spread foundations; and
  - piles (generally continuous flight auger piles, but bored piles may be required into rock).

## **11.4. THE CASE FOR INTERESTED PARTIES**

### **Peterborough City Council**

- 11.4.1. PCC made no comments in respect of the matters the subject of this chapter in either its RR [RR-036] or LIR [REP2-068].

### **Cambridgeshire County Council**

- 11.4.2. CCC, as adjoining local planning authority, noted that since the application documents were drawn up, the Cambridgeshire and Peterborough Minerals and Waste Core Strategy (2011) has been superseded by the Cambridge and Peterborough Minerals and Waste Local Plan (2021).
- 11.4.3. However, the broad strategy remains unchanged, and thus CCC is content that the conclusions of the Minerals Impact Assessment [APP-122] would still be valid.
- 11.4.4. CCC also asks to be provided with an indication of the sources and tonnage of aggregates and fill used and a copy of the SWMP with the approximate locations of disposal sites provided on an annual basis.

### **Natural England**

- 11.4.5. NE notes the extent of the BMV and that would be affected by the Proposed Development. It considers that it is important to safeguard soil resources and that specialist advice is utilised to ensure soil handling meets best practice.

## **Wansford Parish Council**

- 11.4.6. In its WRs [REP2-071] WPC point out that several of the soil types in this area have thin lenses of weak clay and silt interleaved with gravel, sands and weathered limestone. While these have been picked up in the ground investigation it is very difficult to ascribe soil properties. This is made worse as the moisture content of clay layers changes, particularly in flood conditions associated with the River Nene.
- 11.4.7. At ISH2 WPC pointed out that the soils in the area between the Wansford east roundabout and the Wansford Road Railway station is made up of interleaved layers of gravel and soft clay. These are notorious for being unpredictable.
- 11.4.8. WPC pointed out that when the Anglian Water pumping station was constructed around 40 years ago there was a land slip, and analysis showed the instability of the ground conditions. While it may be technically possible to provide mitigation measures these would not provide certainty.
- 11.4.9. WPC considers that the Applicant's proposed solutions of additional ground investigations, cutting (removing the existing soils), calculating, piles, pinning and sheet walls are very expensive and do not resolve risk. WPC has pointed to other examples, in similar locations in proximity to rivers, where there have been ground failures during road and rail construction and failures later, even some years after projects become operational.
- 11.4.10. WPC [REP4-041] refers to other roads, although carefully designed, that were subject to considerable delay because of geotechnical issues close to rivers. More locally, the roadside safety barriers have been reset on more than one occasion due to ground movement. There is therefore a high risk of cost overruns and delays due to geotechnical risk.
- 11.4.11. WPC also point out that should it be determined to widen any constructed road at a later date then this would either have to extend into the Scheduled Monument or towards the river, the latter at very high risk and cost.

## **Other Interested Parties**

- 11.4.12. Mr Robert Reid [REP2-081] confirms his understanding of the geology of the area is the same as that as WPC. The Campbell Household [RR-044] also expressed concerns about land slippage in this area.

## **11.5. ExA'S CONSIDERATIONS**

### **Best and Most Versatile Agricultural Land**

- 11.5.1. The Proposed Development would affect a significant quantum of the BMV land, some 19.1ha of land permanently. However, locating a road between the two end points would inevitably result in the loss of this resource. As shown in Map 3 of Annex 4 to the Agricultural Land

Classification Report [REP2-023], the higher quality land (Grades 2 and 3a) lies in the central and eastern section of this area.

- 11.5.2. The loss of this land weighs against the Proposed Development, but this can be mitigated to some degree by ensuring proper soils management. A Soils Management Plan forms part of the EMP which would be secured as part of Requirement 4 in the dDCO [REP11-002]. This Requirement specifically requires both a soil resource plan and a soil handling strategy. This would ensure the minimisation of loss.
- 11.5.3. With this Requirement in place, I consider that the loss of BMV land is of moderate weight against the Proposed Development.

## **Minerals and Waste**

- 11.5.4. The Proposed Development would result in CDW and the use of materials for construction. In ExQ1.10.1 [PD-008] I queried the non-use of the proximity principle for the disposal of non-hazardous waste, given the proximity of the Application site to the edge of the East of England region. However, minerals and waste policy is based on a regional basis.
- 11.5.5. There would be slight adverse effects from the Proposed Development; the nature of the Proposed Development means that they cannot be avoided. I am satisfied that the Applicant would take best practice measures, secured through the dDCO, to ensure the minimisation of construction materials and waste. Therefore any harm from the Proposed Development in this respect would only be limited.
- 11.5.6. CCC requested that it be consulted on the SWMP, and this is not secured in the dDCO. It seems to me that as disposal would be likely to be on a wider than Peterborough scale, that this would make sense, and I am recommending a change to the dDCO to this effect. It should be noted that PCC would have already been consulted on the SWMP as local planning authority for the Application site.

## **Land Stability**

### **Background to this Issue**

- 11.5.7. In relation to the issue of geotechnical risk as part of their RRs a number of IPs made comments about land (in)stability in the area, particularly in the section between the A47 Wansford east roundabout and Wittering Brook. The import of the representations is that due to a mixture of ground conditions and the action of the River Nene, the ground in this area is unstable. The implication was that the line of the Proposed Development in this area was too far south to be appropriate.
- 11.5.8. Paragraph 184 of the Framework makes clear responsibility for ensuring a safe development rests with the developer. This must also include any implications for costs, which will be for those making decisions relating to the funding of the development.

- 11.5.9. At ISH2 when this matter was discussed, the Applicant accepted the point made that when construction was commenced (assuming consent is granted) it may be that ground conditions would result in construction delays. This, among other matters, led to the submission of Addendum Two to the ES [REP8-031] which assessed a longer construction period of 28 months. I am therefore satisfied that this has been appropriately assessed and considered.
- 11.5.10. In addition, it does not form part of the consideration of the current Application as to whether any particular proposal would prevent or limit later alterations (subject to normal consenting arrangements). This report can only deal with the Proposed Development as set out in the Application.
- 11.5.11. During the discussions during ISH2 the Applicant indicated that further ground investigation works were on-going *"with the field works due to be complete in appropriately another 4-5 weeks. Following this, laboratory testing and reporting will need to be undertaken. The [ground investigation] Contractor's factual report is expected towards the end of May"* (see point 7.1 on pages 29 and 30 in the Applicant's Written Summary of Oral Submissions at Hearings [REP4-018]).
- 11.5.12. The Applicant went on to indicate that it could provide information on this to the Examination, but these *"surveys are being undertaken to inform the detailed design only, and this information is not needed to inform this Application"*.
- 11.5.13. In this regard, in light of my report on this issue, the SoST may consider that they have sufficient information or may wish to seek confirmation from the Applicant of the results and any implications of the latest Ground Investigations. This also may have implications for clarifying the extent of emissions (see paragraph 10.5.25) and for funding decisions (see section 17.11).
- 11.5.14. The policy situation as set out above does not prevent the construction of development on land with stability issues, rather it seeks to ensure that it is considered, and that account is taken of likely consequences.
- 11.5.15. With this in mind, the Applicant has commissioned a Ground Investigation Report [REP1-009] which indicates the likely challenges of building in this location. The Applicant has also sought appropriate professional advice in this regard and has set out potential mitigation measures to ensure that the detailed design, secured in Requirement 3 of the dDCO [REP11-002] and construction of the Proposed Development, would be appropriate and robust.
- 11.5.16. I am therefore satisfied, in respect of those matters which are material considerations to the determination of a transport NSIP, that the Proposed Development has been appropriately assessed and would not be subject to undue risk. This is therefore a neutral matter within the overall planning balance.

## **11.6. CONCLUSIONS**

- 11.6.1. Taking all the relevant documentation and policies into account, I conclude as follows:
- The Proposed Development would result in the permanent loss of 19.1ha of the Best and Most Versatile Agricultural Land. With the mitigation secured in the dDCO, this would result in moderate harm;
  - There would be some limited harm from the Proposed Development through the utilisation of minerals and the disposal of waste;
  - CCC should be consulted on the SWMP given its role in the wider area; and
  - Appropriate consideration has been taken of ground conditions in the area, however the SoST may wish to consider this further in the light of surveys not submitted to the Examination.
- 11.6.2. The Applicant has taken account of expert advice in respect of a site where landslides are known and has, within the constraints of the Application site minimised the effect on BMV land. The Proposed Development therefore complies with the relevant policies of the NPSNN.
- 11.6.3. The Proposed Development would comply with Local Plan Policy LP11 as there is insufficient lower grade land available to deliver the Proposed Development and the impacts of the proposal have been minimised through design solutions. It would, however, be contrary to the Waste Local Plan in that it would result in the loss of resource.

## **12. FINDINGS AND CONCLUSIONS IN RELATION TO THE WATER ENVIRONMENT AND FLOOD RISK**

### **12.1. INTRODUCTION**

12.1.1. This chapter deals with the effects of the Proposed Development in relation to the water environment. In particular it deals with whether the Proposed Development would:

- be at risk of flooding or increase the flood risk off-site;
- result in adverse effects on water quality and resources.

### **12.2. POLICY**

#### **National Policy Statement for National Networks**

12.2.1. The NPSNN paragraphs 5.90 to 5.115 deal with flood risk considerations and paragraphs 5.219 to 5.231 deal with water quality and resources.

12.2.2. Paragraph 5.98 of the NPSNN states "*where flood risk is a factor in determining an application for development consent, the Secretary of State (SoS) should be satisfied, where relevant,*

- *the application is supported by a [Flood Risk Assessment] (FRA);*
- *the Sequential Test (see the National Planning Policy Framework) has been applied as part of site selection, and if required, the Exception Test*".

12.2.3. When determining the application, paragraph 5.99 of the NPSNN states, that the SoS should be satisfied "*flood risk will not be increased elsewhere and only consider development appropriate in areas at risk of flooding where it can be demonstrated that ... development is appropriately flood resilient and any residual risk can be safely managed*".

12.2.4. Paragraph 5.102 sets out circumstances where linear infrastructure may be required in areas at risk of flooding, while paragraph 5.103 of the NPSNN states "*the design of linear infrastructure and the use of embankments in particular can reduce the risk of flooding for the surrounding area. In such cases the SoS should take account of any positive benefit to placing linear infrastructure in a flood-risk area*".

12.2.5. In terms of mitigation, paragraph 5.112 of the NPSNN indicates "*site layout and surface water drainage systems should cope with events that exceed the design capacity of the system, so that excess water can be safely stored on or conveyed from the site without adverse impacts*". Paragraph 5.113 of the NPSNN states "*the surface water drainage arrangements for any project should be such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect*".

- 12.2.6. Paragraph 5.114 of the NPSNN advises *"it may be necessary to provide surface water storage and infiltration to limit and reduce both the peak rate of discharge from the site and the total volume discharged from the site"*.
- 12.2.7. Turning to water quality and resources paragraph 5.222 of the NPSNN states *"for those projects that are improvements to the existing infrastructure, such as road widening, opportunities should be taken, where feasible, to improve upon the quality of existing discharges where these are identified and shown to contribute towards Water Framework Directive commitments"*.
- 12.2.8. In terms of decision making, paragraph 5.226 of the NPSNN states the SoS *"should be satisfied that a proposal has had regard to the River Basin Management Plans and the requirements of the Water Framework Directive ... and its daughter directives, including those on priority substances and groundwater"*.
- 12.2.9. Paragraph 5.227 of the NPSNN states the Examining Authority (ExA) and SoS *"should consider proposals put forward by the applicant to mitigate adverse effects on the water environment and whether appropriate requirements should be attached to any development consent and/or planning obligations"*.
- 12.2.10. In terms of mitigation, paragraph 5.230 of the NPSNN states *"the project should adhere to any National Standards for sustainable drainage systems (SuDS). The National SuDS Standards introduce a hierarchical approach to drainage design that promotes the most sustainable approach but recognises feasibility, and the use of conventional drainage systems as part of a sustainable solution for any given site given its constraints"*.

## **National Planning Policy Framework and Planning Practice Guidance**

- 12.2.11. The Framework sets out various planning policies to meet the challenge of climate change and flooding in paragraphs 152 to 169. This provides detail on the Sequential and Exception Tests as does the Flood risk and coastal change section of the PPG. This was updated on 22 August 2022 after the Examination closed. The main hierarchical approach to flood risk has not fundamentally changed. However, should the SoST consider it necessary he can ask the main parties with an interest in this issue, the Applicant, the EA and PCC as Local Lead Flood Authority, for comments on any changes resulting from the revisions.

## **River Basin District Management Plan**

- 12.2.12. The Proposed Development is located in the Anglian River Basin District and therefore the Anglian River Basin District River Basin Management Plan is relevant. Its purpose, as set out in paragraph 13.3.3 of Chapter 13 of the ES [REP3-011] is to provide a framework:

- to prevent deterioration, enhance and restore bodies of surface water, achieve good chemical and ecological status of such water and reduce pollution from discharges and emissions of hazardous substances.
- protect, enhance and restore all bodies of groundwater, achieve good chemical and quantitative status of groundwater, prevent the pollution and deterioration of groundwater, and ensure a balance between groundwater abstraction and replenishment; and
- preserve protected areas.

## **Local Plan**

- 12.2.13. Policy LP24 in the Local Plan deals with the River Nene. This policy aims to safeguard and enhance recreation and/ or bring nature conservation benefits. It has criteria including the protection and enhancement of biodiversity. Development which would increase flood risk will not be permitted.
- 12.2.14. Policy LP28 deals with biodiversity and geological conservation. The policy specifically refers to the management, protection and enhancement of rivers and flood meadows.
- 12.2.15. Policy LP32 specifically deals with flood and water management. This refers to the sequential approach to flood risk management taking into account the Framework and refers to site specific flood risk assessments and the use of SuDS.

## **12.3. THE CASE FOR THE APPLICANT**

- 12.3.1. Chapter 13 of the ES was submitted with the Application [APP-051]. This was accompanied by various Figures [APP-079] and Appendices. These Appendices were a Flood Risk Assessment (FRA) [APP-128], Drainage Strategy [APP-129], Surface Water Quality Assessment [APP-130], Groundwater Assessment [APP-131] and Geomorphological Assessment [APP-132].
- 12.3.2. In August 2021 the Applicant revised Chapter 13 of the ES [AS-017] in light of changes to the EMP. At D3 the Applicant submitted a further revised version of Chapter 13 of the ES [REP3-011] along with two of the Appendices, the FRA [REP3-014] and the Drainage Strategy [REP3-013]. The changes were made to correct errors and omissions identified. These latest versions will be reported upon.
- 12.3.3. The Applicant indicates it followed the methodology set out in DMRB LA 113 – Road drainage and the water environment. This was to undertake:
- a simple assessment of groundwater levels and flow;
  - a simple assessment of groundwater dependent terrestrial ecosystems;
  - a detailed assessment of groundwater quality and run-off using the Highways England Water Risk Assessment Tool (HEWRAT);
  - a simple assessment of pollution impacts from routine runoff to surface waters;

- an assessment of pollution impact from spillages, again using HEWRAT;
- a Water Framework Directive (WFD) assessment for both surface water and groundwater; and
- a hydromorphological assessment, to identify natural river processes that would have operated before any development had affected the river or catchment.

12.3.4. LA 113 was updated in March 2020 after the SoS's Scoping Opinion was issued. The Applicant considers that no changes were required to its previous approach as a result of the update.

12.3.5. The Applicant consider the Upton Drift area but concluded that the works there could be scoped out of the assessment as the works were "*minor and would have negligible impact*" (paragraph 13.4.7 of Chapter 13 of the ES [REP3-011]), noting that the traffic forecast for the design year of 2040 was below 650 vehicle movements per day, significantly below the HEWRAT minimum threshold of 10,000 vehicle movements per day.

### **Baseline**

12.3.6. The assessment of the baseline was undertaken from the list of documents set out in paragraph 13.4.10 of Chapter 13 of the ES [REP3-011], with a site walkover undertaken in May 2020.

12.3.7. Anglian Water, the EA and PCC as Local Lead Flood Authority (LLFA) responded to the Scoping Request and made various comments on the scope of documents.

12.3.8. As a result of discussions between them the Applicant was asked by the EA to incorporate various elements into the Proposed Development. This led to further discussions with PCC in relation to watercourses for which it is the LLFA, in this case Mill Stream and Wittering Brook.

12.3.9. As all waterbodies are protected by statute no bodies are of negligible value. The Applicant classified assets of surface water, groundwater and flood risk depending on their importance from low to very high. It also set out the magnitude of impact on the same classified assets from 'major adverse' through 'negligible' to 'major beneficial' through change. These are set out in Tables 13.1 and 13.2 of Chapter 13 of the ES [REP3-011].

12.3.10. From this, utilising the matrix in DMRB LA 104 and professional judgement, the Applicant identified and quantified any effects as significant or not.

### **Assumptions and limitations**

12.3.11. The Applicant acknowledges that the temporary drainage system during construction has yet to be confirmed. The Applicant has assumed that:

- the main compound run-off would be collected in a ditch surrounding the compound and redirected to settlement ponds before discharge;

- satellite compounds would not have such containment, but all welfare areas would have waste collected;
- there would be no significant adverse effects from vulnerabilities of the Proposed Development because it would be designed to the relevant standards;
- the groundwater assessment is limited to the information available. Information is available within the Application site from surveys but is limited outside;
- the final alignment forming the Proposed Development was not surveyed between Sutton Heath Road and Upton Road and further surveys may be required below existing structures; and
- while over a year of groundwater data was collected this does not reflect long term seasonal maxima and minima. The Applicant has therefore used 'worst case' scenarios.

12.3.12. The study area was a 1km corridor surrounding the Application site, but as stated above, as the works to Upton Drift were scoped out, the study area does not include a corridor surrounding this part of the Proposed Development.

### **Baseline conditions**

12.3.13. Within the study area there are 29 small lakes and ponds and ten drainage channels. However, the main surface water features are:

- The River Nene – an EA designated main river, adjacent to but outside the Application site to the south. There are several large lakes and drainage ditches on the opposite (southern) side of the main channel.
- Wittering Brook – an ordinary watercourse which flows from the north, west of Sutton Heath Road, through the Sutton Heath and Bog SSSI and under the A47 in an existing culvert into the River Nene. There are three ponds adjacent to Wittering Brook.
- Mill Stream – an ordinary watercourse located approximately 0.3km north of the A47. It flows in an easterly direction from west of the A1 north of the A1/ A47 junction. Here it is two watercourses, with three adjacent ponds, but the confluence is to the west of the A1 and flows under the A1 in a culvert before flowing into the mill pond feeding the Sacrewell Mill. There are two further ponds in this area. After the Mill it then flows eastwards roughly parallel to the A47 converging with Wittering Brook northeast of the Scheduled Monument.
- An unnamed ordinary watercourse (UWc1) to the northeast, which having flowed under Sutton Heath Road north of its junction with Langley Bush Road flows into Wittering Brook through Sutton Heath and Bog SSSI.
- Five drainage ditches are located adjacent to Wittering Brook:
  - o one adjacent to Wittering Brook, downstream of the Mill Stream confluence;
  - o one adjacent to Wittering Brook, leading to a pond upstream of the confluence with Mill Stream; and
  - o three flowing in a southwesterly direction feeding tributaries of Wittering Brook.

- Another unnamed ordinary watercourse (UWc2) east of the Application site but within the study area. This flows in a southerly direction under the A47 before joining the River Nene approximately 2km after the A47 crossing.
  - Two drainage ditches north of the A47 west of Upton Road which flow into the study area. They then flow in an easterly direction along a drainage ditch before running into UWc2 east of the Proposed Development.
  - Two ponds are located within the construction area west of Upton Road (north of the Application Site) and west of Wittering Brook (south of the Application site)
  - Two ponds are located to the west of the A1 outside the Application site; and
  - Two reservoirs are located to the north of the Application site.
- 12.3.14. There are two water gauging stations within the study area, both on the River Nene. One east of the A1 and another near the confluence with Wittering Brook; the latter gauging station is no longer in use.
- 12.3.15. The Anglian Water pumping station lies within the Application site. This extracts water from the River Nene and pumps it to Rutland Water, a reservoir, some 21km to the northwest through the Application site<sup>99</sup>.
- 12.3.16. The study area is split between two WFD surface water body catchments which are within the Anglian River Basin District and both are part of the Nene Middle Operational Catchment. They are shown in Figure 13.2 [APP-079]:
- Nene – Islip to Tidal WFD water body – this covers the southern part of the study area and northern section of Sutton Heath Road. It is a heavily modified water body; and
  - Wittering Brook WFD water body – this covers the northern part of the study area. It is not designated as artificial or heavily modified.
- 12.3.17. Table 13.3 of Chapter 13 of the ES [REP3-011] provides a summary of the WFD waterbodies within the study area.

### **Groundwater**

- 12.3.18. The bedrock and superficial geology of the area comprises sandstone, siltstones and fireclays of the Rutland Formation in the east of the area, underlain with oolitic limestone of the Upper and Lower Lincolnshire Limestone Formation. This is underlain with silts and sands of the Grantham Formation, which itself is underlain by mudstones and shales of the Whitby Mudstone Formation. A more detailed analysis of the geology of the area is set out in Chapter 11.

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<sup>99</sup> The route can be seen in Annex Q 'Water main from River Nene Extraction' in the Applicant's Response to the Examining Authority's First Written Questions (ExQ1) – Annexes [REP1-036].

- 12.3.19. Figure 13.3 of the ES [APP-097] shows the aquifer designations which are described in paragraphs 13.7.20 to 13.7.24 of Chapter 13 of the ES [REP3-011]. There are both Principal and Secondary Aquifers.
- 12.3.20. Groundwater modelling indicates that there is a downward flow from rapid infiltration and the permeable nature of the Lincolnshire Limestone Formation, although springs issue from the contact point between this formation and the underlying Grantham Formation/ Whitby Mudstone Formation.
- 12.3.21. Groundwater level monitoring was carried out between September 2018 and January 2019, and also between September 2020 and February 2021. Groundwater levels generally range between 2.5m and 7.3m below ground level although they are much closer to the surface at the northern extent of the Application site, adjacent to Mill Stream. To the east of Sutton Heath Road, groundwater has been identified at a depth of 5m below ground level. In the overlying river terrace deposits groundwater is in the range 2.75m to 5.26m below ground level, although it may be up to 0.4m higher.
- 12.3.22. Analysis shows that groundwater quality is affected by elevated levels of ammoniaical nitrogen and boron; this may come from human activity and is typical of Lincolnshire Limestone.
- 12.3.23. The bedrock and aquifers have a groundwater vulnerability classification of high risk where there is limited cover. This is found in the vicinity of the A1/ A47 junction and along Sutton Heath Road. There are areas of medium to high risk associated with the exposure of Grantham Formation in the west and Upper Lincolnshire Limestone in the east, and areas of medium to low risk in the vicinity of the River Nene.
- 12.3.24. The River Nene, Wittering Brook and Mill Stream all receive a moderate baseflow supply from groundwater.
- 12.3.25. Along the River Nene and its floodplain to the south are lowland fen priority habitats. These receive water and nutrients from the underlying soil, rock and groundwater. There are two such areas of priority habitats.
- 12.3.26. There are three SSSIs within the study area, 'Sutton Heath and Bog', 'Wansford Pasture' and 'West, Abbot's and Lound Wood'. Wansford Pasture, to the west of the A1, does have springs but these flow eastwards towards the River Nene and the Applicant considers it not to be down-gradient of the Proposed Development and not requiring further consideration. West, Abbot's and Lound Wood is not groundwater dependent and therefore the Applicant has not assessed it in this respect.
- 12.3.27. Sutton Heath and Bog SSSI sits directly on the Lincolnshire Limestone Formation outcrop, giving way to the underlying Grantham Formation and Whitby Mudstone to the western boundary. The EA believes the SSSI is entirely rainfall dependent with rapid infiltration in the higher parts of the site emerging as springs at the boundary of the two.

- 12.3.28. Figure 13.76 [APP-079] shows the susceptibility of the study area to groundwater flooding. The main areas being to the east of the Wansford east roundabout and the watercourses.

### **Aquifers**

- 12.3.29. There are three aquifers underlying the Application site:
- Welland Limestone Unit A – in the western half of the study area and around Sutton Heath Road
  - Nene Mid Lower Jurassic Unit – in the middle of the Application site and generally following the route of the River Nene
  - Northampton Sands – along the A47 from Sutton.
- 12.3.30. Details of these three water bodies are set out in Table 13.4 in Chapter 13 of the ES [REP3-011].

### **Abstractions and discharges**

- 12.3.31. There is a Source Protection Zone 2 along the northern boundary of the study area which is associated with groundwater abstractions to the north.
- 12.3.32. There are nine licensed surface water abstractions, but no known unlicensed abstractions in the study area. Details are set out in Table 13.5 of Chapter 13 of the ES [REP3-011]. Abstractions include Mill Stream which is used to power the Sacrewell Mill. The EA, PCC, HDC and NNC have advised the Applicant that there are no consented or unconsented discharges to surface water or groundwater in the study area.

### **Existing drainage**

- 12.3.33. The existing drainage network is summarised by the Applicant as follows:
- A catchment draining the A1 discharges from the highway to Mill Stream from a single outfall, classified as a pollution risk (priority X<sup>100</sup>);
  - A catchment draining the A47 from the A1, at the west of the Proposed Development, to the east of Wittering Brook, via 12 outfalls, classified as a priority X risk. (The baseline assessment suggested that these are, in fact, soakaways and have been considered as such);
  - A catchment to the east discharges to UWc2 via two outfalls outside the Application site (Priority A – very high pollution risk);
  - There are also potentially 13 soakaway chambers including those identified above; according to the Applicant this needs verification.
- 12.3.34. Further, there are a number of catch-pits and gully pots to the east and west within the Application site. To the west they are located along the A1 and its junction with the A47 and to the east where the A47 is already

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<sup>100</sup> Risk status 'X' is a risk that has been addressed through actions or assessment which concludes the risk to surface water is minimal.

a dual carriageway. There are existing filter drains and vegetated ditches from the Nene Way roundabout to the east, and filter drains on the A1/A47 sliproads.

### **Flood risk**

- 12.3.35. The majority of the site lies in Flood Zone 1 according to the EA's flood maps. The land immediately surrounding the River Nene, Wittering Brook and Mill Stream fall within land classified as Flood Zones 2 and 3. This is based on risk from fluvial sources. The site is 23km upstream from the tidal limit and is thus not at risk of tidal flooding.
- 12.3.36. The Proposed Development would cross three sections of Flood Zones 2 and 3:
- where the A1 would cross Mill Stream;
  - where the A47 would cross Wittering Brook; and
  - immediately to the west of the Wittering Brook crossing.
- 12.3.37. Land surrounding the River Nene has been identified as within Flood Zone 3b and that around Mill Stream and Wittering Brook as within Flood Zone 3a.
- 12.3.38. Modelling as part of the FRA [REP3-014] in relation to the baseline of Wittering Brook from its confluence with the River Nene (which includes the current A47 culvert) predicts:
- the 1 in 100-year event shows water rising up the north side of the A47 embankment, but not overtopping;
  - there would be no out of bank flow over the left bank and the properties to the north-east (Station House and Heath House) are not predicted to flood;
  - flow would be throttled by the A47 culvert and would remain within its bank to the south;
  - the existing A47 culvert (1.83m x 1.64m) (sometimes referred to as 'the Wansford Sluice') was modelled at 1 in 100-year plus 65% climate change and at a maximum predicted depth of 1.64m both up and downstream.
- 12.3.39. Modelling was also undertaken of the A1 Mill Stream culvert. In the 1 in 100-year plus 65% climate change the headwater depth increases from 1.83m to 2.32m and the tailwater from 1.08m to 1.31m.
- 12.3.40. The Application site is within an area which receives flood alerts (Lower Nene and Middle Nene area) and warnings (River Nene Elton to Wansford). There are no flood defences or other storage areas within the study area.
- 12.3.41. The Proposed Development would cross areas of low to high surface water risk (each year between 0.1% and 3.3%) where the A1 crosses Mill Stream, where the A47 crosses Wittering Brook and where Sutton Heath Road crosses UWc1 outside the Application site. Ponding has been identified by the Applicant within the permanent construction area to the

west of the Wansford Sluice proposed replacement culvert and at the proposed Sutton Heath roundabout.

- 12.3.42. There are a number of areas which have been identified as low to high flood risk from surface water flooding with associated surface water flow. These are east of the proposed A47 Wansford sluice, where a flow pathway which runs in a northerly direction and would be east of the proposed Sutton Heath roundabout to the east.
- 12.3.43. Land within the immediate vicinity of the River Nene is at low to medium surface water risk with small sections at high risk. There are elevated areas of medium to high surface water risk associated with localised ponding at the eastern extents of the Application site.
- 12.3.44. Outside the Application site, land in the vicinity of Wittering Brook is associated with low to medium surface water flood risk, with small sections at high risk. There are also areas of high risk either side of the A1 culvert associated with Mill Stream.
- 12.3.45. The EA's historic flood map indicates that there has been flooding within the Application site and study area. Six previous surface water flooding events have been identified on the existing A1 and A47 carriageways within the Application site. These are set out in the FRA [REP3-014].
- 12.3.46. The area also falls within the area at risk of reservoir flooding from two reservoirs where the Proposed Development crosses Mill Stream, Wittering Brook and adjacent to the River Nene.
- 12.3.47. There has been a single incident of foul water sewer flooding within the Application site associated with residential development west of the A1. While nine other incidents have been recorded in the Peterborough Strategic Flood Risk Assessment the locations are unclear. Anglian Water has advised the Applicant that there are no capacity limitations in the public sewerage system.

### **Recreation and human health**

- 12.3.48. The River Nene is used for recreation, including navigation, kayaking and angling. However, the Applicant has found no information that Wittering Brook, Mill Stream or any of the ponds are used for recreation.

### **Climate Change**

- 12.3.49. The Applicant has utilised Meteorological Office regional climate change projections for Eastern England. Due to the proximity to the East Midlands region, the Applicant was asked to sensitivity test its assumptions against the projections for that region. In its response to ExQ1.12.7 [REP2-035] the Applicant stated:

*"... the Applicant has applied the Anglian climate change allowances uplift in accordance with [EA] flood risk assessment guidance at the time ... (2016).*

*This is correct given the location of the development and has been agreed in consultation with PCC and the [EA].*

*Given [this] it is not appropriate to undertake a sensitivity assessment as the climate change allowances use in the [FRA] are for the Anglian region which is defined on catchments within the East of England and which includes the East Midlands.”*

- 12.3.50. The Applicant takes the view that climate change projections do not affect the annual recharge volumes for groundwater, but the recharge season is likely to be shorter.

### **Importance of receptors**

- 12.3.51. Table 13.6 of Chapter 13 of the ES [REP3-011] sets out the importance of various water environment attributes in the study area. In this the Applicant has assessed the Wittering Brook and Mill Stream as individual assets as there are works proposed either on or near to these watercourses. The River Nene is also assessed individually.
- 12.3.52. The individual features are assessed according to their attributes and their importance. Where the Applicant considers the effects would be significant these are set out below.

### **Potential impacts**

#### **Construction**

- 12.3.53. The Applicant has set out the main potential impacts from constructing the Proposed Development. These include:
- mobilisation of sediment and contaminants from surface water runoff to watercourses and ponds;
  - accidental spillages or leakage of fuels, oils, chemicals, etc.. This may have direct impacts on surface water features including watercourses, drainage ditches and ponds. In turn this may have a negative impact on downstream environments; and
  - construction works themselves which could have similar impacts;
- 12.3.54. Water quality impacts are considered by the Applicant to be short term during the construction period, but the Applicant acknowledges that some potential impacts could have longer term consequences which could prevent waterbodies reaching good ecological status. This could include the WFD bodies from physiochemical and biological elements.
- 12.3.55. The Applicant notes parts of the Proposed Development require work within, adjacent, over or close to waterbodies or the fluvial floodplain. These works are set out in paragraph 13.8.7 of Chapter 13 of the ES [REP3-011] as:
- *proposed highway drainage and outfalls, including two new outfalls to the River Nene, one new outfall to Wittering Brook and new attenuation basins, with pollution control devices, to control discharges to local watercourses;*

- *A47 Wansford Sluice replacement crossing Wittering Brook and associated minor watercourse realignment;*
- *A1 Mill Stream culvert extension;*
- *creation of two ponds connected by a ditch and wetland features adjacent to Mill Stream;*
- *creation of new ditch from Mill Stream with bank features for the loss of water vole habitat associated with Wansford Sluice replacement;*
- *River Nene flood compensation area; and*
- *drainage ditch interception along the Proposed Scheme to the east of Upton Road.*

12.3.56. The Applicant acknowledges these may cause an increase in fluvial flooding to the Proposed Development or other receptors due to obstruction or changes of flow. Downstream this could adversely impact the attributes of the watercourses identified, with the exception of ponds as there would be no impact. All of these elements could also impact habitats, ecology and biodiversity during construction and could impact WFD bodies.

12.3.57. The Applicant also acknowledges that during construction there is an increased risk of flooding during extreme rainfall events due to changes in levels and overland flow pathways. This could lead to localised flooding to the Proposed Development or other receptors. Overloading the temporary drainage system would affect watercourses, drainage ditches and ponds. All of this could adversely impact the attributes identified.

12.3.58. Increases in hardstanding, including infilling of ponds, again could increase the volume and flow rate from the construction areas. This could affect downstream flood-sensitive receptors, and other interests.

12.3.59. It should be noted that the Proposed Development would involve the loss of two ponds and any associated aquatic biodiversity.

### **Groundwater**

12.3.60. The Applicant notes that removal of topsoil could mean that surface water contamination could discharge to groundwater, and this could also occur from unlined temporary ditches. This would be at highest risk where discharge could occur directly to the Lincolnshire Limestone Principal Aquifer and Grantham Formation Secondary Aquifer. Were there to be any contamination received in soakaways this could then migrate to associated indirect receptors.

12.3.61. In addition, the Applicant considers similar effects could occur when excavations are required for elements such as the Sacrewell Farm Underbridge or utilities, or where excavations lead to direct contact between construction materials and groundwater. Thus, dewatering may be required. This has the potential to adversely impact aquifers and indirect groundwater receptors dependant on groundwater supplies. Such dewatering discharges may contain suspended soils which have the potential for contamination. This has been separately assessed by the Applicant in Appendix 13.4 [APP-131].

- 12.3.62. The radius of dewatering has been assessed by the Applicant using, what it describes as, "*conservative values*" (paragraph 13.8.18 of Chapter 13 of the ES [REP3-011]) to give a worst case indication of potential impact. Sutton Heath and Bog SSSI falls within this radius for the Wansford NMU underpass, but other groundwater-dependent terrestrial ecosystems fall outside this radius and that for the Sacrewell Farm Underpass.
- 12.3.63. The method of discharge from dewatering has yet to be finalised by the Applicant but is likely to either be returned to ground via infiltration galleries or directly to the River Nene.

### **Operational**

#### Surface Water

- 12.3.64. The Applicant accepts that the Proposed Development would alter risks and have adverse effects on water quality, recreational users, value to the economy and aquatic ecology of surface water features of all relevant watercourses. Equally, ponds and drainage ditches may be adversely affected as indirect receptors. These may be both direct or indirect and are from:
- a risk of pollution to surface water features from accidental spillage or pollution incidents;
  - an increase in the highway drainage area discharging to the River Nene, Wittering Brook, Mill Stream and UWc2. This could lead to WFD bodies being affected as set out in paragraph 13.8.23 of Chapter 13 of the ES [REP3-011];
  - changes in the surface water runoff regime by the alterations of ground elevations or overland flow pathways leading to diversion of flow pathways and increased localised flooding;
  - the increase in impermeable hardsurfaced areas could increase peak flow rates and volumes;
  - changes to the floodplain due to embankments and the construction of the carriageway near Wittering Brook, A47 Wansford Sluice, and A1 Mill Stream culvert;
  - potential river erosion to bed and bank from the proposed outfalls, which could create localised turbulent flows;
  - loss or deterioration of channel and riparian habitat from the A47 Wansford Sluice replacement.

#### Groundwater

- 12.3.65. The Proposed Development would include unlined road drainage in the form of filter drains which would affect groundwater quality. This has been assessed in Appendix 13.4 Groundwater assessment [APP-131]. This is particularly the case where there is a discharge to the Lincolnshire Limestone, as this could affect the water quality of springs and baseflows to surface watercourses such as Mill Stream and the River Nene, and where groundwater levels are shallow.
- 12.3.66. Filter drains to the east of Sutton Heath Road discharge to the Rutland Formation. However, the groundwater conditions and flow pathways are not fully understood and are subject to further investigations. The

Applicant assumes that the Rutland Formation is of low permeability, and thus there may be impacts for physically lower receptors such as Wittering Brook and the River Nene.

- 12.3.67. Road drainage at the northern tie-in of the Sutton Heath Road junction discharges, via an outfall, to a ditch along the eastern boundary of the Sutton Heath and Bog SSSI. The Applicant considers that road drainage is likely to infiltrate into the Lincolnshire Limestone Formation at this location. Untreated road drainage has the potential to impact on water quality within the that Formation, the springs that discharge from it, and ultimately Wittering Brook.
- 12.3.68. The Applicant acknowledges that permanent subsurface drainage may be required for the Sacrewell underpass and Wansford underpass. This could adversely affect the aquifers and groundwater dependent terrestrial ecosystems. This may, in turn, affect downstream receptors such as the Sutton Meadows County Wildlife Site.

### **Design, mitigation and enhancement measures**

#### Construction

- 12.3.69. The Applicant intends to utilise best practice methods for pollution prevention and water management and these are included within the EMP.
- 12.3.70. To minimise the potential effect on surface water both essential and embedded mitigation would be implemented. These are set out in Chapter 13 of the ES [REP3-011] and include:
- appropriate storage of construction materials, spill kits in appropriate locations and emergency response procedures;
  - preventing pollution pathways between construction sites and ordinary watercourses;
  - Mill Stream, Wittering Brook and River Nene are all designated as a Nitrate Vulnerable Zone for surface water and the Wittering Brook and the Nene – Islip to Tidal WFD water bodies are prevented from achieving good ecological potential due to the phosphate concentrations found in the catchment. This would be managed by best practice construction measures in the EMP;
  - temporary drainage from the main construction compound would be collected via a ditch and redirected to settlement ponds and discharged in accordance with relevant permits;
  - obtaining land drainage consent from PCC for works in relation to the A1 Mill Stream culvert extension, Mill Stream ditch creation and pond/wetland creation, A47 Wansford Sluice replacement and associated watercourse diversion;
  - obtaining relevant permits from the EA for works within 8m of the River Nene;
  - designing an appropriate phasing to the construction to minimise the effects on water quality and prevent increased flood risk;
  - the implementation of a temporary surface water drainage strategy using SuDS principles to attenuate runoff to greenfield runoff rates;

- provision of replacement ponds for those lost; and
- monitoring throughout, with requirements secured in the EMP.

12.3.71. Potential impacts on groundwater would be minimised by:

- appropriate storage of construction materials spill kits in appropriate locations and emergency response procedures;
- measures within the EMP where there is limited cover to superficial deposits or the Lower Lincolnshire Limestone Principal Aquifer is exposed to avoid infiltration to ground;
- design and construction of below ground structures to minimise the effect on groundwater quality, with construction method statements and risk assessments approved by the EA where activities may intercept the saturated aquifer;
- using isolation techniques in preference to dewatering where groundwater control is required;
- use of groundwater monitoring between dewatering locations and downward receptors; and
- appropriate inspections and audits and monitoring of groundwater features at risk of pollution.

Operation

12.3.72. The Applicant notes that the overall drainage strategy indicates that the road drainage would drain to groundwater and surface water. The precise location of the seven outfalls, five of which would be new, are shown in the Surface Water Quality Assessment (Appendix 13.3 of the ES [APP-130]).

12.3.73. The Applicant has assessed potential water quality impacts of routine runoff on surface water receptors. This shows there would be a negligible impact following dilution in the channel for both soluble and sediment bound pollutants for Mill Stream, Wittering Brook and the River Nene. The Applicant believes that there would be 'moderate beneficial' effects after vegetated drainage basins are included. Filter drains and vegetated attenuation basins for the other catchments would also be beneficial.

12.3.74. In relation to accidental spillages the Applicant has used the HEWRAT spillage assessment tool. This showed that all outfalls passed this test. In addition, pollution control devices such as penstocks would be provided on all catchments to provide additional protection. The Applicant believes the above measures would mitigate against impacts.

12.3.75. There is a risk of increased runoff due to the introduction of embankments and ground reprofiling. However, the Proposed Development would be designed to ensure the existing natural catchment drainage pathways would be maintained.

12.3.76. Increased areas of hardstanding and alteration of ground elevations would result in an increase in peak flow rates and volumes discharging to Mill Stream, Wittering Brook and its tributary, the River Nene and UWc2, particularly in Flood Zones 2 and 3. This would be attenuated by detention basins and oversized pipes.

- 12.3.77. The A47 Wansford Sluice replacement culvert, the A1 Mill Stream culvert extension, embankments and the widening of the carriageway near Wittering Brook have the potential to alter the conveyance of flow to the floodplain. This has been assessed by the Applicant in the Flood Risk Assessment [REP3-014].
- 12.3.78. The Proposed Development would provide a new culvert for Wittering Brook under the Proposed Development some 10m to the west of the existing culvert location. This, according to the Applicant, has been designed to convey a 1 in 100 year peak flow (including a 65% increase for climate change), with a freeboard exceeding 600mm. This would result in a reduction in the maximum water depth compared with the current situation. The Applicant maintains that this would negate the need for compensation for loss of floodplain.
- 12.3.79. In relation to the River Nene, to ensure that there is no increased flood risk the Applicant is proposing flood compensation between Flood Zone 3 and the 1 in 100 year plus 35% climate change level, 9.8m and 10.5m AOD respectively. This has been agreed with the EA. The location for this is shown on Sheet 4 of 7 of the Environmental Masterplan [REP8-014] to the northeast of the confluence of Wittering Brook with the River Nene.
- 12.3.80. Measures to mitigate for the loss of riparian banks and stream bed would be included for the A47 Wansford Sluice replacement and the A1 Mill Stream culvert extension. This would include a natural sediment bed and a mammal ledge for the A47 Wansford Sluice replacement to allow for passage.
- 12.3.81. The Applicant is proposing that there would be habitat restoration on Wittering Brook and Mill Stream and the creation of wetland/ ponds and ditch at Mill Stream. These would be to mitigate the additional culverting. Furthermore there would be additional planting near the proposed outfalls.
- 12.3.82. To minimise risks of erosion, all surface water runoff would be attenuated to existing levels or greenfield rates whichever is the greater, using SuDS such as attenuation basins. The precise location of the outfalls would be designed to avoid scour. The new ponds would be created prior to the loss of those existing.
- 12.3.83. Turning to groundwater the potential impacts of runoff have been assessed, with the provision of infiltration basins in the form of filter drains and/ or gullies with pollution control valves. However, due to the risk to groundwater from the use of filter drains the Applicant considers that this will need to be reviewed, and where necessary converted to carrier drains. To mitigate accidental spillage pollution control devices would be provided on all catchments.
- 12.3.84. The final drainage design would be completed following further surveys and pre- and post-construction water level and quality monitoring would be undertaken. This would be secured through requirements 3 and 4 in the DCO and the EMP.

### **Assessment of likely significant effects**

- 12.3.85. Tables 13.7 and 13.8 in Chapter 13 of the ES [REP3-011] respectively assess potential effects on surface and groundwater receptors during construction and operation together with any residual impacts after mitigation. These conclude that there would be no significant adverse residual effects during either phase.

### **Water Framework Directive Assessment**

- 12.3.86. The Applicant has assessed the potential construction and operation related effects on each of the water bodies' quantity and quality elements. It has then gone on to assess whether they would lead to non-compliance of the WFD and the ability of the relevant water bodies to meet their current objectives.
- 12.3.87. As well as the Nene – Islip to Tidal WFD water body and the Wittering Brook WFD water body the Applicant has also considered the following groundwater bodies which are shown in Figures 13.2 and 13.4 [APP-079]:
- Nene Mid Lower Jurassic Unit (GB40502G402400)
  - Northampton Sands (GB40501G445500)
  - Welland Limestone Unit A (GB40501G445900)
- 12.3.88. The Applicant maintains appropriate surveys were undertaken in May 2020 to inform the Geomorphological assessment (Appendix 13.5 of Chapter 13 of the ES [APP-132]).
- 12.3.89. The effect of works during both construction and operation are the same as set out above in relation to non WFD bodies and are considered in Table 13.9 of Chapter 13 of the ES [REP3-011].
- 12.3.90. The Applicant concludes that there would be no significant adverse effects from the Proposed Development during either construction or operation. However, monitoring of surface water and groundwater would be required to ensure this, particularly near watercourses and in the construction of the proposed culverts. This would be secured through the dDCO.

## **12.4. THE CASE FOR INTERESTED PARTIES**

### **Peterborough City Council**

- 12.4.1. PCC indicates [RR-036] that it has no concerns in principle with the proposed surface water drainage strategy. However, it does indicate that further information would be required on the following aspects:
- condition survey of the Mill Stream and Wittering Brook;
  - temporary drainage strategy;
  - full and up to date surface water drainage strategy; and
  - the 2022 ground investigations.

- 12.4.2. Through CCC (see [REP10-010]) PCC reminds the Applicant that land drainage consents would be required for any discharges to infiltration basins or watercourses in the PCC area.

### **Environment Agency**

- 12.4.3. The EA confirms it has been working with the Applicant to consider flood risk. It confirms it has reviewed the hydraulic modelling, not only of the River Nene, but also the Mill Stream and Wittering Brook, and have concluded it is fit for purpose.
- 12.4.4. Subject to an appropriate requirement in the dDCO, the EA has no objection to the Proposed Development (see [REP11-015]).
- 12.4.5. It also considers that the application adequately addresses the WFD impacts and would mitigate them appropriately. It particularly supports the provision of a mammal passage through the two culverts and the additional wetland area to the west of Sacrewell Mill.
- 12.4.6. In response to my Rule 17 letter of 6 July 2022 [PD-019] the EA confirmed [REP11-015] that it has considered the issues set out in the Rule 8 letter dated 18 January 2022 [PD-007] and confirmed that, subject to a specific requirement, it was satisfied that the information satisfactorily addressed the issues.

### **UK Health Security Agency**

- 12.4.7. The UKHSA commented [RR-047] about the original lack of submission of the Ground Investigation Report. It also was concerned about the consistency between the chapters of the ES relating to Geology and Soils and Road Drainage and the Water Environment relating to groundwater and surface water abstractions in respect of public health implications.

### **Other IPs**

- 12.4.8. WPC in its pre-Examination (September 2018) comments (see Appendix 1 of [REP2-071]) did make reference to the effect on the water environment, principally the River Nene as a resource. However, this was in the context of considering that the main line of the Proposed Development should be located further north which would remove the need for compensatory flood works in the vicinity of the flood plain.

## **12.5. EXA'S CONSIDERATIONS**

- 12.5.1. There were no outstanding areas of dispute in respect of drainage and the water environment by the end of the Examination. The issues which were considered during the Examination and are important for the SoS's decision are:
- whether the Proposed Development would result in increased flood risk;

- whether the A1 Mill Stream culvert extension and the A47 Wansford Sluice replacement would be appropriate in terms of flood risk, ecology and biodiversity;
- whether the proposed drainage strategy is appropriate;
- whether the Proposed Development would be compliant with the WFD.

## **Overall approach and analysis**

- 12.5.2. The ES Chapter [REP3-011] was supported by a comprehensive analysis including a FRA [REP3-014], Drainage Strategy Report [REP5-007], and reports considering surface water [APP-130], groundwater [APP-131] and geomorphology in relation to Wittering Brook [APP-132].
- 12.5.3. Both the water consenting bodies, the EA and PCC as LLFA, are content with the overall proposals, subject to the quantum of flood compensation works being secured through the dDCO and further elements of detailed design being agreed.
- 12.5.4. I have no substantive evidence to counter this. While it would clearly be better to leave the current flood plain of the River Nene unaltered the comment from WPC requesting the main line move further north forms part of the holistic assessment which I will consider further in Chapter 16.
- 12.5.5. The Applicant acknowledged the criticisms of the UKHSA set out above and submitted additional and revised documents to deal with these issues. The UKHSA was notified of these documents but made no further comment.
- 12.5.6. Having reviewed the revised and additional documents I am satisfied that they resolve the issues highlighted by the UKHSA in respect of the water environment and this does not represent an impediment to the grant of the DCO.

## **Flood Risk including culvert design**

- 12.5.7. The majority of the Application site lies within Flood Zone 1, but there are sections which are in both Flood Zones 2 and 3. As paragraph 5.102 of the NPSNN makes clear, the nature of linear infrastructure means that there are cases where infrastructure is being provided between two points that are not in flood risk area, however the most viable route between the two passes through a flood risk area.
- 12.5.8. Due to the end points of the Proposed Development any direct line would travel through these areas of higher flood risk related to Wittering Brook, and, depending on the precise line chosen, there may be effects relating

to the areas of higher flood risk associated with River Nene<sup>101</sup> and with Mill Stream.

- 12.5.9. The relationship of the flood zones to the Proposed Development can be readily seen in Annex H of the Applicant's Response to the Examining Authority's First Written Questions (ExQ1) – Annexes [REP2-036].
- 12.5.10. In relation to the River Nene, the Applicant takes the view that in order to minimise works in the area of the Scheduled Monument it is necessary that the line would encroach into the area of flood risk. For the purposes of this chapter I will assume that is correct but will consider that more holistically in Chapter 16.
- 12.5.11. In relation to Mill Stream, it is already in a culvert as it travels under the A1. The diverge point for the free-flow slip road is effectively just north of this point, and I am satisfied from the information in front of me that this is necessary to ensure appropriate highway geometries are achieved.
- 12.5.12. In light of all these matters I am satisfied that the sequential test referred to in paragraph 5.105 of the NPSNN is passed subject to the exception test. The exception test set out in paragraph 5.108 gives two requirements. Firstly, that the project provides sustainability benefits, which include the need for the development, which for these purposes I conclude would be the case, and secondly that the FRA must demonstrate that the project will be safe for its lifetime without increasing flood risk.
- 12.5.13. In relation to Mill Stream it was clarified during the Examination that the existing culvert under the A1 would be extended rather than replaced, and as this would be downstream of the beginning of the culvert and of the same size this would have no effect on flow rates through the overall culvert. However, there would be the loss of habitat from the formation of the culvert. I am satisfied that the creation of the ponds to the east would result in an overall net gain reducing flood risk and enhancing biodiversity notwithstanding my criticisms of the effect on the setting of the listed Sacrewell Mill.
- 12.5.14. Moving on to Wittering Brook, the Proposed Development would involve the creation of a new culvert some 10m west of the existing culvert (the Wansford Sluice). Being on a different line to the existing channel would allow it to be constructed before the line of the watercourse was diverted.
- 12.5.15. There was some discussion in the Examination as to the design of the crossing for Wittering Brook, with two main points. Firstly, why a design had been chosen that maintained the throttling effects of the existing

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<sup>101</sup> The EA's flood risk maps at the confluence of Wittering Brook with the River Nene do not differentiate between the two, nor do they at the confluence of Mill Stream with Wittering Brook.

culvert and secondly, why a culvert had been chosen rather than a bridge.

- 12.5.16. In relation to the first of these issues it was clear that there was some confusion. Not having a throttle, it could reasonably be presupposed, would have the effect of reducing flood risk upstream of this point, but may, of course, increase flood risk downstream. However, the EA confirmed at ISH2 that it had not requested and did not request a throttle.
- 12.5.17. Originally, the Application was made on the basis that PCC as LLFA had requested a throttle and PCC confirmed that this had originally been the case, but this was later rescinded (see [REP5-024]). The Applicant's response (point 4.6 of [REP4-018]<sup>102</sup>) was that the modelling in the FRA showed this did not increase flood risk downstream.
- 12.5.18. The Applicant maintained that creating an alternative of a clear span bridge utilising the existing line of the crossing would result in adverse ecological effects due to complex temporary works and would not result in the benefits that would otherwise be expected. A culvert could be designed to mimic natural bed conditions through an appropriate gravel bed.
- 12.5.19. The proposed culvert would be larger than the existing (2.45m high by 2.5m wide when compared to 1.83m by 1.64m for that existing) which would allow a greater flow of water and therefore would, of itself, reduce flood risk to the north of the dual carriageway.
- 12.5.20. The construction of the main line would have the effect of removing part of the nominal flood area for Wittering Brook north of the A47. Consequently, the Applicant undertook hydraulic modelling of this (it can be found in Annex B of the FRA [REP3-014]). This showed a maximum detriment of 0.2m across the floodplain for all events. PCC as LLFA confirmed that no compensation was required for this.
- 12.5.21. While there would be an increase in the depth of water in the event of flood, given the nature of the area in question, at the northern toe of an embankment in a depression in ground levels, I am satisfied that the proposals for the A47 Wansford Sluice replacement are appropriate and would not materially increase flood risk.
- 12.5.22. In relation to the River Nene the proposed embankment would encroach into Flood Zone 3 on the southern side of the existing A47. The proposal here being to provide a compensatory area slightly to the east, just outside Flood Zone 3, but within Flood Zone 2.
- 12.5.23. As noted, the EA is content with this arrangement, subject to an appropriate requirement within the dDCO (Requirement 9). There was a discussion at ISH3 as to whether the increase in area would reduce the

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<sup>102</sup> The Applicant confirmed in [REP6-006] that this remained its response to the subsequent correspondence.

amount of time when the PRowS between Sutton and Wansford would be useable, but I am satisfied that given the existing routes travel through Flood Zone 3 the increased area would not affect the amount of time that the route would be impassable.

- 12.5.24. I am therefore satisfied that the Proposed Development makes appropriate provision in respect of flood risk and the exception test is passed.

### **Drainage Strategy**

- 12.5.25. The overall strategy as set out in the Drainage Strategy Report [REP5-007] is that highway runoff would be controlled to the existing discharge rate, attenuating the net increase of pluvial water on impermeable surfaces. Any areas of additional widening would be restricted to greenfield rates.
- 12.5.26. As a result of the Proposed Development there would be 14 different drainage networks comprising five attenuation basins and two infiltration basins. These are shown in Appendix D to the Drainage Strategy Report [REP5-007]. I note that there would be some drainage outfalls to the River Nene upstream of the extraction points for the Anglian Water pumping station.
- 12.5.27. The Applicant maintains that the combination of attenuation basins, infiltration basins, drainage ditches and filter drains are expected to provide a sufficient level of mitigation against pollution risks, and no party has disputed this.
- 12.5.28. Where possible the Applicant is seeking to utilise existing drainage systems. This is predominantly at the extreme eastern and western parts of the main line and for the new private access to 6 to 12 (evens) Great North Road.
- 12.5.29. Mitigation measures from using combinations of filter drains, vegetated attenuation basins and penstocks would ensure that any outfalls would not add to pollution. In relation to possible effects on the Sutton Heath and Bog SSSI, a penstock was included which otherwise may not have been necessary.
- 12.5.30. The use of filter drains would result in discharges to groundwater, but the Applicant concluded that groundwater mounding is unlikely due to the highly permeable nature of the underlying Lincolnshire Limestone Formation and river terrace deposits. The overall capacities have been sized to allow for climate change.
- 12.5.31. In the absence of any information to the contrary, I am satisfied that the Applicant's drainage strategy is appropriate and would mitigate the risks both of flooding and pollution.

## **Water Framework Directive**

- 12.5.32. The WFD aims to protect and enhance the quality of the water environment and is transposed into legislation in England by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (as amended). Under the WFD, 'waterbodies' are the basic management units, defined as all or part of a river system or aquifer. Waterbodies form part of a larger 'River Basin District', for which 'River Basin Management Plans' are used to summarise baseline conditions and set broad improvement objectives.
- 12.5.33. The Application site lies in the Anglian River Basin District. The Applicant has assessed two surface water bodies, The 'Nene – Islip to Tidal WFD body' and the 'Wittering Brook WFD body' and three groundwater bodies, Nene Mid Lower Jurassic Unit, Northampton Sands, and Welland Limestone Unit A.
- 12.5.34. The Applicant concludes that there would be no significant adverse effects from the Proposed Development during either construction or operation. However, monitoring of surface water and groundwater would be required to ensure this, particularly near watercourses and in the construction of the proposed culverts. This would be secured through the dDCO. This has been agreed with both the EA and PCC as LLFA.
- 12.5.35. Both the EA and PCC as LLFA are satisfied with the assessment and that the Proposed Development would be WFD compliant. I have no evidence before me to reach a different conclusion and therefore am satisfied that the Proposed Development would be WFD compliant.

## **12.6. CONCLUSIONS**

- 12.6.1. Taking all the relevant documents and policies into account and on the basis of the above, I conclude as follows:
- The Proposed Development would meet the sequential and exception tests as essential infrastructure and it would be appropriately located, even given that parts would be within Flood Zones 2 and 3.
  - There has been a robust assessment of the risks from all sources of flooding and the Proposed Development would be safe for its lifetime and its operation and would not be affected by flooding.
  - The Proposed Development would not increase the risk of flooding elsewhere.
  - The Proposed Development is supported by an appropriate Drainage Strategy and contains appropriate mitigation, including flood compensatory storage, secured through requirements in the dDCO.
  - The Proposed Development would be WFD compliant and it would not result in significant detriment to the overall condition and value of the potentially affected waterbodies.
  - Consequently, all these matters are, in my view, neutral in the balance.
- 12.6.2. The Proposed Development would comply with the relevant policies of the NPSNN in that it has put forward proposals to mitigate adverse effect

on the water environment, utilising SuDS where appropriate. The Proposed Development would comply with Local Plan Policies LP24, LP28 and LP32 which all deal with effects on the water environment.

# 13. FINDINGS AND CONCLUSIONS IN RELATION TO NOISE AND VIBRATION

## 13.1. INTRODUCTION

13.1.1. This chapter deals with the effects of the Proposed Development on receptors from noise and vibration. In particular it deals with:

- construction and operational effects of noise; and
- construction and operational vibration effects.

## 13.2. POLICY

### National Policy Statement for National Networks

13.2.1. Paragraph 4.8.1 of the NPSNN states that: *"where the proposed project has likely significant environmental impacts that would have an effect on human beings, any environmental statement should identify and set out the assessment of any likely significant adverse health impacts."*

13.2.2. The NPSNN identifies in paragraph 5.186 the potential consequences of excessive noise in terms of its potential effects *"on the quality of human life and health (e.g. owing to annoyance or sleep disturbance), use and enjoyment of areas of value (such as quiet places) and areas with high landscape quality"*. It confirms that Government policy is set out in the NPSE. In line with current legislation, references to 'noise' in the NPSNN also apply to the impacts of 'vibration'.

13.2.3. In relation to decision making, paragraph 5.193 of the NPSNN states: *"Due regard must have been given to the relevant sections of the Noise Policy Statement for England, National Planning Policy Framework and the Government's associated planning guidance on noise."*

13.2.4. The NPSNN at paragraph 5.189 sets out the factors that should be included in a noise assessment. These include:

- identification of noise-sensitive premises and noise-sensitive areas that may be affected;
- the characteristics of the existing noise environment;
- a prediction on how the noise environment will change with the proposed development in the short and long term and at particular times of the day and night;
- the potential noise impact elsewhere that is directly associated with the development, such as changes in road and rail traffic movements elsewhere on the national networks, should be considered as appropriate; and
- measures to be employed in mitigating the effects of noise.

13.2.5. The NPSNN, at paragraph 5.194, advises that proposals should seek to optimise the layout *"to minimise noise emissions and, where possible, the use of landscaping, bunds or noise barriers should be used to reduce noise transmission"*. It also requires projects to *"consider the need for the mitigation of impacts elsewhere on the road and rail networks that*

*have been identified as arising from the development, according to Government policy”.*

- 13.2.6. Paragraph 5.195 of the NPSNN states SoS should not grant development consent unless satisfied that the proposals will avoid significant adverse impacts, mitigate and minimise other adverse impacts, and contribute to improvements to health and quality of life through the effective management and control of noise, where possible.
- 13.2.7. Paragraph 5.197 of the NPSNN states that the ExA and SoS should consider mitigation measures and may wish to impose measures in addition to those which form part of the project application, together with requirements to ensure delivery of all mitigation measures. Paragraph 5.198 requires such measures to be proportionate and reasonable.
- 13.2.8. Paragraph 5.200 requires consideration of opportunities to address the noise issues associated with Noise Important Areas.

## **National Planning Policy Framework and Planning Practice Guidance**

- 13.2.9. The Framework, in paragraph 174, notes that new and existing development should be prevented from contributing to, being put an unacceptable risk from, or being adversely affected by unacceptable levels of noise pollution. Paragraph 185 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health. In doing so decisions *“should mitigate and reduce to a minimum, potential adverse impacts resulting from new development, and avoid noise giving rise to significant adverse impacts on health and quality of life”*, referencing the NPSE.
- 13.2.10. The PPG provides further guidance in relation to the Government’s approach to noise. It confirms<sup>103</sup> that decision-making needs to take account of the acoustic environment and in doing so consider whether or not a significant adverse effect or an adverse effect is occurring or likely to occur, and whether a good standard of amenity can be achieved. It identifies various factors that may influence the acoustic environment.
- 13.2.11. The PPG states<sup>104</sup>: *“some types and levels of noise will cause a greater adverse effect at night than if they occur during the day - this is because people tend to be more sensitive to noise at night as they are trying to sleep”*. It also lists a number of factors that should be taken into account when considering the noise impacts of a proposed development, including whether any adverse internal effects can be completely removed by closing windows. It explains *“where existing noise sensitive locations already experience high noise levels, a development that is expected to cause even a small increase in the overall noise level may*

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<sup>103</sup> Reference ID: 30-003-20190722

<sup>104</sup> Reference ID: 30-006-20190722

*result in a significant adverse effect occurring even though little or no change in behaviour would be likely to occur”.*

## **Noise Policy Statement for England**

- 13.2.12. The NPSE states that the Government's overall vision for noise is to promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development.
- 13.2.13. It sets out three aims. These are:
- avoid significant adverse impacts on health and quality of life;
  - mitigate and minimise adverse impacts on health and quality of life; and
  - where possible contribute to the improvement of health and quality of life.
- 13.2.14. The NPSE recognises that noise exposure can impact on quality of life. It refers to emerging evidence that long-term exposure to some types of transport noise can additionally cause an increased risk of direct health effects. It states that the Government intends to keep research on the health effects of long-term exposure to noise under review.
- 13.2.15. The NPSE refers to the WHO concepts for establishing noise effects – the No Observed Effect Level (NOEL) and the Lowest Observed Adverse Effect Level (LOAEL). The former is the level below which there is no detectable effect on health and quality of life due to the noise, whilst the LOAEL is the level above which adverse effects on health and quality of life can be detected.
- 13.2.16. The NPSE adds the concept of Significant Observed Adverse Effect Level (SOAEL). This is the level above which significant adverse effects on health and quality of life occur.
- 13.2.17. Paragraph 2.22 of the Explanatory Note to the NPSE states *“It is not possible to have a single objective noise based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. It is acknowledged that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise. However not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available.”*
- 13.2.18. Paragraph 2.23 of the Explanatory Note to the NPSE advises that the first aim of the NPSE states that significant adverse effects on health and quality of life should be avoided while also taking into account the guiding principles of sustainable development (as set out in paragraph 1.8 of the NPSE).

- 13.2.19. The second aim of the Explanatory Note to the NPSE, as advised at paragraph 2.24 of the NPSE, refers to the situation where the impact lies somewhere between the LOAEL and the SOAEL. It requires that all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development.
- 13.2.20. Paragraph 2.25 of the Explanatory Note to the NPSE advises the third aim seeks, where possible, to positively to improve health and quality of life through the proactive management of noise while also taking into account the guiding principles of sustainable development, recognising that there will be opportunities for such measures to be taken and that they will deliver potential benefits to society. The protection of quiet places and quiet times as well as the enhancement of the acoustic environment will assist with delivering this aim.

### **Local Plan**

- 13.2.21. Local Plan Policy LP17 indicates that new development should not result in an unacceptable impact on the amenity of existing occupiers of nearby properties. It indicates that these impacts may include noise and vibration levels resulting in disturbance for the occupiers or users of any nearby property or land.

### **World Health Organisation Guidelines**

- 13.2.22. The WHO Guidelines for Community Noise 1999 (the CNG) provides guidance on suitable internal and external noise levels, for steady sound in and around residential properties. It recommends in Table 4.1:
- 30 decibels (dB) equivalent continuous sound pressure level ( $L_{Aeq}$ ) in bedrooms, with no greater than 45dB  $L_{Amax}$ , over 8 hours at night;
  - 35dB  $L_{Aeq}$  in living rooms over 16 hours in the day;
  - 50 to 55dB  $L_{Aeq}$  in gardens/outdoor living areas over 16 hours in the day; and
  - 45dB  $L_{Aeq}$  outside bedrooms with an open window over 8 hours at night.
- 13.2.23. The WHO Night-Time Noise Guidelines for Europe 2009 (the NNG) provides additional guidance on night-time noise and recommends noise levels based on effects on health. Adverse effects are observed at 40 to 50dB, particularly among vulnerable groups. NNG in Table 5.4 describes levels above 55dB as *"increasingly dangerous for public health"*.
- 13.2.24. The WHO Environmental Noise Guidelines for the European Region (the ENG) updates and supersedes the CNG in so far as it relates to road traffic noise and complements the NNG. The guidelines are source specific and apply a 1dB increment scheme, whereas the CNG and NNG formulated or presented recommendations in 5dB steps.
- 13.2.25. They provide information on the exposure–response relationships between exposure to environmental noise from different noise sources and the proportion of people affected by certain health outcomes, as well

as interventions that are considered efficient in reducing exposure to environmental noise and related health outcomes. The recommendations rely on the critical health outcomes.

- 13.2.26. ENG sets out the recommendations in terms of traffic noise. These are summarised in Section 3.1 as follows:

*"For average noise exposure, the Guideline Development Group (GDG)<sup>105</sup> (strongly recommends reducing noise levels produced by road traffic below 53dB  $L_{den}$ , as road traffic noise above this level is associated with adverse health effects.*

*"For night noise exposure, the GDG strongly recommends reducing noise levels produced by road traffic during night time below 45dB  $L_{night}$ , as road traffic noise above this level is associated with adverse effects on sleep.*

*"To reduce health effects, the GDG strongly recommends that policymakers implement suitable measures to reduce noise exposure from road traffic in the population exposed to levels above the guideline values for average and night noise exposure. For specific interventions, the GDG recommends reducing noise both at the source and on the route between the source and the affected population by changes in infrastructure."*

- 13.2.27. The ENG explains the rationale for the recommendations, including the impacts on health and potential interventions.

### **13.3. THE CASE FOR THE APPLICANT**

- 13.3.1. Chapter 11 of the ES addresses Noise and Vibration. The originally submitted chapter [APP-049] was updated at D2 [REP2-014] to deal with a typographical error. The original chapter was supported by various Appendices and Figures.

#### **General Approach**

- 13.3.2. The Applicant indicates that the assessment was undertaken in accordance with DMRB LA 111. It should be noted that LA 111 was revised in 2020 after some of the original surveys were undertaken. The Applicant notes that some elements of its assessment were amended to take this into account.
- 13.3.3. The Applicant undertook a baseline noise survey in May and June 2018. The results are set out in Appendix 11.3 of the ES [APP-125]. Future DM conditions have been determined at all identified potentially sensitive receptors based on predicted traffic noise levels in the absence of the Proposed Development.
- 13.3.4. Appendix 11.1 of the ES [APP-123] Glossary of Terms defines 'noise sensitive receptor' and 'vibration sensitive receptor' as receptors which

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<sup>105</sup> Guideline Development Group

are potentially sensitive to noise or vibration respectively. It then sets out two lists of examples. 'Sensitive buildings' are defined as "*Dwellings, including those that are listed, hospitals, healthcare facilities, education facilities or other buildings where noise or vibration can cause disturbance to people using the buildings*".

## **Noise**

### **Construction Noise**

- 13.3.5. An assessment of construction noise was undertaken using a study area of 300m from the Proposed Development. This is taken as being where "*there is the greatest potential for significant effects due to construction noise*".
- 13.3.6. The level of noise was predicted using proprietary software using the calculation methodologies within BS 5228-1<sup>106</sup>. This utilised type and sound output from various items of plant which are identified in Appendix 11.5 of the ES [APP-127]. It then determined the construction noise levels based on an average that would occur during each construction stage accounting for the long-term movement of plant and activities over the works area.
- 13.3.7. The LOAEL was taken as being the baseline ambient noise level ( $L_{Aeq, Day}$ ) at that location based on the DM Opening Year (2025) assessment. The SOAEL was based on LA 111 which allows this to be defined based on existing ambient noise levels. The daytime SOAEL is considered to be either 65dB, 70dB, or 75dB  $L_{Aeq,T}$ , depending on the existing ambient noise level in that location. The SOAEL values for evening and weekend works are taken as 10dB lower than for daytime, and the SOAEL values for night-time works are set at 20dB lower than for daytime.
- 13.3.8. The magnitude of impact criteria are set out in Table 11-3 of Chapter 11 of the ES [REP2-014] with the predicted results of 'moderate' or 'major' magnitudes of impact mapped within Figures 11.9 to 11.12 [APP-075] and 11.17 to 11.23 [APP-076].
- 13.3.9. The Applicant notes that LA 111 advises that a significant effect would occur where a 'moderate' or 'major' impact is expected for 10 or more days or nights in any 15 consecutive days or nights, or where, within any six consecutive months, the total number of days would exceed 40. In relation to traffic diversions due to road closures the Applicant notes that LA 111 does not advocate quantitative assessment of impact magnitudes.
- 13.3.10. The Applicant notes that the majority of construction work will take place during the daytime (07:00 hours to 19:00 hours Mondays to Saturdays). However, some night work will be required between 20:00 hours and

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<sup>106</sup> British Standard 5228-1:2009+A1:2014. Code of practice for noise and vibration control on construction and open sites. Noise.

06:00 hours, with potential extended working hours in the summer to take advantage of daylight and weather.

- 13.3.11. The Applicant indicates that there would be haul routes for construction traffic within the overall Application site. Most would be close to the proposed construction compounds (see paragraph 2.2.30) and thus most traffic would travel along the A47, except when side roads are under construction.
- 13.3.12. It is assumed in the calculation that there would be no more than 150 site-wide lorry trips per day for any phase (or 300 movements allowing for return journeys) and they would be limited to the A1 and A47. Due to the existing levels of traffic on these roads, including HGVs, this would have a negligible impact on noise levels.
- 13.3.13. When the A47 would need to be shut, the diversion route would be to the south via the A1, A1139 and A1260. The junction of the A47 and A1260 is the most westerly 'all-ways' junction at Peterborough, and this connects with the A1139 and then the A1. In light of the base levels of traffic, even at night, the Applicant considers that diverted traffic would have a temporary minor magnitude of effect.
- 13.3.14. The Applicant has identified 249 existing noise-sensitive receptors within the 300m construction noise study area.
- 13.3.15. The Applicant has identified three situations where noise could be a potential impact (see paragraph 11.8.1 of Chapter 11 of the ES [REP2-014]) in relation to construction:
- noise arising due to the construction of the Proposed Development;
  - the change in road traffic noise due to heavy vehicle traffic associated with the construction of the Proposed Development; and
  - the change in road traffic noise due to the diversion routes associated with the construction of the Proposed Development.
- 13.3.16. The Applicant has set out that the Proposed Development would take place in various phases. It has set out in Tables 11-11 and 11-12 of Chapter 11 of the ES [REP2-014] where it considers major and moderate noise impacts may take place during daytime construction and evening and weekend construction respectively.
- 13.3.17. In the daytime the four dwellings at 6 to 12 Great North Road (evens) are seen as being affected to a 'major' extent both during Phase 1 (Site clearance and Utility Works) and Phase 5 (Site clearance, Utility, carriageway construction), and two being affected to a 'moderate' extent. These are Sacrewell Farm and Country Centre during the compound set-up and operation and Model Farm at Upton when works in that vicinity would be taking place.
- 13.3.18. During evenings and weekends a larger number of properties would be affected. These are shown below in Table 12: Major and moderate construction effects during evening and weekends. All these properties would be physically close to the works taking place.

**Table 12: Major and moderate construction effects during evening and weekends**

<b>Address</b>	<b>Construction Stage</b>	<b>Works</b>	<b>Magnitude of Impact</b>
Mill House, Sacrewell	Pre-Works and Phase 1	Site Clearance and Utility Works	Moderate
	Compounds	Compound set-up and operation	Moderate
	Phase 2	Finishing works	Moderate
Sacrewell Farm and Country Centre	Pre-Works and Phase 1	Site Clearance and Utility Works	Major
	Compounds	Compound set-up and operation	Major
	Phase 2	Drainage works	Moderate
	Phase 2	Earthworks	Moderate
	Phase 2	Finishing works	Major
Sutton Heath and Bog SSSI	Pre-Works and Phase 1	Site Clearance and Utility Works	Moderate
	Phase 2	Finishing works	Moderate
6 to 12 (evens) Great North Road	Phase 5	Site clearance, utility, carriageway construction	Major
Glebe House, Upton	Upton works		Moderate

13.3.19. The Applicant indicates that until a contractor is in place, it cannot be certain as to how long any works may take place and thus whether they would continue longer than the periods set out in paragraph 13.3.9 so as to result in a significant effect. However, on a precautionary basis it has assumed that those periods would be exceeded.

13.3.20. While it is likely that tie-in works would need to take place overnight, the Applicant considers that it would be unlikely that the time periods set out

in paragraph 13.3.9 would be exceeded. In any event the Applicant indicates *"Due to the sensitive period during which these works will occur, the Principal Contractor shall implement mitigation including further detailed assessments and the application of best practicable means of noise control"*.

### **Operational Noise**

- 13.3.21. The Applicant undertook an assessment based on a study area of 600m from new or altered links. This is seen as including receptors at which there is the greatest potential for significant effects. The Applicant notes that this does not include the effect of the works at Upton on the basis that due to low traffic flows the changes are not deemed significant.
- 13.3.22. Traffic noise levels were predicted in four scenarios, DM in both Opening Year (2025) and Future Year (2040), and DS again in both Opening Year and Future Year. From this the Applicant has produced noise contours, and from this the number of receptors within the 600m zone that are subject to 'no change', 'negligible', 'minor', 'moderate' or 'major' magnitude of impact (these may be either increases or decreases).
- 13.3.23. To ensure that the assessment is robust the Applicant has based its assessment on the elevation of any building which would be most affected by noise change. For outdoor noise-sensitive receptors (PROWs, SSSIs and cemeteries) the assessment has been undertaken for the daytime period only.
- 13.3.24. The Applicant has identified the LOAEL and the SOAEL for buildings from LA 111 and these are set out in Table 11-6 of Chapter 11 of the ES [REP2-014]. It notes that for outdoor receptors the LOAEL and the SOAEL are 3dB lower since they are in free-field conditions.
- 13.3.25. The Applicant has assessed the magnitude of change in respect of operational noise in both the short and long terms. These are set out in Tables 11-7 and 11-8 of Chapter 11 of the ES [REP2-014]. It notes that in LA 111 a 'moderate' or a 'major' change in road traffic noise is classed as 'significant', but further assessment is required to determine the final operational significance based on the context and circumstance of each change. This means that even a 'minor' magnitude of change in the short-term can be significant in the final analysis. This is set out in Table 11-9 of Chapter 11 of the ES.
- 13.3.26. The Applicant maintains that outside the 600m study area identified in paragraph 13.3.21 there would be no road links with the potential to experience a short term increase in the basic noise level of 3.0db(A) or more. For those roads where the short term basic noise level would exceed a 1.0db(A) increase these are all well below the SOAEL. Consequently, the Applicant has not included these within its model.
- 13.3.27. Within the operational noise study area, the Applicant has identified a total of 382 noise-sensitive receptors. This includes 33 non-residential receptors such as:

- PRowS;
- a hotel;
- a bed and breakfast premises;
- a cricket club;
- a community centre;
- a museum; and
- two churches and their associated cemeteries.

- 13.3.28. There are two Noise Important Areas (NIAs) within the study areas. NIAs are areas particularly affected by noise. They are defined in the Noise Action Plans as the area where the 1% of the population that are affected by the highest noise levels from major roads are located according to the results of the strategic noise mapping. One is identified on the A1 at the rear of the properties in Robins Wood and Black Swan Spinney in Wansford. The second is the former station building at the Wansford Road railway station which is due to be demolished.
- 13.3.29. There are two SSSIs within the operational study area: Sutton Heath and Bog SSSI and Wansford Pasture SSSI (located to the southwest of the village of Wansford).
- 13.3.30. The Applicant has set out its analysis of the effect of operational noise in Tables 11-16 to 11-18 of Chapter 11 of the ES [REP2-014]<sup>107</sup> and this is also demonstrated graphically in Figures 11.2 to 11.8 of the ES [APP-074]. The Applicant has set out the predicted operational impacts, then what is described as "*embedded mitigation*", before predicting the significance of effects.
- 13.3.31. The Applicant's assessment concludes that in all three assessed scenarios, that is DM, DM versus DS (Opening Year) and DM versus DS (Future Year) no noise building sensitive receptors would be subject to a 'major' or 'minor' effect (either harmful or beneficial).
- 13.3.32. However, two non-residential sensitive receptors would experience a 'major adverse' impact on the opening of the Proposed Development. These are both PRowS, the Wansford Hereward Way Permissive 3 to the north of the existing A47 to Sacrewell Farm, and Wansford Footpath 4 which runs between the A47 at the lay-by to the south of the Scheduled Monument and Sutton Footpath 1.
- 13.3.33. One residential property, Deep Springs, to the south of the existing A47 and southwest of the existing Sutton Heath Road junction, would be subject to a 'minor beneficial' effect in both of the DS scenarios in both daytime and night-time in the Opening Year and in the daytime alone in the Future Year scenario. One non-residential noise-sensitive receptor, Wansford Permissive Footpath 113, which is a short section of the footpath parallel to the A47 north of the Anglian Water pumping station

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<sup>107</sup> It should be noted that Tables 11-16 and 11-17 exclude non-residential sensitive receptors while Table 11-18 includes them.

would also receive a 'minor beneficial' effect in both the Opening Year and Future Year scenarios.

13.3.34. Conversely, 33 dwellings would experience a 'minor adverse' impact from the Proposed Development upon opening. Four would be located in Wansford and 29 in Sutton. In addition, four non-residential sensitive receptors would experience a 'minor adverse' impact: Sacrewell Farm and Country Centre, Sutton Heath and Bog SSSI and users of Sutton Footpath 1 and Wansford Footpath 4.

13.3.35. According to the Applicant, in the Future Year scenario no residential noise-sensitive receptors would experience 'major', 'moderate' or 'minor' adverse or beneficial impacts. However, two non-residential noise-sensitive receptors would experience adverse impacts, both PROWs. Wansford Footpath 4 would experience a 'moderate adverse' impact and Wansford Hereward Way Footpath would experience a 'major adverse' impact. Conversely, Wansford Footpath 113 would experience a 'minor beneficial' impact.

### **Mitigation**

13.3.36. The Applicant notes that construction mitigation would be provided by seeking to ensure that construction would take place mainly during the daytime. However, it acknowledges that some works would need to take place at night, which would require liaison with the environmental health department of PCC. Such liaison would also take place should the contractor utilise different plant and machinery from that assessed.

13.3.37. In respect of those noise-sensitive receptors where 'major' and 'minor' construction effects are identified the Applicant is proposing to use temporary noise barriers or site hoardings. The precise details would be subject to discussions between PCC and the Principal Contractor. Table 11-19 of Chapter 11 of the ES [REP2-014] sets out locations where temporary mitigation would be required.

13.3.38. These temporary mitigation measures would, in the Applicant's view, mitigate the potential for significant construction noise effects at all receptors apart from 6 to 12 (evens) Great North Road, where a 'moderate adverse' impact is predicted during three phases of construction. To avoid this, works should be avoided between 13:00 hours and 19:00 hours on a Saturday, but if this is not possible then further detailed assessments are required. In any event, best practical means for noise mitigation should be employed and included within the EMP.

13.3.39. Furthermore, the Applicant considers that communication needs to take place with the local community on the basis that being forewarned increases public acceptance. This would be secured in reference NV1 of the REAC in the EMP [REP6-001].

13.3.40. As set out above, it is proposed that construction traffic would utilise the A1 and A47 for access and haul roads within the Application site. Where other roads are required for construction related traffic, detailed noise

impacts would be undertaken, discussed and approved by PCC. Any temporary mitigation, such as screening, would be considered in that assessment.

- 13.3.41. To mitigate operational noise, a low-noise road surface would be utilised on the main carriageway. This would reduce road traffic noise by 2.5dB  $L_{A10,18hr}$  when compared with hot rolled asphalt. This would be secured in reference NV3 of the REAC in the EMP [REP6-001].

### **Overall assessment**

- 13.3.42. The Applicant maintains that subject to the provision of temporary noise barriers, best practical means, construction noise monitoring where required, use of trunk roads only for diversion routes, and the proposed mitigation measures that there would be no significant adverse residual effects.
- 13.3.43. Because of the routes that the construction traffic would utilise the Applicant maintains that this would not have significant effects. This would be controlled through the Outline Traffic Management Plan secured by Requirement 4 in the dDCO. For the reasons outlined above, the Applicant believes that diversion routes would not result in any adverse impacts on noise-sensitive receptors.
- 13.3.44. In relation to operational noise, the Applicant is of the view that with the mitigations in place only two noise-sensitive receptors would experience significant effects, and these are the two PRowS identified in paragraph 13.3.34.
- 13.3.45. The Applicant takes the view, in accordance with LA 111, that for receptors which are initially deemed to experience significant operational effects additional final consideration of the likely significance of effects is required. In the case of the Wansford Hereward Way Permissive Footpath, due to the separation in levels and the existing situation, users in the DS scenario will spend more time where noise levels are lower than in the DM scenario. Similarly, in relation to Wansford Footpath 4 as the route would be closed and realigned. Therefore, in both cases the Applicant considers that the overall effects would not be significant.
- 13.3.46. For completeness, the Applicant takes the view that no properties would be eligible for insulation under the Noise Insulation Regulations.

### **Vibration**

- 13.3.47. The Applicant takes the view that there would only be vibration effects during the construction period.

### **Construction Vibration**

- 13.3.48. The Applicant identified seven receptors closest to the construction works. The assessment was based on identifying only the activities with the potential to result in highest levels of vibration. The Applicant considers (paragraph 11.4.23 of Chapter 11 of the ES [REP2-014]) *"this*

*is limited to compaction works in this instance; piling is likely to be required to construct overbridges and possible elsewhere for the retained cuttings".* However, the Applicant states that this will not occur within 30m of a sensitive receptor and thus will not exceed the SOAEL. The Applicant states that "vibrating rollers are proposed for use during earthworks, road formation, surfacing works, compound construction, drainage, utility diversion, placing subbase and structure formation".

- 13.3.49. The Applicant has estimated the level of vibration during compaction using Annex E of BS 5228-2<sup>108</sup>. The British Standard sets out three results for the Peak Particle Velocity (PPV), one with a 50% chance of being exceeded, one with a 33% chance and one with a 5% chance. The Applicant has utilised the 33% chance of being exceeded on the basis that this represents a reasonable 'worst-case' scenario to allow a judgement of significance to be evaluated.
- 13.3.50. The Applicant has taken the LOAEL for construction vibration as being 0.3 millimetres per second (mm/s) PPV with a SOAEL of 1.0mm/s. The former is considered to be just perceptible while the latter is likely to lead to complaint but can be tolerated with prior warning and explanation.
- 13.3.51. The magnitude of impact criteria area set out in Table 11-4 of Chapter 11 of the ES [REP2-014]. As with construction noise the Applicant notes that LA 111 advises that a significant effect would occur where a 'moderate' or 'major' impact is expected for 10 or more days or nights in any 15 consecutive days or nights, or where, within any six consecutive months, the total number of days would exceed 40.
- 13.3.52. The Applicant indicates that compaction vibration would be based on vibratory rollers with two vibrating drums and that all piling would be undertaken using rotary bored piling techniques.
- 13.3.53. The Applicant undertook its assessment based on a representative sample of the seven closest receptors, all close to the works.
- 13.3.54. Table 11-13 of Chapter 11 of the ES [REP2-014] sets out, by construction activity, the distances at which construction activity could result in vibration levels exceeding the SOAEL of 1.0mm/s PPV. These range from 10m from heavy vehicles (dump trucks) to 30m for Rotary Bored Piling.
- 13.3.55. The Applicant notes that most of the vibration-sensitive receptors are beyond the 30m maximum threshold and thus could not experience 'moderate' or 'major' effects. However, there are a number of properties which could be so affected. These are shown in Table 13: Properties which may be affected by construction vibration.

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<sup>108</sup> British Standard 5228-2:2009+A1:2014. Code of practice for noise and vibration control on construction and open sites. Vibration

**Table 13: Properties which may be affected by construction vibration.**

<b>Address</b>	<b>Distance to works (approximate)</b>
1 & 2 Abbots Wood Cottages, Great North Road, PE8 6HJ <sup>109</sup>	19m
6 to 12 (evens) Great North Road, PE8 6HJ	9 to 15m
Deep Springs, PE5 7XP	26m

- 13.3.56. Taking this together, the Applicant maintains that there is potential for works requiring bulldozers to exceed the SOAEL of 1.0mm/s PPV at properties at 1 & 2 Abbots Wood Cottages and at 6 to 12 (evens) Great North Road. The Applicant also considers that these properties would experience a 'moderate' magnitude of impact when vibrating rollers were used.
- 13.3.57. There would also be the potential for effects on the curtilage listed walls at Model Farm, Upton. This is discussed in more detail in Chapter 8 of this report.
- 13.3.58. The Applicant has referred to BS 7385-2<sup>110</sup> which indicates that minor cosmetic damage in light or unreinforced buildings would require levels of at least 15 mm/s PPV. The Applicant therefore maintains that it would be extremely unlikely that minor cosmetic damage would occur.
- 13.3.59. Mitigation measures in respect of vibration would consist of liaison with the Environmental Health department of PCC so as to agree matters, utilisation of best practicable measures, and liaison with the local community prior to works commencing.

**Overall assessment**

- 13.3.60. The Applicant concludes that construction vibration would occur at or above the SOAEL for those receptors identified within 30m of the Proposed Development set out in Table 13. However, mitigation measures consisting of early communication, pre-condition surveys and vibration monitoring would be instigated. This would be secured in reference NV1 of the REAC in the EMP [REP6-001].
- 13.3.61. In any event, because the SOAEL requires works to take place over certain periods of time high levels of vibration will not occur for periods of several days as works progress lineally.

<sup>109</sup> These properties are located close to the junction of the A1 and the access road to Sacrewell Lodge Farm.

<sup>110</sup> British Standard 7385-2:1993 Evaluation and measurement for vibration in buildings. Guide to damage levels from groundborne vibration

- 13.3.62. The Applicant acknowledges that for static works, such as structure formation, this could occur over a longer period and therefore detailed assessments by the Principal Contractor will be required.
- 13.3.63. Taken together, the Applicant considers that significant effects from construction vibration would not be expected at any vibration sensitive receptor.

## **13.4. THE CASE FOR INTERESTED PARTIES**

### **Peterborough City Council**

- 13.4.1. PCC in the LIR [REP2-068] indicates it has no objections to the Proposed Development. It, however, considers that in addition to the mitigation measures identified, best practicable measures for noise and vibration mitigation should be to British Standards 5228-1:2009+A1:2014.
- 13.4.2. PCC recommends that an application under s61 of the Control of Pollution Act 1974 for prior consent for works on construction sites is made for the entirety of the works once the schedule of works has been finalised. This would be particularly important for night-time works.
- 13.4.3. PCC also requests further detailed construction noise and vibration assessments are made to include:
- locations and heights of temporary barriers;
  - tie-in works;
  - any works which would exceed the criteria set out in paragraph 13.3.9;
  - extended hours in summer months;
  - vibration effects from structure formation; and
  - further detail on plant types, duration and location.
- 13.4.4. PCC has specifically requested that the Applicant implements a communication strategy to ensure that those who may be affected are notified, together with a complaints handling procedure.

### **Other IPs**

- 13.4.5. A single RR [RR-002] from Andy Tonkin raised noise as an issue. This was a generalised concern about additional noise as a consequence of increased traffic rather than a specific objection relating to a particular receptor.

## **13.5. ExA'S CONSIDERATIONS**

### **General approach and analysis**

- 13.5.1. In relation to noise and vibration PCC is content with the baseline monitoring results and that the ES appropriately assesses the effect of the Proposed Development on noise and vibration. PCC confirms that, subject to the detailed matters set out above, there are no objections.

- 13.5.2. There is no significant or technical analysis submitted by any IP that provides for a rational or robust challenge to the figures and data put forward by the Applicant. The noise modelling is verified by the baseline monitoring and demonstrates an appropriate and reasonable degree of confidence in respect of the outputs from the model.
- 13.5.3. The only area where there might be an issue relates to Wansford west roundabout where I have concluded in Chapter 6 that the traffic assessment would underestimate the quantum of traffic travelling north from the village of Wansford leading to additional queue lengths than anticipated from the west. However, my concerns relate to the length of queues into the roundabout where traffic levels will inevitably be slow with a quieter noise profile. Equally, the noise profile from vehicles accelerating would be in the same locations and of the same quantity, if slightly less frequent and over a longer period as the queue dissipates. This therefore would not have a material effect on the noise profile in this location.

## **Construction**

- 13.5.4. The implementation of the Proposed Development would result in the construction of a major piece of highway infrastructure that would involve site clearance, earthworks, retaining wall construction, bridge and culvert construction and road construction (pavement) works. These activities along with the associated construction traffic would have an effect on sensitive receptors in the locality. Temporary construction vibration effects are associated with earthworks and road construction (pavement) works using vibratory rollers as well as piling at the new Sacrewell underbridge and Wansford underpass.
- 13.5.5. Daytime noise effects would be limited to the occupiers of the four dwellings at 6 to 12 (evens) Great North Road, at Sacrewell Farm and Country Centre during the compound set-up, operation and take-down and the Model Farm at Upton when works in that vicinity were taking place.
- 13.5.6. Given the nature of the works, it would not be possible to avoid these effects, so mitigation in the form of noise barriers would be necessary. In particular this would be necessary for the Great North Road properties, as these are dwellings, and at the Sacrewell Farm due to the potential economic effects. This would be secured through commitments NV1, NV2 and G1 in the REAC in the EMP [REP6-001] secured in the dDCO and would be subject to consultation with PCC.
- 13.5.7. There would also be vibratory effects at 6 to 12 (evens) Great North Road and 1 and 2 Abbots Wood Cottages, which given the nature of the works would be unavoidable. I am satisfied that the measures proposed to mitigate the effects are the best practicable so as to ensure that no significant effect would take place.

- 13.5.8. The works at Model Farm have the potential to have a vibratory effect on the listed wall and curtilage listed walls. As these structures are heritage assets, I have discussed this in Chapter 8.
- 13.5.9. The Applicant agrees with PCC that a s61 application, or less formal means, as necessary would be made. In this regard I note that the dDCO includes provision in Article 47 to allow for appeals against either a notice under s60 of the Control of Pollution Act 1974 (control of noise on construction sites) or for situations where PCC does not give consent or grants consent but subject to conditions, under s61. I discuss this further in Chapter 18.
- 13.5.10. I am satisfied with these measures to minimise the effect on sensitive receptors during the construction period.

## **Operation**

- 13.5.11. As noted above, the number of receptors affected by the operation of the Proposed Development during the daytime and the night-time is different as certain receptors, particularly PRoWs, are not assessed for night-time effects. I consider this to be reasonable.
- 13.5.12. The changes in noise levels are shown graphically in Figures 11.7 (short-term change) and 11.8 (long-term change) [APP-074].
- 13.5.13. As shown in Table 11-18 of Chapter 11 of the ES [REP2-014] a significant number of properties would be subject to an increase in the level of noise occasioned by the Proposed Development (that is the difference between the DS and DM scenarios). For the vast majority, during the day some 281 dwellings and 22 non-residential receptors would be subject to an increase of less than 3.0dB based on the  $L_{A10,18hr}$  measurement and thus it would be negligible. Equally, 44 dwellings and 3 non-residential receptors would be subject to a less than 3.0dB reduction in sound levels based on the same criteria.
- 13.5.14. At night, based on the  $L_{night, outside}$  criteria of those affected by the Proposed Development, 261 dwellings and 1 non-residential receptor would be subject to an increase of less than 3.0dB, with 39 dwellings and one non-residential receptor subject to a less than 3.0dB decrease in sound levels, so the impacts would be negligible.
- 13.5.15. No dwellings would be subject to 'minor', 'moderate' or 'major' beneficial or adverse effects from the Proposed Development. One non-residential receptor, the Wansford Footpath 113, which runs to the north of the Anglian Water pumping station, would experience a minor beneficial impact (between 3.0 and 4.9dB).
- 13.5.16. One non-residential receptor would be subject to a 'major adverse' effect (greater than 10.0dB), being Wansford Hereward Way Permissive 3 which would run through the Sacrewell underpass. One non-residential receptor, Wansford Footpath 4, between the River Nene and the A47 immediately west of Wittering Brook, would be subject to a 'moderate adverse' (between 5.0 and 9.9dB) effect.

- 13.5.17. Users of the Wansford Hereward Way Permissive 3 would be provided with a separate route and would not have to cross the A47 at grade. Consequently, I consider that this change in noise level is acceptable.
- 13.5.18. Overall, therefore, I am satisfied that the Proposed Development would avoid significant adverse impacts on health and quality of life where possible, and mitigate and minimise other adverse impacts on health and quality of life where avoidance was not possible, as well as contribute to improvements to health and quality of life through the effective management and control of noise and vibration. The proposal would therefore comply with paragraph 5.195 of the NPSNN, paragraph 185 of the Framework and the NPSE.

## **13.6. CONCLUSIONS**

- 13.6.1. Taking all the relevant documents and policies into account and on the basis of the above, I conclude as follows:
- The Applicant's approach to the noise and vibration assessment is generally acceptable and in line with the NPSNN.
  - The Proposed Development would result in construction and operational noise and vibration effects that would result in significant adverse environmental effects on a number of sensitive receptors.
  - The proposed embedded and other mitigation secured through the dDCO and the EMP would reduce and mitigate further some of the significant effects.
  - Given the nature and scale of the Proposed Development, the short term nature of the significant effects and the mitigation, overall, the effects of noise and vibration are minimised and, in my view, should be given moderate negative weight in the balance.
- 13.6.2. I consider that the increase in noise and vibration levels has been considered, minimised and mitigated as far as possible. On this basis while there are some outstanding significant adverse effects on a small number of non-residential receptors, given the location, this should be afforded moderate negative weight in the overall planning balance. As well as it is able, the Proposed Development would comply with the relevant policies in the NPSNN.
- 13.6.3. I consider the Proposed Development would comply with Local Plan Policy LP17 in that while there would be an adverse effect from noise and vibration this would not cause an unacceptable impact.

# 14. FINDINGS AND CONCLUSIONS IN RELATION TO LANDSCAPE AND VISUAL EFFECTS

## 14.1. INTRODUCTION

14.1.1. This chapter deals with the effects of the Proposed Development on the landscape and its visual effects. In particular it deals with:

- the effect on landscape character; and
- the effect on visual receptors.

## 14.2. POLICY

### National Policy Statement for National Networks

14.2.1. Paragraphs 5.143 to 5.161 of the NPSNN identify the landscape and visual impacts decision-making considerations which the SoS is to take into account.

14.2.2. Paragraph 5.149 of the NPSNN notes *"landscape effects depend on the nature of the existing landscape likely to be affected and the nature of the effect likely to occur"*. It continues *"having regard to siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate"*.

14.2.3. The NPSNN advises at paragraph 5.156 *"Where a local development document in England has policies based on landscape character assessment, these should be given particular consideration. However, local landscape designations should not be used in themselves as reasons to refuse consent, as this may unduly restrict acceptable development."*

14.2.4. Paragraph 5.157 of the NPSNN states in taking decisions, the SoS *"should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation"*.

14.2.5. As regards visual impact paragraph 5.158 of the NPSNN indicates the SoS *"will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development"*.

14.2.6. Paragraphs 5.159 to 5.161 of the NPSNN deal with mitigation. It is particularly noted in the first of those paragraphs *"reducing the scale of a project or making changes to its operation can help to avoid or mitigate the visual and landscape effects of a proposed project. However, reducing the scale or otherwise amending the design or changing the operation of a proposed development may result in a significant operational constraint and reduction in function"*

- 14.2.7. Further, as paragraph 1.60 of the NPSNN states "*adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design (including choice of materials), and landscaping schemes, depending on the size and type of the proposed project. Materials and designs for infrastructure should always be given careful consideration*".

## **National Planning Policy Framework**

- 14.2.8. The Framework, in paragraph 174, indicates that planning decisions should contribute to and enhance the natural and local environment by, *inter alia*, recognising the intrinsic character and beauty of the countryside. Paragraph 130 seeks decisions that create places that are safe with a high standard of amenity for existing and future users.

## **Local Plan**

- 14.2.9. Local Plan Policy LP22 seeks to enhance, create and manage multi-functional green infrastructure, which is considered and integrated into the scheme design from the outset.
- 14.2.10. Local Plan Policy LP27 deals with Landscape Character. It indicates that new development in and adjoining the countryside should be located and designed in a way that is sensitive to its landscape setting. It notes that there are six Landscape Character Areas (LCAs) in the City Council area, with two covering the Application site: Nene Valley and Nassaburgh Limestone Plateau. These are identified in the Peterborough Landscape Character Assessment and are shown in Figure 7.3 [APP-059].
- 14.2.11. There are six criteria which development should meet, including:
- recognising and where possible enhancing the character and special qualities of the local landscape;
  - identifying, maintaining and, where possible, enhancing natural or man-made features of significant landscape, historical, cultural, wildlife and geological importance; and
  - providing appropriate landscape mitigation.
- 14.2.12. In respect of the second of these criteria it is noted *that "where a proposal may result in significant harm, it may be permitted in exceptional circumstances, if the overriding benefits of the development demonstrably outweigh the harm: in such circumstances the harm should be minimised and mitigated"*.
- 14.2.13. Local Plan Policy LP24 on the Nene Valley supports development that will safeguard and enhance recreation and/ or bring landscape, nature conservation, heritage, cultural or amenity benefits.
- 14.2.14. Local Plan Policy LP16 deals with Design and the Public Realm. This sets out various criteria including that development should respect the context of a site and surrounding area, responding appropriately to existing natural and historic built assets; and provide a well-designed new public realm. Policy LP17 deals with Amenity Provision. This

indicates new development should not result in an unacceptable impact on the amenity of existing occupiers of any nearby properties, with pollution from artificial light being such an impact.

- 14.2.15. Huntingdonshire Local Plan Policy LP 11 indicates that proposals will be supported where it responds positively to its context and has drawn inspiration from the key characteristics of its surroundings. Policy LP 31 relates to trees, woodland, hedges and hedgerows.

### **14.3. THE CASE FOR THE APPELLANT**

- 14.3.1. Chapter 7 of the ES [APP-045] assesses the potential landscape and visual impacts associated with the construction and operation of the Proposed Development. According to the ES *"this assessment includes a description of existing baseline conditions, consideration of the potential impacts of the Proposed Scheme upon surrounding landscape and visual receptors and identification of appropriate mitigation"* (paragraph 7.1.5). It is stated this approach is consistent with the Scoping Report and Scoping Opinion and DMRB LA 107 Landscape and Visual Effects. The Applicant also references the Guidelines for Landscape and Visual Impact Assessment Third Edition (GLVIA3).
- 14.3.2. The Assessment considered seasonable and temporal (day/ night) aspects and the effect on landscape character. It has divided consideration into three points in time:
- during construction;
  - Year 1 (effectively on opening); and
  - Year 15 (after opening) to allow for mitigation planting to take effect.
- 14.3.3. The initial study area for both the landscape and the visual assessments extended to 1km from the Application site on the basis that the Application site is not overlooked from higher ground. The Assessment takes the position that because of the existing highway infrastructure in the area this precludes any likelihood of any significant landscape and visual effects occurring at distances of greater than 1km.
- 14.3.4. As set out above two LCAs, the Nassaburgh Limestone Plateau and Nene Valley, represent the 'host' landscapes. The Applicant judged that there was no potential for a significant adverse effect on two other LCAs within the 1km study area, namely Rockingham Forest and the Northern Wolds (both fall to the southwest just within the 1km study area).
- 14.3.5. A total of 43 visual receptors were identified: a mix of individual residential properties, grouped residential properties, whole settlements, footpath routes, highway routes and commercial or community locations. These are all within the 1km study area as the Applicant *considers "there are no visual receptors just outside the 1km study area with a particularly high level of visual sensitivity that would justify their additional inclusion in the assessment"*.
- 14.3.6. The Nassaburgh Limestone Plateau is described by the Applicant (Table 7-3 of Chapter 7 of the ES [APP-045], although derived from the PCC

Landscape Character Assessment) as an "Open and slightly elevated landscape with a large scale pattern of geometric, often arable, fields interspersed with copses, woodland belts and road-side trees. The large-scale geometric pattern of the landscape displays some capacity [sic] to absorb the potential landscape effects of large scale, linear, highway infrastructure". The Nene Valley is described as "Low lying and slightly [sic] enclosed river valley landscape recognised through policy (though not locally designated) for the landscape and recreational enhancement opportunities that it offers for nearby more heavily settled areas. The shallow topographical form and smaller scale of the pastoral landscape displays less capacity to absorb the potential landscape effects [sic] of large scale, linear, highway infrastructure".

- 14.3.7. In assessing the two LCAs the Applicant takes the view, following a baseline description [APP-094] that both are of medium value and medium to low susceptibility to change leading to a medium combined sensitivity.
- 14.3.8. A ZTV based on digital surface modelling data was undertaken<sup>111</sup>. This analysis was not undertaken in relation to Upton as the focus was on the main carriageway. It particularly noted:
- the villages of Wansford, Stibbington and Sutton largely fall outside the ZTV due to screening effects;
  - much of the River Nene valley floor falls outside the ZTV due to the topography and the location of the Proposed Development on higher land;
  - there is limited potential visibility from the west of the A1 except on elevated ground to the south;
  - Ermine Street to the northeast has a screening effect; and
  - the potential visibility from Upton and Ailsworth at the eastern end is very limited.
- 14.3.9. A number of existing features were noted as being part of the baseline:
- the existing traffic movements along the A47, high sided vehicles and lighting columns at roundabouts;
  - a telecommunications tower south of the Sacrewell Farm entrance;
  - woodland belts, particularly at Sacrewell Farm and towards the eastern end of the Application site; and
  - overhead power lines and towers, particularly towards the eastern end of the Application site.
- 14.3.10. The Applicant noted that during winter months there is greater visual permeability and in low views from a lack of foliage.
- 14.3.11. Lighting during hours of darkness is limited to the roundabouts, with those at the western end being particularly visible as they are in an elevated and open position.

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<sup>111</sup> See footnote 63.

- 14.3.12. To assess the effects on visual receptors the Applicant identified fourteen viewpoints, some of which are seen as 'representative' to reflect the range of visual aspects experienced by the receptors they represent. The list can be seen in Table 7-4 in Chapter 7 of the ES [APP-045] and they are shown in Figure 7.4 [APP-059]. Following discussions with PCC these were divided into two sets, Viewpoints 1 to 4 for visualisation and Viewpoints A to J for baseline consideration.
- 14.3.13. Depending on the nature of the receptor (residential, community, commercial, PRoWs and roads) each was given a degree of sensitivity to visual change. This was in significance order from highest to lowest
- 14.3.14. The main effects of the Proposed Development are set out in paragraph 7.8.1 of Chapter 7 of the ES [APP-045]. These are:

Construction:

- removal of woodland, trees and linear planting;
- changes in landform;
- temporary construction compounds and haul routes; and
- general construction activity.

Operation:

- the new 2.6km of dual carriageway with associated earthworks;
- approximately 1km of new and realigned local roads with associated earthworks;
- new walking, cycling and horse-riding routes;
- creation of surface water attenuation basins and flood storage areas, with associated earthworks;
- introduction of moving vehicles (visible and audible), sometimes in new locations;
- new woodland, trees and hedgerows planted as mitigation;
- new road furniture, including signage, safety barriers and boundary fencing; and
- new lighting.

- 14.3.15. The Applicant indicates a list of locations which, due to the potential adverse and significant effects, have influenced the key mitigation strategies. These are:

The potential effect on landscape character of:

- the proximity of the Proposed Development to the River Nene approximately halfway between the villages of Wansford and Sutton; and
- landscape changes to Sutton Heath Road and the rural landscape to its east.

The potential visual effects:

- on users of the Sacrewell Farm Visitor Centre and its connected footpath network;

- in views across the valley floor from the south from the vicinity of Stibbington;
- on users of the Nene Way long distance footpath; and
- on properties on the north-eastern fringes of the village of Sutton, including changes to the location and extent of road lighting.

14.3.16. According to the Applicant mitigation during construction would comprise keeping a tidy site, 'as and when' material delivery to avoid stockpiles and protection of vegetation in accordance with BS 5837<sup>112</sup>.

14.3.17. In relation to the operational phase, the design sought to minimise effects by remaining close to the line of the existing A47, utilising the east/ west tree belt at the eastern end, and minimising land-take in relation to the tie-in to the local road network. Mitigation planting of new hedgerow, trees and woodland both to screen the Proposed Development and integrate with the existing field pattern was also proposed. This is shown in the Environmental Masterplan [REP5-009] and would be secured in requirement 5 in the DCO [REP11-002].

## **Assessment of effects**

### **Construction**

#### **Landscape**

14.3.18. The Applicant acknowledges that during construction the effect on the landscape would be significant. For the Nene Valley LCA due to the proximity and the nature of the landscape, the Applicant considers that the effects would be 'large adverse'. For the Nassaburgh Limestone Plateau LCA the Applicant considers that the magnitude of change of the landscape character would be moderate adverse and the effect would be moderate adverse, that is significant.

#### **Visual**

14.3.19. The two main construction compounds would be located within agricultural land to the south of Sacrewell Farm and to the east of Sutton Heath Road (the locations are shown in Annex B of the Applicant's Response to the Examining Authority's (ExA) First Written Questions [REP2-036]). The Applicant indicates that they are both in locations not widely visible from surrounding areas and visual receptors. The third smaller compound in the south of the side road to the south of the main line area would be in a more open position<sup>113</sup>. The Applicant accepts that in winter months there would be some increase in visibility of construction compounds and construction activity from the main two compounds. As construction would be largely during daylight hours lighting is considered to have little effect.

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<sup>112</sup> British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations.

<sup>113</sup> The Applicant does not specifically refer to the fourth compound at the site for the former picnic site.

- 14.3.20. The Applicant has undertaken an analysis of the magnitude of change and its significance from the viewpoints referenced in paragraph 14.3.12. These are set out in Table 7-8 of Chapter 7 of the ES [APP-045]. The most significant construction phase visual effects would be those at locations in closest proximity to the Application site and construction works. The Applicant considers 'large (significant) adverse' visual effects would occur at:
- viewpoints 3 and E on the Nene Way riverside footpath (due to the proximity to the works);
  - viewpoint 1 on the north-eastern fringe of Sutton (due to the removal of some lengths of the existing tree belt which presently terminates views to the north); and
  - viewpoint G on Windgate Way within the wider Sacrewell Farm estate (due to the construction activity associated with the new slip road over a relatively short distance to the west).
- 14.3.21. In light of this analysis, the Applicant considers that there would be a 'large adverse' effect on a single residential receptor, Sutton Lodge in Sutton, and a moderate adverse effect on six representative receptors, although in reality this would be the occupiers of a greater number of properties. These six are:
- Windgate Way (property with same name as route);
  - Heath House, Sutton Heath Road;
  - Lower Lodge Farm, Upton Road;
  - Willowhayne House, Sutton Drift, Sutton;
  - Properties on the north-eastern fringe of Sutton village (including Manor Farm); and
  - Stibbington (properties at Old Great North Road with rear views across the valley).
- 14.3.22. According to the Applicant, there would be a 'large adverse' effect on:
- the community facility at Sacrewell Farm Visitor Centre;
  - on the footpaths alongside the River Nene; and
  - the footpath network north of and through Sacrewell Farm, which include sections of long-distance footpaths.
- 14.3.23. There would also be a 'moderate adverse' effect on the footpaths:
- between Sacrewell Farm and Sutton Heath Road;
  - the east-west footpath to the west of Stibbington; and
  - at the Sutton Crossways.
- 14.3.24. The Applicant considers that none of the construction works would have a significant visual effect on road users due to their low sensitivity.

## **Operation**

### **Landscape Character**

- 14.3.25. An analysis of the effects on landscape character has been undertaken by the Applicant. This concludes that at Year 1 there would be a 'moderate adverse' effect on both LCAs but this would reduce to 'slight adverse' by

Year 15. The effects are caused by a mixture of the proximity of the dual carriageway to the River Nene and the removal of vegetation, with this being mitigated by Year 15 as a result of replacement planting.

### **Visual Effects**

- 14.3.26. At opening, the Applicant considers that most visual effects would be associated with road infrastructure and traffic, principally high sided vehicles and road signs<sup>114</sup>. By Year 15 the proposed landscaping would contribute to a reduction in the extent and magnitude of visual change. The Applicant acknowledges that there would be some seasonal variation, particularly from the vicinity of Stibbington and the footpath to the west.
- 14.3.27. Road lighting would be associated with roundabouts. That at the Wansford east roundabout would be, according to the Applicant, largely unchanged and would remain very widely visible. The relocation of the Nene Way roundabout from the eastern end of the Application site to the new location for the Sutton Heath Roundabout would alter these effects. The Applicant contends that this would reduce the effects as viewed from the north-eastern fringes of the village of Sutton leading to some benefits.
- 14.3.28. In considering the representative viewpoints set out in paragraph 14.3.12 the Applicant has identified that four locations would have 'significant operational adverse' visual effects. These are from:
- the Nene Way riverside footpath (Viewpoint E);
  - the north-eastern fringe of Sutton (Viewpoint 1);
  - the northern end of Stibbington (Viewpoint 2); and
  - from Windgate Way (Viewpoint G).
- 14.3.29. However, the Applicant considers that by Year 15 the planting would have reduced the visual effects at most representative viewpoints, although some non-significant adverse residual visual effects, particularly along the Nene Way riverside footpath, would remain.
- 14.3.30. Turning to residential receptors at Year 1, the Applicant considers that there would be 'moderate adverse' effects at Stibbington with views to the north across the valley, but conversely 'moderate beneficial' effects at Deep Springs to the south of the existing A47 as the road would be located to the north of the tree belt. By Year 15 the Applicant considers that all adverse effects would be non-significant, but the 'moderate beneficial' effect for Deep Springs would remain.
- 14.3.31. The Applicant considers that there would be a 'moderate adverse' visual effect upon opening at the Sacrewell Farm Visitor Centre, although this would reduce to a non-significant level by Year 15.

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<sup>114</sup> A plan showing traffic signs can be found at [REP2-041].

14.3.32. In relation to the effects on users of the PRoW network the Applicant considers that on opening there would be significant 'moderate adverse' effects for receptors along:

- the Nene Way;
- the footpath network north of and through Sacrewell; and
- to the west of Stibbington.

However, by Year 15 this would have reduced so that no significant effects would remain.

14.3.33. As with construction effects, the Applicant considers that due to their low sensitivity road users would not be subject to any significant effects.

## **14.4. THE CASE FOR INTERESTED PARTIES**

### **Peterborough City Council**

14.4.1. PCC's concerns [RR-036] in relation to this issue relate predominantly to the effect of the Proposed Development on trees. It considered that there was insufficient information in the Application to confirm whether certain trees were to be removed or remain.

14.4.2. Furthermore, it considered that a suitable landscaping requirement was necessary within the EMP and that further, specific, detailing was required.

14.4.3. In the LIR [REP2-068] PCC reiterated these objections while having no overall objection to the Proposed Development.

### **William Scott Abbott Trust**

14.4.4. The William Scott Abbott Trust [RR-040] set out its concerns about the design of the access to the Sacrewell Farm site from the south. While its concerns are predominantly related to anti-social behaviour, the design of the final entrance will have an effect on landscape and visual receptors.

### **The Campbell Household**

14.4.5. The Campbell Household [RR-044], while supporting the principle of the Proposed Development, expressed its concerns about the effect on receptors in Sutton, the Nene Valley and generally.

## **14.5. ExA'S CONSIDERATIONS**

### **Effects on Landscape**

14.5.1. The application site lies outside any nationally designated landscapes and is sufficiently distant not to have any effect on such. Similarly, there was nothing in front of me to indicate that this landscape was highly valued locally or protected by a local designation. PCC in response to ExQ1.8.1 [REP2-067] stated: "*It is not considered that the Order Lands or land*

*within the ZTV represents a Valued Landscape for the purposes of para 174 of the Framework”.*

- 14.5.2. Because the nature of the landscape immediately to the west of the A1 is urban, the main effects on the rural landscape lie from the Wansford east roundabout eastwards. I therefore agree that only the two ‘host’ LCAs, the Nassaburgh Limestone Plateau LCA and Nene Valley LCA, would be affected.
- 14.5.3. Appendix 7.3 ‘Landscape Character Areas’ [APP-094] makes it clear that the Nene Valley LCA includes those areas to the south of the River Nene within the HDC area. This is identified in Figure 7.3A [APP-059]. In making its assessment the Applicant only referred to documentation from HDC in coming to its conclusions rather than explaining how it had actively considered it, which it did for that part of the Nene Valley to the north of the river.
- 14.5.4. However, I am satisfied that, overall, the analysis of the part of the Nene Valley LCA that falls to the south of the River Nene can be satisfactorily understood from the documentation relating to the land to the north.
- 14.5.5. No IPs disagreed with the Applicant’s assessment that the Nassaburgh Limestone Plateau LCA is of medium value, medium to low susceptibility to change and of low sensitivity. Equally, no IP disagreed that the Nene Valley LCA is of medium value and of medium to high susceptibility to change and of medium sensitivity. This was generally attributable to the nature of the landscape, the lack of significant designations and the influence of transport infrastructure features, particularly the A1 and the remainder of the A47 to the east. I agree with this analysis.
- 14.5.6. At present the Wansford east roundabout is highly visible from the south, east and north, with its presence being emphasised at night through its lighting. This means that the roundabout and the traffic on the existing A47 degrade those parts of the Nene Valley LCA that lie south of the River Nene, and the Nassaburgh Limestone Plateau LCA that lies to the north of the A47.
- 14.5.7. I would agree with the Applicant, for the reasons given, that the Proposed Development would have a significant, ‘large adverse’ effect during construction on the whole of the Nene Valley LCA.
- 14.5.8. I would, however, go further than the Applicant in respect of the area that falls within the Nassaburgh Limestone Plateau LCA. One of the main construction compounds would fall within this area, as would be the new link road between the A1 and A47 and the side roads to the south of the Wansford east roundabout. As discussed in Chapter 8 there would also be a harmful effect on landscape which forms part of the setting of the heritage assets at Sacrewell Farm. I consider that the assessment of the Nassaburgh Limestone Plateau LCA does not take sufficient account of these factors in assessing the effects of the construction of the Proposed Development. I therefore consider that rather than a ‘moderate adverse’

effect, like the Nene Valley LCA, construction effects would also be 'large adverse'.

- 14.5.9. At opening, there would be little mitigating effect from any landscaping. I would agree with the Applicant that upon opening there would also be 'large adverse effects' on the Nene Valley LCA as a whole. However, while the construction compound would be removed, I consider that the effects on the Nassaburgh Limestone Plateau LCA would be 'large adverse' as the free-flow slip road and the vehicles upon it would be particularly intrusive at this time.
- 14.5.10. However, I agree with the Applicant that as the landscaping matures that this would start to mitigate the effects on the receiving landscapes and that by Year 15 there would only be a 'slight adverse' effect.
- 14.5.11. I therefore give more weight to the adverse overall effect on the landscape during construction and at opening than the Applicant, which would be significant, but reduce to limited by Year 15. These will weigh against the Proposed Development in the final balance in Chapter 16.

### **Visual effects**

- 14.5.12. The location of all the assessed receptors can be seen in Figure 7.5 [REP2-020].
- 14.5.13. As with landscape effects there was no disagreement from IPs as to the effect on visual receptors.
- 14.5.14. Night-time construction works are likely to be limited, but there would be some effects particularly in the vicinity of the compounds and when tie-in works are undertaken.
- 14.5.15. I consider that the Applicant's assessment of visual effects particularly for those using the Sacrewell Farm visitor centre and the NMU routes in the vicinity underestimates the effect. In my view, the construction of the compound and link road would be particularly intrusive into views across a wide arc from south to northwest creating a greater magnitude of change than the 'minor adverse' ascribed to it by the Applicant. Rather than being a 'large adverse' effect, I consider that it would be a 'major adverse' effect.
- 14.5.16. For the remaining representative receptors I consider the assessments made by the Applicant to be reasonable for the reasons given. As can be seen from Table 7-8 in Chapter 7 of the ES [APP-045], these range from 'neutral' to 'large adverse'.
- 14.5.17. There is a single residential receptor, Sutton Lodge, (Receptor R13 in Appendix 7.4 [APP-095] and shown in Figures 7.5 [REP2-020]) where there would be 'major adverse' significant effects during construction. This property is located in the north-eastern part of the village of Sutton and faces to the north and the Application site.

- 14.5.18. The Applicant maintains that upon opening most of the larger visual effects would cease. This, to my mind, underestimates the effect of the Proposed Development even with initial landscaping.
- 14.5.19. At the western end, where the landform slopes more steeply down to the River Nene and Wittering Brook the effects on receptors would be marked, and this is accepted by the Applicant in its assessment. The effect of the construction works on the slope north of the River Nene would be significant, and this would continue in the early years following the opening of the Proposed Development.
- 14.5.20. The landscape at the eastern end of the Application site is predominantly flat but, providing the screen of vegetation to the north of the existing A47 is maintained, then this would not be particularly intrusive to visual receptors once construction works have ceased.
- 14.5.21. Once the landscaping has been allowed to mature, then I am satisfied that the Applicant's assessments give a reasonable assessment for the effects on visual receptors.

## **Trees**

- 14.5.22. In its response to the RR and LIR of PCC the Applicant confirmed [REP1-010] and [REP3-025] that all but one of the trees specifically mentioned by PCC were to be retained. The exception to this is tree T18 in the Arboricultural Impact Assessment (Appendix 7.6 to the ES [REP4-007]). This is an Oak tree categorised as A1<sup>115</sup> – a tree of high quality with an expected life span of at least 40 years categorised mainly for its arboricultural qualities. This tree is located between the Proposed Development and the River Nene south of the Scheduled Monument.
- 14.5.23. The Applicant explains that proposed highway embankments would fall within the Root Protection Area of the tree. Given the location of the tree I am satisfied that felling is unavoidable.

## **Entrance to Sacrewell Farm**

- 14.5.24. Government policy emphasizes the importance of good design. The entrance to the Sacrewell Farm from the south would be subject to detailed design, which would be secured through the dDCO. The Applicant in its response to the William Scott Abbott Trust RR [REP1-010] indicated that design principles had been agreed between the Trust and the Applicant.
- 14.5.25. However, I have not been appraised of these principles, and consider that due to the importance to the local economy of the tourist facility that this should be the subject of consultation with the Trust as part of the process towards approving the detailed design.

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<sup>115</sup> Pursuant to BS5837:2012.

- 14.5.26. This, of course, does not require the Applicant to accede to any particular request from the Trust, but would be required in a transparent way to explain its reasons for disagreeing. I am therefore recommending a change to the dDCO to ensure this.

## **Landscaping design**

- 14.5.27. Under the terms of the dDCO Requirement 5 includes the submission of a landscaping scheme for the Proposed Development. I consider that this is necessary to ensure that the landscaping required to mitigate the effects of the Proposed Development is maintained. Longer term maintenance would be secured through and Landscape and Ecology Management Plan pursuant to Requirement 4.

## **14.6. CONCLUSIONS**

- 14.6.1. Taking all the relevant documents and policies into account and on the basis of the above, I conclude as follows:

- The Applicant's overall approach to landscape and visual effects is generally reasonable including a comprehensive landscaping scheme.
- The Assessment underestimates the effects on the landscape and visual receptors in relation to development in the western part of the Application site during construction and at opening. During this time:
  - o the effects on the Nassaburgh Limestone Plateau LCA would be 'large adverse'; and
  - o there would be a 'major adverse' effect on the visual receptors at Sacrewell Farm and the nearby PRoWs.

I therefore give them significant weight during construction and at opening, but limited weight by Year 15.

- Once the mitigation landscaping has matured, then the effects would be as assessed.
- The loss of tree T18 is unavoidable given its location in proximity to the Proposed Development.
- The detailed design of the entrance to the Sacrewell Farm complex from the south should be subject to wider consultation.
- Given the overall nature of the landscape and visual effects in the context of the Proposed Development and the general area it would not be possible to avoid harm to either the landscape or visual receptors and the Proposed Development incorporates reasonable mitigation measures.
- I conclude that the proposed tree planting and mitigation measures identified in the EMP for screening are necessary, reasonable and appropriate.

- 14.6.2. The Proposed Development has been carefully design to take account of the effect on the landscape and on visual receptors so as to minimise harm. It would therefore comply with the relevant policies of the NPSNN.

- 14.6.3. The Proposed Development would not comply with Local Plan Policies LP24 and LP27 in that it would not bring landscape benefits and would harm landscape character. I do, however, consider that there would be

compliance with Local Plan Policies LP16 and 17 dealing with design and light pollution issues.

## **15. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

### **15.1. INTRODUCTION**

- 15.1.1. This chapter sets out my analysis and conclusions relevant to the HRA. This will assist the SoST, as the Competent Authority, in performing their duties under Habitats Regulations.
- 15.1.2. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European sites<sup>116</sup> and no reasonable scientific doubt remains<sup>117</sup>.
- 15.1.3. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 3 of this report.
- 15.1.4. I have been mindful throughout the Examination of the need to ensure that the SoST has such information as may reasonably be required to carry out their duties as the Competent Authority. I have sought evidence from the Applicant and the relevant IPs, including NE as the Appropriate Nature Conservation Body (ANCB), through written questions and at ISH2.

### **Report on the Implications for European Sites and Consultation**

- 15.1.5. The Applicant set out its assessment in its 'Report to Inform Habitats Regulations Assessment' (hereafter referred to as the 'No Significant Effects Report' (NSER) [APP-140]. It submitted a subsequent updated version at D3 (Rev 1) [REP3-016] in response to ExQ1 [PD-008], and a final updated version at D5 (Rev 2) [REP5-010] in response to discussions at ISH2 and ISH Action Point (AP) 24 [EV-021]. References to the NSER in this report are to [REP5-010] unless otherwise stated.
- 15.1.6. The RR from NE [RR-032] confirmed agreement with the Applicant's conclusions with regard to the European sites assessed and their qualifying features. In its response [REP2-080] to ExQ1.2.18 [PD-008]

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<sup>116</sup> For the purposes of this chapter, in line with the Habitats Regulations and relevant Government policy, the term 'European sites' includes SACs, candidate SACs, possible SACs, SPAs, potential SPAs, Sites of Community Importance, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites. For ease of reading, this chapter also collectively uses the term 'European site' for European sites defined in the Conservation of Habitats and Species Regulations 2017. 'UK National Site Network' refers to SACs and SPAs belonging to the United Kingdom already designated under the Directives and any further sites designated under the Habitats Regulations.

<sup>117</sup> CJEU Case C-127/02 Waddenzee 7 September 2004.

NE also confirmed that it was generally satisfied with the findings of the HRA. However it considered that as a potential hydrological pathway to Rutland Water SPA and Ramsar site had been identified, the precautionary principle should be applied and the HRA should include a screening for likely significant effects (LSE) on this SPA/ Ramsar site. It also stated that given the distances involved, between the Proposed Development and this SPA/ Ramsar site, it had no concerns at that time.

- 15.1.7. PCC confirmed in its response [REP2-067] to ExQ1 [PD-008] that it was satisfied with the NSER and considered that its conclusions were appropriate. No other evidence or comments on this were submitted by any other party, and therefore I decided that a Report on the Implications for European Sites (RIES) compiling HRA-relevant information would not be required.

## **Proposed Development Description and HRA Implications**

- 15.1.8. The Proposed Development is described in Chapter 2 of this report.
- 15.1.9. The spatial relationship between the Application site and European sites is shown in Appendix E of the NSER [REP5-010].
- 15.1.10. The Proposed Development is not directly connected with or necessary to the management of a European site (NSER Section 2.2) [REP5-010]. Therefore, the SoST must make an assessment of the LSE of the Proposed Development on potentially affected European sites and consider the need to undertake an 'appropriate assessment' (AA) of its implications for those European sites in light of their Conservation Objectives.
- 15.1.11. The Applicant's assessment of effects is presented in the following documents:
- Report to Inform Habitats Regulations Assessment [REP5-010]
  - Chapter 8 of the ES: Biodiversity [AS-015]
  - Chapter 11 of the ES: Noise and Vibration [REP2-014]
  - Chapter 13 of the ES: Drainage and Water [REP3-011]
  - Appendix 13.1 to the ES: Flood Risk Assessment [REP3-014]
  - Chapter 15 of the ES: Cumulative Effects Assessment [AS-018]
  - The EMP [REP6-001]
  - ES (Addendum Two) [REP8-031]
- 15.1.12. Section 3.7 of the NSER confirms that the Applicant consulted NE on the HRA prior to submitting the Application. NSER Appendices G and H contain copies of correspondence between them dated June 2021 about a draft version of the NSER.
- 15.1.13. During the Examination, the Applicant submitted two change requests as described in Chapter 2 of this report [REP8-029] and [AS-053]. I rejected the first request and accepted the second request [AS-053], as described in Chapter 2 of this report. The proposed changes had no implications for the HRA.

- 15.1.14. The Applicant did not identify any LSE on European sites in European Economic Area States in its NSER or within its ES. Only European sites which form part of the NSN are addressed in this report.

## **Summary of HRA Matters Considered During the Examination**

- 15.1.15. ExQ1 [PD-008] predominantly sought clarification about inconsistencies between HRA information within different sections of the NSER. The main HRA matter, raised in ExQ1.2.18 and discussed during the Examination at ISH2 related to whether there was a potential hydrological pathway to Rutland Water SPA/ Ramsar site and whether the HRA should include a screening for LSE on this site. This is discussed below. ExQ2 [PD-010] contained a request for the Applicant to submit an updated version of the NSER to address the inconsistencies and the Rutland Water SPA/ Ramsar site matter (ExQ2.2.5). ExQ3.2.1 [PD-015] requested NE's views on the updated NSER addressing the potential for LSE on Rutland Water SPA/ Ramsar site.
- 15.1.16. The Applicant's conclusions that there would be no LSE on the European sites considered in the HRA alone and in combination were undisputed by IPs, including NE as the ANCB.

## **15.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS**

- 15.2.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an AA and the activities, sites or plans and projects to be included for further consideration in the AA.
- 15.2.2. The following European sites and qualifying features were considered in the Applicant's initial assessment of LSE and are described in Section 3.3 of the NSER:

**Table 14: Qualifying features of Nene Washes SPA/ SAC/ Ramsar site**

Name of European site	Features
Nene Washes Special Protection Area	Bewick’s swan (non-breeding)
	Black-tailed godwit (breeding)
	Eurasian teal (non-breeding)
	Eurasian wigeon (non-breeding)
	Gadwall (breeding and non-breeding)
	Garganey (breeding)
	Northern pintail (non-breeding)
	Northern shoveler (breeding and non-breeding)
Nene Washes Special Areas of Conservation	Spined loach
Nene Washes Ramsar site	Bewick’s swan (non-breeding)
	Eurasian teal (non-breeding)
	Eurasian widgeon (non-breeding)
	Golden plover (non-breeding)
	Pochard (non-breeding)
	Ruff (non-breeding)
	Whooper swan (non-breeding)
	Internationally important assemblage of breeding birds

15.2.3. Both Rutland Water SPA and the Ramsar site are designated for Gadwall, Northern shoveler and a waterbird assemblage.

15.2.4. The Applicant’s NSER sets out the methodology applied to determining what would constitute a LSE.

**LSE from the Proposed Development Alone**

15.2.5. The Applicant identified potential impacts of the Proposed Development considered to have the potential to result in LSE alone in Section 3 of the NSER.

15.2.6. The impacts considered by the Applicant to have the potential to result in LSE are:

**Nene Washes SPA**

- pollution of watercourses during construction and operation;
- air pollution during construction and operation;
- noise disturbance during construction and operation;
- vibration disturbance during construction;
- visual disturbance during construction and operation; and
- light disturbance during construction and operation.

**Nene Washes Special Area of Conservation (SAC)**

- pollution of watercourses during construction and operation;
- air pollution during construction and operation;
- noise disturbance during construction and operation;
- vibration disturbance during construction; and
- light disturbance during construction and operation.

**Nene Washes Ramsar site**

- pollution of watercourses during construction and operation
- air pollution during construction and operation;
- noise disturbance during construction and operation;
- vibration disturbance during construction;
- light disturbance during construction and operation; and
- spread of invasive non-native species during construction.

15.2.7. The NSER explains that the European sites are approximately 10km to the east of the Proposed Development and approximately 16.3km downstream via the River Nene (that is the potential effect pathway) at their nearest point. Only two and three bird species that are features of the SPA and the Ramsar site, respectively, were found in the study area during the wintering and breeding bird surveys and in such small numbers that it was considered highly unlikely they were part of the European site populations. An individual spined loach (the only feature of the SAC) was found in one location on the River Nene in 2017; none were found in subsequent surveys.

15.2.8. In relation to watercourse pollution, standard best practice measures would be implemented during construction in line with the EMP [REP6-001], including a temporary surface water drainage strategy, designed to prevent increased flood risk to people and property and to manage pollution risks associated with increased sediment loading. During operation, the Proposed Development would utilise the existing drainage network and five new outfalls, according to the drainage strategy set out in Chapter 13 of the ES [REP3-011] and associated documents. It was concluded that there would not be any construction or operational LSEs as a result of watercourse pollution.

15.2.9. In respect of air pollution, the NSER highlighted that the European sites were approximately 10km from the Application site, with Peterborough city between them. Construction activities would take place over

18 months. As this is less than the 24 month threshold applied for inclusion in the air quality assessment, it was initially concluded that there would be no construction LSEs. In response to comments I made at ISH2 [EV-017] about extended construction periods the Applicant submitted an addendum to the ES (Addendum Two) [REP8-031], in which it assessed the potential impacts of a 28 month construction period in relation to each of the environmental aspects considered in the ES. It concluded that the extended period would not result in changes to the findings and conclusions of any of the existing assessments in the ES. Operational air quality modelling indicated that there would be no LSE on designated habitats that are closer to the Proposed Development than the European sites, as set out in NSER Appendix B, so it was concluded that there would be no operational LSEs.

- 15.2.10. In relation to vibration during construction and noise during construction and operation, vibration and noise assessments including noise modelling were undertaken and reported in Chapter 11 of the ES [REP2-014]. A 300m noise study area extending from the closest construction activity, and a 30m vibration study area extending from vibration-generating construction activity were used for the assessments. The operational study area was the area within 600m of new road links or road links physically changed or bypassed by the Proposed Development. It is stated in the NSER that no dwellings were identified in the assessment where the façade noise level is at least 68dB  $L_{A10,18h}$  and the noise from the new or altered highways would cause the total level to increase by at least 1.0dB. Given the distance of the European sites from the Proposed Development it was concluded that there would not be any LSEs from noise and vibration generated by the Proposed Development.
- 15.2.11. In respect of light disturbance, it is explained in the NSER that construction would predominately be undertaken in the daytime, minimising the need for further lighting requirements. The lighting design for the operational phase would minimise glare and upward light spill and the 10m high lighting columns would be located at the junctions only. It was concluded that the lighting levels would not give rise to a LSE on the European sites.
- 15.2.12. In relation to visual disturbance effects on the SPA during construction and operation it was concluded that there would be no LSE as a result of the intervening distance between the Proposed Development and the SPA and also because no large populations of any of the SPA qualifying species had been recorded in the study area.
- 15.2.13. In respect of effects on the Ramsar site from the potential spread of invasive non-native species during construction, the NSER stated that this would be prevented through standard construction best practice, including strict biosecurity measures as set out in the EMP [REP6-001], so there would be no LSE on the SAC.
- 15.2.14. The Applicant's NSER concluded no LSE from the Proposed Development alone on any of the qualifying features of the Nene Washes SPA, SAC and Ramsar site.

- 15.2.15. NE stated in its RR [RR-032] that it agreed with the conclusion of the Applicant of no LSE on any European site. PCC confirmed in [REP2-067] that it was satisfied with the NSER and that the conclusions it reached were appropriate. No IPs raised any HRA issues.
- 15.2.16. ExQ1.2.18 noted that Chapter 13 of the ES [REP3-011] stated that there is an Anglian Water pumping station located on the River Nene south of the Proposed Development and that water from the River Nene is transferred to Rutland Water, located 21km north-west of the Proposed Development. There would be outfalls from the Proposed Development drainage systems which would feed into the River Nene above the intake for the Anglian Water pumping station. Given this, I asked the Applicant, NE, the EA and Anglian Water if Rutland Water should be considered to be hydrologically connected to the Proposed Development. In the event that the Applicant considered it was connected I asked the Applicant to explain why it considered, in its correspondence to NE (June 2021) contained in NSER Appendix H, that the Proposed Development would not have a potential hydrological link to Rutland Water SPA/ Ramsar site. If it changed its position and considered that there was a link, I requested that it undertake a screening of the potential effects of the Proposed Development on Rutland Water SPA/ Ramsar site.
- 15.2.17. The Applicant confirmed in [REP2-035] that it considered Rutland Water to be hydrologically linked. However, it stated that the drainage strategy for the Proposed Development would enhance water quality and therefore the assessment contained in Chapter 13 of the ES [REP3-011] had concluded that there would be a 'slight beneficial' effect on water quality. There would be no adverse impact on the quality of the River Nene abstractions or the Rutland Water groundwater-dependent terrestrial ecosystem. On this basis it considered that the decision to screen out Rutland Water SPA/ Ramsar site from the HRA was appropriate. As water from the River Nene is transferred to Rutland Water it considered that Rutland Water had already been considered in the water quality assessment. In its Written Summary of Oral Submissions at Hearings [REP4-018] the Applicant explained that for the purposes of the assessment it had applied a 'worst case' scenario that Rutland Water is artificially hydrologically linked to the River Nene through water pumping. However, as the Proposed Development would not have an impact on flow rates in the River Nene there was no reason why there would be any detrimental impact on the qualifying features of Rutland Water SPA/ Ramsar site.
- 15.2.18. In its response to ExQ1.2.18 NE considered that Rutland Water had potential hydrological/ hydrogeological linkage to the Proposed Development [REP2-080] and considered that the precautionary principle should be adopted and a screening for LSE on Rutland Water SPA/ Ramsar site undertaken. However, it did state that given the distance involved it had no specific concerns at that time. In its comments on the pre-application draft NSER it had queried why Rutland Water SPA and Ramsar site had been screened out from the HRA (NSER Appendix G). The Applicant had responded that it did not meet any of the five criteria set out in NSER Section 2.2.8 for identifying NSN sites requiring to be

assessed, and the birds present in the study area were unlikely to constitute part of the SPA population (NSER Appendix H). It was concluded that SPA birds did not rely on habitat within the Proposed Development site.

- 15.2.19. The EA were of the view that Rutland Water was not hydrogeologically connected to the River Nene, and therefore that the Proposed Development would not affect the water transfer scheme between the two waterbodies [REP2-078]. At ISH2 the EA expanded on this by explaining that, although in theory both were connected, its view was based on the fact that the Applicant would not be fundamentally changing the flow regime within the River Nene itself and the two waterbodies could be considered to be two different entities [EV-019].
- 15.2.20. Anglian Water did not respond on this point.
- 15.2.21. The Applicant submitted an updated NSER [REP5-010] at DL5 in response to ExQ2.2.5 and ISH2 Action Point 24. It contained a new paragraph 3.3.8 that reflected the statements made in [REP2-035] and [REP4-018] and additionally explained that Rutland Water SPA/ Ramsar site is located 21km to the northwest of the Proposed Development site.
- 15.2.22. In response to ExQ3.2.1 NE noted that the updated NSER recognised that Rutland Water SPA/ Ramsar site had a hydrological link to the Proposed Development. It confirmed that given the distances involved and the nature of the hydrological connection it was satisfied with the conclusion of the Applicant that the Proposed Development would not have a LSE on Rutland Water SPA/ Ramsar site and therefore that it could be screened out from further assessment.
- 15.2.23. The conclusion of the Applicant conclusion of no LSE alone on the European sites considered in the NSER was not disputed by any IP and no other matters were raised.

### **LSE from the Proposed Development in Combination**

- 15.2.24. The Applicant addressed the potential for in-combination effects (ICE) arising from the Proposed Development within the NSER. More detailed information on the methodology is provided in ES Chapter 15 [AS-018].
- 15.2.25. The Applicant stated that no major projects had been identified within the 2km ZoI of the Proposed Development for which a scoping report was available on the Planning Portal and that there was no land allocated for development within the ZoI according to either of the Local Plans (to 2036) for the PCC and HDC areas. It considered that none of the other parts of the A47 improvements programme were sufficiently close either geographically or in timing to give rise to an ICE.
- 15.2.26. On this basis it concluded that there were no developments requiring further assessment and no potential for the Proposed Development to give rise to ICE together with other plans and projects on the European

sites considered in the NSER. This conclusion was not disputed by any IPs.

## **LSE Assessment Outcomes**

- 15.2.27. The Applicant concluded in the NSER that there would be no LSE on the European sites from either the project alone or in combination with other plans and projects.
- 15.2.28. The signed SoCG between the Applicant and NE submitted at D11 [REP11-010] records agreement on the conclusions of the screening assessment.

## **15.3. ExA CONSIDERATIONS**

- 15.3.1. I agree with the conclusion of the Applicant based on the evidence provided in the Application and subsequently submitted to the Examination. I note the intervening distance, the location of Peterborough City between the Proposed Development and the European sites, and the survey evidence indicating that the features of the European sites recorded in low numbers in the study area are unlikely to be from the SPA, SAC and Ramsar site populations. I consider that the design of the Proposed Development and adherence to standard construction good practice would ensure that there would be no impacts on the River Nene that would result in a LSE on the European sites, including Rutland Water SPA and Ramsar site.
- 15.3.2. I am satisfied, on the basis of the information provided, that the correct impact-effect pathways to each of the European sites have been assessed and with the approach to the assessment of alone and in-combination LSEs.
- 15.3.3. Taking into account the reasoning set out above, I consider that the Proposed Development is not likely to have a significant effect from the impacts identified above on the qualifying features of the identified European sites when considered alone, or in combination with other plans or projects. This was not disputed by IPs, including NE, during the Examination.

## **15.4. ExA'S HRA CONCLUSIONS**

- 15.4.1. I conclude as follows in relation to the HRA process:
- there are no likely significant effects of the Proposed Development on any European Sites or their qualifying features.
  - no mitigation relevant to HRA has been proposed and none is required.
  - the Proposed Development can proceed without the need for an Appropriate Assessment being undertaken by the SoST.

## **16. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **16.1. INTRODUCTION**

- 16.1.1. This chapter sets out my reasoning and conclusions on the planning merits of the Proposed Development and whether there is a case for the making of a Development Consent Order (DCO) for the Proposed Development.
- 16.1.2. The legal and policy context is set out in Chapter 3 with Chapter 4 setting out the planning issues that arose from the application and during the Examination. Chapter 5 considers the scope of the Proposed Development and the assessment of alternatives. Chapters 6 to 14 address the potential effects of the Proposed Development with Chapter 15 addressing Habitats Regulations Assessment (HRA) considerations.
- 16.1.3. The matters to be taken into account in decision making are set out below, following which the remainder of this Chapter provides a summary of the main planning issues and conclusions reached in respect of the individual matters. I will then look at potential 'in combination effects' before moving to the overall conclusions in which the heritage balance and overall planning conclusions are set out.
- 16.1.4. Matters in relation to the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and/ or rights and the creation of new rights over land are discussed in Chapter 17, with Chapter 18 addressing the implications of the matters arising for the DCO and finally Chapter 19 summarises all relevant considerations and sets out my recommendation as Examining Authority (ExA) to the Secretary of State for Transport (SoST).

### **16.2. COMMENT ON SCOPE OF PROPOSED DEVELOPMENT, BENEFITS AND FUNDING**

- 16.2.1. As set out in Chapter 5 there is a dispute over what should be the scope of the Proposed Development. In Chapter 6 I have concluded that if the effect on the Wansford west roundabout, and traffic particularly from the west, were to be included within the assessment then the Proposed Development would fail to fully meet its objective to provide a more free-flowing network. This would, in turn, mean that it would be less successful in meeting the objectives of 'supporting economic growth' and 'creating an accessible and integrated network'.
- 16.2.2. The Applicant's 'Legal Submission in response to ISH2' in Annex E of its 'Applicant's Further Response to Actions from Hearings – Annexes' [REP5-021] makes the following comment about including a Non Motorised User (NMU) route across the A1 overbridge: *"the Applicant considers that the costs of providing a compliant cycle track across the A1 overbridge is disproportionate to the numbers of NMU likely to benefit*

*from its inclusion*". As set out in Chapter 6 I conclude that such a provision is necessary to make the development acceptable.

16.2.3. As with all planning permissions under the Town and Country Planning Act 1990 (as amended) the grant of permission is only facilitative. It does not obligate a person with the benefit of a permission to undertake a development. In my view the same applies to an application for a DCO under the Planning Act 2008 (PA2008) when granted.

16.2.4. Thus, were the SoST to grant development consent in the terms as set out in my recommendation with the cycleway on the A1 overbridge, if those providing funding for the Proposed Development conclude, in the light of my report, that the failure to comply with the scheme objectives to the extent set out and/ or the additional costs associated with the requirements therein mean that it no longer meets value for money criteria that is a matter for them as to whether to proceed with the development. This does not form part of the planning considerations.

### **16.3. MATTERS TO BE TAKEN INTO ACCOUNT**

16.3.1. S104 of the PA2008 sets out at subsection (2) the matters to which the Secretary of State (SoS) must have regard where there is a relevant National Policy Statement (NPS). In particular s104(3) provides that: *"The Secretary of State must decide the application in accordance with any relevant National Policy Statement, except to the extent that one or more of subsections (4) to (8) applies"*.

16.3.2. Given the Proposed Development is highway infrastructure and a Nationally Significant Infrastructure Project (NSIP) the designated National Policy Statement for National Networks (NPSNN) provides the primary basis for making decisions on development consent applications for national networks NSIPs in England by SoST.

16.3.3. My conclusions on the case for making a DCO are therefore reached within the context of the policies contained in the NPSNN. Also, as indicated in Chapters 3 and Chapters 5 to 15 dealing with the main planning issues, I have taken all other relevant law and policy into account. I have had regard to the PSED as addressed in Chapter 17 of this report.

16.3.4. Section 4 of the NPSNN addresses assessment principles. Paragraph 4.2 states: *"Subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS"*.

16.3.5. In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, paragraph 4.3 of the NPSNN expects the following to be taken into account:

- *"its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits; and*

- *its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.”*

16.3.6. My conclusions follow from my consideration of all evidence presented to the Examination, including the application documents, the Environmental Statement (ES), the HRA, the Local Impact Report (LIR), Statements of Common Ground (SoCG), Relevant and Written Representations, oral submissions at the hearings, answers to questions, responses to requests for information and my Unaccompanied and Access Required Site Inspections and including all matters which I consider are both important and relevant to the decision of the SoST.

## **16.4. SUMMARY OF THE MAIN PLANNING ISSUES**

### **Consideration of Alternatives (Chapter 5)**

16.4.1. For the reasons set out in Chapter 5 I consider that the Applicant’s decision making processes for locating the Proposed Development so that it, eventually, only marginally encroached into the Scheduled Monument was flawed. However, had the decision making been undertaken on a correct basis then it is likely that the same solution would have been chosen.

16.4.2. The failure to engage effectively with residents and businesses in Upton prior to the submission of the DCO application has not helped the Applicant’s case. However, I am satisfied that through the statutory process involved with this Application all parties were able to engage and consequently, I consider that they would not be prejudiced by the SoST considering the Proposed Development as submitted.

16.4.3. Subject to these caveats I am satisfied that a proportionate optioneering of the main alternatives was undertaken taking into account the environmental effects.

16.4.4. It also follows that being the case, that the Proposed Development appropriately balances the need for encroachment into the Scheduled Monument against encroachment into the flood plain of the River Nene and avoiding effects on the Sutton Heath and Bog Site of Special Scientific Interest (SSSI).

### **The need for the Proposed Development and Traffic and Transport (Chapter 6)**

16.4.5. The need for an upgrading of the A47 between the Nene Way roundabout and the A1 has been identified since 2014 when it was identified as part of the A47/ A12 Corridor Feasibility Study. The initial stage of the Feasibility Study was published in March 2015, and the A47 Wansford to Sutton Dualling was included in Road Investment Strategy 1 (RIS1) in 2014.

16.4.6. As set out in the NPSNN there is a presumption in favour of granting development consent for national network NSIPs that fall within the need

for infrastructure established in the NPS. This Proposed Development represents such a scheme.

- 16.4.7. In the LIR PCC [REP2-068] confirmed it supported the principle of the Proposed Development and that the majority of the technical issues have been addressed. I am content that these matters could be resolved post-decision.
- 16.4.8. There was a dispute about how consideration of this matter should be approached. I have set out in paragraphs 5.5.1 to 5.5.4 my approach. I have concluded that the effects at the Wansford west roundabout should be included in making the determination.
- 16.4.9. In short form, the objectives of the Proposed Development are:
- Supporting economic growth;
  - Making a safer network;
  - Providing a more free-flowing network; and
  - Creating an accessible and integrated network
- 16.4.10. There is no dispute that the provision of a dual carriageway between the Nene Way roundabout and the A1 would be a substantial benefit, improving substantially the situation for the vast majority of users of the highway to the east of Wansford east roundabout and for those travelling from the A1 southbound to the east. It would also facilitate economic growth, improve journey times, improve safety, provide capacity for future growth associated with these users. I give these benefits substantial weight.
- 16.4.11. As explored in Chapter 6, the Proposed Development would not fulfill all its objectives, particularly if the effects on the Wansford west roundabout are taken into account. For the reasons explored in that chapter the Proposed Development would not provide 'a more free-flowing' network to the west of the Wansford east roundabout. This means that traffic on the A47 heading east from the west and from within Wansford heading north would not experience benefits from the Proposed Development. In transport terms the Proposed Development would also result in severance for the community at Upton leading to harm.
- 16.4.12. Balancing both the positive and negative aspects of the transport case together I consider that the benefits to motorised traffic should only be given moderate beneficial weight.
- 16.4.13. The Proposed Development would significantly improve NMU facilities from the east of point SU3 on the Rights of Way and Access Plans [REP2-004]. However, the Proposed Development would also continue the existing Public Right of Way (PRoW) severance at the western end of the Application site, failing to make the improvements required as set out in the NPSNN. This could be mitigated to a greater extent by setting out a Requirement in the made DCO to provide a cycleway across the A1 overbridge. However considered, it is only with this requirement would the Proposed Development meet its fourth objective of creating an accessible and integrated network.

- 16.4.14. The SoST may take a different view to me as to whether the effects on Wansford west roundabout should be taken into account. Effectively, this would be to reduce the extent of the Application by removing the proposed cycle crossing on the Wansford west roundabout. This could be achieved by removing the words *"and a new cycle crossing point"* from Work 12 in Schedule 1.
- 16.4.15. If these effects were to be excluded then, provided the cycleway across the A1 were to be provided, the Proposed Development would meet its objectives and the benefits of the Proposed Development should, to my mind, only be reduced by the severance created for the community at Upton so that the benefits would still be very significant.

### **Socio Economic Effects (Chapter 7)**

- 16.4.16. In the LIR PCC confirmed that the dualling of the A47 will help to boost the economic prosperity of Peterborough and the regional economy as well as deliver planned growth.
- 16.4.17. Due to the physical obstruction created by the Proposed Development of the direct route between Upton and the communities to the south there would be significant severance in socio-economic terms. This weighs, in my view, significantly against the development since it may have been that an alternative solution could have been provided. Since there was no alternative solution in front of me which would allow a necessary requirement to be drafted I am unable to reduce the weight to this adverse impact which remains significant.
- 16.4.18. The Proposed Development would also result in moderate harm from its effect on agricultural landholdings. This also weighs against the Proposed Development.

### **Cultural Heritage (Chapter 8)**

- 16.4.19. In the LIR PCC assessed the effect on the individual heritage assets and generally agrees with the Applicant's assessment. It, however, does not consider that there is a justification for the changing of the status of Sutton Drift, and it would have preferred the retention of the buildings at the Wansford Road railway station had that been possible.
- 16.4.20. The Proposed Development would have a direct effect on the Scheduled Monument and on its setting, leading to a loss of significance. This heritage asset is of the highest importance. Of slightly lesser importance is the Grade II\* Sacrewell Farm Mill, where there would be less than substantial harm to the setting and thus significance through increased noise and visual effects. There would also be less than substantial harm to the setting and significances of Sacrewell Farm and the Sutton and Stibbington Conservation Areas as designated heritage assets.
- 16.4.21. There would be substantial harm and total loss of significance of the non-designated heritage assets individually consisting of the Wansford Road Railway Station, linesman's hut, gate and gate piers and platform. There would also be less than substantial harm both directly and to the setting

of the Wansford to Stamford railway which would affect its significance, and less than substantial harm to the settings and significances of the Wansford Railway bridge, Heath House and the Mile Marker. The setting and significance of the Royal Observer Corps Bunker would be preserved.

- 16.4.22. As detailed surveys have not been completed at this stage it is not possible to be certain as to the effect on unidentified archaeology. However, I consider that there is adequate information and appropriate mitigation in place to ensure any such archaeology is properly considered. For all other heritage assets identified I am satisfied that they would be preserved both in that there would be no direct effects and in respect of their settings. Therefore the significances of these assets would be unaffected.
- 16.4.23. The NPSNN does not specifically refer to non-designated heritage assets in the same way as it does to designated heritage assets, although it does refer to 'heritage assets' generally. Great weight should be given to any heritage asset's conservation, with the more important the asset the greater the weight.
- 16.4.24. In accordance with Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, Paragraph 5.131 of the NPSNN and 199 of the Framework, great weight and importance should be given to the desirability of preserving any listed building or its setting, preserving or enhancing the character and appearance of any Conservation Area and the desirability of preserving any scheduled monument or its setting.
- 16.4.25. For the designated heritage assets, the NPSNN indicates that where less than substantial harm is found, this harm should be weighed against the public benefits of the proposal, including securing optimum viable use. For non-designated heritage assets the Framework indicates that the effect on significance should be taken into account. In weighing applications that directly or indirectly affect non-designated heritage assets a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 16.4.26. I will consider this later in this chapter.

### **Biodiversity (Chapter 9)**

- 16.4.27. PCC in the LIR notes that while the Proposed Development would have impacts on biodiversity and habitats and has requested further clarification on mitigation and compensation. However, it does believe that, subject to this, there would be compliance with relevant Local Plan policies.
- 16.4.28. I conclude that there would be no significant adverse effects on nationally designated sites, in this case a SSSI. However, there would be direct and indirect effect on a locally designated wildlife site during the construction period. I am satisfied that by the end of that period the harm would have been fully mitigated. Thus, any harm would be of short duration and thus any harm would be very limited.

- 16.4.29. The Proposed Development would result in the loss of a veteran tree, and while specific compensation should have been identified within the overall Environmental Masterplan and associated documents, I am satisfied that there is sufficient 'headroom' within them to ensure proper compensation. I do conclude that the loss of the veteran tree would be outweighed by the benefits of the Proposed Development however the scope is defined. Notwithstanding this, the loss does weigh against the Proposed Development and I give this limited weight.
- 16.4.30. It is not clear from the information submitted by the end of the Examination as to whether the necessary bat licences will be forthcoming. My overall recommendation is set out on the basis that the SoST should satisfy themselves in this regard if minded to grant the DCO. If the SoST does not obtain this information, then the NPSNN makes clear that consent should be refused unless the benefits of the development clearly outweigh the harm. Given my view as to the merits of the Proposed Development I conclude that, with the information available to me, this adds to the reasoning as to why consent should be withheld.
- 16.4.31. I am satisfied that subject to appropriate mitigation secured in the draft Development Consent Order (dDCO) there would not be harm to any other species protected at international, national or local level and this is therefore neutral in the final balance.
- 16.4.32. I am of the opinion that moderate positive weight should be given to the net gains for biodiversity as evidenced in the Biodiversity matrix.
- 16.4.33. Overall, in my view, subject to concluding satisfactorily in relation to bats the Proposed Development would accord with Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 relating to the United Nations Environmental Programme Convention on Biological Diversity of 1992.

## **Air Quality and Emissions (Chapter 10)**

- 16.4.34. In accordance with paragraph 5.10 of the NPSNN, the Applicant has adequately considered air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the Proposed Development.
- 16.4.35. I have concluded that the construction phase of the Proposed Development has the potential to result in adverse effects from dust, but these can be adequately mitigated through the dDCO and associated documents.
- 16.4.36. Until there is any policy or regulatory change in assessing air quality the existing limit values represent the appropriate level to assess the Proposed Development. The Proposed Development would result in a reduction in air quality in the opening year in 14 of the 22 receptors modelled, but none would exceed the relevant limit values. Taken together the reduction in air quality should be given moderate negative weight. I am satisfied that none of the situations set out in paragraph

5.13 of the NPSNN would occur meaning that there is no objection in air quality grounds to the Proposed Development.

- 16.4.37. Turning to emissions while I have identified a small number of deficiencies in the Applicant's modelling, given the degree, these would not, in my judgement, affect the overall materiality of the quanta of emissions from the Proposed Development and it would not affect the UK Government's ability to meet its obligations under the Paris Agreement on Climate Change. However, due to the increase in emissions this weighs against the Proposed Development with moderate weight.
- 16.4.38. The High Court's decision in the Net Zero Case (see paragraph 10.1.3) post-dates the closure of the Examination and the SoST will need to consider any implications of that decision.

### **Geology, Geotechnical Risk and Soils (Chapter 11)**

- 16.4.39. I have concluded that the Proposed Development would result in the permanent loss of an assumed area of 19.1ha of best and most versatile (BMV) agricultural land and, given the nature of the agricultural land in this area, this should be result in moderate weight against the order being made.
- 16.4.40. Furthermore there would be some limited harm from the Proposed Development through the utilisation of minerals for construction and the disposal of waste.
- 16.4.41. I am satisfied that the Applicant has made appropriate consideration of the ground conditions in the area. However, I am conscious that not all the surveys commissioned by the Applicant have reported and the SoST may wish to satisfy themselves in this regard in relation to any implications particularly in relation to emissions and for funding decisions.

### **Water Environment and Flood Risk (Chapter 12)**

- 16.4.42. I am satisfied that the Proposed Development would meet the Sequential and Exception Tests and as essential infrastructure it would be appropriately located, even given that parts would be within Flood Zones 2 and 3. Moreover, there has been a robust assessment of the risks from all sources of flooding and the Proposed Development would be safe for its lifetime and its operation and would not be affected by flooding and it would not increase the risk of flooding elsewhere.
- 16.4.43. I am satisfied that the Proposed Development would meet the appropriate tests in the NPSNN as regards to flood risk, having regard to the works in proximity to the River Nene, Wittering Brook and Mill Stream and that through the appropriate mitigations secured in the dDCO and associated documents that it would be supported by an appropriate drainage strategy and mitigations including flood compensatory storage.

- 16.4.44. I am satisfied that the Proposed Development would be Water Framework Directive (WFD) compliant and that it would not result in significant detriment to the overall condition and value of the potentially affected water bodies and would not conflict with the Local Plan.
- 16.4.45. Therefore, taking all matters into consideration I am satisfied that water environment matters do not weigh against the order being made and is neutral in the overall balance.

### **Noise and Vibration (Chapter 13)**

- 16.4.46. I have concluded that the Applicant's approach to noise and vibration assessment is generally acceptable and in line with the NPSNN.
- 16.4.47. I also conclude that the Proposed Development would result in construction and operational noise and vibration effects that would result in significant adverse environmental effects on a number of sensitive receptors.
- 16.4.48. The proposed embedded and other mitigation secured through the dDCO and associated documents would reduce and mitigate further some of the significant effects to a minimum. However, it would not remove them.
- 16.4.49. Given the nature and scale of the Proposed Development, the short term nature of the significant effects and the mitigation, overall, the effects of noise and vibration are minimised.
- 16.4.50. Both these harms weigh against the DCO being made, and in my view they do so with moderate weight in the overall balance.

### **Landscape and Visual (Chapter 14)**

- 16.4.51. I conclude that given the overall nature of the landscape and visual effects in the context of the Proposed Development and the general area it would not be possible to avoid harm to either the landscape or visual receptors and the Proposed Development incorporates reasonable mitigation measures. I also consider that the overall value of the landscape is medium and that it is reasonable to judge the effects against this baseline.
- 16.4.52. However, I conclude the Applicant's assessment underestimates the effects on the landscape and visual receptors in relation to development in the western part of the Application site during construction and at opening. During this time, the effects at to the Nassaburgh Limestone Plateau Landscape Character Area (LCA) would be large adverse; and there would be a major adverse effect on the visual receptors at Sacrewell Farm and the nearby NMU routes. I am satisfied that once the mitigation landscaping has matured, then the effects would be as assessed by the Applicant; that is slight adverse on both the landscape and visual receptors.
- 16.4.53. The loss of tree T18 is unavoidable given its location in proximity to the Proposed Development.

- 16.4.54. I have concluded that due to the importance to the local economy the detailed design of the entrance to the Sacrewell Farm complex from the south should be subject to wider consultation including the operators of the complex. This could be secured in any final DCO.
- 16.4.55. I conclude that the proposed tree planting and mitigation measures identified in the Environmental Masterplan for screening are necessary, reasonable and appropriate.
- 16.4.56. Overall, I conclude that the harm from the landscape and visual effects of the Proposed Development should be given moderate weight.

## **Habitats Regulations Assessment (Chapter 15)**

- 16.4.57. I have found that there would be no likely significant effects of the Proposed Development on any European sites or their qualifying features. No mitigation relevant to HRA has been proposed and none is required. I am satisfied that the Proposed Development can proceed without an appropriate assessment being undertaken by the SoST.

## **Cumulative and in combination effects**

### **Applicant's position**

- 16.4.58. In Chapter 15 of the ES [AS-018] the Applicant undertook a cumulative effects analysis of the results of the ES. This was updated at D8 [REP8-031] to take account of the then proposed, and later accepted, changes to the Application. The ES points out that cumulative effects result from multiple actions on receptors over time and are generally additive or interactive in nature.
- 16.4.59. In this the Applicant looked both at the Proposed Development as a single project and together with 'other developments'. In this the Applicant looked at the Planning Inspectorate's NSIP website, Peterborough City Council's (PCC) and Cambridgeshire County Council's (CCC) planning registers and a traffic uncertainty log used in the traffic forecasting package.
- 16.4.60. These potential developments were identified on a range from 'near certain' to 'hypothetical'. This is set out in Table 15-2 of Chapter 15 of the ES [AS-018]<sup>118</sup>. The assessment focussed on the main significant effects and aims to differentiate between permanent or temporary, positive or negative and other existing or more than likely/ near certain major developments
- 16.4.61. The Applicant noted that it did not find any adverse effects in relation to Air Quality, Noise and Vibration, Water environment or Climate. With the exception of Climate I too have also found no adverse effects.

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<sup>118</sup> This was reviewed as part of Addendum Two to the ES [REP8-031] where, in Table 1.1, the Applicant found that no changes were required.

- 16.4.62. Table 15-5 looked at the single project effects from the individual topics on receptors during construction. The Applicant identified a significant construction cumulative effect on the former Wansford Road railway station in relation to the loss of the building as a heritage asset and as a dwelling. A non-significant cumulative construction effect on the River Nene was also identified in terms of both Geology and Soils and the Water Environment.
- 16.4.63. Table 15-6 looked at potential single project effects between topics on receptors during operation of the Proposed Development and from this the Applicant concluded that there were no cumulative effects. However, again more than one effect was identified on the River Nene in the same terms as the construction effect, but again was considered not to be significant.
- 16.4.64. In looking at a wider geographic scale there were no NSIP projects identified within 2km, nor were there any allocations in the respective local plans within the same area.

### **ExA Conclusions**

- 16.4.65. The main areas where I have come to different conclusions to the Applicant's submissions relate to traffic and transport, socio-economic matters and landscape and visual effects. The first two of these both have implications for businesses and residents of Upton, and do cumulatively reinforce the harm which would be caused by the Proposed Development.
- 16.4.66. The other main in combination relates to the effects on Sacrewell Mill, in particular, through the effects on it as a designated heritage asset and a visual receptor. Again this reinforces the harms I have identified.
- 16.4.67. I would otherwise agree with the Applicant as to the in combination effects which are set out in Chapter 15 of the ES [AS-018] and confirmed in Addendum Two to the ES [REP8-031].

### **Design**

- 16.4.68. The Government has emphasized the importance of good design in all built development. The National Infrastructure Commission has published 'Design Principle for National Infrastructure'. I asked in ExQ1.0.20 [PD-008] how this document had been taken account. Annex C to the Applicant's response to those questions [REP2-036] sets this out.
- 16.4.69. In general terms design has two main aspects, aesthetic, how a development looks, and functional, whether it can be utilised for its intended purpose.
- 16.4.70. In relation to aesthetics there is relatively little that a linear piece of infrastructure predominantly situated at ground level can do to exhibit high quality design. There are two structures, the two underpasses to Sacrewell Farm and adjacent to the Wansford Road railway station bridge, but both are relatively small structures and while they would be

visible in short-distance views would not be in longer-distance views. The detailed design of these structures and their environs would be subject to subsequent consultation and approval.

16.4.71. The setting of a piece of infrastructure can be enhanced by well-designed landscaping and I consider that the proposals set out in the Environmental Masterplan [REP8-014] would achieve this.

16.4.72. In relation to functionality, I do not believe that as submitted the Proposed Development would represent good design. It would fail to meet its objective of providing a more free-flowing network or deal with the issue of connectivity for NMUs and would result in severance for the community in Upton. I have not found a way within this Application that the third design failing could be addressed. In relation to the design failure of dealing with the issue of connectivity for NMUs, if the SoST is minded to grant the DCO, my recommended change to require a cycleway on the A1 overbridge would mitigate the former to some degree. My overall conclusion is that, functionally, the Proposed Development would not represent good design in that it would fail to meet its design objectives.

## **16.5. FINDINGS AND OVERALL CONCLUSIONS:**

### **Heritage conclusions**

16.5.1. Whatever the SoST decides on the overall scope of the Proposed Development, that is whether the effects of traffic on the Wansford west roundabout are included or not, I consider that the needs for and benefits of the Proposed Development outlined above would outweigh, in each case, the harm that I have identified for designated heritage assets. I also conclude that the harm to the undesignated heritage assets would be outweighed by the public benefits of the Proposed Development.

16.5.2. Therefore, I am satisfied that the public benefits provide a clear and convincing justification for the harm that would result, both individually and collectively, upon designated and non-designated heritage assets. Overall, I consider that matters concerning the historic environment would accord with the relevant provisions of the NPSNN.

### **Overall conclusions**

16.5.3. Paragraph 4.2 of the NPSNN states, subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established within the NPSNN.

16.5.4. In reaching conclusions on the case for the Proposed Development, I have had regard to s104 of the PA2008, that the NPSNN as the relevant NPS, the NPPF, the LIR and all other matters which I consider are both important and relevant to the SoS's decision. I have also considered whether the determination of this application in accordance with the relevant NPS would lead the UK to be in breach of any of its international

obligations where relevant. Subject to consideration of the implications of the Net Zero Case I am satisfied, in all respects, this would not be the case.

- 16.5.5. Insofar as the Development Plan is a material consideration, the Proposed Development would comply with a number of the cited policies, and would be contrary to others. Overall I conclude the Proposed Development would comply with the Development Plan as a whole.
- 16.5.6. The Proposed Development would make an important contribution to the improvement and enhancement of part of the strategic road network meeting the key objectives of the NPSNN and local planning policy. However, this would only apply east of the Wansford east roundabout and to traffic travelling south on the A1 and then travelling east. In this regard it would support economic growth by improving journey times and reliability, making a safer and more free-flowing network, and subject to the provision of a cycleway on the A1 overbridge would create a more accessible and integrated network.
- 16.5.7. As set out above, to my mind the benefits of the Proposed Development are materially different whether the effect on traffic on the Wansford west roundabout is taken into account. If it is not, then the Proposed Development would meet its objectives and should be given substantial weight. However, if it is included then the Proposed Development would only partially achieve its objectives and the benefits would be of only moderate weight.
- 16.5.8. In relation to NMU traffic, the failure to connect these routes with the wider network at the western end negates to some extent the beneficial provision of a separate way along the remainder of the route. Subject to the cycleway across the A1 overbridge being provided, I give this element moderate beneficial weight.
- 16.5.9. Paragraph 3.4 of the NPSNN recognises that some developments will have some adverse local impacts including on noise, emissions, landscape/ visual amenity, biodiversity and cultural heritage. It states that whilst applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain.
- 16.5.10. There would be harm created during the construction of the Proposed Development and from the operation of the Proposed Development. I am satisfied that through the operation of the dDCO, as I am proposing it to be amended, there would be a reasonable and proportionate approach to minimising these harms, although it would not mitigate the severance caused to the community in Upton in any meaningful way.
- 16.5.11. I have considered the effects based on the 'worst-case' scenario assessed in the ES. In the case of the effects on the designated heritage assets I am satisfied that the Proposed Development would result in less than substantial harm and that mitigation over time would minimise this.

- 16.5.12. However the Proposed Development is considered, I have found one element that significantly weighs against the order being made that cannot be even partially mitigated within the terms of the current Application. This relates to the issue of severance between Upton and the communities to the south. This is both in socio-economic and traffic and transport terms and their in-combination effects.
- 16.5.13. I have also found that there are a number of issues where the effects of the Proposed Development weigh against the order being made to a moderate or minor extent. These are:
- Economic Effect on a farm holding
  - Historic environment (including less than substantial harm to designated heritage assets and substantial harm to non-designated heritage assets)
  - Loss of a veteran tree
  - Air Quality and Emissions
  - BMV land and loss of mineral and waste capacity
  - Noise and vibration
  - Landscape and Visual effects.
- 16.5.14. In addition, at the end of the Examination, the lack of certainty as to whether the effect on bats can be mitigated must, in line with the precautionary principle, add substantially to the weight against the order being made.
- 16.5.15. I have found that the effect on the water environment and habitats regulations matters are both neutral.
- 16.5.16. In addition, to the identified benefits in traffic and transport terms and to the economy identified, the Proposed Development would also result in a moderate benefit through Biodiversity Net Gain.
- 16.5.17. Returning to paragraph 5.5.4 and the scope of the Proposed Development I concluded that it was appropriate to include the effects of the Proposed Development on the Wansford west roundabouts for the reasons given there.
- 16.5.18. S104(7) of the PA2008 indicates that the SoS may refuse consent where they are satisfied that the adverse impact of the proposed development would outweigh its benefits. This section of the A47 is part of an important route leading to and from East Anglia. This is reflected in the presumption in favour of granting consent to applications for transport NSIPs. The jobs likely to be forthcoming from the construction phase, and economic benefits to the wider areas add to the benefits side of the balance.
- 16.5.19. In my view if the effects on traffic on the Wansford west roundabout are taken into account, then the adverse effects of the Proposed Development when taken together do outweigh the benefits as identified. Therefore I find that the case for the Proposed Development has not been made out and recommend accordingly in Chapter 19. Therefore I do

not find the proposed development to be in accordance with the NPSNN and that the disbenefits outweigh the benefits.

16.5.20. However, were the SoST to consider the effects on traffic on the Wansford west roundabout fall outside the scope of the Proposed Development then the cycleway element of Work 12 should be removed. Then, subject to the provision of a cycleway across the A1 overbridge, I consider that the balance would fall the other way and that the benefits would outweigh the adverse impacts. Having said that, it should be recognised that the Proposed Development would not bring all of the purported benefits as set out in the Application and would result in severance for the community in Upton.

16.5.21. In such an event there are three matters relating to the Planning Balance that need to be resolved prior to such a grant. These are:

- ensuring no significant adverse effect on bats through clarification that NE would be willing to grant a bat licence;
- considering any implications of the Net Zero Case; and
- considering any implication from the latest ground investigations, particularly in relation to emissions.

16.5.22. In this event, in Chapter 17 I have highlighted three further matters that needs to be resolved:

- Crown consent from the SoS for Levelling Up, Housing and Communities;
- whether Anglian Water has an interest in a particular land plot; and
- ensuring the Book of Reference is correct.

The results of the ground investigations may also have implications in relation to funding, and I also consider that the recommended changes to the final submitted DCO [REP11-002] set out in Chapter 18 need to be made.

# **17. COMPULSORY ACQUISITION AND RELATED MATTERS**

## **17.1. INTRODUCTION**

17.1.1. The application subject to the Examination included proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and imposition of Permanent Rights over land. Notwithstanding my conclusion on the merits of the application this chapter records the examination of those proposals and related issues.

## **17.2. THE REQUEST FOR CA AND TP POWERS**

17.2.1. The request for CA and TP powers is made through the inclusion of Part 5 Powers of Acquisition and Possession in the Applicant's final dDCO [REP11-002] (the preferred DCO). The following provisions are included:

- Article 24: Compulsory Acquisition of Land
- Article 25: Compulsory acquisition of land – incorporation of the mineral code
- Article 26: Time limit for exercise of authority to acquire land compulsorily
- Article 27: Compulsory acquisition of rights and imposition of restrictive covenants
- Article 28: Public rights of way
- Article 29: Private rights over land
- Article 30: Modification of Part 1 of the Compulsory Purchase Act 1965
- Article 31: Application of the Compulsory Purchase (Vesting Declarations) Act 1981
- Article 32: Acquisition of subsoil or airspace only
- Article 33: Rights under or over streets
- Article 34: Temporary use of land for carrying out the authorised development
- Article 35: Temporary use of land for maintaining the authorised development
- Article 36: Statutory undertakers
- Article 37: Apparatus and rights of statutory undertakers in stopped up streets
- Article 38: Recovery of costs of new connections

17.2.2. If made, the DCO would also confer on the Applicant other rights and powers that may interfere with property rights and private interests. These additional powers include:

- Article 14: Power to alter layout etc. of streets
- Article 15: Street works
- Article 16: Temporary alteration, diversion, prohibition and restriction of use of streets
- Article 17: Permanent stopping up and restriction of use of streets and private means of access
- Article 18: Access to works
- Article 21: Discharge of water

- Article 22: Protective works to buildings
- Article 23: Authority to survey and investigate the land
- Article 38: Felling or lopping of trees and removal of hedgerows

17.2.3. As finally submitted the application was accompanied by:

- Book of Reference (BoR) [REP10-007];
- Land Plans [REP8-002];
- Works Plans [REP8-003];
- Rights of Way and Access Plans [REP8-004]
- Crown Land Plans [REP5-004];
- Statement of Reasons (SoR) [REP8-010]; and
- Funding Statement [APP-021].

17.2.4. Taken together these documents set out the land and rights sought by the Applicant, together with the reasons for their requirement and the basis under which compensation would be funded. References to the BoR and the Land, Works and Streets, Rights of Way and Access Plans in this chapter from this point should be read as references to the latest revisions cited above.

17.2.5. Land over which CA and TP powers are sought is referred to in this Chapter as the Order Land.

### **Compulsory Acquisition**

17.2.6. The CA powers sought under Article 24 are for the acquisition of land within the Order Lands where it is required to carry out or facilitate the Proposed Development. Article 29 provides for the extinguishment of private rights over land that is subject to compulsory acquisition under the Order.

### **Temporary Possession and Rights Acquired Permanently**

17.2.7. In addition to the CA of land Article 27(1) provides for the Compulsory Acquisition of rights and the imposition of restrictive covenants. Article 27(2) provides that in the case of Schedule 5 land only new rights may be acquired, rather than the land itself. It also allows for the imposition of such restrictive covenants, as may be required for the purposes set out in Schedule 5. Article 23(3) provides that where the undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.

17.2.8. Under Article 34(1)(a)(ii) the undertaker may enter any Order land not only required for TP of which no notice of entry has been served and no declaration made and, under Article 34(1)(d) construct any works on that land as are mentioned in Schedule 7. As the works in Schedule 7 are also mentioned in Schedule 1, this allows the undertaker to take temporary possession of the land set out in Schedule 7 and then construct the works in question. In other words, as it says in the key on the Land Plans [REP8-002], "Land to be used temporarily and rights to be acquired permanently" (this is the land coloured blue).

## Temporary Possession

- 17.2.9. Article 34 provides for the temporary use of land for carrying out the authorised development. As set out in the previous paragraph it also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired. Article 34(1)(c) permits the construction of temporary works and sub-paragraph (d) provides for the construction of permanent works specified in Schedule 7, or any other mitigation works in connection with the authorised development. Article 34(3) sets out the time limits for remaining in possession of land under Article 34, unless the undertaker has the agreement of the owners. Article 34(4) makes provision for the restoration of the land and 34(5) sets out the provision for compensation.
- 17.2.10. As drafted Article 34(9) prevents the undertaker from Compulsorily Acquiring land set out in Article 34(1)(a)(i) (land in or where it would acquire subsoil or airspace only under Article 32).
- 17.2.11. Article 29(4) provides that all private rights over land which the undertaker takes TP of under the Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.
- 17.2.12. Article 35 allows the Undertaker to take TP of land within the Order Limits, at any time within a period of five years from the date on which that part of the authorised development is first opened for use where required, for the purpose of maintaining the authorised development.

## Crown Land

- 17.2.13. The application was originally accompanied by Crown Land Plans [APP-011]. These were later updated at D2 [REP2-007] (Rev 1) and D5 [REP5-004] (Rev 2). These relate to two plots of land (Plots 1/5a and 1/6a) held on behalf of the Secretary of State for Levelling Up, Housing and Communities (SoSLUHC)<sup>119</sup>, and one plot of land (Plot 3/1i) held on behalf of the Secretary of State for Transport. These are set out in Part 4: Crown Land Interests in the BoR [REP10-007].
- 17.2.14. On 27 June 2022 the DfT, acting for and on behalf of the SoST, gave consent under Section 135(1) and (2) of the PA2008 to the inclusion of Article 52 into the dDCO and to its wording in respect of Plot 3/1i. This letter was provided as Annex A to [REP9-001].
- 17.2.15. However, no such confirmation at the end of the Examination that consent had been granted by the SoSLUHC had been received. The latest position reported to the Examination can be found in Annex A to the Applicant's Cover Letter to the D10 submission [REP10-001]. In simple terms this indicated that the Applicant had been liaising with the

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<sup>119</sup> The BoR [REP10-007] refers to the Secretary of State for Housing, Communities and Local Government.

Government Legal Department (GLD) for some months but while Crown Consent had been requested GLD had not received instructions from SoSLUHC.

- 17.2.16. The Applicant further indicated that if such consent was not received by the time that this report was submitted, then the Applicant would write to the SoST and consider whether it could proceed with the Proposed Development without the relevant land affected. I too will comment on this below.

## **Statutory Undertakers**

- 17.2.17. Statutory Undertakers' land and Electronic Communications Code Operators' land is extensively involved along the route and CA powers are sought to acquire land, interfere with interests, override interests and remove apparatus. All the land involved is included in Part 1 and Part 3 of the Book of Reference (BoR).
- 17.2.18. Article 36 allows the Undertaker, subject to the Protective Provisions in Schedule 9, to acquire compulsorily, acquire new rights, or impose restrictive covenants over any Order land belonging to Statutory Undertakers and to remove or reposition apparatus belonging to Statutory Undertakers. Article 36(2) provides that the power in relation to apparatus does not apply if the streets in question are to be stopped up as part of the authorised development. In that situation then the provisions of Article 37 will apply.
- 17.2.19. Article 37 governs what happens to Statutory Undertakers' apparatus (pipes, cables etc.) under streets that are stopped up by the Order. Under Article 37(2) the Applicant may require a Statutory Undertaker to remove and relocate the apparatus (or apparatus provided in substitution) elsewhere.
- 17.2.20. The Statutory Undertakers and utility providers with interests in the Order land, other than the Applicant itself<sup>120</sup>, are:
- Anglian Water Services Limited;
  - British Gas;
  - Cadent Gas Limited;
  - National Grid PLC<sup>121</sup>;
  - Openreach Limited;
  - Western Power Distribution plc;
  - SSE plc;
  - Virgin Media Limited; and
  - Vodafone Limited.
- 17.2.21. Schedule 9 to the preferred DCO has Protected Provisions for the following undertakers:

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<sup>120</sup> Referred to in the BoR [REP10-007] as 'Highways England Company Limited'.

<sup>121</sup> The BoR [REP10-007] in some citations refers to 'National Grid' without the 'PLC'.

- Part 1: Electricity, gas, water and sewage for undertakers not covered in Parts 3 to 5;
- Part 2: Electronic Communications Code Networks;
- Part 3: Anglian Water Services Limited;
- Part 4: National Grid as gas undertaker;
- Part 5: National Grid as electricity undertaker; and
- Part 6: Western Power Distribution Limited (East Midlands) Plc as electricity undertaker

17.2.22. It should be noted that the Application site includes the Anglian Water pumping station site. This is Plot 3/8b in the Land Plans [REP8-002] and is shown for Temporary Possession with the imposition of rights. This is to allow the undertaker as part of Work 27 (Protection, diversion and resilience works to large diameter water pipelines and associated apparatus) to undertake various specific works set out in Schedule 5 and impose restrictive covenants for their protection.

### **Other Special Category Land**

17.2.23. There is no other special category land, that is land held by the National Trust or land forming part of a common (including a town or village green), open space, or fuel or field garden allotment. Consequently, Sections 130 and 131 of the PA2008 are not engaged.

## **17.3. PROPOSED DESIGN CHANGES AND ADDITIONAL LAND**

17.3.1. The PA2008 requires that if changes are sought to the application, the changes, whether material or non-material, must be considered and accepted or otherwise by the ExA. If the changes accepted into the Examination involve CA of 'additional land' as defined in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ( the CA Regulations) will apply.

17.3.2. Paragraphs 2.3.7 to 0 detail the June 2022 application changes which were considered to be material as Change Two involved 'additional land'.

17.3.3. Regulation 4 of the CA Regulations sets out the procedure to be followed. However, this procedure only applies where the person(s) with an interest in the additional land do not consent to the inclusion of the provision. Where they do consent, there is no requirement to undertake additional procedures.

17.3.4. The Applicant provided signed letters (see Annex C of [AS-053]) on behalf of those with an interest, as set out in Part 1 of the BoR [AS-050], agreeing to the land being compulsorily acquired showing that all persons with an interest in the additional land have consented to the inclusion of that land. I accepted this change on 28 June 2022 in [PD-018].

## **17.4. THE PURPOSES FOR WHICH LAND IS REQUIRED**

17.4.1. The purposes for which the CA and TP powers are required are set out in the BoR and the Statement of Reasons (SoR).

- 17.4.2. In general terms, CA is sought for land that would be required permanently so that the Applicant can acquire the land interests required for the construction and operation (including maintenance) of the Proposed Development that is not already in its possession. The Applicant explains that powers of compulsory acquisition are necessary to enable the Applicant to use land temporarily and acquire, suspend, interfere with or extinguish rights over land. This is in order to construct and maintain the Proposed Development in a way that is both proportionate and in the public interest by reducing environmental impacts, minimising the cost to the Applicant (and hence the public purse) and mitigating the impact on affected land interests. This compelling case is evidenced further in the wider documentation that accompanies the application.
- 17.4.3. The Applicant also seeks powers to take TP of land to carry out and thereafter maintain the Proposed Development. Articles 34 and 35 make provision for these powers. The SoR explains that this is to ensure that appropriate work sites, working space and means of access are available for use during the construction and maintenance period and provides space for mitigation and other permanent works. This temporary power minimises the impact on land interests by ensuring that the Applicant does not have to acquire land it only requires temporarily.

## **17.5. LEGISLATIVE REQUIREMENTS**

### **Compulsory Acquisition**

- 17.5.1. CA powers can only be granted if the conditions set out in s122 and s123 of PA2008 are met, and the relevant guidance in 'Guidance Related to Procedures for the Compulsory Acquisition of Land', DCLG, September 2013 (the former Department for Communities and Local Government (DCLG) (the CA Guidance) sets out the purpose for which CA may be authorised.
- 17.5.2. S122(2) of the PA2008 requires that land subject to CA must be required for the development to which the development consent relates, or must be required to facilitate, or be incidental to that development. In respect of land required for development the land to be taken must be no more than is reasonably required and proportionate<sup>122</sup>.
- 17.5.3. S122(3) of the PA2008 requires that there must be a compelling case in the public interest to acquire the land compulsorily, which means the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected.
- 17.5.4. An order granting development consent may include provision authorising the CA of land only if the Secretary of State (SoS) is satisfied that one of the conditions in s123(2) to (4) is met. These are:
- The application includes a request for CA to be authorised.

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<sup>122</sup> DCLG CA guidance.

- All persons with an interest in the land consent to the inclusion of the provision.
  - The prescribed procedure is followed.
- 17.5.5. I am satisfied that the condition in s123(2) is met because the application for development consent includes a request for CA of the land to be authorised and thus one of the conditions is met.
- 17.5.6. A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with the legal duties on decision-makers:
- all reasonable alternatives to CA must have been explored;
  - the Applicant must have a clear idea of how it intends to use the land subject to CA powers and to demonstrate that adequate funds are likely to be available to meet the compensation liabilities that might flow from the exercise of CA powers; and
  - the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the Human Rights of those affected.
- 17.5.7. These matters were tested in the Examination and are reported on below.
- 17.5.8. S127 of PA2008 applies to land acquired by a Statutory Undertaker for the purposes of their undertaking where a representation is made about the application for the DCO and not withdrawn. S127(5) states that an order granting development consent may include provision authorising the creation of a new right over statutory undertaker's land providing that it can be done without serious detriment to the carrying out of the undertaking or any detriment can be made good by undertakers. It should be noted that this provision only relates to compulsory acquisition or the imposition of rights and not to temporary possession.
- 17.5.9. S138 of PA2008 provides for an order to include provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus of statutory undertakers only if the SoS is satisfied that such actions are necessary for the purposes of carrying out the development to which it relates.
- 17.5.10. Further to s120 and Part 1 of Schedule 5 to PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated CA Regulations do not contain the same level of specification and tests as for CA to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or permanently interfere with a person's interests in land. The need for the powers and their implications for Human Rights are considered below.

## **Crown Land**

- 17.5.11. Section 135(1) of the PA2008 enables DCOs to authorise the compulsory acquisition of an interest in Crown land where that interest is held by a

party other than the Crown. This provision only applies where the appropriate Crown authority consents to the acquisition.

- 17.5.12. Section 135(2) of the PA2008 allows a DCO to include any provision which applies *"in relation to Crown land or rights benefiting the Crown"*, but only if the appropriate Crown authority consents to the inclusion of the provision. This provision could include a power to use Crown land temporarily for construction or maintenance of the Proposed Development.

## **17.6. EXAMINATION OF THE CA AND TP CASE**

- 17.6.1. The Examination of the Proposed Development included consideration of all submitted written material relevant to CA and TP. All relevant guidance and legislation has been taken into account in the reasoning below and relevant conclusions are drawn at the end of this chapter in relation to both CA and TP.

- 17.6.2. Written Questions were posed to the Applicant and Affected Persons (APs) in respect of CA and TP in ExQ1 [PD-008], ExQ2 [PD-010] and ExQ3 [PD-015].

- 17.6.3. [REDACTED]

- 17.6.4. The documents set out in paragraph 17.2.3 taken together form the basis of the analysis in this chapter. References to these documents from this point should be read as references to the latest revision cited above. It should be particularly noted that all Land Plan plot references employed in this chapter are correct as per the most recently submitted Land Plans.

- 17.6.5. The Land subject to powers of CA and TP required in order to enable the Applicant to construct, operate and maintain the Proposed Development comprises approximately 71.07ha. Of this, approximately 49.47ha would be permanently acquired, approximately 14.43ha would be temporarily possessed for construction and approximately 7.17ha would be subject to TP with acquisition of permanent rights.

## **17.7. THE APPLICANT'S CASE FOR CA AND TP POWERS**

### **General Case**

- 17.7.1. The Applicant's case is set out in the SoR [REP9-010]. It considers that the land subject to CA requests is either needed for the development, or is needed to facilitate the development, or is incidental to the development.

- 17.7.2. The Applicant considers that the land subject to CA, TP and TP with rights is the minimum necessary to construct, operate, maintain and mitigate the Proposed Development necessary to achieve its objectives (paragraph 5.3.3 of the SoR [REP9-010]). The Applicant confirms that if less land is needed at a later stage in the process, the Applicant will only seek to acquire that part of the land that is required.
- 17.7.3. The Applicant explains that CA powers are also required to override any existing rights and interests in the land as well as grant the right to take TP of land for construction and maintenance purposes. It maintains that without these rights over the land, the Proposed Development cannot be delivered.
- 17.7.4. The Applicant maintains that there is a compelling case in the public interest as set out in the wider documentation accompanying the Application, particularly the SoR and 'The Case for the Scheme' [AS-022]. This latter document refers to the NPSNN paragraph 2.2 which identifies a "*critical need*" to improve the national networks to address road congestion to provide safe, expeditious and resilient networks to support social and economic activity.

### **Consideration of alternatives**

- 17.7.5. In designing the Proposed Development the Applicant has considered the CA and TP implications with a view to minimising the potential land-take. It explains that these alternatives were consulted upon, and the preferred route chosen was based on a thorough consideration of relevant issues. Those whose land would be affected were part of the consultation process.
- 17.7.6. The Applicant considers that the Proposed Development represents the "*best option to meeting defined need and objectives*" (paragraph 5.5.5 of the SoR [REP-010]).

### **Funding**

- 17.7.7. The Applicant believes that there is a reasonable prospect of funding. The Funding Statement [APP-021] gives a most likely estimate of £70.9 million, including allowances for risk and inflation at the date of the Application. This estimate includes all costs to deliver the Proposed Development from Options stages through to the opening for traffic. It includes an allowance for compensation payments relating to the compulsory acquisition of land interests in, and rights over, land and the temporary possession and use of land.
- 17.7.8. Funding was first agreed in RIS1 which was published in December 2014, and this was re-iterated in the Highways England Delivery Plan 2015 – 2020 published in 2015 and subsequent delivery plans.
- 17.7.9. On 11 March 2020 the Government published RIS2 for the period 2020 – 2025. As set out in paragraph 3.7.5 this scheme is included for this period.

- 17.7.10. Thus, the Applicant believes, the Proposed Development will be fully funded by DfT and is not dependent on funding from other parties.

### **Acquisition by Agreement**

- 17.7.11. The Applicant has set out in Annex B to the SoR a summary of the discussions between the Applicant and landowners seeking to acquire the relevant land by agreement. However, it acknowledges that in order to deliver the Proposed Development in a timely manner, or in the event that it does not prove possible or practical to acquire all the land by agreement, that CA powers should be granted. The state of the negotiations between the Applicant and those with an interest in land at D10 is set out in the Compulsory Acquisition Schedule (CAS) [REP10-014].

### **ExA Conclusions on the General Case for CA and TP**

- 17.7.12. I agree with the Applicant's conclusions on the generality of the case, including its approach to dealing with alternatives in respect of land interests and ensuring that there are no outstanding interests that have not been previously identified in land that the Applicant already owns. I also agree that in order to ensure delivery of the Proposed Development is not delayed by negotiations that some powers to provide for CA, TP with Permanent Rights or TP would be appropriate. However, the overarching conclusion on CA and TP cannot be reached until individual objections and all other relevant and important considerations have been addressed.

## **17.8. DISCREPANCIES BETWEEN THE BoR AND THE CAS**

- 17.8.1. As part of my Written Questions (ExQ1.3.1 of [PD-008]) I asked that the Applicant provide a schedule setting out the current situation of negotiations with affected landowners and occupiers. The Applicant submitted a CAS at D2 [REP2-038] and this was updated on various occasions with the last version being submitted at D10 [REP10-014].

- 17.8.2. Unfortunately, when comparing the CAS [REP10-014] with the BoR [REP10-007] it appears that there are a number of discrepancies. These are set out, as best I am able, below. References to the Plot numbers relate to the BoR and are shown on the Land Plans [REP8-002].

### **Plot 3/2g**

- 17.8.3. Both the CAS and BoR indicate that Category 1 rights in Plot 3/2g are held by the William Scott Abbott Trust and Riverford Organic. The CAS also indicates that Anglian Water has a Category 2 interest in this plot, but this is not given in the BoR.
- 17.8.4. It is not clear whether Anglian Water has an interest in Plot 3/2g. It would appear to have an interest in physically adjoining plots, for example Plots 3/2i and 3/3g. There is no reference to individual plots within the SoCG with Anglian Water [REP11-011].

[REDACTED]

17.8.5. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

17.8.6. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

17.8.7. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

17.8.8. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Plots 5/5a and 5/6i**

17.8.9. In Part 1 of the BoR (Categories 1 and 2) both Plots 5/5a and 5/6i are listed as "Number not used". However, both appear in Part 3 (Names and addresses of those persons whose entitlement to enjoy private easements or rights may be extinguished, suspended or interfered with). For Plot 5/5a these interests are stated to be in favour of British Gas and Milton Estates and for Plot 5/6i interests for Milton Estates and National Grid.

17.8.10. I have looked carefully through the Land Plans have found reference to neither Plot 5/5a nor Plot 5/6i. My conclusion is that they do not exist.

**Plot 5/5b**

17.8.11. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

17.8.12. While for some parties the CAS lists both Category 1 and Category 2 interests, for Milton Estates it cites only the Category 1 interests. The

BoR includes Milton Estates as having Category 2 interests in Plots 4/1c, 5/6a, 5/6b, 5/6c, 5/6d, 5/6e, 5/6f, 5/6g, 5/6h, 5/6j, 5/6k, 5/6l, 5/7a, 5/7b, 5/7c, 5/7d.

## **ExA's Comments on Discrepancies**

- 17.8.13. These errors only came to light when I was preparing this report after the Examination had closed. I was therefore unable to ask the Applicant to correct any errors.
- 17.8.14. The general assumption is that the BoR should be the definitive record of the land to be subject to CA, TP or TP with rights. It is defined in Regulation 7 of the Application Regulations and required to be submitted under Regulation 5. The CAS, on the other hand is non-statutory and is used to identify those with an interest in land with the plot numbers rather than starting from the plot numbers.
- 17.8.15. Therefore, anyone who is affected by CA, TP or TP with rights should start by looking at the BoR and, provided this is referenced accurately, then there is no need to go further. Thus, provided the BoR is accurate, then no person would be prejudiced by errors in the CAS.
- 17.8.16. The errors in the CAS relating to Plots 4/1c, 4/3a, 4/3b, 4/3c, 4/3d, 4/3f, 5/5b, 5/6a, 5/6b, 5/6c, 5/6d, 5/6e, 5/6f, 5/6g, 5/6h, 5/6j, 5/6k, 5/6l, 5/7a, 5/7b, 5/7c and 5/7d would therefore not result in prejudice for any party. This also applies to the 'duplication' of interests sought in relation to Plot 4/3c, as the 'higher' right sought, of CA, was clear.
- 17.8.17. However, there are errors in the BoR. Both Plots 5/5a and 5/6i should not be included in Part 3 and clarification is required as to whether Anglian Water has an interest in Plot 3/2g which is subject to a request for CA.
- 17.8.18. If Anglian Water does have an interest in Plot 3/2g then as it would not have been subject to identification previously, it could be prejudiced. If this is the case, in my view, to allow the DCO to proceed, then, in similar way to Regulation 4 of the CA Regulations, written confirmation should be provided from Anglian Water that it would be willing for its interest to be acquired.
- 17.8.19. I would therefore recommend a two stage process to the SoST. Firstly, seek clarification from the Applicant as to whether Anglian Water has a Category 2 interest in Plot 3/2g. If it does not, then there would be no impediment in this regard to the making of the DCO.
- 17.8.20. If on the other hand it does have such an interest, then as a second stage, written confirmation should be sought from Anglian Water as to whether it is content for its interest to be acquired. If it does, there is no impediment in this regard to the making of the DCO.
- 17.8.21. If it does object, then this would prevent the delivery of the Sacrewell Farm link road which forms an integral and necessary part of the overall Proposed Development. The DCO could not, in my opinion, be granted as

the Applicant would not have complied with the necessary requirements set out in ss58 and 59 of the PA2008.

- 17.8.22. A revised version of the BoR also should be sought setting out the correct position in respect of Plot 3/2g and deleting from Part 3 reference to Plots 5/5a and 5/6i.

## **17.9. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES**

- 17.9.1. Subject to my criticisms of it set out above, the final version of the CAS [REP10-014] sets out in Table 1-2 the status of the objections with the individual owners and others with an interest in land as far as I was informed at the end of the Examination. The discussion therefore represents the situation at that time.
- 17.9.2. The CAS sets out seven different situations depending on whether there remained objections to the CA, TP or TP with Rights of land.
- 17.9.3. Even then, however, this became out-of-date by the end of Examination at D11. Two of the objections, from National Grid as gas [REP11-017] and electricity [REP11-016] undertaker, were withdrawn and a third, from Western Power [REP11-019] while not withdrawn indicated that, subject to a separate commercial agreement being completed, it was likely to be withdrawn. Western Power confirmed it did not consider a SoCG was required.
- 17.9.4. Where agreement has been completed, or no agreement is required, as set out in Section 1 of Table 1-2 I have not reported individually upon land interests. It can be taken that I agree with the case for CA, TP or TP with Rights as appropriate.

### **Land Plans**

- 17.9.5. In writing this report I have noticed a cartographic error on the Land Plans [REP8-002]. This is in Insert F on Sheet 1 of 7<sup>123</sup>. In this inset there are two plots "1/6b", one marked for CA and one for TP with Rights, and no plot 1/6a. I am satisfied that this is a cartographic error because the base drawing upon which the inset is based, clearly shows two plots, plots 1/6a and 1/6b, the former for CA and the latter for TP with Rights.

### **Crown Land**

- 17.9.6. There are two plots at the close of the Examination where Crown consent had not been obtained by the Applicant to allow for the interference with Crown rights. These are plots 1/5a and 1/6a on the Crown Land Plans [REP5-002]. The former is for TP with Rights and the latter for CA. These are set out in Part 4 of the BoR [REP10-007].

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<sup>123</sup> Drawing HE551492-GTY-LLO-000-DR-BL-30001 Rev P04.

- 17.9.7. The SoR [REP8-010] indicates Plot 1/5a is required for the diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables and safe working room and traffic management along the A1
- 17.9.8. Plot 1/6a is required to provide the new access highway and associated works to 6 to 12 (evens) Great North Road, service vehicle turning point and safety barrier.
- 17.9.9. Without plot 1/6a it is my view that it would not be possible to deliver the Proposed Development in the form applied for. Without the compulsory acquisition of this plot it would not be possible to provide the separate access for 6 to 12 (evens) Great North Road and the property known as Windgate Way. That being the case the risks to highway safety from potential conflicts between traffic seeking to gain access to these properties and the A1 to A47 free-flow link road would be unacceptable. There would be the risk of 'rear end shunts' from vehicles travelling at higher speed to use the free-flow slip road not expecting traffic to stop relatively abruptly to gain access to the properties. There would also be a conflict between traffic leaving these dwellings and traffic wanting to utilise the free-flow slip road or travel further south along the A1.
- 17.9.10. Without plot 1/5a it would not be possible to fully deliver Work 3. As this would only be for the provision of services this may be less problematic since detailed design may allow these services to be provided through a less commodious route. However, as this alternative route would more than likely be through plot 1/6a this would not resolve this issue.
- 17.9.11. In the absence of agreement from SoSLUHC of confirmation of Crown Consent, it is my view that consent for the DCO should be withheld. However, I consider it is likely that such consent will be forthcoming. Therefore I have included this in the list of pre-conditions that, in my view, need to be satisfied in the event that the SoST considers that the DCO should be granted.

**Category 1 objectors**

- 17.9.12. [REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

**ExA Reasoning and Conclusion:**

17.9.13. The land subject to CA, TP and TP with rights is required to construct the Proposed Development, in particular the main line, free-flowing slip road,

private access to 6 to 12 (evens) Great North Road and the Sacrewell Farm underpass.

- 17.9.14. Allowing the Applicant to take TP of land prior to its CA would allow construction to take place faster than would otherwise be the case. It is clearly in the public interest that, if consented, any development takes place as expeditiously as possible.
- 17.9.15. There are two plots of land marked 'B' in the plan annexed to the SoCG. The western of the two lies outside the Application site, but the eastern (which is surrounded by the A47 and the on and off slip roads to the A1 southbound) would be subject to TP. This would be used as a temporary storage and working area and to facilitate adjoining works.
- 17.9.16. As discussed more fully in section 17.12 Article 1 of the First Protocol the Human Rights Act 1998 indicates that every natural or legal person is entitled to the peaceful enjoyment of their possessions; this includes land. This land is not permanently required and therefore there can be no compelling case in the public interest for it to be compulsorily acquired.
- 17.9.17. I therefore conclude that the plots in question are required for the development, should the SoST be minded to grant the DCO. If this were to be the case there would be a compelling case in the public interest for the CA, TP and TP with Rights of the plots in question. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

### **Riverford Organic Farmers Limited**

**Location:** To the east and north of the A1 and A47 between the access to Sacrewell Lodge Farm and the eastern extent of Scheduled Monument

**Interests<sup>124</sup>:** CA of plots: 1/2a, 1/2b, 1/3b, 1/4a, 1/10b, 2/3a, 2/3c, 2/3d, 2/4a, 3/2a, 3/2b, 3/2d, 3/2f, 3/2g, 3/2h, 3/3a, 3/3b, 3/3c, 3/3e, 3/3f, 3/5b, 4/2a, 4/2c, 4/2d, 4/2e, 4/2g, 4/2k, 4/2l, 4/3a, 4/3b, 4/3c, 4/4a

TP of plots: 1/9a, 1/10a, 2/3b, 3/2c, 3/2e, 3/2i, 3/2k, 3/3d, 3/3g, 3/5a, 4/2b, 4/2f, 4/3d, 4/3f

TP with Rights of plots: 1/4b, 1/10d, 3/2j, 3/2l, 3/3h, 4/3c

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<sup>124</sup> In the CAS [REP10-014] Section 3, reference 10, there is a missing 'carriage return' after the reference in Column 3 (Plot No(s).) to plot 4/3f. This gives the impression that the remaining plots are only subject to a request for TP. This is not the case; the "(c)" is the marker for 'TP with permanent rights'. This is correctly set out in the BoR and I consider that the lack of a carriage return can reasonably be considered to be a typographic error only. I have set out the report on this basis.

**Status Summary:** Heads of Terms with landowner under process of negotiation.

Signed Statement of Common Ground:  
[REP8-017]

Agreement to CA of land required for Sacrewell Farm entrance [REP8-029] – plots 3/2f and 3/3c. The agreement also relates to plots 3/2e and 3/3d which are subject to TP.

**Objector's case:** [RR-042]

None relate to CA or TP

**Applicant's response:** None specific to this interest.

**ExA Reasoning and Conclusion:**

17.9.18. The land subject to CA, TP and TP with rights is required to construct the Proposed Development, in particular the main line, free-flowing slip road, private access to 6 to 12 (evens) Great North Road and the Sacrewell Farm underpass.

17.9.19. I conclude that the plots in question are required for the Proposed Development, should the SoST be minded to grant the DCO. If this were to be the case there would be a compelling case in the public interest for the CA, TP and TP with Rights of the plots in question. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

**Milton (Peterborough) Estates Company<sup>125</sup>**

17.9.20. Milton Estates paid an active part in the Examination attending and participating in a number of Hearings and making representations throughout.

**Location:** Those parts of Sutton Heath Road and Langley Bush Road which would be affected together with adjoining land.

**Interests:** CA of plots: 4/4b, 4/7a, 5/1a, 5/1b, 5/3c.

TP of plots: 5/3a, 5/3b, 5/5b.

TP with Rights of plot: 4/7b

**Status Summary:** Head of terms agreed

Signed SoCG: [REP8-030]

**Objector's case:** [RR-030]

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<sup>125</sup> [REDACTED]

None of the objections relate to CA or TP.

**Applicant's response:** None specific to this interest.

**ExA Reasoning and Conclusion:**

17.9.21. The areas of land are required to facilitate the closure of the junction of the A47 with Sutton Heath Road, and the re-working of the junctions of Sutton Heath Road with Langley Bush Road. These are considered necessary to allow these aspects of the Proposed Development to be delivered.

17.9.22. I conclude that the plots in question are required for the development, should the SoST be minded to grant the DCO. If this were to be the case there would be a compelling case in the public interest for the CA, TP and TP with Rights of the plots in question. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]



with Rights of the plots in question. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

## **Category 1 and Category 2 objector**

### **Anglian Water Services Limited**

<b>Location of Category 1 Interests</b>	Area of and around Anglian Water Pumping Station  Area of and around pumping station north of Upton Drift
<b>Location of Category 2 Interests:</b>	Throughout the Application site.
<b>Category 1 Interests:</b>	CA of Plots: 3/8a  TP of Plots: 5/7a, 5/7c  TP with Rights of Plots: 3/8b, 5/7b, 5/7d
<b>Category 2 Interests:</b>	CA of Plots: 1/1d,1/2a, 1/2b, 1/3b, 1/3d, 2/1c, 2/2c, 2/2d, 3/1k, 3/1p, 3/2h, 3/4e, 3/4g, 3/7a, 3/7e, 3/9a, 4/1e, 4/3a, 4/4a, 4/4c, 4/4d, 4/8a, 4/9b, 4/9c, 4/9d, 6/1g, 6/3b, 6/4b, 6/5d, 7/1a, 7/1b, 7/2a, 7/2b, 7/4a, 7/4d.  TP of Plots: 1/9a, 2/1d, 3/1j, 3/1l, 3/2i, 3/4h, 3/4i, 4/9a  TP with Rights of Plots: 3/1h, 3/2j, 3/4d, 3/4k, 3/7b, 3/7c, 3/7d, 3/8b, 4/9e, 6/4f, 6/5c
<b>Potential Category 2 Interest:</b>	See paragraphs 17.8.17 to 17.8.21.  3/2g
<b>Status Summary:</b>	At D10 – <i>"No formal objection received but Agreement on the PPs unlikely before the close of the examination"</i> .  A SoCG between the parties was submitted at D11 [REP11-011].
<b>Objector's case:</b>	The objections relate solely to the Protective Provisions and this is discussed in Chapter 18.
<b>Applicant's response:</b>	None relating to CA, TP or TP with Rights.

### **ExA Reasoning and Conclusion:**

17.9.31. Anglian Water is, of course, a statutory undertaker where s127 of the PA 2008 can apply. There are three tests, all of which must apply:

- the land has been acquired for the purposes of their undertaking;
- a representation has been made about the Proposed Development and not withdrawn;

- as a result of the representation, the SoS is satisfied that the land is held for carrying out the statutory undertaker's undertaking or an interest is held for those purposes.
- 17.9.32. While this is a matter of law for the SoST, in this case no representation has been made and consequently I am satisfied that s127 of the PA2008 is not engaged.
- 17.9.33. There are two pumping stations within the Application site, one adjacent to the River Nene for pumping water from there to Rutland Water and the second north of Upton Drift in Upton.
- 17.9.34. The main interest sought in relation to the River Nene pumping station is TP with Rights to allow the main line of the Proposed Development to be constructed while not adversely affecting the water main. There is one small section for CA, plot 3/8a, which would affect part of the access road to the pumping station. I am satisfied that these are both necessary to facilitate the Proposed Development.
- 17.9.35. The 'serious detriment' test set out in s127 applies where a permanent right is sought through the DCO. I have therefore considered whether the Proposed Development would result in serious detriment for Anglian Water. I have concluded that it would not on the basis that the right sought is to protect the water mains.
- 17.9.36. At Upton the interests sought relates to works the Upton Drift. There is no assertion that the function of Anglian Water would be affected. I am satisfied that the interests are required in order to facilitate the construction of the Proposed Development.
- 17.9.37. Subject to the issue in relation to Plot 3/2g set out above, in relation to the Category 2 rights, these are effectively to allow the Applicant to construct the Proposed Development. Interests are dealt with in the Protective Provisions as set out in the dDCO.
- 17.9.38. I therefore conclude that the plots in question are required for the development, should the SoST be minded to grant the DCO. If this were to be the case there would be a compelling case in the public interest for the CA, TP and TP with Rights of the plots in question. The tests in s122 of the PA2008 would have been met in relation to those plots over which CA is sought.

## **Category 2 interest**

- 17.9.39. The Compulsory Acquisition Schedule identifies four other statutory undertakers with Category 2 interest only/ interests to be identified and discussions progressed where necessary. These are:
  - Cadent Gas Limited
  - SSE plc
  - Virgin Media Limited
  - UK Power Networks

17.9.40. None of these undertakers made a representation to the Examination. In each case interests are to allow the Applicant to construct the Proposed Development. Interests are dealt with in the Protective Provisions as set out in the dDCO.

**Land to which no objection has been received**

17.9.41. There are a number of other Category 1 landowners in the Order lands whose land would be subject to CA, TP with Permanent Rights or TP who have not raised objections to the Proposed Development.

17.9.42. Some of these are public bodies, in particular PCC which has indicated its general support for the Proposed Development. The issues of concern raised do not relate to land matters. As the Applicant explains, the comprehensive approach to CA is to ensure 'clean title' and no unexpected delays.

17.9.43. There are a number of other plots of land where land rights would be interfered with, and where no correspondence has been received to indicate that there is an objection to the CA, TP with Permanent Rights or TP of the relevant plots.

17.9.44. In all cases I conclude that, should the SoST be minded to grant the DCO, the land is required for the development to which the development consent would relate, or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The same considerations apply to that land, which is sought to be acquired for TP, whether or not with Permanent Rights thereafter and this includes those with 'Category 3' interests.

**17.10. THE ExA'S RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION POWERS**

17.10.1. My approach to the question as to whether and what CA powers I should recommend to the SoST to grant in the event that they are minded to grant the DCO has been to seek to apply the relevant sections of the PA2008, notably s122 and s123, the DCLG Guidance, and the Human Rights Act 1998, and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

17.10.2. The preferred DCO [REP11-002] deals with both the Proposed Development itself and CA powers. I conclude above that when the adverse effects of the Proposed Development are weighed against its public benefits the DCO should not be granted. The consideration of the CA issues must be consistent with that view. Without an approved development there is no need to interfere with land rights and consequently, in my view no compelling case in the public interest to that effect.

- 17.10.3. However, if the SoST were to take a contrary view, so that development consent was to be granted, then I am satisfied that there would be a need to acquire the rights and interests in the CA land. On this basis the Proposed Development would comply with s122.
- 17.10.4. I am also satisfied that the Applicant has sought to acquire land by negotiation and that all reasonable alternatives to CA have been explored.

## **17.11. FUNDING**

- 17.11.1. In accordance with DCLG Guidance the Applicant submitted a Funding Statement [APP-021] with the application and reiterated that it was still valid in the last version of the SoR [REP8-010]. The Funding Statement estimates that the cost of the Proposed Development would be about £70.9 million. This estimate includes an allowance for compensation payments relating to the CA of land interests in, and rights over, land and the TP and use of land. It also takes into account potential claims under Part 1 of the Land Compensation Act 1973, Section 10 of the Compulsory Purchase Act 1965 and Section 152(3) of the 2008 Act.
- 17.11.2. The Proposed Development would be fully funded by the DfT and it is not dependent on funding contributions from other parties. On the basis of the evidence submitted by the Applicant no changes to the Funding Statement have been requested. Subject to the point set out in paragraph 17.11.4 I am satisfied that should the DCO be confirmed there would be adequate funding in place to ensure its delivery.
- 17.11.3. Consistent with previous SoS decisions on Orders relating to Highways England/ National Highways and having regard to the DCLG Guidance in respect of the adequacy and security of financial resources, I am satisfied that there are adequate funds for CA and TP compensation and no additional or special steps are required to secure or guarantee those funds.
- 17.11.4. However, in saying that, the results of the latest ground investigations will not have been factored into the funding of the Proposed Development other than within 'risk'. It may be that the implications of ground investigations would result in a material increase in the cost of construction of the Proposed Development. The SoST may wish to satisfy themselves in this regard.

## **17.12. HUMAN RIGHTS ACT 1998 CONSIDERATIONS**

- 17.12.1. The Applicant acknowledges in the SoR [REP8-010] that the DCO engages a number of the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as brought into UK Law by the Human Rights Act but submits that such interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.

- 17.12.2. It would affect Article 1 of the First Protocol (rights of those whose property is to be Compulsorily Acquired and those whose peaceful enjoyment of their property is to be interfered with).
- 17.12.3. Article 6 entitles those affected by CA powers sought for the project to a fair and public Hearing of their objections. The provision of a CAH [EV-013]<sup>127</sup> enabled any AP who wished to be heard to be heard fully, fairly and in public. The Applicant states that all owners and occupiers of land affected by the Proposed Development have been contacted and that representations could be made in response to the notice under s56 PA2008 or at any CAH advertised or held in public by the ExA.
- 17.12.4. As noted above, it is not clear whether Anglian Water has an interest in respect of Plot 3/2g as shown on the Land Plans. If it does have an interest then it may be that Anglian Water wished to be heard. The procedure set out in paragraphs 17.8.18 to 17.8.21 may resolve this.
- 17.12.5. Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.
- 17.12.6. While there would be the loss of a dwelling, the former Wansford Road railway station building, it is nobody's 'home' since it has been unoccupied for some time (see paragraph 8.3.71). Consequently, to my mind, this Article is not engaged. There would, however, be the loss of part of the homes (the areas in front) of 6 to 12 (evens) Great North Road.
- 17.12.7. In each of these cases while Rights would be interfered with, I consider that if the SoST is minded to grant the DCO then the interference would be proportionate and justified in the public interest, and consequently the CA, TP with Permanent Rights and TP would be compatible with the Human Rights Act and the ECHR.

## **17.13. EQUALITY ACT 2010 CONSIDERATIONS**

- 17.13.1. The original application was accompanied by an Equality Impact Assessment (EqIA) [APP-147]. This was superseded with two later versions, [AS-028] following the s51 advice and at D2 [REP2-031] in response to ExQ1.
- 17.13.2. In the EqIA [REP2-031] there is a table that sets out the Applicant's assessment of the level of impact on those with protected characteristics. In two of the rows, relating to the protected characteristics of 'Age – older people' and 'Disability' the Applicant did not positively mark their conclusions. However, from the associated text it can be taken that the Applicant considers that there would be a neutral effect in respect of those people with the protected characteristic of disability. The text in

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<sup>127</sup> The recording is available at [EV-026] and [EV-027] and transcripts at [EV-028] and [EV-029].

relation to 'Age – older persons' is less clear concluding: *"The project is likely to provide benefits in terms of improved safety. The impacts identified are not anticipated to significantly impact people with this protected characteristic."*

17.13.3. The EqIA found neutral effects for those with the following protected characteristics:

- sex;
- religion or belief;
- age – young people
- race;
- sexual orientation;
- gender reassignment;
- pregnancy and maternity; and
- marriage and civil partnership.

17.13.4. The assessment was based on the Applicant's conclusion that the effects of the Proposed Development would not affect people with these characteristics differently from any other group.

17.13.5. As set out above (paragraph 3.4.11) the PSED is designed to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share the protected characteristics and persons who do not.

17.13.6. The PSED is for the decision-maker, in this case the SoST. However, to assist the SoST in making their determination I make the following comments.

17.13.7. In general terms I consider that the EqIA provides a reasonable approach to this issue. I agree with the Applicant that due to the nature of the project there would be no positive or negative effects for those with the protected characteristics of sex, religion or belief, race, sexual orientation, gender reassignment, and marriage and civil partnership when compared with any other grouping.

17.13.8. I would, however, disagree with the Applicant in respect of the effects on those with the protected characteristics of age, both young people and older people, pregnancy and maternity and disability.

17.13.9. This relates predominantly to the design of the Proposed Development as submitted in relation to the nature of the steep ramp leading down/ up from the western extent of Wansford Nene Way Permissive 1 at the junction with Peterborough Road close to the junction with the A1.

17.13.10. [REDACTED]

- 17.13.11. Therefore, the Proposed Development would, in my view, not advance equality of opportunity for those with the protected characteristics of disability, age or pregnancy and maternity.
- 17.13.12. I would comment that, in my view, my recommended change to provide a separate crossing of the A1 overbridge would improve matters, but as this would result in a longer journey would not eliminate the adverse effects entirely.

## **17.14. CONCLUSIONS**

- 17.14.1. Taking all relevant documents and policies into account, I conclude as follows, that if the SoST is minded to grant the DCO:
- The CA powers sought would accord with Sections 122(2) and (3) and 123 of the PA2008;
  - The Crown interests in respect of those held by:
    - o the SoST have been resolved;
    - o the SoSLUHC remain outstanding and without them being resolved Development Consent should be withheld; however, I consider there is a reasonable prospect of such consent being granted.
  - I am satisfied that in all cases relating to individual objections and issues that CA, TP with Permanent Rights and TP is justified to enable implementation of the Proposed Development and a compelling case in the public interest would have been made out;
  - In relation to Statutory Undertakers, subject to clarity as to whether Anglian Water Services Limited has an interest in land plot 3/2g and, if so, whether it objects to interference with its rights as regards this plot, I am satisfied there are no outstanding objections;
  - The Book of Reference needs to be corrected in respect of Plots 3/2g, 5/5a and 5/6i;
  - Subject to the consideration of the implications of the latest ground investigations report there is adequate funding in place for the Proposed Development;
  - Subject to clarity in respect of plot 3/2g the Proposed Development would be compatible with the Human Rights Act in terms of being a proportionate interference with property, including homes, and family life;
  - Consideration of the PSED is for the SoS, but I consider that the amendments set out in Chapter 18 below would assist in reducing adverse effects on those with certain protected characteristics.
  - Overall, the SoST can be satisfied:
    - o Subject to the resolution of the Crown interests held by SoSLUHC and clarity obtained in relation to plot 3/2g the tests in s122(2)(a) and (b) and s122(3) PA2008 are met and recommend acceptance of the CA, TP with Rights and TP powers proposed in the DCO; and
    - o that the conditions in s123(2) and s123(4) PA2008 are met.
- 17.14.2. For the avoidance of doubt, where the SoST minded to grant the DCO the deletion of the new cycle crossing from Work 12 does not affect the land that would need to be subject to CA or TP.

# **18. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

## **18.1. INTRODUCTION**

- 18.1.1. A draft Development Consent Order (dDCO) [APP-016] and Explanatory Memorandum (EM) [APP-017] were submitted by the Applicant as part of the application for development consent. The EM describes the purpose of the dDCO as originally submitted, with each of its articles and schedules.
- 18.1.2. The submission version dDCO was broadly based on the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) along with other Development Consent Orders that have been made up to the date of the application. The original dDCO [APP-016] and subsequent iterations are in the form of a Statutory Instrument as required by s117(4) of the Planning Act 2008 (PA2008).
- 18.1.3. This chapter starts by providing an overview of the dDCO, the changes made to the dDCO during the Examination process between the original application draft DCO and the final dDCO submitted by the Applicant at D11 [REP11-002]. This final dDCO will be referred to as 'the preferred DCO' as it is the version preferred by the Applicant at the end of the Examination. A final EM was also submitted at D11 [REP11-005] which incorporated changes to that date.
- 18.1.4. This chapter then considers changes which should be made to the preferred dDCO in order to arrive at my Recommended DCO in Appendix E to this report in the event that the Secretary of State for Transport (SoST) is minded to make the DCO.
- 18.1.5. The sections of this chapter describe:
- The DCO as applied for;
  - Changes during the Examination;
  - Wording of Requirements (Rs); and
  - Matters in contention.

## **18.2. THE DCO AS APPLIED FOR**

- 18.2.1. The first version of the dDCO [APP-016] included a number of provisions to enable the construction, operation and maintenance of the Proposed Development. As explained, it was modified during the Examination. Its final general structure is set out below:
- Part 1 (Preliminary): Articles 1 and 2 set out how the DCO may be cited, when it would come into force and the meaning of various terms used in the Order. Articles 3 and 4 dealt with disapplication of certain legislative provision and maintenance of drainage works;
  - Part 2 (Principal Powers): Articles 5 to 7 provide development consent for the Proposed Development, allow it to be carried out and maintained and the relationship with any planning permissions

granted. Article 8 deals with limits of deviation. Articles 9 and 10 set out who has the benefit of the Order and how that benefit can be transferred;

- Part 3 (Streets): Articles 11 to 20 provide powers in relation to street works. These include the ability for the undertaker to construct and maintain new, altered or diverted streets and other structures, provides for the classification of roads, powers to alter layout of streets, for street works, for temporary alteration, diversion and prohibition and restriction of use of streets, the permanent stopping up and restriction of streets and private means of access, ensures access to works and deals with traffic regulation;
- Part 4 (Supplemental Powers): Articles 21 to 23 relate to discharge of water, protective works to buildings and authority to survey and investigate land;
- Part 5 (Powers of Acquisition): Articles 24 to 38 provide powers in relation to the Compulsory Acquisition (CA) and Temporary Possession (TP) of land, along with powers in relation to Statutory Undertakers;
- Part 6 (Operations): Articles 39 and 40 contain powers in relation to trees and hedgerows, including those trees protected by Tree Preservation Orders; and
- Part 7 (Miscellaneous and General): Articles 41 to 52 relate to the application of landlord and tenant law, operational land under the Town and Country Planning Act 1990, ensure no double recovery of compensation, disregard of certain improvements, set-off for enhancement of the value of retained land, appeals under the Control of Pollution Act 1974, defence to proceedings in respect of statutory nuisance, protection of interests, document certification, the serving of notices, arbitration, Crown Rights and the removal of human remains.

18.2.2. There are ten schedules to the dDCO providing for:

- Schedule 1: The description of the Authorised development;
- Schedule 2: The requirements applying to it<sup>128</sup>;
- Schedule 3: Classification of roads;
- Schedule 4: Permanent stopping up of streets, public rights of way and private means of access;
- Schedule 5: Land in respect of which only new rights etc. may be acquired;
- Schedule 6: Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants;
- Schedule 7: Land of which TP may be taken;
- Schedule 8: Trees and hedgerows;
- Schedule 9: Protective Provisions; and
- Schedule 10: Documents to be certified.

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<sup>128</sup> It should be noted that like most highway DCOs, Schedule 2 is split into two parts, Part 1 dealing with Requirements, and Part 2 with the Procedure for discharge of Requirements. However, unlike most DCOs each part is numbered separately, that is Part 2 starting again with "1".

18.2.3. Although there were numerous changes made to the dDCO during the Examination, as described below, including moving provisions from one part to another, its broad structure did not change, although an additional provision was provided in Article 53 to provide powers relating to the removal of human remains.

### 18.3. CHANGES DURING EXAMINATION

18.3.1. During the Examination the Applicant sought to make various changes to the dDCO. At each iteration of the dDCO the Applicant submitted a “clean” and “tracked change” version of the dDCO. There were nine versions of the dDCO up to the close of the Examination. Table 15 sets out the version number, dates of the submission and Examination event, along with the Examination Library (EL) numbers of the clean and tracked change versions.

**Table 15: History of draft DCOs**

Version	Date	Event	'Clean' version EL reference	'Tracked Change' version EL reference
0	July 2021	Application	[APP-016]	
1	August 2021	In response to S51 letter	[AS-010]	[AS-009]
2	March 2022	Deadline 3	[REP3-003]	[REP3-004]
3	March 2022	Deadline 4	[REP4-002]	[REP4-003]
4	April 2022	Deadline 5	[REP5-005]	[REP5-006]
5	June 2022	Deadline 8	[REP8-006]	[REP8-007]
6	June 2022	Deadline 9	[REP9-002]	[REP9-003]
7	July 2022	Deadline 10	[REP10-003]	[REP10-004]
8	July 2022	Deadline 11	[REP11-002]	[REP11-003]

18.3.2. These changes were in response to:

- First Written Questions (ExQ1) [PD-008];
- Second Written Questions (ExQ2) [PD-010];
- my Proposed Changes to the draft DCO [PD-014].
- Third Written Questions (ExQ3) [PD-015];
- the Proposed Changes submitted in June 2022;
- the Rule 17 letter of 28 June 2022 [PD-018];
- the Rule 17 letter of 6 July 2022 [PD-019]; and

- agreements between parties (particularly to deal with Protective Provisions).

18.3.3. As various of the changes often flowed from discussions between the Applicant and IPs to address concerns raised, I consider that they are justified and can be recommended for inclusion in the DCO if the SoST concludes that development consent should be granted.

18.3.4. As part of the Examination process, I published my Consultation Draft Consent Order, or more accurately a list of proposed changes to the dDCO existing at that time, version 4 [REP5-006], which I considered were likely to be necessary.

18.3.5. In setting out these Proposed Changes [PD-014], I made clear that these did not include all those matters where I might need to recommend a change to the SoST. These were most likely to be in situations where it was clear that there were fundamental differences between parties but I had not considered all the evidence that would be submitted.

18.3.6. The Applicant made a number of changes following decisions that the SoST had made in relation to three highways DCOs which were made between April and June 2022<sup>129</sup>. These were prompted by the Third Written Questions and my Rule 17 letters.

18.3.7. For the most part the Applicant amended the dDCO to accord with the SoST's decisions. The reasoning for this can be found in [REP8-027], Annex B to [REP10-001] and Annex A to [REP11-001]. There are a small number of occasions where the Applicant has not followed the SoST's drafting, and where this would be material to this Proposed Development. I discuss these below.

## **18.4. MATTERS IN CONTENTION**

18.4.1. This section deals with those matters which remain in contention at the end of the Examination. In the next section is Table 16 which references all the recommended changes to the preferred DCO as discussed in this report.

### **Consultation on Requirements**

18.4.2. There are two points in contention:

- who should be consulted; and
- the length of time to respond.

#### **Consultees**

18.4.3. During discussions through the Examination, additional statutory bodies were added to those who would need to be consulted pursuant to

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<sup>129</sup> These were the M54 to M6 Link Road DCO, the M25 Junction 28 DCO and the A47 Blofield to North Burlingham DCO.

requirements prior to the formal submission to the SoST for approval. This is not contentious.

- 18.4.4. However, both WPC and SPC requested they be consulted on certain matters which affect their interests. This was discussed at ISH4 with a number of subsequent submissions, see for example, [REP4-044] from WPC and [REP8-021] from the Applicant.
- 18.4.5. WPC and SPC take the view that it is government policy that matters should be dealt with at the lowest level competent for the task. Both WPC and SPC say they have expertise in the area of infrastructure and note that PCC *"is undergoing something of a financial and staffing crisis and as a result they have not been able to devote very much time to the project"*. They consider that they are well placed to deal with this, and point to their involvement in the proposal, both prior to the submission of the Application and during the Examination.
- 18.4.6. The Applicant strongly resists this [REP4-018] on the basis of delay and on the basis that it has not been included within previous DCOs and *"therefore is not appropriate"*. It confirmed [REP5-019] that *"it is continuing to engage with the Parish Councils and will continue to do so through the detailed design and construction of the Scheme"*.

#### **Time period for response**

- 18.4.7. Articles 16(6), 20(11) and 21(8) of the preferred DCO set out various time limits whereby if, respectively, the street authority, traffic authority or the person with authority to grant consent for discharge of water, do not give the undertaker a decision within 28 days of receiving the application, deemed consent or approval is made. Similarly, under Requirement 4 of Part 2 of Schedule 2 of the preferred DCO, as part of the pre-submission consultation the Applicant must give any consultee *"not less than 14 days for any response to the consultation"*. In the M25 Junction 28 DCO in each case the period was amended to be 42 days.
- 18.4.8. In ExQ3.6.5 I asked IPs for their response to these changes. PCC [REP8-039], WPC [REP8-046] and SPC [REP8-047] all indicated that they considered a longer period was appropriate as this would allow matters to be fully explored and answered. The EA [REP8-038] noted *"In order to discharge surface water to a watercourse via a headwall, a Flood Risk Activity Permit will therefore be required from the EA. The EA will have 2 months in which to determine a Flood Risk Activity Permit"*.
- 18.4.9. Conversely, the Applicant resisted a longer period. In its response [REP8-027] it stated that the longer periods allowed for in the M25 Junction 28 DCO *"was the result of the unique resourcing pressures faced by the London Borough of Havering during the Covid 19 pandemic making the provision in respect of deemed consent exceptional rather than standard practice"*.

## **ExA's Considerations**

- 18.4.10. As set out by WPC and SPC it is a tenet of good administration that decisions should be made at the lowest level possible contingent on ensuring efficiency and equity. It is also the case the local authorities, generally, are expressing concern about resourcing. Where a parish council offers expertise from its own resources, expertise that was clearly shown in their participation with the Examination, then it seems to me sensible to use that expertise.
- 18.4.11. That a parish council has not previously been consulted upon requirements seems to me a moot point. There may not have been expertise available or offers to participate. In any event, in Requirement 11 of the M54 to M6 Link DCO the undertaker has to consult the proprietor of a nearby filling station over signage in the vicinity, so there is precedent for consultation of a non-statutory body, let alone a statutory parish council.
- 18.4.12. The Applicant also resisted this on the grounds of delay, but consulting the parish councils would take no longer than consulting other statutory bodies.
- 18.4.13. I therefore recommend that Requirements 3, 4, 5 and 11 of Part 1 of Schedule 2 of the preferred DCO should be amended to include consultation with WPC and SPC in respect of matters that fall within their geographic areas.
- 18.4.14. In relation to the timetable to respond to consultations, I note in the ExA's Report on the M25 Junction 28 DCO application (paragraph 9.4.4) that *"a 14-day extension to the said Articles and Requirements to allow further time for IPs to assess discharge material is reasonable particularly having regard to recovery from the Covid-19 pandemic"*. However, the decision was made on 16 May 2022 when the restrictions caused by the Covid pandemic had ceased. I therefore conclude that, of themselves, restrictions caused by the pandemic would have no longer been material.
- 18.4.15. It seems to me that, particularly where deemed consent results from not taking a decision there should be a reasonable time for the consulted party to respond; the 14 or 28 day period is insufficient and that a 42 day period is more appropriate. This should not affect the overall delivery of the Proposed Development as the time period would be clear in setting out the construction programme. I therefore recommend that Articles 16(6), 20(11) and 21(8) and Requirement 4 of Part 2 of Schedule 2 of the preferred DCO are all amended to this effect.

## **Other changes in ExA's Recommended Amendments [PD-014] not carried through in preferred DCO**

- 18.4.16. As set out above I published my proposed changes to the dDCO on 24 May 2022 in relation to Version 4 of the dDCO [REP5-005]. Many of the

proposed changes were accepted and incorporated into the next versions of the dDCO. I do not intend to comment upon them but will deal with matters which were not so incorporated.

- 18.4.17. In the preferred DCO there are two locations, Requirements 4(1) and 11(1) of Part 1 of Schedule 2, where the phrase "*substantially in accordance with*" has been used. I recommended that these should be amended by the deletion of the word "substantially". The Applicant resisted this [REP8-032] "*so as to provide an element of flexibility, reality and pragmatism*".
- 18.4.18. I note that from the M25 Junction 28 report this matter was also in dispute, and the ExA there (paragraph 9.4.4) recommended that this word be deleted on the basis "*the documents that come forward are not capable of departing from what has been examined in the application*". The SoST accepted this recommendation. For the same reason I recommend that the word "substantially" should be deleted from the preferred DCO in Requirements 4(1) and 11(1) of Part 1 of Schedule 2.
- 18.4.19. Requirement 5(4) sets out the standards under which landscaping should be carried out. As drafted in the preferred DCO this would be in accordance with the "*appropriate British Standards or other recognised codes of good practice*". I had recommended that the word 'or' should be replaced with 'and' to ensure that the Proposed Development would be implemented in accordance with best practice. The Applicant resisted this [REP8-032] on the basis that "*there could be any number of codes of practice to comply with*".
- 18.4.20. I note that word 'and' is used in the equivalent provision in the M25 Junction 28 DCO but the word 'or' is used in the A47BNB DCO, and there appears to be a lack of consistency. In my view, any landscaping needs to be of an appropriate standard, and this should include all material codes of practice. I therefore recommend that the word "or" should be replaced with "and".

### **Title page and citation**

- 18.4.21. In the preferred DCO the Applicant has set out the title of the Order as "*The A47 Wansford to Sutton Dualling Development Consent Order 2022*". In the normal course of events following the timetable set out in s107 of the PA2008 the SoST's decision will be made in 2023. The Statutory Instrument year would also be 2023. Other references to the year of the Order within itself are in the form "202[X]"<sup>130</sup>. In the event that the SoST decides to grant the Order I leave it to the SoST to ensure that the drafting is amended as necessary.

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<sup>130</sup> Articles 1, 30 and 31 and Schedule 6, paragraphs 2 and 5.

## **Changes in recently made DCOs not incorporated into the preferred DCO**

- 18.4.22. The subsequent matters are set out following consideration of the SoST's decision letters in respect of the A47 North Tuddenham to Easton DCO 2022 (A47NTE) and the A428 Black Cat to Caxton Gibbet DCO 2022 (A428BCCG) which were issued after the end of the Examination. These have not been subject to consultation. These have been included to ensure consistency within transport DCOs.

### **Article 2 (interpretation)**

- 18.4.23. The definition of 'commence' was amended in the A47BNB DCO to remove the phrase "*and site clearance*" from those matters which were to be excluded. The Applicant in the current case notes that the definition excludes the "*diversion and laying of underground apparatus*" and considers it makes sense that the site clearance associated with that also is excluded, and the drafting amended to make this clear. I agree with the Applicant's approach.
- 18.4.24. The definitions of 'classification of road plans', 'detrunking plans', 'engineering drawings and sections', 'general arrangement plans', 'hedgerow plan', 'land plans', 'rights of way and access plans', 'traffic regulation plans' and 'works plans' are all recommended to refer to 'documents' rather than 'plans' in line with the definitions in the A47NTE. The definition of "maintain" twice references ensuring that maintenance does not go beyond the extent assessed in the ES; I am therefore recommending an amendment so that there is only a single reference using the drafting in the A47NTE. I have also recommended amending the typography of 'detrunking' so that it is consistent throughout the whole recommended DCO.
- 18.4.25. As promoted Article 2(7) provides that "includes" is without limitation. In the A428BCCG the SoST removed this provision as not being needed. I too can see no reason for this and am thus recommending its deletion.

### **Article 3 (disapplication of legislative provisions)**

- 18.4.26. There was no justification for paragraph (2) of Article 3 in the A47BNB EM. Here the EM explains it would allow "*the relevant drainage authority to make a variation to awards made under public or local Act which may affect or relate to the drainage of land*". I am content with this reasoning.
- 18.4.27. However, there is no explanation in the EM for paragraph (3) and the amendments to the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017. I also note in the A428BCCG that the SoST deleted reference to amendment of those Regulations. In light of these I can see no reason for their inclusion and therefore recommend deletion (along with the definition 'the 2017 Regulations' in Article 2(1)).

**Articles 13 (classification of roads), 19 (clearways) and 29 (private rights over land)**

- 18.4.28. In the A47NTE in each case in the equivalent provisions the word “from” was replaced by “on or after” into to improve clarity on the date when the provisions relate. In order to ensure consistency with transport DCOs I therefore am recommending changes to this effect.

**Article 21 (discharge of water)**

- 18.4.29. Made transport DCO’s have definitions within individual articles at the end of the provision. As in the A47NTE the drafting of paragraph (7) needs to be amended to comply with this convention.

**Articles 26 (time limit for exercise of authority to acquire land compulsorily) and 32 (acquisition of subsoil or airspace only)**

- 18.4.30. In both these articles there is reference to the Compulsory Purchase Act 1965, but not to the modifications that would be made to that Act by the preferred DCO in article 30 (modification of Part 1 of the 1965 Act). As with A47NTE I recommend that both these articles should be amended to ensure this modification is explicit.

**Article 31 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)**

- 18.4.31. In the A47BNB DCO paragraph (9) along with paragraph (4) was deleted on the basis that it omits s5 of the Compulsory Purchase (Vesting Declarations) Act 1981 and there was no justification in the EM.

- 18.4.32. In its commentary on this the Applicant stated "*Paragraph (8)<sup>131</sup> is retained for consistency with article 31 (9) of the emerging A47 Tuddenham DCO*".

- 18.4.33. Effectively the difference between the drafting in the made A47BNB DCO and the preferred dDCO is that in the A47BNB DCO paragraph 1(2) of Schedule A1 of the 1981 Act is omitted, while in the preferred dDCO it is substituted for "*(2) But see article 32 (acquisition of subsoil or airspace only) of the A47 Wansford to Sutton Development Consent Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.*"

- 18.4.34. I note that Article 30(9) of both the A38 Derby Junctions DCO<sup>132</sup> and the A30 Chiverton to Carland DCO use the drafting promoted by the Applicant here. As such I consider the drafting of Art 31(9) to be uncontroversial and will not recommend any amendment.

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<sup>131</sup> The reference to paragraph (8) is a typographic error and should be a reference to paragraph (9).

<sup>132</sup> Although quashed by Order of the High Court on different grounds.

### **Article 34 (temporary use of land for carrying out the authorised development)**

- 18.4.35. In the equivalent provision in the A47BNB DCO the SoST deleted the provision which required, upon vacating the land, the undertaker to "*remove or reposition necessary mitigation works*". This provision can be found in the preferred DCO at paragraph 4(e), and it also includes reference to "*any apparatus installed or belonging to statutory undertakers*". This was in the final draft in the A47BNB and I consider it to be acceptable.
- 18.4.36. In paragraph (9) the wording of the preferred DCO goes further than that in the A47BNB DCO in that it allows the undertaker to acquire rights in Schedule 5 (land for TP with Rights) or where subsoil or airspace (or rights thereto) which are provided for in Article 32 (acquisition of subsoil or airspace only). However, as there is no land subject to Schedule 7 and Schedule 5 the former provision is redundant. In relation to the latter provision this would allow only taking, on a temporary basis, the subsoil or airspace (or rights thereto) rather than the land itself. This is considered reasonable. Consequently, I recommend that this provision is truncated to remove paragraph 9(a).

### **Article 39 (felling or lopping of trees and removal of hedgerows)**

- 18.4.37. As drafted the preferred DCO allows for removal or translocation of any hedgerow within the Order limits whether or not it is required to be removed to facilitate the Proposed Development. This is clearly an error, and, as in the A47NTE, I am recommending this provision be amended so as to limit it to any hedgerow that is required to be removed.

### **Article 44 (no double recovery)**

- 18.4.38. The EM explains that this provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order. The Applicant cites precedent in three non-transport DCOs.
- 18.4.39. In the A428BCCG the SoST has deleted an equivalent provision as the provisions are covered in the Compensation Code, and thus does not need to be repeated. It seems to me that this would be correct and thus I am recommending this provision be deleted.

### **Article 47 (appeals relating to the Control of Pollution Act 1974)**

- 18.4.40. I note that in the A428BCCG the SoST has deleted the equivalent provision explaining that "*the provision is unnecessary as the 1974 Act provides the appropriate mechanism to be followed*". However, in the A47NTE the provision is retained, subject to modification. There would appear, therefore, to be some inconsistency on this.
- 18.4.41. The EM explains that the aim is to streamline the appeals process and cites precedent DCOs including the A14 Cambridge to Huntingdon Improvement Order 2016.

- 18.4.42. At ISH1 I queried this provision. The Applicant's Written Summary of Oral Submissions at ISH1 [REP1-011] (Agenda Point 10) indicates "*the reasoning for Article 47 in respect of s 61 [Control of Pollution Act] is to provide for the circumstance where the Applicant makes an application under s 61 which is refused or issued subject to conditions and replaces the appeal mechanism to the Magistrates' Court with a bespoke appeal system before a technical expert appointed by the Secretary of State which is more conducive to the NSIP regime. This allows for a streamlined appeals system to ensure that any decisions are made quickly and so are not an impediment to the scheme progressing*".
- 18.4.43. As this provision does not disapply the normal appeals mechanism under s61 of the Control of Pollution Act it would allow the undertaker to choose which mechanism it would prefer. It seems to me that this could lead to unfairness to the local authority, and ultimately local residents affected by noise, since there should be certainty as to the approach to be followed. I therefore consider that the provision should be deleted.
- 18.4.44. However, if the SoST does consider that the provision should be retained I consider that drafting amendments as in the A47NTE should be applied. These are that paragraph (8)(b) should be amended to move the words at the end of that provision so to apply to the whole paragraph. This is consistent with other transport DCOs where this provision is used. There would also be a need in paragraph (14) to update the title of the relevant Government department. I have put these amendments in Table 17: DCO Provisions not Recommended to be Changed, but provided in case the SoST takes a contrary view.

#### **Article 52 (Crown Rights)**

- 18.4.45. In this article following the death of the late Queen Elizabeth II and the accession of King Charles III all the references to 'Her Majesty' need replacing with 'His Majesty'.

#### **Schedule 1, Work 12**

- 18.4.46. In light of my conclusions in respect of the Wansford west roundabout, were the SoST be minded to grant the Proposed Development on the basis that Wansford west roundabout falls outside the scope of the Proposed Development then the provision to allow a new cycle crossing within this Work should be deleted.

#### **Schedule 3 Part 4 (speed limits)**

- 18.4.47. As in the A47NTE I am recommending a change how this provision is laid out in order to improve clarity of the drafting.

#### **Protective Provisions**

- 18.4.48. The Protective Provisions are set out in Schedule 9. They are given force by Article 48 of the preferred DCO (subject to Article 36). The Protective Provisions deal with the following statutory undertakers:

- Electricity, Gas, Water and Sewage undertakers not included below (Part 1);
- Operators of Electronic Communication Code Networks (Part 2);
- Anglian Water (Part 3);
- National Grid as Gas Undertaker (Part 4);
- National Grid as Electricity Undertaker (Part 5); and
- Western Power as Electricity Undertaker (Part 6).

18.4.49. During the Examination there was discussion as to the protective provisions set out in Schedule 9. However, by the end of the Examination these were all agreed except for the caveat from Western Power about completing the commercial side agreement (see [REP11-019]). I do note that Western Power has not provided alternative, preferred from its point of view, wording. I therefore must assume that Western Power is content with the wording whether the side agreement is in place or not. I therefore consider that there is no need to recommend that the SoST seeks further clarification on this point.

18.4.50. The drafting of paragraph 1 of Part 1 does not explicitly make clear that where a statutory undertaker would be subject to the provisions of Parts 2 to 6 they would not be subject to the provisions of Part 1. Alternative wording making this clear was included in the M54 to M6 Link Road DCO, and I am recommending a change to this effect.

18.4.51. Other than on that single point I am recommending no change to the protective provisions other than to deal with consequential changes and typographic errors (see paragraph 18.4.56).

### **Documents to be Certified**

18.4.52. In checking through Schedule 10 there are a small number of inconsistencies between the versions set out in the preferred DCO when compared to those set out in the Examination Library. I believe this has mostly happened when revised documents were submitted but the title page or revision number were not updated.

18.4.53. The most important inconsistency relates to the Engineering Drawings and Sections [REP2-005]. As well as a number of inconsistencies over titling and revision numbers, this Examination Library document includes sections for the revised access to Sacrewell Farm. This document includes four drawings showing the access as originally submitted and not in accordance with the accepted change relating to this which was submitted at D8.

18.4.54. I consider that the most effective way to deal with this is to make clear in Schedule 10 that these drawings are no longer extant. It is clear what is proposed, but revised engineering drawings showing this do need to be submitted for approval prior to detailed designs being agreed pursuant to Requirement 3. I have recommended re-working Requirement 3 to ensure these are submitted and approved.

18.4.55. For certainty in respect of the documents concerned I have set out in Appendix D the versions that have been submitted and in Table 16 any

necessary changes to ensure that the correct revisions of the documents form part of any DCO granted. Article 49(2) of the recommended DCO allows for drawings to be updated as necessary.

## Consequential changes

18.4.56. Particularly as a result of my recommendation to delete two articles from the preferred DCO there are a number of consequential changes needed, particularly in relation to cross-referencing. These are included in Table 16. However, I have not included changes to the footnotes from those in the preferred DCO in this table. These will need to be resolved.

18.4.57. For clarity, I have not included in Table 17 any further changes which would need then to be made should the SoST disagree with me and decide not to delete article 47 (appeals relating to the Control of Pollution Act 1974) or impose an additional requirement relating to the northern entry to the Wansford west roundabout.

## 18.5. RECOMMENDED CHANGES

18.5.1. Table 16 sets out my recommended changes to the preferred DCO from all the various elements set out above.

**Table 16: DCO Provisions Recommended to be Changed**

Provision as cited in preferred DCO	Examination Issue (paragraph number in report)	Change
Article 2(1)	<p>Consistency with made DCOs (18.4.24 and 18.4.27)</p> <p>Consequential drafting change and typographic error.</p>	<p>Delete the definition of 'the 2017 Regulations'.</p> <p>In the definitions of 'classification of road plans', 'detrunking plans', 'engineering drawings and sections', 'general arrangement plans', 'hedgerow plan', 'land plans', 'rights of way and access plans', 'traffic regulation plans' and 'works plans' replace the words "means the plans" with "means the documents".</p> <p>In the definition of 'highways' replace</p>

<b>Provision as cited in preferred DCO</b>	<b>Examination Issue (paragraph number in report)</b>	<b>Change</b>
		<p>"section 329(1)" with "section 328".</p> <p>In the definition of 'maintain' replace "includes, to the extent assessed in the environmental statement" with "in relation to the authorised development includes to".</p> <p>In the definition of 'Secretary of State' replace "article 53" with "article 51".</p>
Article 2(7)	No need and for consistency with other made DCOs (18.4.25)	Delete provision.
Article 3	Lack of justification and consistency with other made DCOs (18.4.27)	Delete paragraph (3).
Article 12	Typographic (18.4.24)	Replace "de-trunking" with "detrunking" on both occasions.
Article 13	Consistency with made DCOs (18.4.28)	In paragraphs (1), (2), (3) and (4) replace "From" with "On or after".
Article 16(6)	Consultation period (18.4.15)	Replace "28 days" with "42 days".
Article 19(1)	Consistency with made DCOs (18.4.28)	In paragraph (1) replace "From" with "On or after".

<b>Provision as cited in preferred DCO</b>	<b>Examination Issue (paragraph number in report)</b>	<b>Change</b>
Article 20(11)	Consultation period (18.4.15)	Replace "28 days" with "42 days".
Article 21	Consistency with made DCOs (18.4.29) Consultation period (18.4.15)	Move paragraph (7) to end as paragraph (9), and renumber paragraphs (8) and (9) as paragraphs (7) and (8) respectively.  In new paragraph (7) replace "28 days" with "42 days".  In new paragraph (8) replace "(8)" with "(7)".
Article 22(6)	Consequential drafting change	Replace "article 51" with "article 49".
Article 24(2)	Consequential drafting change	Replace "article 52" with "article 50".
Article 26	Consistency with made DCOs (18.4.30)	After "1965 Act" add "as modified by article 30 (modification of Part 1 of the 1965 Act)"
Article 29	Consistency with made DCOs (18.4.28)	In paragraphs (1)(a) and (2)(a) replace "from" with "on".
Article 32	Consistency with made DCOs (18.4.30)	After "1965 Act" add "as modified by article 30 (modification of Part 1 of the 1965 Act)"

<b>Provision as cited in preferred DCO</b>	<b>Examination Issue (paragraph number in report)</b>	<b>Change</b>
Article 34 (9)	Ensure powers do not extend beyond that applied for (18.4.36)	After "from" delete "- (a) acquiring new rights over any part of that land that is also specified in column (1) of Schedule 5 (land in which only new rights etc. may be required) or (b)".
Article 39(4)	To limit provision to that necessary to facilitate the Proposed Development (18.4.37)	Add after "limits" " that is required to be removed".
Article 44	No need (18.4.39)	Delete provision and renumber subsequent articles
Article 47	No need (18.4.43)	Delete provision and renumber subsequent articles
Article 52	Following the accession of King Charles III (18.4.45)	Replace "Her Majesty" with "His Majesty" each time it occurs.
Schedule 1, Work 12	To exclude Wansford west roundabout from consideration (16.4.14)	Delete the words "and a new cycle crossing point".
Schedule 2, Part 1, Requirement 3	Resolve preliminary design of Works 21, 23 and 25 (18.4.54), ensure consultation with SPC and WPC in respect of their geographic areas (18.4.13) and the	At beginning of paragraph (1) replace "The" with "With the exception Works 21, 22 and 25 as set out in Schedule 1 the"

Provision as cited in preferred DCO	Examination Issue (paragraph number in report)	Change
	William Scott Abbott Trust in respect of the Sacrewell entrance and underbridge (14.5.26)	<p>In paragraph (1) after "functions," insert "Sutton and Wansford Parish Councils in respect of matters within their geographic areas,"</p> <p>Insert new paragraph (2) "(2) No works shall commence on site until preliminary scheme design engineering sections for Works 21, 22 and 25 as set out in Schedule 1 have been submitted to and agreed in writing by the Secretary of State. Thereafter the authorised development must be designed in detail and carried out so that it is compatible with these approved drawings, following consultation by the undertaker with the relevant planning authority and local highway authority on matters related to their functions and Official Custodian of Charities on behalf of The Wansford Parish Council and the William Scott Abbott Trust, provided that the Secretary of State is satisfied that any amendments to the these approved drawings showing departures from the</p>

Provision as cited in preferred DCO	Examination Issue (paragraph number in report)	Change
		<p>preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement."</p> <p>Re-number paragraph (2) as paragraph (3) and replace "sub-paragraph (1)" with "sub-paragraphs (1) and (2)"</p>
Schedule 2, Part 1, Requirement 4	<p>Ensure provision takes place in accordance with Application (18.4.18)</p> <p>Ensure consultation with Cambridgeshire County Council (CCC) on Site Waste management plan (11.5.6) and SPC and WPC in respect of their geographic areas (18.4.13).</p>	<p>In paragraph (1):</p> <p>delete "substantially" in line 2;</p> <p>after "local lead flood authority" insert ", Cambridgeshire County Council"; and</p> <p>after "their functions" insert "and Sutton and Wansford Parish Councils in respect of matters within their geographic areas".</p>
Schedule 2, Part 1, Requirement 5	<p>Ensure consultation with SPC and WPC in respect of their geographic areas (18.4.13).</p> <p>Ensure appropriate landscaping codes of practice are followed (18.4.20)</p>	<p>In paragraph (1) after "functions" add "and Sutton and Wansford Parish Councils in respect of matters within their geographic areas".</p> <p>In paragraph (4) replace "or" with "and".</p>

Provision as cited in preferred DCO	Examination Issue (paragraph number in report)	Change
Schedule 2, Part 1, Requirement 11	<p>Ensure provision takes place in accordance with Application (18.4.20)</p> <p>Ensure consultation with SPC and WPC in respect of their geographic areas (18.4.13).</p>	<p>Delete "substantially" in line 2.</p> <p>After "its function" insert "and Sutton and Wansford Parish Councils in respect of matters within their geographic areas".</p>
Schedule 2, Part 1	Provision of Non Motorised Users (NMU) route over A1 Overbridge (6.5.56)	<p>Add additional requirement after requirement 12:</p> <p><b>Non-motorised route across A1 overbridge</b></p> <p>13. Before Work 6 as defined in Schedule 1 is first brought into operation, a cycleway, as shown as Option 1a on drawing HE551494-GTY-HGN-000-DR-CH-38004, shall be completed and therefore made available for use as a public right of way.</p> <p><u>ExA Note:</u></p> <p>As a result of this recommended change, the Rights of Way and Access Plans will need to be amended. Such a change is provided for in Article 49(2) of the preferred DCO so further drafting alterations should not be necessary.</p>

Provision as cited in preferred DCO	Examination Issue (paragraph number in report)	Change
Schedule 2, Part 1	Consequential drafting amendment	ReNUMBER requirement 13 as requirement 14.
Schedule 2, Part 2, Requirement 4	<p>Consultation period (18.4.15)</p> <p>Consequential drafting amendment</p>	<p>In paragraph (1) replace "14 days" with "42 days".</p> <p>In paragraph (5) replace "Article 49" with "Article 47".</p>
Schedule 3, Part 4	To improve clarity (18.4.47)	<p>Replace paragraph (a) with:</p> <p>"(a) the national speed limit set out in—</p> <p>(i) Section 86 and Schedule 6 of the Road Traffic Regulation Act 1984; and</p> <p>(ii) the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 as varied by the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 and continued indefinitely by Regulation 2 of the 70 Miles Per Hour, 60 Miles Per Hour and 50 Miles Per Hour (Temporary Speed Limit) (Continuation)</p>

Provision as cited in preferred DCO	Examination Issue (paragraph number in report)	Change
		Order 1978 (SI 1978/1548)(a); or"
Schedule 9	Consequential drafting amendments <sup>133</sup>	<p>In title reference replace "Articles 36 and 48" with "Articles 36 and 46".</p> <p>Replace "article 51 (arbitration)", "article 52 (arbitration)", and "article 53 (arbitration)" with "article 49 (arbitration)" wherever they occur.</p> <p>Replace "article 50 (service of notices) and "article 51 (service of notices)" with "article 48 (service of notices)" wherever they occur.</p>
Schedule 9, Part 1, paragraph 1	Ensure where Parts 2 to 6 apply there is exclusion from Part 1 (18.4.50)	After "otherwise" insert "identified in another Part of this Schedule or".
Schedule 10	<p>Consequential drafting amendment</p> <p>Referencing errors (18.4.55)</p>	<p>In title reference replace "Articles 2 and 49" with "Articles 2 and 47"</p> <p>In Part 1, for the following documents utilise the following revisions:</p>

<sup>133</sup> There are a number of typographic errors in the cross referencing in the preferred DCO which this recommendation also corrects.

<b>Provision as cited in preferred DCO</b>	<b>Examination Issue (paragraph number in report)</b>	<b>Change</b>
Document title		Revision
Environmental Statement – Chapter 2: The Proposed Scheme		1
Environmental Statement – Chapter 8: Biodiversity		0
Environmental Statement – Figures 7.1 to 7.5 <sup>134</sup>		0
Environmental Statement – Appendix 7.6 Arboricultural impact Assessment		0

18.5.2. As set out in paragraph 6.5.35 I consider that it would be possible to impose an additional requirement in Part 1 of Schedule 2 to secure an additional lane into the Wansford west roundabout from the north. For the reasons explained in that paragraph I do not consider that to be justified should the SoST take a contrary view. Table 17 sets out draft wording. This Table also sets out a number of amendments should the SoST decide not to delete article 47 (appeals relating to the Control of Pollution Act 1974).

**Table 17: DCO Provisions not Recommended to be Changed, but provided in case the SoST takes a contrary view**

<b>Provision as cited in preferred DCO</b>	<b>Examination Issue (paragraph number in report)</b>	<b>Change</b>
Article 47	Consistency with DCOs and updating (18.4.44)	In paragraph (8)(b) move from “any may” to a new line so as to apply to whole paragraph.  In paragraph (14) replace “Ministry for Housing, Communities and Local

<sup>134</sup> The drawings making up this document are set out in Appendix D.

Provision as cited in preferred DCO	Examination Issue (paragraph number in report)	Change
		Government” with “Department for Levelling Up, Housing and Communities”.
Schedule 2, Part 1	Capacity at Thackers Close/ Old North Road junction (6.5.35)	<p>Add additional requirement after requirement 13:</p> <p><b>Wansford west roundabout</b></p> <p><b>14.</b> Before Work 6 as defined in Schedule 1 is first brought into operation, the Wansford west roundabout and associated roads shall be reconfigured in accordance with drawing number HE551494-GTY-HSR-000-SK-CH-30008 Revision P01.02.</p>

## 18.6. CONCLUSIONS

- 18.6.1. I have considered all the iterations of the draft DCO submitted by the Applicant set out in Table 15, and have noted the significant number of changes made during the Examination made in response to the material and non-material changes, responses to representations made and my Proposed Changes [PD-014].
- 18.6.2. In light of the evidence submitted and heard I have recommended a number of changes to the Applicant’s preferred DCO submitted at Deadline 11 [REP11-002] which are set out in Table 16. These are incorporated into the recommended DCO (rDCO) which is set out in Appendix E.
- 18.6.3. I am satisfied that the rDCO (Appendix E) adequately defines the scope of any consent being granted and that it secures the necessary controls and mitigation measures that are consistent with the assessments provided in the ES.
- 18.6.4. I consider that the rDCO (Appendix E) only includes requirements that are necessary, relevant to planning, relevant to the development to be

consented, enforceable, precise, and reasonable in all other respects. On that basis I am of the view that paragraph 4.9 of the NPSNN is satisfied.

- 18.6.5. If, contrary to my overall recommendation, the SoST is minded to make the DCO, I recommend that it is made in the form set out in Appendix E.

# **19. SUMMARY OF FINDINGS AND CONCLUSIONS**

## **19.1. INTRODUCTION**

19.1.1. This chapter summarizes my conclusions arising from the report as a whole and sets out my recommendation to the Secretary of State for Transport (SoST).

## **19.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS**

19.2.1. During the Examination I accepted three changes to the Proposed Development. These are set out in more detail in Chapter 2. They were:

- the realignment of the link road to south of A47 Wansford east roundabout;
- the modification of the access alignment to Sacrewell Farm; and
- the modification of the cycle route at the eastern end of the Application site.

19.2.2. While the second of these changes represented a material change due to the effect on land interests, none of these changes individually or cumulatively represented a fundamental change to the Proposed Development to the extent that a new application would have been necessary.

19.2.3. I have considered whether the determination of this application in accordance with the relevant National Policy Statement (NPS) would lead the UK to be in breach of any of its international obligations where relevant. Subject to the Secretary of State's (SoS) consideration of the implications arising from the High Court's judgement in the Net Zero Case<sup>135</sup> I am satisfied this would not be the case. Again, subject to the same point, neither would it lead to the SoST being in breach of any duty imposed on the SoST by or under any enactment, or be otherwise unlawful by virtue of any enactment.

19.2.4. Whilst the SoST is the competent authority under the Habitats Regulations, and will make the definitive assessment under those Regulations, I am satisfied that the Proposed Development would not be likely to have any significant effects on European sites and this finding has been taken into account in reaching my recommendation.

19.2.5. In reaching my recommendation I have considered whether the Proposed Development is in accordance with the relevant National Policy Statement and have had regard to the submitted Local Impact Report from Peterborough City Council (PCC), matters prescribed in relation to

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<sup>135</sup> *The Queen (on the Application of (1) Friends of the Earth, (2) Client Earth, (3) Good Law Project and Joanna Wheatley v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin).

the development and other matters that are both important and relevant to the decision, as required by s104(2) of PA2008.

19.2.6. The Proposed Development would deliver a number of benefits which are specific to this proposal. These include for those travelling south on the A1 and east on the A47 and to the east of the Wansford east roundabout:

- Benefits from a decrease in congestion and improved journey times, and enhanced highway safety;
- Economic and social benefits from improved connectivity both regionally and in the immediate vicinity of the Proposed Development including improved reliability of journeys;
- A Biodiversity Net Gain.

19.2.7. However, there would be a number of adverse effects specific to the Proposed Development. These include:

- Severance between the community in Upton and the villages to the south (significant harm)
- Economic Effect on a farm holding (moderate harm)
- Historic environment (less than substantial harm to designated heritage assets and substantial harm to non-designated heritage assets)
- Loss of a veteran tree (moderate harm)
- Air Quality and Emissions (moderate harm)
- Noise and vibration (moderate harm)
- Landscape and Visual effects (moderate harm)

19.2.8. As set out in Chapter 16 my overall recommendation is dependent on whether the SoST as decision maker considers that the effects on traffic on the Wansford west roundabout fall within the scope of the Proposed Development.

19.2.9. For the reasons set out in paragraph 5.5.4 I conclude that it was appropriate to consider those effects. On that basis that the effects on the Wansford west roundabout are included I have concluded that the benefits of the Proposed Development are only of moderate weight and consequently the adverse effects of the Proposed Development when taken together do outweigh the benefits as identified. Therefore I find that the case for the Proposed Development has not been made out. On balance, therefore I do not find the Proposed Development to be in accordance with the National Policy Statement for National Networks (NPSNN) and that the disbenefits outweigh the benefits.

19.2.10. If the SoST were to take a contrary view and conclude the effects on traffic on the Wansford west roundabout fall outside the scope of the Proposed Development then, subject to the imposition of an additional requirement as recommended relating to the provision of the cycleway across the A1 overbridge and the deletion of the cycle crossing within Work 12, I consider that the balance would fall the other way and that the substantial benefits would outweigh the adverse impacts, albeit it

should be recognised that the Proposed Development would not bring all of the purported benefits as set out in the Application.

- 19.2.11. In such an event there are six matters that need to be resolved prior to such a grant. These are:
- gaining Crown consent from the Secretary of State for Levelling Up, Housing and Communities for the compulsory acquisition of plot 1/5a and the temporary possession with imposition of rights on plot 1/6a as shown on the Land Plans [REP8-002];
  - gaining clarification as to whether Anglian Water Services Limited has an interest in land plot 3/2g and, if so, whether it objects to interference with its rights as regards this plot;
  - ensuring that the Book of Reference is up to date;
  - ensuring no significant adverse effect on bats through clarification that Natural England (NE) would be willing to grant a bat licence;
  - considering any implications of the Net Zero Case; and
  - considering any implication from the latest ground investigations particularly on emissions and funding.
- 19.2.12. The conclusion on the case for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights (and the imposition of rights) depends on the SoST's conclusion on the planning merits of the Proposed Development. If the SoST accepts my recommendation to refuse consent, then I do not consider that a compelling case has been made out.
- 19.2.13. However, were the SoST to disagree with me, then I am satisfied that the CA and TP powers sought by the Applicant would be justified and should be granted. They are necessary to enable the Applicant to complete the Proposed Development. The Applicant has a clear idea of how it intends to use the land, and, subject to the point about implications from the latest ground investigations, funds are available for the implementation of the Proposed Development.
- 19.2.14. In that event, I have had regard to the provisions of the Human Rights Act 1998. Subject to the consideration of whether Anglian Water has an interest in Plot 3/2g as shown on the Land Plans [REP8-002] I consider that the opportunity for objectors to make their cases through the CA Hearing fully, fairly and in public has ensured compliance with Article 6. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998.
- 19.2.15. However, in this case the wider public interest qualifies any interference with the human rights of the owners and occupiers affected by CA and TP. The interference with their human rights would be proportionate and justified in the public interest.
- 19.2.16. I have had regard to the Public Sector Equality Duty (PSED). While this is for the SoST I have concluded that due to the nature of the project there would be no positive or negative effects for those with protected

characteristics of sex, religion or belief, race, sexual orientation, gender reassignment, and marriage and civil partnership in relation to any other grouping.

- 19.2.17. However, I conclude that the Proposed Development would have adverse effects on those with the protected characteristics of age, both young people and older people, and pregnancy and maternity due to the design of the Proposed Development as submitted in relation to the nature of the steep ramp leading down/ up from the western extent of Wansford Nene Way Permissive 1 at the junction with Peterborough Road close to the junction with the A1.
- 19.2.18. With the proposed additional requirement recommended to provide an alternative route across the A1 overbridge, I believe that this would mitigate these harmful effects to a greater extent. On that basis, in my view there would be no breach of the PSED.
- 19.2.19. My recommendation takes into account Regulations 3(1) and 7(1) of the Infrastructure Planning (Decisions) Regulations 2010 in respect of the effect on listed buildings, conservation areas and scheduled monuments and biological diversity respectively, as set out in the report.

### **19.3. RECOMMENDATION**

- 19.3.1. For all the above reasons and in the light of my findings and conclusions on important and relevant matters set out in this report, I, as Examining Authority under the PA2008, recommend that the Secretary of State for Transport should not make an Order granting development consent for the Proposed Development as applied for.
- 19.3.2. Should the Secretary of State consider that the effect on the Wansford west roundabout should be excluded, then the Examining Authority recommends that associated development on the Wansford west roundabout should be excluded and that the Order should be granted development consent with the modifications to the Applicant's preferred DCO as set out at Appendix E only if the following matters have been resolved to the Secretary of State's satisfaction:
- gaining Crown consent from the Secretary of State for Levelling Up, Housing and Communities for the compulsory acquisition of plot 1/5a and the temporary possession with imposition of rights on plot 1/6a as shown on the Crown Land Plans;
  - clarity as to whether Anglian Water Services Limited has an interest in land plot 3/2g on the Land Plans and, if so, whether it objects to interference with its rights as regards this plot;
  - ensuring the Book of Reference is corrected;
  - ensuring no significant adverse effect on bats through clarification that NE would be willing to grant a bat licence;
  - considering any implications of the Net Zero Case; and
  - considering any implications from the latest ground investigations as this may have implications for clarifying the extent of emissions and for funding decisions.



# **APPENDICES**

APPENDIX A: THE EXAMINATION

APPENDIX B: EXAMINATION LIBRARY

APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX D: DOCUMENT IRREGULARITIES IDENTIFIED

APPENDIX E: THE RECOMMENDED DCO

# **Appendix A:**

## **Examination timetable**

A47 Wansford to Sutton Project TR010039  
Report to the Secretary of State

The table below lists the main events that occurred during the Examination and the Procedural Decisions taken by the Examining Authority (ExA)

Item	Matters	Due dates
	<p><b>Procedural Deadline A</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written submissions on examination procedure, including draft timetable</li> <li>• Requests to speak at the Preliminary Meeting Part 1</li> <li>• Requests to speak at Issue Specific Hearing 1 on the draft Development Consent Order (dDCO)</li> </ul>	<p><b>Friday 7 January 2022</b></p>
1.	<p><b>Preliminary Meeting Part 1</b></p>	<p><b>Tuesday 11 January 10.00am</b></p>
2.	<p><b>Issue Specific Hearing 1</b></p> <ul style="list-style-type: none"> <li>• Draft Development Consent Order</li> </ul>	<p><b>Wednesday 12 January 10.00am</b></p>
3.	<p><b>Issue by the ExA of:</b></p> <ul style="list-style-type: none"> <li>• Examination Timetable</li> <li>• Issue of Written Questions (WQ) – ExQ1</li> </ul>	<p>As soon as practicable following the Preliminary Meeting</p>
4.	<p><b>Deadline 1 (D1)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on RRs</li> <li>• Comments on updated application documents.</li> <li>• Post Hearing submissions</li> <li>• Notification by Statutory Parties of their wish to be considered as an Interested Party (IP) by the ExA</li> <li>• Notification of wish to speak at an Open Floor Hearing (OFH)</li> <li>• Notification of wish to speak at a Compulsory Acquisition Hearing (CAH)</li> <li>• Request to receive future correspondence by email</li> <li>• Proposed itinerary for Accompanied Site Inspection (ASI) from the Applicant</li> <li>• Notification of wish to attend an ASI, if one is required and suggested locations, with justifications</li> </ul>	<p><b>Friday 28 January</b></p>

	<ul style="list-style-type: none"> <li>• The Applicant to provide the Habitats Screening matrices in MS Word format</li> <li>• Any information requested by the ExA for this deadline</li> </ul>	
5.	<p><b>Deadline 2 (D2)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to ExQ1</li> <li>• Written Representations (WR) and summaries of any WR exceeding 1500 words</li> <li>• Local Impact Reports (LIR) from local authorities</li> <li>• Comments on the Applicant’s proposed ASI itinerary</li> <li>• Comments on any submissions received by D1</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul>	<b>Tuesday 15 February</b>
6.	<p><b>Deadline 3 (D3)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExQ1</li> <li>• Comments on WRs</li> <li>• Responses to comments made on RRs</li> <li>• Comments on LIRs</li> <li>• Comments on any submissions received by D2</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul> <p>Requested from the Applicant only:</p> <ul style="list-style-type: none"> <li>• Progressed Statements of Common Ground (SoCG) and Statement of Commonality of the Statements of Common Ground (SCSoCG)</li> <li>• An updated version of the dDCO in clean and tracked versions and a schedule of changes</li> <li>• An updated Compulsory Acquisition Schedule (CAS) in clean and tracked versions</li> <li>• Schedule of changes to the Book of Reference (BoR)</li> <li>• Updated Guide to the Application</li> </ul>	<b>Tuesday 1 March</b>
7.	<p><b>Procedural Deadline B</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Registration for ISH2, ISH3, ISH4 and CAH</li> </ul>	<b>9 March 2022</b>
8.	<p><b>Issue Specific Hearing 2</b></p> <ul style="list-style-type: none"> <li>• Environmental Matters</li> </ul>	<b>Tuesday 15 March 10:00am</b>

9.	<b>Issue Specific Hearing 3</b> <ul style="list-style-type: none"> <li>Traffic, Transport and Socio-Economic Matters</li> </ul>	<b>Wednesday 16 March 10:00</b>
10.	<b>Compulsory Acquisition Hearing</b>	<b>Thursday 17 March 10:00</b>
11.	<b>Issue Specific Hearing 4</b> <ul style="list-style-type: none"> <li>Draft Development Consent Order</li> </ul>	<b>Thursday 17 March 14:00</b>
12.	<b>Deadline 4 (D4)</b> For receipt by the ExA of: <ul style="list-style-type: none"> <li>Post Hearing submissions including written submissions of oral case</li> <li>Comments on any submissions received by D3</li> <li>Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul> Requested from the Applicant only: <ul style="list-style-type: none"> <li>Progressed SoCG and SCSocG</li> <li>An updated version of the dDCO in clean and tracked versions and a schedule of changes</li> <li>An updated CAS in clean and tracked versions</li> <li>Updated Guide to the Application</li> </ul>	<b>Thursday 24 March</b>
13.	<b>Unaccompanied Site Inspection</b>	<b>Tuesday 29 March</b>
14.	<b>Publication by the ExA of:</b> <ul style="list-style-type: none"> <li>The ExA's further Written Questions (ExQ2)</li> </ul>	<b>Tuesday 5 April</b>
15.	<b>Deadline 5 (D5)</b> For receipt by the ExA of: <ul style="list-style-type: none"> <li>Responses to ExQ2</li> <li>Comments on any submissions received by D4</li> <li>Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul> Requested from the Applicant only: <ul style="list-style-type: none"> <li>Progressed SoCG and SCSocG</li> <li>An updated version of the dDCO in clean and tracked versions and a schedule of changes</li> <li>An updated CAS in clean and tracked versions</li> <li>Updated Guide to the Application</li> <li>Schedule of changes to the BoR</li> </ul>	<b>Wednesday 20 April</b>

16.	<p><b>Deadline 6 (D6)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to ExQ2</li> <li>• Comments on any submissions received by D5</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul>	<b>Tuesday 3 May</b>
17.	<p><b>Deadline 7 (D7)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Post Hearing submissions including written submissions of oral case, if required</li> <li>• Comments on any submissions received by D6</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul> <p>Requested from the Applicant only:</p> <ul style="list-style-type: none"> <li>• Progressed SoCG and SCSocG</li> <li>• An updated version of the dDCO in clean and tracked versions and a schedule of changes</li> <li>• An updated CAS in clean and tracked versions</li> <li>• Updated Guide to the Application</li> </ul>	<b>Friday 20 May</b>
18.	<p><b>Publication by the ExA of:</b></p> <ul style="list-style-type: none"> <li>• The ExA's proposed changes to the dDCO</li> <li>• Publication of the ExA's Additional Questions (ExQ3)</li> </ul>	<b>Tuesday 24 May</b>
19.	<p><b>Deadline 7A (D7A)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Draft SoCGs between the Applicant and:</li> <li>• Cambridgeshire County Council</li> <li>• Natural England</li> <li>• Historic England</li> <li>• Western Power (East Midlands) Plc</li> <li>• Anglian Water Limited</li> </ul>	<b>Monday 6 June</b>
20.	<p><b>Deadline 8 (D8)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the ExA's proposed changes to the draft DCO</li> <li>• Responses to the ExA's Additional Questions (ExQ3)</li> <li>• Comments on any submissions received by D7</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul>	<b>Tuesday 14 June</b>

	<p>Requested from the Applicant only:</p> <ul style="list-style-type: none"> <li>• Progressed SoCG and SCSOCG</li> <li>• An updated version of the dDCO in clean and tracked versions and a schedule of changes</li> <li>• An updated CAS in clean and tracked versions</li> <li>• Updated Guide to the Application</li> <li>• Schedule of changes to the BoR</li> </ul>	
21.	<p><b>Deadline 9 (D9)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on any submissions received by D8</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul> <p>Requested from the Applicant only:</p> <ul style="list-style-type: none"> <li>• Final SoCG and SCSOCG</li> <li>• Final dDCO in MS Word clean and tracked versions</li> <li>• Final Schedule of changes to the dDCO</li> <li>• SI template validation report</li> <li>• Final Book of Reference, and schedule of changes</li> <li>• Final Compulsory Acquisition Schedule, in clean and tracked versions</li> <li>• Final updated Guide to the Application</li> </ul>	<b>Tuesday 28 June</b>
22.	<p><b>Deadline 10 (D10)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on any submissions received by D9</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul>	<b>Tuesday 5 July</b>
23.	<p><b>Deadline 11 (D11)</b></p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul> <p>The ExA is under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.</p> <p>The ExA may close the Examination earlier if satisfied that all relevant matters have been addressed.</p>	<b>Monday 11 July</b>

# **Appendix B:**

## **Examination Library**

A47 Wansford to Sutton Project TR010039  
Report to the Secretary of State

## **A47 Wansford to Sutton Examination Library**

**Updated – 10 August 2022**

This Examination Library relates to the A47 Wansford to Sutton application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

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RR-040	<a href="#">Savills (UK) Ltd on behalf of William Scott Abbott Trust</a>
RR-041	<a href="#">Steve Woods</a>
RR-042	<a href="#">Strutt &amp; Parker on behalf of Riverford Organic Farmers Ltd</a>
RR-043	<a href="#">Sutton Parish Council</a>
RR-044	<a href="#">The Campbell Household</a>
RR-045	<a href="#">The Woodland Trust</a>
RR-046	<a href="#">Trevor McSparron</a>
RR-047	<a href="#">UK Health Security Agency</a>
RR-048	<a href="#">Upton Community Council</a>
RR-049	<a href="#">Vivien Thorley</a>
RR-050	<a href="#">Wansford Parish Council</a>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<a href="#">Notification of Decision to Accept Application</a>
PD-002	<a href="#">Section 55 Checklist</a>
PD-003	<a href="#">Section 51 advice to the Applicant</a>
PD-004	<a href="#">Notification of the appointment of the Examining Authority</a>
PD-005	<a href="#">Section 89 - Pre-Preliminary Meeting Procedural Decision, made under s89(3) and notified only under s89(4), to issue draft questions</a>
PD-006	<a href="#">Rule 6 letter - notification of the preliminary meeting and matters to be discussed</a>
PD-007	<a href="#">Rule 8 letter - notification of timetable for the examination</a>
PD-008	<a href="#">The Examining Authority's written questions and requests for information (ExQ1)</a>
PD-009	<a href="#">Rule 13 Notification of March Hearings</a>
PD-010	<a href="#">The Examining Authority's further written questions (ExQ2)</a>
PD-011	<a href="#">Rule 17 letter - Request for Further Information</a>
PD-012	<a href="#">Variation to Timetable – Rule 8(3)</a>
PD-013	<a href="#">Rule 17 and 8(3) letter - Request for Further Information and Variation to Timetable</a>
PD-014	<a href="#">The Examining Authority's proposed changes to the draft Development Consent Order (dDCO)</a>

PD-015	<a href="#">The Examining Authority's further written questions (ExQ3)</a>
PD-016	<a href="#">Rule 17 Letter</a>
PD-017	<a href="#">Rule 9 Letter - decision on the Applicant's request for a change</a>
PD-018	<a href="#">Rule 17 Letter - request for further information</a>
PD-019	<a href="#">Rule 17 Letter - request for further information</a>
PD-020	<a href="#">Notification of completion of the Examining Authority's Examination</a>
PD-021	<a href="#">Section 89 - Pre-Preliminary Meeting Procedural Decision to issue draft questions - Word version</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">Highways England</a> Additional Submission - Cover Letter - Accepted at the discretion of the Examining Authority
AS-002	<a href="#">Highways England</a> Additional Submission - 1.3 Introduction to the Application (Tracked Changes) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-003	<a href="#">Highways England</a> Additional Submission - 1.3 Introduction to the Application (Clean) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-004	<a href="#">Highways England</a> Additional Submission - 2.2 Land Plans (Rev 1) - Accepted at the discretion of the Examining Authority
AS-005	<a href="#">Highways England</a> Additional Submission - 2.3 Work Plans (Tracked Changes) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-006	<a href="#">Highways England</a> Additional Submission - 2.3 Work Plans (Clean) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-007	<a href="#">Highways England</a> Additional Submission - 2.4 Rights of Way and Access Plans (Tracked Changes) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-008	<a href="#">Highways England</a> Additional Submission - 2.4 Rights of Way and Access Plans (Clean) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-009	<a href="#">Highways England</a> Additional Submission - 3.1 Draft Development Consent Order (Tracked Changes) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-010	<a href="#">Highways England</a> Additional Submission - 3.1 Draft Development Consent Order (Clean) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-011	<a href="#">Highways England</a> Additional Submission - 5.1 Consultation Report (Rev 1) - Accepted at the discretion of the Examining Authority
AS-012	<a href="#">Highways England</a> Additional Submission - 6.1 Environmental Statement Chapter 3 - Assessment of Alternatives (Tracked Changes) (Rev 1) - Accepted at the discretion of the Examining Authority

AS-013	<a href="#">Highways England</a> Additional Submission - 6.1 Environmental Statement Chapter 2 - The Proposed Scheme (Rev 0) - Accepted at the discretion of the Examining Authority
AS-014	<a href="#">Highways England</a> Additional Submission - 6.1 Environmental Statement Chapter 3 - Assessment of Alternatives (Clean) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-015	<a href="#">Highways England</a> Additional Submission - 6.1 Environmental Statement Chapter 8 - Biodiversity (Rev 0) - Accepted at the discretion of the Examining Authority
AS-016	<a href="#">Highways England</a> Additional Submission - 6.1 Environmental Statement Chapter 12 – Population and Human Health (Rev 0) - Accepted at the discretion of the Examining Authority
AS-017	<a href="#">Highways England</a> Additional Submission - 6.1 Environmental Statement Chapter 13 - Drainage and Water (Rev 1) - Accepted at the discretion of the Examining Authority
AS-018	<a href="#">Highways England</a> Additional Submission - 6.1 Environmental Statement Chapter 15 - Cumulative Effects Assessment (Rev 0) - Accepted at the discretion of the Examining Authority
AS-019	<a href="#">Highways England</a> Additional Submission - 6.3 Appendix 8.15 - Badger Survey Report (CONFIDENTIAL) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-020	<a href="#">Highways England</a> Additional Submission - 6.8 Environmental Masterplan (Tracked Changes) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-021	<a href="#">Highways England</a> Additional Submission - 6.8 Environmental Masterplan (Clean) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-022	<a href="#">Highways England</a> Additional Submission - 7.1 Case for the Scheme (Rev 1) - Accepted at the discretion of the Examining Authority
AS-023	<a href="#">Highways England</a> Additional Submission - 7.2 National Policy Statement for National Networks Accordance Tables (Rev 0) - Accepted at the discretion of the Examining Authority
AS-024	<a href="#">Highways England</a> Additional Submission - 7.3 Transport Assessment (Rev 1) - Accepted at the discretion of the Examining Authority
AS-025	<a href="#">Highways England</a> Additional Submission - 7.4 Scheme Design Report (Tracked Changes) (Rev 1) - Accepted at the discretion of the Examining Authority
AS-026	<a href="#">Highways England</a> Additional Submission - 7.4 Scheme Design Report (Clean) (Rev 1) - Accepted at the discretion of the Examining Authority

AS-027	<a href="#">Highways England</a> Additional Submission - 7.5 Environmental Management Plan (Rev 0) - Accepted at the discretion of the Examining Authority
AS-028	<a href="#">Highways England</a> Additional Submission - 7.7 Equality Impact Assessment (Rev 1) - Accepted at the discretion of the Examining Authority
AS-029	<a href="#">Highways England</a> Additional Submission - 7.8 Public Consultation Report 2017 (Rev 0) - Accepted at the discretion of the Examining Authority
AS-030	<a href="#">Highways England</a> Additional Submission - 7.9 Scheme Assessment Report 2018 (Rev 0) - Accepted at the discretion of the Examining Authority
AS-031	<a href="#">Highways England</a> Additional Submission - 7.10 Scheme Assessment Report Appendices (Rev 0) - Accepted at the discretion of the Examining Authority
AS-032	<a href="#">Highways England</a> Additional Submission - 7.11 Design Development Report 2020 (Rev 0) - Accepted at the discretion of the Examining Authority
AS-033	<a href="#">Highways England</a> Additional Submission - DCO Validation Report August 2021 - Accepted at the discretion of the Examining Authority
AS-034	<a href="#">Environment Agency</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-035	<a href="#">The Coal Authority</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-036	<a href="#">Highways England</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-037	<a href="#">Historic England</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-038	<a href="#">Huntingdonshire District Council</a> Additional Submission - Local Plan Policies Map – Accepted at the discretion of the Examining Authority
AS-039	<a href="#">Huntingdonshire District Council</a> Additional Submission – Local Plan to 2036 – Accepted at the discretion of the Examining Authority
AS-040	<a href="#">Huntingdonshire District Council</a> Additional Submission – Consultation Draft 2021 Chapter 3 Landscape Character Area Assessments – Accepted at the discretion of the Examining Authority
AS-041	<a href="#">Huntingdonshire District Council</a> Additional Submission – Correspondence with National Highways – Accepted at the discretion of the Examining Authority
AS-042	<a href="#">Huntingdonshire District Council</a> Additional Submission – Cover Letter – Accepted at the discretion of the Examining Authority

AS-043	<a href="#">Environment Agency</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-044	<a href="#">National Highways</a> Notification of intention to submit a Change Request - Additional Submission accepted at the discretion of the Examining Authority
AS-045	<a href="#">National Highways</a> Land Plans Sheet 3 of 7 - Additional Submission accepted at the discretion of the Examining Authority
AS-046	<a href="#">National Highways</a> General Arrangement Plans Sheet 3 of 7 - Additional Submission accepted at the discretion of the Examining Authority
AS-047	<a href="#">National Highways</a> Rights of Way and Access Plans Sheet 7 of 7 - Additional Submission accepted at the discretion of the Examining Authority
AS-048	<a href="#">Climate Emergency Planning and Policy</a> Additional submission accepted at the discretion of the Examining Authority
AS-049	<a href="#">National Highways</a> Change Request Cover Letter - Additional submission accepted at the discretion of the Examining Authority 27 June 2022
AS-050	<a href="#">National Highways</a> 4.3 Book of Reference (Clean) - Rev 03 - Additional submission accepted at the discretion of the Examining Authority 27 June 2022
AS-051	<a href="#">National Highways</a> 4.3 Book of Reference (Tracked) - Rev 03 - Additional submission accepted at the discretion of the Examining Authority 27 June 2022
AS-052	<a href="#">National Highways</a> 9.34 Updated Request for a Non Material Change to the Application (Tracked) - Additional submission accepted at the discretion of the Examining Authority 27 June 2022
AS-053	<a href="#">National Highways</a> 9.38 Updated Request for a Non Material Change to the Application (Clean) - Additional submission accepted at the discretion of the Examining Authority 27 June 2022
<b>Events and Hearings</b>	
<b>Preliminary Meeting, Accompanied Site Inspections and Hearings</b>	
EV-001	<a href="#">Note of Unaccompanied Site Inspection - 27 October 2021</a>
EV-002	<a href="#">Agenda for Issue Specific Hearing 1 (ISH1) on Draft Development Consent Order on Wednesday 12 January 2022</a>
EV-003	<a href="#">Recording of preliminary meeting - 11 January 2022</a>
EV-004	<a href="#">Preliminary Meeting - Transcript - 11 January 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-005	<a href="#">Recording of Issue Specific Hearing (ISH1) - Part 1 - 12 January 2022</a>

EV-006	<a href="#">Issue Specific Hearing (ISH1) - Part 1 - Transcript - 12 January 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-007	<a href="#">Recording of Issue Specific Hearing (ISH1) - Part 2 - 12 January 2022</a>
EV-008	<a href="#">Issue Specific Hearing (ISH1) - Part 2 - Transcript - 12 January 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-009	<a href="#">Preliminary meeting note</a>
EV-010	<a href="#">Action Points from Issue Specific Hearing 1</a>
EV-011	<a href="#">Agenda for Issue Specific Hearing 2 (ISH2) on Environmental Matters on Tuesday 15 March 2022</a>
EV-012	<a href="#">Agenda for Issue Specific Hearing 3 (ISH3) on Traffic, Transport and Socio-economic matters on Wednesday 16 March 2022</a>
EV-013	<a href="#">Agenda for Compulsory Acquisition Hearing (CAH) on Environmental Matters on Thursday 17 March 2022</a>
EV-014	<a href="#">Agenda for Issue Specific Hearing 4 (ISH4) on Draft Development Consent Order on Thursday 17 March 2022</a>
EV-015	<a href="#">Recording of Issue Specific Hearing 2 (ISH2) on Environmental Matters - Session 1 - 15 March 2022</a>
EV-016	<a href="#">Recording of Issue Specific Hearing 2 (ISH2) on Environmental Matters - Session 2 - 15 March 2022</a>
EV-017	<a href="#">Recording of Issue Specific Hearing 2 (ISH2) on Environmental Matters - Session 3 - 15 March 2022</a>
EV-018	<a href="#">Issue Specific Hearing 2 (ISH2) on Environmental Matters - Transcript - Session 1 - 15 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-019	<a href="#">Issue Specific Hearing 2 (ISH2) on Environmental Matters - Transcript - Session 2 - 15 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-020	<a href="#">Issue Specific Hearing 2 (ISH2) on Environmental Matters - Transcript - Session 3 - 15 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-021	<a href="#">Hearing action points from Issue Specific Hearings 2, 3 and 4, and Compulsory Acquisition Hearing 1</a>
EV-022	<a href="#">Recording of Issue Specific Hearing 3 (ISH3) on Traffic, Transport and Socio-economic matters - Session 1 - Wednesday 16 March 2022</a>
EV-023	<a href="#">Recording of Issue Specific Hearing 3 (ISH3) on Traffic, Transport and Socio-economic matters - Session 2 - Wednesday 16 March 2022</a>

EV-024	<a href="#">Issue Specific Hearing 3 (ISH3) on Traffic, Transport and Socio-economic matters - Transcript - Session 1 - Wednesday 16 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-025	<a href="#">Issue Specific Hearing 3 (ISH3) on Traffic, Transport and Socio-economic matters - Transcript - Session 2 - Wednesday 16 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-026	<a href="#">Recording of Compulsory Acquisition Hearing (CAH) - Session 1 - Thursday 17 March 2022</a>
EV-027	<a href="#">Recording of Compulsory Acquisition Hearing (CAH) - Session 2- Thursday 17 March 2022</a>
EV-028	<a href="#">Compulsory Acquisition Hearing (CAH) - Transcript - Session 1 - Thursday 17 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-029	<a href="#">Compulsory Acquisition Hearing (CAH) - Transcript - Session 2 - Thursday 17 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-030	<a href="#">Recording of Issue Specific Hearing 4 (ISH4) on Draft Development Consent Order on Thursday 17 March 2022</a>
EV-031	<a href="#">Issue Specific Hearing 4 (ISH4) on Draft Development Consent Order - Transcript - Thursday 17 March 2022</a> This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-032	<a href="#">Note of Unaccompanied Site Inspection 2 – 29 March 2022</a>
<b>Representations</b>	
<b>Procedural Deadline A – 7 January 2022</b>	
Deadline for receipt by the ExA of:	
<ul style="list-style-type: none"> <li>- Written submissions on the examination procedure, including any submissions about the use of virtual procedures; and</li> <li>- Requests to be heard orally at the Preliminary Meeting Part 1</li> </ul>	
PDA-001	<a href="#">Highways England</a> Procedural Deadline A Submission
PDA-002	<a href="#">Wansford Parish Council</a> Procedural Deadline A Submission
PDA-003	<a href="#">Wansford Parish Council</a> Procedural Deadline A Submission

**Deadline 1 – 28 January 2022**

Deadline for the receipt by the ExA of:

- Comments on Additional Documents submitted by the Applicant since the application was accepted
- Comments on Relevant Representations (RRs)
- Summaries of all RR's exceeding 1500 words
- Written Representations (WRs)
- Summaries of all WRs exceeding 1500 words
- Written summaries of oral submissions made at OFH1
- Submission by Applicant of draft Accompanied Site Inspection (ASI) itinerary
- Draft Statements of Common Ground (SoCG) requested by the ExA
- An updated version of the draft Development Consent Order (dDCO) in clean and tracked versions
- A schedule of changes to the dDCO
- Any further information requested by the ExA under Rule 17 of the Examination Rules

REP1-001	<a href="#">National Highways</a> Deadline 1 Submission - Cover Letter
REP1-002	<a href="#">National Highways</a> Deadline 1 Submission - Proposed itinerary for Accompanied Site Inspection (ASI)
REP1-003	<a href="#">National Highways</a> Deadline 1 Submission - 6.1 Environmental Statement Chapter 9 Geology and Soils (Clean) - Rev 1
REP1-004	<a href="#">National Highways</a> Deadline 1 Submission - 6.1 Environmental Statement Chapter 9 Geology and Soils (Tracked) - Rev 1
REP1-005	<a href="#">National Highways</a> Deadline 1 Submission - 7.5 Environmental Management Plan (Clean) - Rev 1
REP1-006	<a href="#">National Highways</a> Deadline 1 Submission - 7.5 Environmental Management Plan (Tracked) - Rev 1
REP1-007	<a href="#">National Highways</a> Deadline 1 Submission - 9.1 Guide to the Application (Clean)
REP1-008	<a href="#">National Highways</a> Deadline 1 Submission - 9.1 Guide to the Application (Tracked)
REP1-009	<a href="#">National Highways</a> Deadline 1 Submission - 9.2 Ground Investigation Report
REP1-010	<a href="#">National Highways</a> Deadline 1 Submission - 9.4 Applicant's Response to Relevant Representations
REP1-011	<a href="#">National Highways</a> Deadline 1 Submission - 9.5 Applicant's Written Submission of Oral Submissions at ISH1
REP1-012	<a href="#">Bedford Borough Council</a> Deadline 1 Submission
REP1-013	<a href="#">Fight 4 Upton</a> Deadline 1 Submission - Written Representations

## Deadline 2 – 15 February 2022

### Deadline for the receipt by the ExA of:

- Responses to ExQ1
- Written Representations (WR) and summaries of any WR exceeding 1500 words
- Local Impact Reports (LIR) from local authorities
- Comments on the Applicant's proposed ASI itinerary
- Comments on any submissions received by D1
- Any further information requested by the ExA under Rule 17 of the Examination Rules

REP2-001	<a href="#">National Highways</a> Deadline 2 submission - Cover Letter
REP2-002	<a href="#">National Highways</a> Deadline 2 submission - 2.1 Location Plan Rev 1
REP2-003	<a href="#">National Highways</a> Deadline 2 submission - 2.2 Land Plans Rev 1
REP2-004	<a href="#">National Highways</a> Deadline 2 submission - 2.4 Rights of Way and Access Plans Rev 2
REP2-005	<a href="#">National Highways</a> Deadline 2 submission - 2.5 Engineering Drawings and Sections Rev 2
REP2-006	<a href="#">National Highways</a> Deadline 2 submission - 2.6 General Arrangement Plans Rev 1
REP2-007	<a href="#">National Highways</a> Deadline 2 submission - 2.8 Crown Land Plans Rev 1
REP2-008	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 2 - The Proposed Scheme Rev 1 (Clean)
REP2-009	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 2 - The Proposed Scheme Rev 1 (Tracked)
REP2-010	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 6 Cultural Heritage Rev 1 (Clean)
REP2-011	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 6 Cultural Heritage Rev 1 (Tracked)
REP2-012	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 9 - Geology and Soils Rev 1 (Clean)
REP2-013	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 9 - Geology and Soils Rev 1 (Tracked)
REP2-014	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 11 - Noise and Vibration Rev 1 (Clean)
REP2-015	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 11 - Noise and Vibration Rev 1 (Tracked)

REP2-016	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 12 Population and Human Health Rev 2 (Clean)
REP2-017	<a href="#">National Highways</a> Deadline 2 submission - 6.1 Environmental Statement - Chapter 12 Population and Human Health Rev 2 (Tracked)
REP2-018	<a href="#">National Highways</a> Deadline 2 submission - 6.2 ES Figure 5.1 - 5.3 Rev 1
REP2-019	<a href="#">National Highways</a> Deadline 2 submission - 6.2 Environmental Statement - Figures 5.4 - 5.8 Rev 1
REP2-020	<a href="#">National Highways</a> Deadline 2 submission - 6.2 Environmental Statement - Figures 7.1 - 7.5 Rev 1
REP2-021	<a href="#">National Highways</a> Deadline 2 submission - 6.2 Environmental Statement - Figures 12.1 - 12.4 Rev 1
REP2-022	<a href="#">National Highways</a> Deadline 2 submission - 6.3 ES Appendix 7.6 Arboricultural Impact Assessment Rev 1
REP2-023	<a href="#">National Highways</a> Deadline 2 submission - 6.3 ES Appendix 9.2 Agricultural Land Classification report Rev 1
REP2-024	<a href="#">National Highways</a> Deadline 2 submission - 6.8 Environmental Masterplan Rev 1
REP2-025	<a href="#">National Highways</a> Deadline 2 submission - 7.3 Transport Assessment Rev 2 (Clean)
REP2-026	<a href="#">National Highways</a> Deadline 2 submission - 7.3 Transport Assessment Rev 2 (Tracked)
REP2-027	<a href="#">National Highways</a> Deadline 2 submission - 7.5. Environmental Management Plan Rev 2 (Clean)
REP2-028	<a href="#">National Highways</a> Deadline 2 submission - 7.5. Environmental Management Plan Rev 2 (Tracked)
REP2-029	<a href="#">National Highways</a> Deadline 2 submission - 7.6 Outline Traffic Management Plan Rev 1 (Clean)
REP2-030	<a href="#">National Highways</a> Deadline 2 submission - 7.6 Outline Traffic Management Plan Rev 1 (Tracked)
REP2-031	<a href="#">National Highways</a> Deadline 2 submission - 7.7 Equality Impact Assessment Rev 2 (Clean)
REP2-032	<a href="#">National Highways</a> Deadline 2 submission - 7.7 Equality Impact Assessment Rev 2 (Tracked)
REP2-033	<a href="#">National Highways</a> Deadline 2 submission - 9.1 Guide to the Application (Clean)
REP2-034	<a href="#">National Highways</a> Deadline 2 submission - 9.1 Guide to the Application (Tracked)

REP2-035	<a href="#">National Highways</a> Deadline 2 submission - 9.6 Applicant's Response to the Examining Authority's First Written Questions (ExQ1)
REP2-036	<a href="#">National Highways</a> Deadline 2 submission - 9.7 Applicant's Response to the Examining Authority's First Written Questions (ExQ1) - Annexes
REP2-037	<a href="#">National Highways</a> Deadline 2 submission - 9.8 Biodiversity Metric
REP2-038	<a href="#">National Highways</a> Deadline 2 submission - 9.9 Compulsory Acquisition Schedule
REP2-039	<a href="#">National Highways</a> Deadline 2 submission - 9.10 Likely Significant Residual Effects Summary Table
REP2-040	<a href="#">National Highways</a> Deadline 2 submission - 9.11 Road Safety Audits
REP2-041	<a href="#">National Highways</a> Deadline 2 submission - 9.12 Traffic Sign Layout Plans
REP2-042	<a href="#">Peterborough City Council</a> Deadline 2 submission - Ailsworth Conservation Area Appraisal
REP2-043	<a href="#">Peterborough City Council</a> Deadline 2 submission - Ailsworth Examiner's Report (29 August 2017)
REP2-044	<a href="#">Peterborough City Council</a> Deadline 2 submission - Ailsworth Neighbourhood Plan - Adoption version (December 2017)
REP2-045	<a href="#">Peterborough City Council</a> Deadline 2 submission - Barnack neighbourhood plan (July 2021)
REP2-046	<a href="#">Peterborough City Council</a> Deadline 2 submission - Castor Conservation Area Appraisal
REP2-047	<a href="#">Peterborough City Council</a> Deadline 2 submission - Castor Examiners Report (August 2017)
REP2-048	<a href="#">Peterborough City Council</a> Deadline 2 submission - Castor Neighbourhood Plan - Adoption Version (December 2017)
REP2-049	<a href="#">Peterborough City Council</a> Deadline 2 submission - District Policies Map
REP2-050	<a href="#">Peterborough City Council</a> Deadline 2 submission - Sutton map
REP2-051	<a href="#">Peterborough City Council</a> Deadline 2 submission - Thornhaugh map
REP2-052	<a href="#">Peterborough City Council</a> Deadline 2 submission - Upton map
REP2-053	<a href="#">Peterborough City Council</a> Deadline 2 submission - Wansford map
REP2-054	<a href="#">Peterborough City Council</a> Deadline 2 submission - Glinton neighbourhood plan (July 2021)
REP2-055	<a href="#">Peterborough City Council</a> Deadline 2 submission - Helpston Neighbourhood Plan Submission Version Nov 21

REP2-056	<a href="#">Peterborough City Council</a> Deadline 2 submission - Key to Insets 3 to 28
REP2-057	<a href="#">Peterborough City Council</a> Deadline 2 submission - Local plan part 1
REP2-058	<a href="#">Peterborough City Council</a> Deadline 2 submission - Local plan part 2
REP2-059	<a href="#">Peterborough City Council</a> Deadline 2 submission - Local plan part 3
REP2-060	<a href="#">Peterborough City Council</a> Deadline 2 submission - Peakirk Examiner's Report (May 2017)
REP2-061	<a href="#">Peterborough City Council</a> Deadline 2 submission - Former Wansford to Stamford Railway Line
REP2-062	<a href="#">Peterborough City Council</a> Deadline 2 submission - Peakirk Neighbourhood Plan
REP2-063	<a href="#">Peterborough City Council</a> Deadline 2 submission - Southorpe Conservation Area Appraisal
REP2-064	<a href="#">Peterborough City Council</a> Deadline 2 submission - Sutton Conservation Area Appraisal
REP2-065	<a href="#">Peterborough City Council</a> Deadline 2 submission - Thornhaugh Conservation Area Appraisal
REP2-066	<a href="#">Peterborough City Council</a> Deadline 2 submission - Wansford conservation area appraisal
REP2-067	<a href="#">Peterborough City Council</a> Deadline 2 submission - ExQ1
REP2-068	<a href="#">Peterborough City Council</a> Deadline 2 submission - Local Impact Reports (LIR) from local authorities
REP2-069	<a href="#">Peterborough City Council</a> Deadline 2 submission - Glington NP Examiner's Report (16 November 20)
REP2-070	<a href="#">Peterborough City Council</a> Deadline 2 submission - Barnack NP Examiner's Final Report (April 2021)
REP2-071	<a href="#">Wansford Parish Council</a> Deadline 2 submission - Written Representations (WR) and summaries of any WR exceeding 1500 words
REP2-072	<a href="#">Wansford Parish Council</a> Deadline 2 submission - Written Representations (WR) and summaries of any WR exceeding 1500 words
REP2-073	<a href="#">Historic England</a> Deadline 2 submission - Scheduled Monument Official List Entry
REP2-074	<a href="#">Historic England</a> Deadline 2 submission - Written Representations
REP2-075	<a href="#">Historic England</a> Deadline 2 submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-076	<a href="#">Woodland Trust</a> Deadline 2 submission - Written Representations
REP2-077	<a href="#">UK Health Security Agency</a> Deadline 2 submission - Response to Examination Authority's Written Questions

REP2-078	<a href="#">Environment Agency</a> Deadline 2 submission - Responses to ExQ1
REP2-079	<a href="#">Environment Agency</a> Deadline 2 submission - Written Representations (WR) and summaries of any WR exceeding 1500 words
REP2-080	<a href="#">Natural England</a> Deadline 2 submission - Written Representations and Responses to ExQ1
REP2-081	<a href="#">Robert W Reid</a> Deadline 2 submission - Responses to ExQ1
REP2-082	<a href="#">Fight 4 Upton</a> Deadline 2 submission - Comments on any submissions received by D1
REP2-083	<a href="#">Fight 4 Upton</a> Deadline 2 submission - Written Representations (WR) and summaries of any WR exceeding 1500 words
REP2-084	<a href="#">Milton (Peterborough) Estates Company</a> Deadline 2 submission - Written Representations (WR) and summaries of any WR exceeding 1500 words
REP2-085	<a href="#">Bletsoes on behalf of David Longfoot</a> Deadline 2 submission - Written Representations (WR) and summaries of any WR exceeding 1500 words
<p><b>Deadline 3 – 1 March 2022</b></p> <p><b>Deadline for the receipt by the ExA of:</b></p> <ul style="list-style-type: none"> <li>- Comments on responses to the ExQ1</li> <li>- Comments on WRs</li> <li>- Responses to comments made on RRs</li> <li>- Comments on LIRs</li> <li>- Comments on any submissions received by D2</li> <li>- Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul> <p>Requested from the Applicant only:</p> <ul style="list-style-type: none"> <li>- Progressed Statements of Common Ground (SoCG) and Statement of Commonality of the Statements of Common Ground (SCSoCG)</li> <li>- An updated version of the dDCO in clean and tracked versions and a schedule of changes</li> <li>- An updated Compulsory Acquisition Schedule (CAS) in clean and tracked versions</li> <li>- Schedule of changes to the Book of Reference (BoR)</li> <li>- Updated Guide to the Application</li> </ul>	
REP3-001	<a href="#">National Highways</a> Deadline 3 submission - Cover Letter
REP3-002	<a href="#">National Highways</a> Deadline 3 submission - 3.1 Draft Development Consent Order - Validation Report
REP3-003	<a href="#">National Highways</a> Deadline 3 submission - 3.1 Draft Development Consent Order (Clean)
REP3-004	<a href="#">National Highways</a> Deadline 3 submission - 3.1 Draft Development Consent Order (Tracked)

REP3-005	<a href="#">National Highways</a> Deadline 3 submission - 3.2 Explanatory Memorandum Rev 1 (Clean)
REP3-006	<a href="#">National Highways</a> Deadline 3 submission - 3.2 Explanatory Memorandum Rev 1 (Tracked)
REP3-007	<a href="#">National Highways</a> Deadline 3 submission - 3.3 Consents and Agreements Position Statement Rev 1 (Clean)
REP3-008	<a href="#">National Highways</a> Deadline 3 submission - 3.3 Consents and Agreements Position Statement Rev 1 (Tracked)
REP3-009	<a href="#">National Highways</a> Deadline 3 submission - 4.3 Book of Reference Rev 2 (Clean)
REP3-010	<a href="#">National Highways</a> Deadline 3 submission - 4.3 Book of Reference Rev 2 (Tracked)
REP3-011	<a href="#">National Highways</a> Deadline 3 submission - 6.1 ES Chapter 13 Road Drainage and the Water Environment Rev 2 (Clean)
REP3-012	<a href="#">National Highways</a> Deadline 3 submission - 6.1 ES Chapter 13 Road Drainage and the Water Environment Rev 2 (Tracked)
REP3-013	<a href="#">National Highways</a> Deadline 3 submission - 6.3 Environmental Statement Appendix 13.2 Drainage Strategy Report Rev 0
REP3-014	<a href="#">National Highways</a> Deadline 3 submission - 6.3 ES Appendix 13.1 Flood Risk Assessment Rev 1 (Clean)
REP3-015	<a href="#">National Highways</a> Deadline 3 submission - 6.3 ES Appendix 13.1 Flood Risk Assessment Rev 1 (Tracked)
REP3-016	<a href="#">National Highways</a> Deadline 3 submission - 6.9 Report to Inform Habitats Regulations Assessments Rev 1 (Clean)
REP3-017	<a href="#">National Highways</a> Deadline 3 submission - 6.9 Report to Inform Habitats Regulations Assessments Rev 1 (Tracked) - Late submission accepted at the discretion of the Examining Authority
REP3-018	<a href="#">National Highways</a> Deadline 3 submission - 8.1 Progressed Statements of Common Ground (SoCG) and Statement of Commonality of the Statements of Common Ground (SCSoCG)
REP3-019	<a href="#">National Highways</a> Deadline 3 submission - 9.1 Updated Guide to the Application (Clean)
REP3-020	<a href="#">National Highways</a> Deadline 3 submission - 9.1 Updated Guide to the Application (Tracked)
REP3-021	<a href="#">National Highways</a> Deadline 3 submission - 9.9 Compulsory Acquisition Schedule (CAS) (Clean)

REP3-022	<a href="#">National Highways</a> Deadline 3 submission - 9.9 Compulsory Acquisition Schedule (CAS) (Tracked)
REP3-023	<a href="#">National Highways</a> Deadline 3 submission - 9.13 Draft Development Consent Order - Schedule of Changes to the Draft DCO
REP3-024	<a href="#">National Highways</a> Deadline 3 submission - 9.14 Schedule of changes to the Book of Reference (BoR)
REP3-025	<a href="#">National Highways</a> Deadline 3 submission - 9.15 Response to Peterborough Council Local Impact Report
REP3-026	<a href="#">National Highways</a> Deadline 3 submission - 9.16 Applicant's Response to Written Representations
REP3-027	<a href="#">National Highways</a> Deadline 3 submission - 9.17 Applicant's Comments on Responses to the Examining Authority's First Written Questions (ExQ1)
REP3-028	<a href="#">National Highways</a> Deadline 3 submission - 9.18 Applicant's Comments on Deadline 2 Submissions
REP3-029	<a href="#">Sutton Parish Council</a> Deadline 3 submission - Comments for Issue Specific Hearing 3 - Traffic and Transport
REP3-030	<a href="#">Sutton Parish Council</a> Deadline 3 submission - Comments for Issue Specific Hearing 2 - Environmental Matters
REP3-031	<a href="#">Sutton Parish Council</a> Deadline 3 submission
REP3-032	<a href="#">Sutton Parish Council</a> Deadline 3 submission - Responses to the Examining Authority's First Written Questions (ExQ1) - Accepted at the discretion of the Examining Authority
REP3-033	<a href="#">Wansford Parish Council</a> Deadline 3 submission - Comments on D2 Submission by National Highways - 7.3 Transport Assessment Rev 2
REP3-034	<a href="#">Wansford Parish Council</a> Deadline 3 submission - Comments on D2 Submission by National Highways - 7.6 Arboricultural Impact Assessment
REP3-035	<a href="#">Anglian Water</a> Deadline 3 submission - Progressed Statements of Common Ground (SoCG) and Statement of Commonality of the Statements of Common Ground (SCSoCG)
REP3-036	<a href="#">Robert W Reid</a> Deadline 3 submission - Comments for ISH2 - Environmental Matters
REP3-037	<a href="#">Robert W Reid</a> Deadline 3 submission - Further Comments for ISH2 - Environmental Matters

REP3-038	<a href="#">Robert W Reid</a> Deadline 3 submission - Comments for ISH3 - Traffic and Transport
REP3-039	<a href="#">Robert W Reid</a> Deadline 3 submission - Response to the Examining Authority's First Written Questions (ExQ1) - Accepted at the discretion of the Examining Authority
REP3-040	<a href="#">David Longfoot</a> Deadline 3 submission
<p><b>Deadline 4 – 24 March 2022</b></p> <p><b>Deadline for the receipt by the ExA of:</b></p> <ul style="list-style-type: none"> <li>- Post Hearing submissions including written submissions of oral case</li> <li>- Comments on any submissions received by D3</li> <li>- Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul> <p>Requested from the Applicant only:</p> <ul style="list-style-type: none"> <li>- Progressed SoCG and SCSocG</li> <li>- An updated version of the dDCO in clean and tracked versions and a schedule of changes</li> <li>- An updated CAS in clean and tracked versions</li> <li>- Updated Guide to the Application</li> </ul>	
REP4-001	<a href="#">National Highways</a> Deadline 4 submission - Covering Letter
REP4-002	<a href="#">National Highways</a> Deadline 4 submission - 3.1 Draft Development Consent Order Rev 3 (Clean) - Late Submission - Accepted at the discretion of the Examining Authority
REP4-003	<a href="#">National Highways</a> Deadline 4 submission - 3.1 Draft Development Consent Order Rev 3 (Tracked)
REP4-004	<a href="#">National Highways</a> Deadline 4 submission - 6.1 ES Chapter 12 Population and Human Health Rev 3 (Clean)
REP4-005	<a href="#">National Highways</a> Deadline 4 submission - 6.1 ES Chapter 12 Population and Human Health Rev 3 (Tracked)
REP4-006	<a href="#">National Highways</a> Deadline 4 submission - 6.2 ES Figures 12.1-12.4 Rev 2
REP4-007	<a href="#">National Highways</a> Deadline 4 submission - 6.3 ES Appendices - Appendix 7.6 Arboricultural Impact Assessment
REP4-008	<a href="#">National Highways</a> Deadline 4 submission - 7.3 Transport Assessment Rev 3 (Clean)
REP4-009	<a href="#">National Highways</a> Deadline 4 submission - 7.3 Transport Assessment Rev 3 (Tracked)

REP4-010	<a href="#">National Highways</a> Deadline 4 submission - 8.1 Statement of Commonality for Statements of Common Ground Rev 1 (Clean)
REP4-011	<a href="#">National Highways</a> Deadline 4 submission - 8.1 Statement of Commonality for Statements of Common Ground Rev 1 (Tracked)
REP4-012	<a href="#">National Highways</a> Deadline 4 submission - 9.1 Guide to the Application Rev 3 (Clean)
REP4-013	<a href="#">National Highways</a> Deadline 4 submission - 9.1 Guide to the Application Rev 3 (Tracked)
REP4-014	<a href="#">National Highways</a> Deadline 4 submission - 9.13 Draft Development Consent Order - Schedule of Drafting Changes for Deadline 4 Rev 1
REP4-015	<a href="#">National Highways</a> Deadline 4 submission - 9.16 Applicant's Response to Written Representations Rev 1 (Clean)
REP4-016	<a href="#">National Highways</a> Deadline 4 submission - 9.16 Applicant's Response to Written Representations Rev 1 (Tracked)
REP4-017	<a href="#">National Highways</a> Deadline 4 submission - 9.19 Applicant's Comments on Deadline 3 Submissions
REP4-018	<a href="#">National Highways</a> Deadline 4 submission - 9.20 Applicant's Written Summary of Oral Submissions at Hearings
REP4-019	<a href="#">National Highways</a> Deadline 4 submission - 9.9 Compulsory Acquisition Schedule (Clean) - Rev 2
REP4-020	<a href="#">National Highways</a> Deadline 4 submission - 9.9 Compulsory Acquisition Schedule (Tracked) - Rev 2
REP4-021	<a href="#">National Highways</a> Deadline 4 submission - Master DCO Validation Report - Late Submission - Accepted at the discretion of the Examining Authority
REP4-022	<a href="#">David Longfoot</a> Deadline 4 submission - Post-Hearing Submission - Farmers Weekly Article
REP4-023	<a href="#">David Longfoot</a> Deadline 4 submission - Post-Hearing Submission - Farmers 4 Upton letter
REP4-024	<a href="#">David Longfoot</a> Deadline 4 submission - Post Hearing submissions - Works quote
REP4-025	<a href="#">Robert W Reid</a> Deadline 4 submission - Comments on any submissions received by D3
REP4-026	<a href="#">Robert W Reid</a> Deadline 4 submission
REP4-027	<a href="#">Robert W Reid</a> Deadline 4 submission - Post-Hearing Submission

REP4-028	<a href="#">Milton (Peterborough) Estates Company</a> Deadline 4 submission - Comments on the Action list following specific hearings
REP4-029	<a href="#">Sutton Parish Council</a> Deadline 4 submission - Comments on any submissions received by D3
REP4-030	<a href="#">Sutton Parish Council</a> Deadline 4 submission - Post Hearing submissions Part 1
REP4-031	<a href="#">Sutton Parish Council</a> Deadline 4 submission - Post Hearing submissions Part 2
REP4-032	<a href="#">Sutton Parish Council</a> Deadline 4 submission - Post Hearing submissions Part 3
REP4-033	<a href="#">Sutton Parish Council</a> Deadline 4 submission - Post Hearing submissions Part 4
REP4-034	<a href="#">Sutton parish Council</a> Deadline 4 submission - Post Hearing submissions Part 5
REP4-035	<a href="#">Sutton parish Council</a> Deadline 4 submission - Post Hearing submissions Part 6
REP4-036	<a href="#">Fight 4 Upton</a> Deadline 4 submission - Post Hearing submissions including written submissions of oral case
REP4-037	<a href="#">Natural England</a> Deadline 4 submission - Any further information requested by the ExA under Rule 17 of the Examination Rules
REP4-038	<a href="#">Peterborough City Council</a> Deadline 4 submission - A47 Email correspondence CCC and EA
REP4-039	<a href="#">Peterborough City Council</a> Deadline 4 submission - A47 Modelling - LLFA Comments
REP4-040	<a href="#">Peterborough City Council</a> Deadline 4 submission - Issue Specific Hearing Action points
REP4-041	<a href="#">Wansford Parish Council</a> Deadline 4 submission - ISH2 Geotechnical Rish Post-Hearing Submission
REP4-042	<a href="#">Wansford Parish Council</a> Deadline 4 submission - ISH2 Scheduled Monument Post-Hearing Submission
REP4-043	<a href="#">Wansford Parish Council</a> Deadline 4 submission - ISH3 Traffic Modelling Post-Hearing Submission
REP4-044	<a href="#">Wansford Parish Council</a> Deadline 4 submission - ISH4 Post-Hearing Submission
REP4-045	<a href="#">Robert W Reid</a> Deadline 4 Submission - Late submission accepted at the discretion of the Examining Authority

## Deadline 5 – 20 April 2022

### Deadline for the receipt by the ExA of:

- Responses to ExQ2 if required
- Comments on any submissions received by D4
- Any further information requested by the ExA under Rule 17 of the Examination Rules

### Requested from the Applicant only:

- Progressed SoCG and SCSocG
- An updated version of the dDCO in clean and tracked versions and a schedule of changes
- An updated CAS in clean and tracked versions
- Updated Guide to the Application
- Schedule of changes to the BoR

REP5-001	<a href="#">National Highways</a> Deadline 5 submission - Covering Letter
REP5-002	<a href="#">National Highways</a> Deadline 5 submission - 2.2 Land Plans - Rev 3
REP5-003	<a href="#">National Highways</a> Deadline 5 submission - 2.3 Works Plans - Rev 2
REP5-004	<a href="#">National Highways</a> Deadline 5 submission - 2.8 Crown Land Plans - Rev 2
REP5-005	<a href="#">National Highways</a> Deadline 5 submission - 3.1 Draft Development Consent Order (Clean) - Rev 4
REP5-006	<a href="#">National Highways</a> Deadline 5 submission - 3.1 Draft Development Consent Order (Tracked) - Rev 4
REP5-007	<a href="#">National Highways</a> Deadline 5 submission - 6.3 ES Appendix 13.2 Drainage Strategy Report (Clean) - Rev 2
REP5-008	<a href="#">National Highways</a> Deadline 5 submission - 6.3 ES Appendix 13.2 Drainage Strategy Report (Tracked) - Rev 2
REP5-009	<a href="#">National Highways</a> Deadline 5 submission - 6.8 Environmental Masterplan - Rev 2
REP5-010	<a href="#">National Highways</a> Deadline 5 submission - 6.9 Report to Inform HRA (Clean) - Rev 2
REP5-011	<a href="#">National Highways</a> Deadline 5 submission - 6.9 Report to Inform HRA (Tracked) - Rev 2
REP5-012	<a href="#">National Highways</a> Deadline 5 submission - 8.1 Statement of Commonality for the SoCGs (Clean) - Rev 2
REP5-013	<a href="#">National Highways</a> Deadline 5 submission - 8.1 Statement of Commonality for the SoCGs (Tracked) - Rev 2
REP5-014	<a href="#">National Highways</a> Deadline 5 submission - 9.1 Guide to the Application (Clean) - Rev 4

REP5-015	<a href="#">National Highways</a> Deadline 5 submission - 9.1 Guide to the Application (Tracked) - Rev 4
REP5-016	<a href="#">National Highways</a> Deadline 5 submission - 9.9 Compulsory Acquisition Schedule (Clean) - Rev 3
REP5-017	<a href="#">National Highways</a> Deadline 5 submission - 9.9 Compulsory Acquisition Schedule (Tracked) - Rev 3
REP5-018	<a href="#">National Highways</a> Deadline 5 submission - 9.13 Draft Development Consent Order - Schedule of Drafting Changes - Rev 4
REP5-019	<a href="#">National Highways</a> Deadline 5 submission - 9.21 Applicant's Comments on Deadline 4 Submissions
REP5-020	<a href="#">National Highways</a> Deadline 5 submission - 9.22 Applicant's Further Response to Actions from Hearings
REP5-021	<a href="#">National Highways</a> Deadline 5 submission - 9.23 Applicant's Further Response to Actions from Hearings - Annexes
REP5-022	<a href="#">National Highways</a> Deadline 5 submission - 9.24 Applicant's Response to the Examining Authority's Further Written Questions (ExQ2)
REP5-023	<a href="#">National Highways</a> Deadline 5 submission - 9.25 Applicant's Response to the Examining Authority's Further Written Questions (ExQ2) - Annexes
REP5-024	<a href="#">Peterborough City Council</a> Deadline 5 submission - Issue Specific Hearing 2 Action Points Response
REP5-025	<a href="#">Peterborough City Council</a> Deadline 5 submission - Minutes of meeting 22 April 2019
REP5-026	<a href="#">Peterborough City Council</a> Deadline 5 submission - Response to ExQ2
REP5-027	<a href="#">Wansford Parish Council</a> Deadline 5 submission - Comments on Document 9.16 Applicant's Response to Written
REP5-028	<a href="#">Wansford Parish Council</a> Deadline 5 submission - Comments on Document 9.20 Applicant's Written Summary of Oral
REP5-029	<a href="#">Historic England</a> Deadline 5 submission
REP5-030	<a href="#">Historic England</a> Deadline 5 submission - Response to ExQ2
REP5-031	<a href="#">Natural England</a> Deadline 5 submission - Response to ExQ2
REP5-032	<a href="#">Robert W Reid</a> Deadline 5 submission (Part 1)
REP5-033	<a href="#">Robert W Reid</a> Deadline 5 submission (Part 2)

REP5-034	<a href="#">Robert W Reid</a> Deadline 5 submission (Part 3)
REP5-035	<a href="#">Robert W Reid</a> Deadline 5 submission (Part 4)
REP5-036	<a href="#">Robert W Reid</a> Deadline 5 submission (Part 5)
REP5-037	<a href="#">National Highways</a> Deadline 5 submission - Master DCO Validation Report - Rev 4 - Late submission accepted at the discretion of the Examining Authority
<b>Deadline 6 – 3 May 2022</b>	
<b>Deadline for the receipt by the ExA of:</b>	
<ul style="list-style-type: none"> <li>- Comments on responses to ExQ2, if required</li> <li>- Comments on any submissions received by D5</li> <li>- Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul>	
REP6-001	<a href="#">National Highways</a> Deadline 6 submission - 7.5 Environmental Management Plan Rev 3 (Clean)
REP6-002	<a href="#">National Highways</a> Deadline 6 submission - 7.5 Environmental Management Plan Rev 3 (Tracked)
REP6-003	<a href="#">National Highways</a> Deadline 6 submission - 9.1 Guide to the Application Rev 5 (Clean)
REP6-004	<a href="#">National Highways</a> Deadline 6 submission - 9.1 Guide to the Application Rev 5 (Tracked)
REP6-005	<a href="#">National Highways</a> Deadline 6 submission - 9.8 Biodiversity Metric Rev 1
REP6-006	<a href="#">National Highways</a> Deadline 6 submission - 9.26 Applicant's Comments on Deadline 5 Submissions
REP6-007	<a href="#">National Highways</a> Deadline 6 submission - 9.27 Applicant's Comments on Responses to the Examining Authority's Further Written Questions (ExQ2)
REP6-008	<a href="#">Wansford Parish Council</a> Deadline 6 submission - Comments on Document 9.23 Applicant's Further Response to Actions from Hearings
REP6-009	<a href="#">Wansford Parish Council</a> Deadline 6 submission - Comments on Document 9.25 Applicant's Response to the ExA's Further Written Questions
REP6-010	<a href="#">David Longfoot</a> Deadline 6 submission - Farmers Weekly Article with annotations
REP6-011	<a href="#">David Longfoot</a> Deadline 6 submission - Works quote with annotations

<b>Late Submissions</b>	
REP6-012	<a href="#">Sutton Parish Council</a> Deadline 6 Submission - Minutes of Parish Council meeting held 20 April 2022 - Late submission accepted at the discretion of the Examining Authority
REP6-013	<a href="#">Sutton Parish Council</a> Deadline 6 Submission - Late submission accepted at the discretion of the Examining Authority
<b>Deadline 7 – 20 May 2022</b>	
<b>Deadline for the receipt by the ExA of:</b>	
<ul style="list-style-type: none"> <li>- Post Hearing submissions including written submissions of oral case, if required</li> <li>- Comments on any submissions received by D6</li> <li>- Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul>	
Requested from the Applicant only:	
<ul style="list-style-type: none"> <li>- Progressed SoCG and SCSocG</li> <li>- An updated version of the dDCO in clean and tracked versions and a schedule of changes</li> <li>- An updated CAS in clean and tracked versions</li> <li>- Updated Guide to the Application</li> </ul>	
REP7-001	<a href="#">National Highways</a> Deadline 7 submission - Covering Letter
REP7-002	<a href="#">National Highways</a> Deadline 7 submission - 8.1 Statement of Commonality for Statements of Common Ground (Clean) - Rev 3
REP7-003	<a href="#">National Highways</a> Deadline 7 submission - 8.1 Statement of Commonality for Statements of Common Ground (Tracked) - Rev 3
REP7-004	<a href="#">National Highways</a> Deadline 7 submission - 8.2 Statement of Common Ground with Peterborough City Council
REP7-005	<a href="#">National Highways</a> Deadline 7 submission - 8.5 Statement of Common Ground with the Environment Agency
REP7-006	<a href="#">National Highways</a> Deadline 7 submission - 8.11 Statement of Common Ground with Riverford Organic Farmers
REP7-007	<a href="#">National Highways</a> Deadline 7 submission - 8.12 Statement of Common Ground with the William Scott Abbott Trust
REP7-008	<a href="#">National Highways</a> Deadline 7 submission - 8.13 Statement of Common Ground with Mr D Longfoot
REP7-009	<a href="#">National Highways</a> Deadline 7 submission - 8.14 Statement of Common Ground with Milton (Peterborough) Estates Co and Sir Philip Naylor Leyland BT

REP7-010	<a href="#">National Highways</a> Deadline 7 submission - 8.15 Statement of Common Ground with Wansford Parish Council
REP7-011	<a href="#">National Highways</a> Deadline 7 submission - 8.16 Statement of Common Ground with Sutton Parish Council
REP7-012	<a href="#">National Highways</a> Deadline 7 submission - 9.1 Guide to the Application (Clean) - Rev 6
REP7-013	<a href="#">National Highways</a> Deadline 7 submission - 9.1 Guide to the Application (Tracked) - Rev 6
REP7-014	<a href="#">National Highways</a> Deadline 7 submission - 9.9 Compulsory Acquisition Schedule (Clean) - Rev 4
REP7-015	<a href="#">National Highways</a> Deadline 7 submission - 9.9 Compulsory Acquisition Schedule (Tracked) - Rev 4
REP7-016	<a href="#">National Highways</a> Deadline 7 submission - 9.28 Applicant's Comments on Deadline 6 submissions
REP7-017	<a href="#">National Highways</a> Deadline 7 submission - 9.29 Outline Water Management and Monitoring Plan
REP7-018	<a href="#">National Highways</a> Deadline 7 submission - 9.30 Applicant's Response to Rule 17 Letter
REP7-019	<a href="#">Wansford Parish Council</a> Deadline 7 Submission - Comments on Document 9.26 Applicant's Comments on Deadline 5 Submissions - Late submission accepted at the discretion of the Examining Authority
<b>Deadline 7a – 6 June 2022</b>	
<b>Deadline for the receipt by the ExA of:</b>	
Draft SoCGs between the Applicant and:	
<ul style="list-style-type: none"> <li>- Cambridgeshire County Council</li> <li>- Natural England</li> <li>- Historic England</li> <li>- Western Power (East Midlands) Plc</li> <li>- Anglian Water Limited</li> </ul>	
REP7a-001	<a href="#">National Highways</a> Deadline 7a submission - Cover Letter
REP7a-002	<a href="#">National Highways</a> Deadline 7a submission - 8.3 Statement of Common Ground with Cambridgeshire County Council
REP7a-003	<a href="#">National Highways</a> Deadline 7a submission - 8.6 Statement of Common Ground with Natural England
REP7a-004	<a href="#">National Highways</a> Deadline 7a submission - 8.7 Statement of Common Ground with Historic England

REP7a-005	<a href="#">National Highways</a> Deadline 7a submission - 8.8 Statement of Common Ground with Anglian Water Services Limited
REP7a-006	<a href="#">National Highways</a> Deadline 7a submission - 8.9 Statement of Common Ground with Western Power Distribution (East Midlands) PLC
REP7a-007	<a href="#">National Highways</a> Deadline 7a submission - Response to the ExA's Additional Questions (ExQ3)
REP7a-008	<a href="#">ESP Utilities Group Ltd</a> Deadline 7a submission
REP7a-009	<b>REFERENCE NOT IN USE</b>
REP7a-010	<a href="#">Natural England</a> Deadline 7a submission - Responses to the ExA's Additional Questions (ExQ3)
<p><b>Deadline 8 – 14 June 2022</b></p> <p><b>Deadline for the receipt by the ExA of:</b></p> <ul style="list-style-type: none"> <li>- Comments on the RIES (if required)</li> <li>- Comments on the ExA's proposed changes to the draft DCO</li> <li>- Responses to the ExA's Additional Questions (ExQ3)</li> <li>- Comments on any submissions received by D7</li> <li>- Any further information requested by the ExA under Rule 17 of the Examination Rules</li> <li>-</li> </ul> <p>Requested from the Applicant only:</p> <ul style="list-style-type: none"> <li>- Progressed SoCG and SCSocG</li> <li>- An updated version of the dDCO in clean and tracked versions and a schedule of changes</li> <li>- An updated CAS in clean and tracked versions</li> <li>- Updated Guide to the Application</li> <li>- Schedule of changes to the BoR</li> </ul>	
REP8-001	<a href="#">National Highways</a> Deadline 8 submission - Cover Letter
REP8-002	<a href="#">National Highways</a> Deadline 8 submission - 2.2 Land Plans - Rev 4 (including amendments made in support of the change request)
REP8-003	<a href="#">National Highways</a> Deadline 8 submission - 2.3 Works Plans - Rev 3 (including amendments made in support of the change request)
REP8-004	<a href="#">National Highways</a> Deadline 8 submission - 2.4 Rights of Way and Access Plans - Rev 3
REP8-005	<a href="#">National Highways</a> Deadline 8 submission - 2.6 General Arrangement Plans - Rev 2 (including amendments made in support of the change request)
REP8-006	<a href="#">National Highways</a> Deadline 8 submission - 3.1 Draft Development Consent Order (Clean) - Rev 5 (including amendments made in support of the change request)

REP8-007	<a href="#">National Highways</a> Deadline 8 submission - 3.1 Draft Development Consent Order (Tracked) - Rev 5 (including amendments made in support of the change request)
REP8-008	<a href="#">National Highways</a> Deadline 8 submission - 3.2 Explanatory Memorandum (Clean) - Rev 2 (including amendments made in support of the change request)
REP8-009	<a href="#">National Highways</a> Deadline 8 submission - 3.2 Explanatory Memorandum (Tracked) - Rev 2 (including amendments made in support of the change request)
REP8-010	<a href="#">National Highways</a> Deadline 8 submission - 4.1 Statement of Reasons (Clean) - Rev 1 (including amendments made in support of the change request)
REP8-011	<a href="#">National Highways</a> Deadline 8 submission - 4.1 Statement of Reasons (Tracked) - Rev 1 (including amendments made in support of the change request)
REP8-012	<a href="#">National Highways</a> Deadline 8 submission - 4.3 Book of Reference (Clean) - Rev 2 (including amendments made in support of the change request)
REP8-013	<a href="#">National Highways</a> Deadline 8 submission - 4.3 Book of Reference (Tracked) - Rev 2 (including amendments made in support of the change request)
REP8-014	<a href="#">National Highways</a> Deadline 8 submission - 6.8 Environmental Masterplan - Rev 3 (including amendments made in support of the change request)
REP8-015	<a href="#">National Highways</a> Deadline 8 submission - 8.1 Statement of Commonality for Statements of Common Ground (Clean) - Rev 4
REP8-016	<a href="#">National Highways</a> Deadline 8 submission - 8.1 Statement of Commonality for Statements of Common Ground (Tracked) - Rev 4
REP8-017	<a href="#">National Highways</a> Deadline 8 submission - 8.11 Statement of Common Ground with Riverford Organic Farmers
REP8-018	<a href="#">National Highways</a> Deadline 8 submission - 8.12 Statement of Common Ground with the William Scott Abbott Trust
REP8-019	<a href="#">National Highways</a> Deadline 8 submission - 8.13 Statement of Common Ground with Mr D Longfoot
REP8-020	<a href="#">National Highways</a> Deadline 8 submission - 8.14 Statement of Common Ground with Milton (Peterborough) Estates Co and Sir Philip Naylor Leyland BT
REP8-021	<a href="#">National Highways</a> Deadline 8 submission - 8.15 Statement of Common Ground with Wansford Parish Council
REP8-022	<a href="#">National Highways</a> Deadline 8 submission - 8.16 Statement of Common Ground with Sutton Parish Council
REP8-023	<a href="#">National Highways</a> Deadline 8 submission - 9.1 Guide to the Application (Clean) - Rev 7

REP8-024	<a href="#">National Highways</a> Deadline 8 submission - 9.1 Guide to the Application (Tracked) - Rev 7
REP8-025	<a href="#">National Highways</a> Deadline 8 submission - 9.15 Schedule of Changes to the Book of Reference - Rev 1
REP8-026	<a href="#">National Highways</a> Deadline 8 submission - 9.31 Applicant's Comments on Deadline 7 Submissions
REP8-027	<a href="#">National Highways</a> Deadline 8 submission - 9.32 Applicant's Response to the ExA's Third Written Questions (ExQ3)
REP8-028	<a href="#">National Highways</a> Deadline 8 submission - 9.33 Underpass Lighting Assessment Technical Note
REP8-029	<a href="#">National Highways</a> Deadline 8 submission - 9.34 Request for a Non-Material Change to the Application (made in support of the change request)
REP8-030	<a href="#">National Highways</a> Deadline 8 submission - 9.35 Environmental Statement Addendum One (made in support of the change request)
REP8-031	<a href="#">National Highways</a> Deadline 8 submission - 9.35 Environmental Statement Addendum Two (made in support of the change request)
REP8-032	<a href="#">National Highways</a> Deadline 8 submission - 9.37 Applicant's Response to ExA's Recommended Amendments to the Draft Development Consent Order
REP8-033	<a href="#">National Highways</a> Deadline 8 submission - 9.4 Draft Development Consent Order - Schedule of Drafting Changes - Rev 5
REP8-034	<a href="#">National Highways</a> Deadline 8 submission - 9.9 Compulsory Acquisition Schedule (Clean) - Rev 5
REP8-035	<a href="#">National Highways</a> Deadline 8 submission - 9.9 Compulsory Acquisition Schedule (Tracked) - Rev 5
REP8-036	<a href="#">National Highways</a> Deadline 8 submission - Validation Report for the dDCO - Rev 5
REP8-037	<a href="#">Historic England</a> Deadline 8 submission - Responses to the ExA's Additional Questions (ExQ3)
REP8-038	<a href="#">Environment Agency</a> Deadline 8 submission - Responses to the ExA's Additional Questions (ExQ3)
REP8-039	<a href="#">Peterborough City Council</a> Deadline 8 submission - Responses to the ExA's Additional Questions (ExQ3)
REP8-040	<a href="#">Peterborough City Council</a> Deadline 8 submission - Appendix 1 Thornhaugh Townscape Map

REP8-041	<a href="#">Peterborough City Council</a> Deadline 8 submission - Appendix 2 Thornhaugh Conservation Area Boundary
REP8-042	<a href="#">Peterborough City Council</a> Deadline 8 submission - Thornhaugh Conservation Area Appraisal and Management Plan
REP8-043	<a href="#">Climate Emergency Policy and Planning (CEPP)</a> Deadline 8 Submission - Responses to the ExA's Additional Questions (ExQ3)
REP8-044	<a href="#">Climate Emergency Policy and Planning (CEPP)</a> Deadline 8 submission - Climate Change Committee - Advice on Reducing the UK's Emissions
REP8-045	<a href="#">Milton (Peterborough) Estates Company</a> Deadline 8 submission
REP8-046	<a href="#">Wansford Parish Council</a> Deadline 8 submission - Responses to the ExA's Additional Questions (ExQ3)
REP8-047	<a href="#">Sutton Parish Council</a> Deadline 8 submission - Responses to the ExA's Additional Questions (ExQ3) - Late submission accepted at the discretion of the Examining Authority
<p><b>Deadline 9 – 28 June 2022</b></p> <p><b>Deadline for the receipt by the ExA of:</b></p> <ul style="list-style-type: none"> <li>- Comments on any submissions received by D8</li> <li>- Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul> <p>Requested from the Applicant only:</p> <ul style="list-style-type: none"> <li>- Final SoCG and SCSOCG</li> <li>- Final dDCO in MS Word clean and tracked versions</li> <li>- Final Schedule of changes to the dDCO</li> <li>- SI template validation report</li> <li>- Final Book of Reference, and schedule of changes</li> <li>- Final Compulsory Acquisition Schedule, in clean and tracked versions</li> <li>- Final updated Guide to the Application</li> </ul>	
REP9-001	<a href="#">National Highways</a> Deadline 9 submission - Covering Letter
REP9-002	<a href="#">National Highways</a> Deadline 9 submission - 3.1 Draft DCO (Clean) - Rev 6
REP9-003	<a href="#">National Highways</a> Deadline 9 submission - 3.1 Draft DCO (Tracked) - Rev 6
REP9-004	<a href="#">National Highways</a> Deadline 9 submission - 3.2 Explanatory Memorandum (Clean) - Rev 3
REP9-005	<a href="#">National Highways</a> Deadline 9 submission - 3.2 Explanatory Memorandum (Tracked) - Rev 3
REP9-006	<a href="#">National Highways</a> Deadline 9 submission - 8.1 Statement of Commonality for Statements of Common Ground (Clean)
REP9-007	<a href="#">National Highways</a> Deadline 9 submission - 8.1 Statement of Commonality for Statements of Common Ground (Tracked)

REP9-008	<a href="#">National Highways</a> Deadline 9 submission - 8.3 Statement of Common Ground with Cambridgeshire County Council
REP9-009	<a href="#">National Highways</a> Deadline 9 submission - 9.1 Guide to the Application (Clean)
REP9-010	<a href="#">National Highways</a> Deadline 9 submission - 9.1 Guide to the Application (Tracked)
REP9-011	<a href="#">National Highways</a> Deadline 9 submission - 9.13 Draft Development Consent Order - Schedule of Drafting Changes for Deadline 9
REP9-012	<a href="#">National Highways</a> Deadline 9 submission - 9.9 Compulsory Acquisition Schedule (Clean)
REP9-013	<a href="#">National Highways</a> Deadline 9 submission - 9.9 Compulsory Acquisition Schedule (Tracked)
REP9-014	<a href="#">National Highways</a> Deadline 9 submission - 9.39 Applicant's Comments on Deadline 8 Submissions
REP9-015	<a href="#">National Highways</a> Deadline 9 submission - 9.40 Applicant's Comments on Responses to the Examining Authority's Third Written Questions (ExQ3)
REP9-016	<a href="#">National Highways</a> Deadline 9 submission - Statutory Instruments template validation report
REP9-017	<a href="#">Wansford Parish Council</a> Deadline 9 submission - Comments on Historic England's Responses to the ExA's Additional Questions (ExQ3)
REP9-018	<a href="#">Wansford Parish Council</a> Deadline 9 submission - Comments on the Applicant's Response to the ExA's Recommended Amendments to the Draft Development Consent Order Document 9.37
REP9-019	<a href="#">Wansford Parish Council</a> Deadline 9 submission - Comments on the Applicant's Responses to the ExA's Additional Questions (ExQ3) Section 3.4.1 Scheduled Monument North of A47
<b>Deadline 10 – 5 July 2022</b>	
<b>Deadline for the receipt by the ExA of:</b>	
<ul style="list-style-type: none"> <li>- Comments on any submissions received by D9</li> <li>- Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul>	
REP10-001	<a href="#">National Highways</a> Deadline 10 submission - Cover Letter
REP10-002	<a href="#">National Highways</a> Deadline 10 submission - 3.1 Draft Development Consent Order - Validation Report
REP10-003	<a href="#">National Highways</a> Deadline 10 submission - 3.1 Draft Development Consent Order (Clean) - Rev 7
REP10-004	<a href="#">National Highways</a> Deadline 10 submission - 3.1 Draft Development Consent Order (Tracked) - Rev 7

REP10-005	<a href="#">National Highways</a> Deadline 10 submission - 3.2 Explanatory Memorandum (Clean) - Rev 4
REP10-006	<a href="#">National Highways</a> Deadline 10 submission - 3.2 Explanatory Memorandum (Tracked) - Rev 4
REP10-007	<a href="#">National Highways</a> Deadline 10 submission - 4.3 Book of Reference - Rev 3
REP10-008	<a href="#">National Highways</a> Deadline 10 submission - 8.1 Statement of Commonality for Statements of Common Ground (Clean) - Rev 6
REP10-009	<a href="#">National Highways</a> Deadline 10 submission - 8.1 Statement of Commonality for Statements of Common Ground (Tracked) - Rev 6
REP10-010	<a href="#">National Highways</a> Deadline 10 submission - 8.3 Statement of Common Ground with Cambridgeshire County Council
REP10-011	<a href="#">National Highways</a> Deadline 10 submission - 8.7 Statement of Common Ground with Historic England
REP10-012	<a href="#">National Highways</a> Deadline 10 submission - 9.1 Guide to the Application (Clean) - Rev 9
REP10-013	<a href="#">National Highways</a> Deadline 10 submission - 9.1 Guide to the Application (Tracked) - Rev 9
REP10-014	<a href="#">National Highways</a> Deadline 10 submission - 9.9 Compulsory Acquisition Schedule (final version)
REP10-015	<a href="#">National Highways</a> Deadline 10 submission - 9.13 Draft Development Consent Order - Schedule of Drafting Changes for Deadline 10 - Rev 5
REP10-016	<a href="#">National Highways</a> Deadline 10 submission - 9.41 Applicant's Comments on Deadline 9 Submissions
REP10-017	<a href="#">Historic England</a> Deadline 10 submission
REP10-018	<a href="#">Anglian Water</a> Deadline 10 submission - Comments on any submissions received by D9
<b>Deadline 11 – 11 July 2022</b>	
<b>Deadline for the receipt by the ExA of:</b>	
- Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP11-001	<a href="#">National Highways</a> Deadline 11 submission - Cover Letter and response to Rule 17 request for further information
REP11-002	<a href="#">National Highways</a> Deadline 11 submission - 3.1 Draft Development Consent Order (Clean)
REP11-003	<a href="#">National Highways</a> Deadline 11 submission - 3.1 Draft Development Consent Order (Tracked)
REP11-004	<a href="#">National Highways</a> Deadline 11 submission - 3.1 Validation Report for the Draft Development Consent Order Deadline 11

REP11-005	<a href="#">National Highways</a> Deadline 11 submission - 3.2 Explanatory Memorandum (Clean) - Rev 5
REP11-006	<a href="#">National Highways</a> Deadline 11 submission - 3.2 Explanatory Memorandum (Tracked) - Rev 5
REP11-007	<a href="#">National Highways</a> Deadline 11 submission - 8.1 Statement of Commonality for Statements of Common Ground (Clean) - Rev 7
REP11-008	<a href="#">National Highways</a> Deadline 11 submission - 8.1 Statement of Commonality for Statements of Common Ground (Tracked) - Rev 7
REP11-009	<a href="#">National Highways</a> Deadline 11 submission - 8.2 Statement of Common Ground with Peterborough City Council - Rev 1
REP11-010	<a href="#">National Highways</a> Deadline 11 submission - 8.6 Statement of Common Ground with Natural England
REP11-011	<a href="#">National Highways</a> Deadline 11 submission - 8.8 Statement of Common Ground between National Highways Limited and Anglian Water Services Limited - Rev 1
REP11-012	<a href="#">National Highways</a> Deadline 11 submission - 9.1 Guide to the Application (Clean) - Rev 10
REP11-013	<a href="#">National Highways</a> Deadline 11 submission - 9.1 Guide to the Application (Tracked) - Rev 10
REP11-014	<a href="#">National Highways</a> Deadline 11 submission - 9.13 Draft DCO Schedule of Drafting Changes for Deadline 11 - Rev 6
REP11-015	<a href="#">Environment Agency</a> Deadline 11 submission - Response to Rule 17 Letter
REP11-016	<a href="#">CMS on behalf of National Grid Electricity Transmission plc</a> Deadline 11 submission - Withdrawal of Objection
REP11-017	<a href="#">CMS on behalf of National Grid Gas plc</a> Deadline 11 submission - Withdrawal of Objection
REP11-018	<a href="#">Robert W Reid</a> Deadline 11 submission
REP11-019	<a href="#">Osborne Clarke on behalf of Western Power Distribution</a> Deadline 11 submission - Response to Rule 17 Letter
<b>Other Documents</b>	
OD-001	<a href="#">Section 56 notice</a>
OD-002	<a href="#">Regulation 32 Transboundary Screening</a>
OD-003	<a href="#">Highways England</a> Section 56 Certificate
OD-004	<a href="#">Highways England</a> Section 59 Certificate
OD-005	<a href="#">Highways England</a> Regulation 16 Notice

# **Appendix C: Abbreviations List**

A47 Wansford to Sutton Project TR010039  
Report to the Secretary of State

<b>Abbreviation</b>	<b>Full reference</b>
AA	Appropriate Assessment
AADT	Annual Average Daily Traffic
ARSI	Access Required Site Inspection
ALC	Agricultural Land Classification
ANCB	Appropriate Nature Conservation Body
AP	Affected Persons
AQMA	Air Quality Management Areas
ARN	Affected Road Network
ASI	Accompanied Site Inspection
ATC	Automated Traffic Counts
BGS	British Geological Society
BMV	Best and most versatile
BoR	Book of Reference 1
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CAS	Compulsory Acquisition Schedule
CCC	Cambridgeshire County Council
CDW	Construction and demolition waste
CEPP	Climate Emergency Planning Policy
CFA	Continuous flight auger
CIEEM	Chartered Institute of Ecology and Environmental Management
CNG	WHO Guidelines for Community Noise 1999
CWS	County Wildlife Sites
dB	decibels
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DCLG	Department for Communities and Local Government
DMRB	Design Manual for Roads and Bridges
DM	Do-Minimum
DS	Do-Something
EA	Environment Agency
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
eDNA	Environmental DNA
EIA	Environmental Impact Assessment
EL	Examination Library
EM	Explanatory Memorandum
EMP	Environmental Management Plan
ENC	East Northamptonshire Council

ENG	WHO Environmental Noise Guidelines for the European Region
EPR	Examination Procedure Rules
EqIA	Equality Impact Assessment
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FRA	Flood Risk Assessment
GCN	Great crested newts
GDG	Guideline Development Group)
GIR	Ground Investigation Report
GLD	Government Legal Department
GLVIA	Guidelines for Landscape and Visual Impact Assessment
HDC	Huntingdonshire District Council
HE	Historic England
HEGDMS	Highways England Geotechnical Data Management System
HEWRAT	Highways England Water Risk Assessment Tool
HGV	Heavy goods vehicle
HRA	Habitats Regulations Assessment
IAPI	Initial Assessment of the Principal Issues
ICE	In-combination effects
IEMA	Institute of Environmental Management and Assessment
INNS	Invasive non-native species
IP	Interested Parties
IPe	Inter-peak
ISH	Issue Specific Hearing
LCA	Landscape Character Areas
LGS	Local Geological Site
LIR	Local Impact Report
LLFA	Local Lead Flood Authority
LSE	Likely Significant Effects
LOAEL	Lowest Observed Adverse Effect Level
LV	Limit Values
LWS	Local Wildlife Site
MCTC	Manual Classified Turning Count
MoD	Ministry of Defence
mph	Miles per hour
MS	Microsoft
NDC	National Determined Contribution
NE	Natural England
NERCA	Natural Environment and Rural Communities Act
NH	National Highways
NIA	Noise Important Areas

NNC	North Northamptonshire Council
NNG	WHO Night-Time Noise Guidelines for Europe 2009
NMU	Non-Motorised Users
NSER	No Significant Effects Report
NOEL	No Observed Effect Level
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NPSNN	National Policy Statement for National Networks
NSN	National Sites Network
NSIP	Nationally Significant Infrastructure Project
NZS	Net Zero Strategy
OFH	Open Floor Hearing
PINS	Planning Inspectorate
PCC	Peterborough City Council
PCU	Passenger car units
PM	Preliminary Meeting
PWS	Potential Wildlife Site
PPG	Planning Practice Guidance
PPV	Peak Particle Velocity
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
rDCO	Recommended Development Consent Order
REAC	Record of Environmental Actions and Commitments
RIES	Report on the Implications for European Sites
RIS1	Road Investment Strategy 1
RIS2	Road Investment Strategy 2
RR	Relevant Representation
SAC	Special Areas of Conservation
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoSLUHC	Secretary of State for Levelling Up, Housing and Communities
SoST	Secretary of State for Transport
SPA	Special Protection Area
SPC	Sutton Parish Council
SSSI	Site of Special Scientific Interest
SuDS	Sustainable Drainage Systems
SWMP	Site Waste Management Plan
TA	Transport Assessment
TAG	Transport Appraisal Guidance
TDP	Transport Decarbonisation Plan
TP	Temporary Possession
UKHSA	UK Health Security Agency
UNEP	United Nations Environmental Programme

USI	Unaccompanied Site Inspection
WCA	Wildlife and Countryside Act
WFD	Water Framework Directive
WHO	World Health Organisation
WPC	Wansford Parish Council
WR	Written Representations
WTM	Wansford Traffic Model
WTR	Wildlife Trust Reserves
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility

# **Appendix D:**

## **Document Irregularities Identified**

A47 Wansford to Sutton Project TR010039  
Report to the Secretary of State

## **APPENDIX D: DOCUMENT IRREGULARITIES IDENTIFIED**

### Environmental Statement – Chapter 2: The Proposed Scheme

Three versions of the document were submitted to the Examination as follows. The revision identifiers given are also shown. As can be seen, the first two versions had the same reference number.

<b>EL Reference</b>	<b>Revision Number</b>
[APP-040]	Rev 0
[AS-013]	Rev 0
[REP2-009]	Rev 1 (Clean)
[REP2-010]	Rev 1 (Tracked Change)

### Environmental Statement – Chapter 8: Biodiversity

Two versions of the document were submitted to the Examination as follows. The revision identifiers given are also shown. As can be seen, the second version, which has differences to the original version, has the same revision.

<b>EL Reference</b>	<b>Revision Number</b>
[APP-046]	Rev 0
[AS-015]	Rev 0

### Environmental Statement – Figures 7.1 to 7.5

Two versions of the document were submitted to the Examination as follows. The revision identifiers given are also shown. As can be seen, the second version, which has differences to the original version, has the same revision. It should be noted that the 'Schedule of Figures' in the document omits Figure 7.5 – Visual Receptors Sheet 4.

<b>EL Reference</b>	<b>Revision Number</b>
[APP-059]	Rev 0
[REP2-020]	Rev 0

For clarity the drawings which make up the final submitted version should be:

<b>Figure Title</b>	<b>Drawing Number</b>
Figure 7.1 - Site Location	HE551494-GTY-EGN-000-DR-GI-30040
Figure 7.2 - Landscape Context	HE551494-GTY-EGN-000-DR-GI-30041
Figure 7.3A - Landscaper Character	HE551494-GTY-EGN-000-DR-GI-30042
Figure 7.3B - Landscaper Character	HE551494-GTY-EGN-000-DR-GI-30043
Figure 7.4 – Visual Context	HE551494-GTY-EGN-000-DR-GI-30044
Figure 7.5 - Visual Receptors Sheet 1	HE551494-GTY-EGN-000-DR-GI-30045
Figure 7.5 - Visual Receptors Sheet 2	HE551494-GTY-EGN-000-DR-GI-30046
Figure 7.5 - Visual Receptors Sheet 3	HE551494-GTY-EGN-000-DR-GI-30047
Figure 7.5 - Visual Receptors Sheet 4	HE551494-GTY-EGN-000-DR-GI-30104
Figure 7.5 - Visual Receptors Sheet Overview	HE551494-GTY-EGN-000-DR-GI-30048

Environmental Statement – Appendix 7.6 Arboricultural impact Assessment

Three versions were submitted to the Examination. As can be seen the final two have the same revision number. It is stated that the change between the final two version was “New cover only”.

<b>EL Reference</b>	<b>Revision Number</b>
[APP-096]	Rev 0
[REP2-022]	Rev 1

<b>EL Reference</b>	<b>Revision Number</b>
[REP4-007]	Rev 1 (New Cover Only)

Engineering Drawings and Sections [REP2-005]

<b>Drawing title as set out in document</b>	<b>Issue</b>
Engineering Drawings and Sections (A47 Long Sections) – Regulation 5(2)(o), 5(2)(p) and 6(2) Sheet 1 of 6	Title should be “Engineering Drawings & Sections (A47 Mainline Long Sections) Regulations 5(2)(o), 5(2)(p) & 6(2) Sheet 1 of 6” Revision should be C02 not P01
Engineering Drawings and Sections (A47 Long Sections) – Regulation 5(2)(o), 5(2)(p) and 6(2) Sheet 2 of 6	Title should be “Engineering Drawings & Sections (A47 Mainline Long Sections) Regulations 5(2)(o), 5(2)(p) & 6(2) Sheet 2 of 6” Revision should be C02 not P01
Engineering Drawings and Sections (A47 Long Sections) – Regulation 5(2)(o), 5(2)(p) and 6(2) Sheet 3 of 6	Title should be “Engineering Drawings & Sections (A47 Mainline Long Sections) Regulations 5(2)(o), 5(2)(p) & 6(2) Sheet 3 of 6” Revision should be C02 not P01
Engineering Drawings and Sections (A47 Long Sections) – Regulation 5(2)(o), 5(2)(p) and 6(2) Sheet 4 of 6	Title should be “Engineering Drawings & Sections (A47 Mainline Long Sections) Regulations 5(2)(o), 5(2)(p) & 6(2) Sheet 4 of 6” Revision should be C02 not P01
Engineering Drawings and Sections (A47 Long Sections) – Regulation	Title should be “Engineering Drawings & Sections (A47 Mainline Long Sections)

Drawing title as set out in document	Issue
5(2)(o), 5(2)(p) and 6(2) Sheet 5 of 6	Regulations 5(2)(o), 5(2)(p) & 6(2) Sheet 5 of 6" Revision should be C02 not P01
Engineering Drawings and Sections (A47 Long Sections) – Regulation 5(2)(o), 5(2)(p) and 6(2) Sheet 6 of 6	Title should be "Engineering Drawings & Sections (A47 Mainline Long Sections) Regulations 5(2)(o), 5(2)(p) & 6(2) Sheet 6 of 6" Revision should be C02 not P01
Engineering Drawings and Sections (A47Side Road Long Sections) – (New Link connecting A47 New Sutton Roundabout and Sutton Heath Road/Langley Bush Road)	Revision should be C02 not P01
Engineering Drawings and Sections (A47Side Road Long Sections) – (New Link connecting A47 New Sutton Roundabout and Peterborough Road)	Revision should be C02 not P01
Engineering Drawings and Sections (A47 Side Road Long Sections) – (New Interchange link from A1 SB to A47 EB)	Revision should be C02 not P01
Engineering Drawings and Sections (A47 Side Road Long Sections) – (New Link to the Petrol Station/ Sacrewell)	Revision should be C02 not P01
Engineering Drawings Regulation 5(2)(o) & 6(2)(a) Structures Drawings Structure S02, CH.1+330.5	Revision should be C02 not P02
Engineering Drawings Regulation 5(2)(o) & 6(2)(a) Structures Drawings Structure S05, CH.0+298	Revision should be C02 not P01

<b>Drawing title as set out in document</b>	<b>Issue</b>
Engineering Drawings Regulation 5(2)(o) & 6(2)(a) Structures Drawings Structures Location Plan	Revision should be C02 not P01
Engineering Drawings Regulation 5(2)(o) & 6(2)(a) Structures Drawings Structure S04, CH.1+235	Revision should be C02 not P01

The following drawings should be deleted from the Engineering drawings and sections schedule as they show the Proposed Development as originally submitted, not with the accepted changes.

<b>Title</b>	<b>Drawing Number</b>
Engineering Drawings & Sections (A47 Side Road Long Sections) Sacrewell Farm	HE551494-GTYHSR-000-DR-CH31007
Engineering Drawings & Sections (A47 Side Road Cross Sections) Sacrewell Farm Sheet 1 of 3	HE551494-GTYHSR-000-DR-CH31008
Engineering Drawings & Sections (A47 Side Road Cross Sections) Sacrewell Farm Sheet 2 of 3	HE551494-GTYHSR-000-DR-CH31009
Engineering Drawings & Sections (A47 Side Road Cross Sections) Sacrewell Farm Sheet 3 of 3	HE551494-GTYHSR-000-DR-CH31010

# **Appendix E:**

## **Examining Authority's recommended Development Consent Order**

A47 Wansford to Sutton Project TR010039  
Report to the Secretary of State

**202X No. XX**

**INFRASTRUCTURE PLANNING**

**The A47 Wansford to Sutton Development Consent Order 202X**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* \*\*\*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by a *single appointed person* (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The *single appointed person*, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report and recommendation of the *single appointed person*, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122 and 123 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 Schedule 5 to, the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the A47 Wansford to Sutton Development Consent Order 202[X] and comes into force on [XX].

#### **Interpretation**

2.—(1) In this Order except where provided otherwise—

“the 1961 Act” means the Land Compensation Act 1961(d);

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(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/2381, S.I. 2015/377, S.I. 2017/ 572; modified by S.I. 2012/1659.  
(c) S.I. 2010/103, amended by S.I. 2012/635.  
(d) 1961 c. 33.

“the 1965 Act” means the Compulsory Purchase Act 1965(a);

“the 1980 Act” means the Highways Act 1980(b);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(c);

“the 1984 Act” means the Road Traffic Regulation Act 1984(d);

“the 1990 Act” means the Town and Country Planning Act 1990(e);

“the 1991 Act” means the New Roads and Street Works Act 1991(f);

“the 2004 Act” means the Traffic Management Act 2004(g);

“the 2008 Act” means the Planning Act 2008(h);

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order,

“the book of reference” means the document of that description certified by the Secretary of State as the book of reference for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“bridleway” has the same meaning as in the 1980 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“business day” means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(i);

“carriageway” has the same meaning as in section 329(1) of the 1980 Act;

“the classification of roads plans” means the documents of that description certified by the Secretary of State as the classification of roads plans for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant, equipment, welfare facilities and temporary buildings, diversion and laying of underground apparatus including site clearance, and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“completion or completed” means the relevant parts of the authorised development are completed and fully open to traffic;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(j) and for the purposes of this Order includes parts of a cycle track and a right of way on foot;

- 
- (a) 1965 c. 56.
  - (b) 1980 c. 66.
  - (c) 1981 c. 66.
  - (d) 1984 c. 27.
  - (e) 1990 c. 8.
  - (f) 1991 c. 22.
  - (g) 2004 c.18.
  - (h) 2008 c.29.
  - (i) 1970 c.80.
  - (j) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

“detrunking plans” mean the documents of that description certified by the Secretary of State as the detrunking plans for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991<sup>(a)</sup> and includes the carrying on, for any purpose, of any practice which involves management of the level of water in a watercourse;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

and in this definition “electronic communications network” has the same meaning as is in section 32(1) (meaning electronic communications networks and services) of the Communications Act 2003<sup>(b)</sup>

“the engineering drawings and sections” means the documents of that description certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“the environmental statement” means the document of that description submitted with the application for this Order and certified by the Secretary of State as the environmental statement for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“footpath” and “footway” have the same meaning as in section 329(1) of the 1980 Act and include part of a footpath or footway;

“the general arrangement plans” means the documents of that description certified by the Secretary of State as the general arrangement plans for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“hedgerow” has the same meaning as in Regulation 3 of the Hedgerows Regulations 1997<sup>(c)</sup>;

“hedgerow plans” means the documents of that description certified as the hedgerow plans by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“highway” has the same meaning as in section 328(1) of the 1980 Act and includes part of a highway;

“the highway authority” means the undertaker;

“important hedgerow” has the same meaning as in Regulation 4 of the Hedgerows Regulations 1997;

“land adjacent to the Order limits” means any land outside but adjacent to the Order limits which is reasonably necessary to construct or maintain the authorised development or any section or part of the authorised development;

“the land plans” means the documents of that description certified as the land plans by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“limits of deviation” means the limits of deviation referred to in article 8 (limits of deviation);

“the local highway authority” means Peterborough City Council;

“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove, replace or reconstruct, provided such works do not give rise to any materially new or materially different effects in comparison with those reported in the environmental statement, in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

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(a) 1991 c. 59, as amended by paragraph 323, Part 1 of Schedule 2 of S.I. 2013/755 (W.55), section 100 of the Environment Act 1995 (c. 25) and paragraph 39, Schedule 2 of the Flood Water Management Act 2010 (c. 29).

(b) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210

(c) S.I. 1997/1160, as amended by S.I. 2003/2155, S.I. 2015/1997, S.I. 2015/377, S.I. 2009/1307 and S.I. 2013/755.

“NGG” means National Grid Gas Plc (company number 02006000) whose registered office is at 1-3 The Strand, London, WC2N 5EH;

“Order land” means the land shown on the land plans which is within the limits of the land to be acquired permanently or used permanently or temporarily and described in the book of reference;

“the Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the land plans and works plans within which the authorised development may be carried out;

“outline traffic management plan” means the document of that description certified by the Secretary of State as the outline traffic management plan for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003;

“public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation;

“relevant planning authority” means in any given provision of this Order the planning authority for the area in which the land to which the provision relates is situated;

“the rights of way and access plans” means the documents of that description certified as the rights of way and access plans by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“Secretary of State” means the Secretary of State for Transport, except in article 51 where directions may be given by the Secretary of State for Justice;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street,

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A(b) (traffic authorities) of the 1984 Act;

“traffic regulation plans” means the plans of that description certified as the traffic regulation plans by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10(c) (general provision as to trunk roads) or section 19(1)(d) (certain special roads and other highways to become trunk roads) of the 1980 Act;
- (b) an order made or direction given under section 10 of that Act; or
- (c) an order granting development consent; or
- (d) any other enactment;

---

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(b) This section was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22); and brought into force by S.I. 1991/2288.

(c) As amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(d) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

“the undertaker” means National Highways Limited, company number 09346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the documents of that description certified as the works plans by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified).

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

### **Disapplication of legislative provisions**

**3.**—(1) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup> insofar as they relate to temporary possession of land under articles 34 (temporary use of land for carrying out the authorised development) and 35 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development.

(2) Section 32 (variation of awards) of the Land Drainage Act 1991<sup>(b)</sup> does not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development.

### **Maintenance of drainage works**

**4.** Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise agreed in writing between the undertaker and the person responsible.

## **PART 2**

### **PRINCIPAL POWERS**

### **Development consent etc. granted by the Order**

**5.**—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out and operated within the Order limits.

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(a) 2017 c. 20.

(b) 1991 c. 59, as amended by paragraph 323, Part 1 of Schedule 2 of S.I. 2013/755 (W.55), section 100 of the Environment Act 1995 (c. 25) and paragraph 39, Schedule 2 of the Flood Water Management Act 2010 (c. 29).

(2) Any enactment applying to land within the Order limits or land adjacent to the Order limits has effect subject to the provisions of this Order.

### **Maintenance of authorised development**

6. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

### **Planning permission**

7. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order.

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

### **Limits of deviation**

8.—(1) In constructing Work Nos. 1, 2, 6, 11, 12, 13, 15, 19, 20, 21, 22, 23, 37, 40, 41, 42, 43, 44, 45, 47, 51, 53 and 55 the undertaker may

- (a) in deviating laterally from the centrelines shown on the works plans, vary the situation of the centreline by up to a maximum of 3 metres either side of the centreline of that work as shown on the works plans provided the works do not extend beyond the Order limits; and
- (b) deviate by up to 3 metres from the points of commencement and termination.

(2) In constructing or maintaining any other work comprised in the authorised development the undertaker must construct any such work within the lateral limits of deviation shown on the works plan for the relevant work except that these maximum limits of lateral deviation and commencement and termination limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects from those reported in the environmental statement.

(3) In carrying out any work comprised in the authorised development the undertaker may deviate vertically from the levels of the authorised development shown on the engineering drawings and sections, to a maximum of 1 metre upwards or 1 metre downwards, except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects from those reported in the environmental statement.

### **Benefit of Order**

9.—(1) Subject to article 10 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

## Consent to transfer benefit of Order

**10.**—(1) Subject to paragraph (5) the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee;
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (5), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) If the benefit of the provisions of this Order relating to compulsory acquisition is transferred or granted to a transferee or grantee pursuant to this article and the transferee or grantee exercises those powers then the undertaker alone is liable for any compensation that is payable to another party as a consequence of the exercise of those powers by the transferee or grantee.

(5) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) Anglian Water Services Limited (company number 2366656), whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, United Kingdom, PE29 6XU (or a related subsidiary company), for the purposes of undertaking Work Nos. 27 and 49;
- (b) Western Power Distribution (East Midlands) Plc (company number 02366923), whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB, for the purposes of undertaking Work Nos. 3, 5, 8, 9, 14, 18, 26, 29, 36, 48, 52, 54, 57 and 58;
- (c) NGG for the purposes of undertaking Work No. 4.

## PART 3 STREETS

### Application of the 1991 Act

**11.**—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act (a); or
- (b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(b) (dual carriageways and roundabouts) of the 1980 Act or section 184(c) (vehicle crossings over footways and verges) of that Act.

---

(a) 1991 c. 22, to which are amendments not relevant to section 86 in the Act.  
(b) As amended by relevant instruments which are section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).  
(c) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22).

(2) In Part 3 of the 1991 Act references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(a) (power to give directions as to timing of street works);
- (b) section 56A(b) (power to give directions as to placing of apparatus);
- (c) section 58(c) (restrictions following substantial road works);
- (d) section 58A(d) (restriction on works following substantial street works);
- (e) section 73A (power to require undertaker to re-surface street);
- (f) section 73B (power to specify timing etc. of re-surfacing);
- (g) section 73C (materials, workmanship and standard of re-surfacing);
- (h) section 78A (contributions to costs of re-surfacing by undertaker); and
- (i) Schedule 3A(e) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 16 (Temporary alteration, diversion, prohibition and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(f) referred to in paragraph (4) are—

- (a) section 54(g) (advance notice of certain works), subject to paragraph (6);
- (b) section 55(h) (notice of starting date of works), subject to paragraph (6);
- (c) section 57(i) (notice of emergency works);
- (d) section 59(j) (general duty of street authority to co-ordinate works);
- (e) section 60 (k) (general duty of undertakers to co-operate);
- (f) section 68 (l) (facilities to be afforded to street authority);
- (g) section 69 (m) (works likely to affect other apparatus in the street);
- (h) section 75(n) (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route).

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

- 
- (a) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).
  - (b) Inserted by section 44 of the Traffic Management Act 2004 (c. 18).
  - (c) As amended by section 51 of the Traffic Management Act 2004 (c. 18).
  - (d) Inserted by section 52 of the Traffic Management Act 2004 (c. 18).
  - (e) Inserted by section 52 and Schedule 4 of the Traffic Management Act 2004 (c. 18).
  - (f) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (g) As also amended by section 49(1) of the Traffic Management Act 2004.
  - (h) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
  - (i) As also amended by section 52(3) of the Traffic Management Act 2004.
  - (j) As amended by section 41 of the Traffic Management Act 2004.
  - (k) As amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
  - (l) As amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
  - (m) As amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (n) As amended by section 58 of the Traffic Management Act 2004 (c. 18).

(7) Nothing in article 12 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87(a) (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is, by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

(8) Any order made by the Secretary of State under section 74A(2)(a) (charge determined by reference to duration of works) of the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012(b) does not have effect in relation to the construction or maintenance of the authorised development.

### **Construction and maintenance of new, altered or diverted streets and other structures**

**12.**—(1) Any highway (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing with the local highway authority, the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a footpath, cycle track or bridleway is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(4) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(5) Where a highway is de-trunked under this Order—

- (a) section 265(c) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and
- (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that detrunking must, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of detrunking.

(6) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority unless otherwise agreed in writing between the undertaker and the local highway authority, and the

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(a) 1991 c. 22.

(b) S.I. 2012/425, as amended by S.I. 2015/377 and S.I. 2018/215.

(c) The following provisions have been inserted into the section by paragraph 52, Schedule 1 of the Infrastructure Act 2015 (c.7).

remainder of the bridge, including the waterproofing membrane, and structure below, parapets and any system of lighting must be maintained by and at the expense of the undertaker.

(7) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(8) For the purposes of a defence under paragraph (7), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and the competent person had carried out those instructions.

### **Classification of roads, etc.**

**13.**—(1) On or after the date on which the roads described in Part 1 (trunk roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2)(a) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) On or after the date on which the roads described in Part 2 (classified C roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(3) On or after the date on which the roads described in Part 3 (unclassified roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.

(4) On or after the date on which the roads specified in Part 4 (speed limits) of Schedule 4 and identified on the traffic regulation plans are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(5) On such day as the undertaker may determine, the order specified in column (3) of Part 5 (revocations and variations of existing traffic regulation orders) of Schedule 3 is to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

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(a) As amended by section 22 of the 1991 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(6) Unless otherwise agreed in writing with the local highway authority, the footpaths, cycle tracks, footways and bridleways set out in Part 6 (footpaths, cycle tracks, footways and bridleways) of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(7) On the date on which the roads described in Part 7 (roads to be detrunked) of Schedule 3 and identified on the detrunking plans are completed and open for traffic, they are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 5(2)(a) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(8) The application of paragraphs (1) to (7) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

### **Power to alter layout etc. of streets**

**14.**—(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1)—

- (a) are exercisable on the giving of not less than 42 days' notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority.

(4) If a street authority which receives an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 6 weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(5) Any application to which this article applies must include a statement that the provisions of paragraph (4) apply to that application.

(6) Paragraphs (2), (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Street Works**

**15.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street; or carry out works to strengthen or repair the carriageway;
- (c) place and keep apparatus in or under the street;
- (d) maintain, renew or alter apparatus in the street or change its position;
- (e) demolish, remove, replace and relocate any street furniture;
- (f) execute any works to provide or improve sight lines;
- (g) execute and maintain any works to provide hard and soft landscaping;
- (h) carry out re-lining and placement of road markings;
- (i) remove and install temporary and permanent signage; and

- (j) execute any works required for, or incidental to, any works referred to in subparagraphs (a) to (i).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1)(a) (prohibition of unauthorised streetworks) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### **Temporary alteration, diversion, prohibition and restriction of use of streets**

**16.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily prohibited or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily alter, divert, prohibit or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act(b).

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

(7) Any application to which this article applies must include a statement that the provisions of paragraph (6) apply to that application.

### **Permanent stopping up and restriction of use of streets and private means of access**

**17.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Part 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and identified on the rights of way and access plans to the extent specified and described in column (3) of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Part 2 or Part 3 of Schedule 4 (being a highway or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new highway or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or

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(a) 1991 c. 21. There are amendments to section 48(3) and 51(1) but none is relevant to this Order.

(b) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the highway or private means of access until the completion and opening of the new highway or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Part 1 or Part 4 of Schedule 4 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street or private means of access concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) The undertaker may, in connection with the carrying out of the authorised development, alter the private means of access specified in column (1) of Part 5 of Schedule 4 as specified in column (2) of that Part.

(6) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(7) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1(a) of the 1961 Act.

(8) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**18.** The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Clearways**

**19.—**(1) On or after such day as the undertaker may determine, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 8 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) and identified on the traffic regulation plans where it is specified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) applies—

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;
  - (ii) the maintenance, improvement, reconstruction or operation of the road;
  - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable, or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 1 (the Electronic Communications Code) to the Communications Act 2003(a); or
  - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes,
  - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services (Universal Postal Service) Order 2012 (c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person’s control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(d).

### **Traffic Regulation**

**20.—**(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;

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(a) 2003, Schedule 3A.

(b) 1991 c. 56.

(c) S.I 2012/936, amended by 2013/3108 and 2015/643.

(d) 2004 c. 18, as brought into force by Article 2 of S.I. 2004/2380 and Article 2 of S.I. 2009/1095 (W.55).

- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

- (a) given not less than—
  - (i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces) of the 1984 Act<sup>(a)</sup>,and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004<sup>(b)</sup>.

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) within a period of 24 months from the opening of the authorised development.

(8) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.

(9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

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(a) 1984 c.27, section 32 was amended by sections 1, 2, 8(1) and paragraph 4 of Schedule 5 to the Local Government Act 1985 (c. 51) and by section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c. 18, Schedule 7 as implemented by Article 2 of S.I. 2007/2053, Article 2 and Schedule of S.I. 2007/3174; as amended by Regulation 28 of S.I. 2013/362 and Regulation 2 and 3 of S.I. 2018/488.

(11) If the traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

(12) Any application to which this article applies must include a statement that the provisions of paragraph (11) apply to that application.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**21.**—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(7) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4) fails to notify the undertaker of a decision within 42 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

(8) Any application to which this article applies must include a statement that the provisions of paragraph (7) apply to that application.

(9) In this article expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

#### **Protective work to buildings**

**22.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

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(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I.2016/1154, amended by S.I. 2018/110

(c) 1991 c. 57.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development;
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specify the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 49 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (8) or (9) is to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means —

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(a) 2008 c. 29, section 152 as implemented by Article 3 of S.I. 2010/101 and amended by S.I. 2009/1307.

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

**Authority to survey and investigate the land**

**23.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker sees fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land indicating the nature of the survey or investigation that the undertaker intends to carry out.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take into the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the local highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either the local highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of the local highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(7) Any application to which this article applies must include a statement that the provisions of paragraph (6) apply to that application.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

**24.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (2) of article 27 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (9) of article 34 (temporary use of land for carrying out the authorised development) and article 50 (Crown rights).

#### **Compulsory acquisition of land – incorporation of the mineral code**

**25.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981<sup>(a)</sup> are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”; and
- (c) for “undertaking” substitute “authorised development”.

#### **Time limit for exercise of authority to acquire land compulsorily**

**26.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 30 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 34 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### **Compulsory acquisition of rights and imposition of restrictive covenants**

**27.**—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

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(a) As amended by S.I. 2009/1307.

(4) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) The undertaker's power to create rights under paragraph (1) includes the power to create rights for the benefit of third parties. Where a right is for the benefit of a third party that right shall, on the exercise of the power of compulsory acquisition, have effect for that party's benefit and be treated for all purposes as though it was vested in the third party directly.

### **Public rights of way**

**28.**—(1) Subject to paragraph (2), the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and shown on the rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the rights of way and access plans, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

### **Private rights over land**

**29.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) on the date of acquisition of the land by the undertaker whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (a)(power of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) on the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation

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(a) 1965 c. 56. Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), Section 103 of the Planning and Compulsory Purchase Act 2004 c. 5 and S.I. 2009/1307.

in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act (a).

(6) This article does not apply in relation to any right to which section 138 (b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 36 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Modification of Part 1 of the 1965 Act**

**30.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(c)(application of compulsory acquisition provisions) of the 2008 Act, is modified as follows—

“(a) In section 4A(1)(d)(extension of time limit during challenge)

(i) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)”, substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(ii) for the “three year period” mentioned in section 4 substitute the “five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsory) of the A47 Wansford to Sutton Development Consent Order 202[X]”.”

(2) In section 11A(e) (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”;

(b) in subsection (2), after “land” insert “under that provision”.

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(b) 2008 c. 29. Section 138 as amended by section 23 of the Growth and Infrastructure Act 2013 (c. 27) and paragraph 12, Schedule 1 of S.I. 2017/1285.

(c) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

(d) 1981 c. 67.

(e) 1965 c.56, section 11A as inserted by section 202(1) Housing and Planning Act 2016 (c. 22).

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 26 of the A47 Wansford to Sutton Development Consent Order 202[X]”.

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 32 (acquisition of subsoil or airspace only) on the A47 Wansford to Sutton Development Consent Order 202[X], which excludes the acquisition of subsoil or airspace only from this schedule”;

(b) after paragraph 29, end insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 22 (protective works to buildings), 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development) of the A47 Wansford to Sutton Development Consent Order 202[X].”

#### **Application of the 1981 Act**

**31.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5(2)(a) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(b) (time limit for general vesting declaration).

(6) In section 5B(c) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)”, substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008”; and

(b) for the “three year period” mentioned in Section 5A substitute the “five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the A47 Wansford to Sutton Development Consent Order 202[X]”.

(7) In section (6)(d)(notices after execution of declaration), in subsection (1)(b) substitute—

“(b) on every person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served in section 134 (notice of authorisation of compulsory acquisition of the Planning Act 2008.”

(8) In section 7(e) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1(a) (counter-notice requiring purchase of and not in general vesting declaration) for paragraph 1(2) substitute—

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(a) 1981 c.67, section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(b) 1981 c. 67, section 5A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(c) 1981 c. 67, section 5B was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(d) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(e) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016.

“(2) But see article 32 (acquisition of subsoil or airspace only) of the A47 Wansford to Sutton Development Consent Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125(b) (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil or airspace only**

**32.—**(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 24 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 30 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (1) and (2) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

### **Rights under or over streets**

**33.—**(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act(c).

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(a) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2012/16.  
(b) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).  
(c) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(5) Compensation is not payable under paragraph (4) to any person who is a statutory undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act (a) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### Temporary use of land for carrying out the authorised development

**34.**—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11(b) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (c);
- (b) remove any buildings and vegetation from that land,
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken), or any other mitigation works in connection with the authorised development.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 7 (land of which temporary possession may be taken); or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act (d) or made a declaration under section 4 of the 1981 Act (e) in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;

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(a) 1991 c. 22, to which there are no amendments relevant to section 85 of the Act.  
(b) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).  
(c) 1981 c. 66. Section 4 as amended by section 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 21).  
(d) 1965 c. 56, section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), Section 103 of the Planning and Compulsory Purchase Act 2004 c. 5 and S.I. 2009/1307.  
(e) 1981 c. 66. Section 4 as amended by section 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 21).

- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development;
- (e) remove or reposition necessary mitigation works or any apparatus installed for or belonging to statutory undertakers.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act(a).

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152(b) (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 32 (acquisition of subsoil or airspace only).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13(c) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act(d).

(12) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 24 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights and imposition of restrictive covenants).

### **Temporary use of land for maintaining the authorised development**

**35.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(b) 2008 c. 29, section 152 as implemented by Article 3 of S.I. 2010/101 and amended by S.I. 2009/1307.

(c) 1965 c. 56, section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and part of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(d) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and must explain the purpose for which entry is taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act<sup>(a)</sup>.

(9) Nothing in this article affects any liability to pay compensation under section 152<sup>(b)</sup> (compensation in case where no right claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13<sup>(c)</sup> (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act<sup>(d)</sup>.

(12) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

### **Statutory undertakers**

**36.—**(1) Subject to the provisions of article 27 (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(b) 2008 c. 29, Section 152 as implemented by Article 3 of S.I. 2010/101 and amended by S.I. 2009/1307.

(c) 1965 c. 56, section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and part of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(d) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

- (b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3(a) (street works in England and Wales) of the 1991 Act; and
- (b) article 37 (apparatus and rights of statutory undertakers in stopped up streets).

### **Apparatus and rights of statutory undertakers in stopped up streets**

**37.**—(1) Where a street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 17 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by

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(a) 1991 c.22, Part 3 as amended by 2004 (c. 18), S.I. 2007/1952, S.I. 2008/102 (w. 55) and 2003 (c. 21).

deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider.

### **Recovery of costs of new connections**

**38.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 36, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 37 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph “public utility undertaker” means a gas, water, electricity or sewerage undertaker.

## **PART 6**

### **OPERATIONS**

### **Felling or lopping of trees and removal of hedgerows**

**39.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1) or (4), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub;

- (b) pay compensation to any person for any loss or damage arising from such activity; and
- (c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981(a) and the Conservation of Habitats and Species Regulations 2010(b) or any successor acts and regulations.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act (c).

(4) The undertaker may, for the purposes of carrying out the authorised development —

- (a) remove any hedgerows within the Order limits and specified in Schedule 8 Part 1 (removal of hedgerows);
- (b) remove the important hedgerows that are within the Order limits and specified in Schedule 8 Part 2 (removal of important hedgerows); and
- (c) without limitation on the scope of sub-paragraph (a), and with the consent of the local authority in whose area the hedgerow is located, remove or translocate any hedgerow within the Order limits that is required to be removed.

(5) The grant of consent of a local authority in terms of paragraph (4)(c) must not be unreasonably withheld.

(6) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(c) the local authority is deemed to have granted consent.

(7) Any application to which this article applies must include a statement that the provisions of paragraph (6) apply to that application.

#### **Trees subject to tree preservation orders**

**40.**—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after 23 March 2021 if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to passengers or other persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and
- (c) the undertaker must consult the relevant planning authority prior to that activity taking place.

(3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

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(a) S.I. 2015/596.

(b) S.I. 2010/490, amended by S.I. 2010/490, S.I. 2010/2020, S.I. 2011/603, S.I. 2011/625, S.I. 2011/950, S.I. 2012/630, S.I. 2012/635, S.I. 2012/637, S.I. 2012/1914, S.I. 2012/1927, S.I. 2013/755, S.I. 2014/2933, S.I. 2015/377, S.I. 2015/1390, S.I. 2015/2020, S.I. 2016/1154, S.I. 2017/1012.

(c) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## PART 7

### MISCELLANEOUS AND GENERAL

#### Application of landlord and tenant law

**41.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### Operational land for purposes of the 1990 Act

**42.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act(a).

#### Defence to proceedings in respect of statutory nuisance

**43.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within paragraphs (d), (fb), (g) or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(c) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent

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(a) 1990 c. 8, to which there are amendments to this sub-section not relevant to this Order.

(b) 1990 c. 43, to which there are amendments to this sub-section not relevant to this Order.

(c) 1990 c. 43, section 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6, Schedule 17 of the Environment Act 1995 (c. 25).

given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(a); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974(b) does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Disregard of certain improvements etc.**

**44.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

### **Set off for enhancement in value of retained land**

**45.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 27 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

(a) any increase in the value of the land over which the new rights are required; and

(b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

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(a) 1974 c. 40. Section 60 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43), there are further amendments to section 61 but none is relevant to this Order.

(b) 1974 c. 40, section 61 to which there are amendments to section 61 but none is relevant to this Order.

## **Protection of interests**

46. Schedule 9 (protective provisions) to the Order has effect.

## **Certification of documents, public register, etc.**

47.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 (documents to be certified) is required to be amended to accord with the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public:

- (a) a copy of each of the documents listed in Schedule 10 (documents to be certified) as may be amended in accordance with paragraph (2); and
- (b) a register of those requirements contained in Part 1 of Schedule 2 of this Order (requirements) that provide for further approvals to be given by the Secretary of State.

(5) The register pursuant to sub-paragraph (4)(b) must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(6) The electronic record set out in paragraph (4) must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

## **Service of notices**

48.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

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(a) 1978 c.30, as amended by section 17 of 1994 (c. 36), there are other amendments but none are relevant.

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

## **Arbitration**

**49.** Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

## **Crown Rights**

**50.—**(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to use, enter upon or in any manner interfere with any land or rights of any description—

- (a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

### **Removal of Human Remains**

**51.**—(1) In this article “the specified land” means the land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Subject to paragraph (12) before any such remains are removed from the specified land the undertaker must consult the local planning authority on the intended removal, following which the undertaker must give notice of the intended removal describing the specified land and stating the general effect of the following provisions of this article by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land for a minimum of 28 days.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the local planning authority

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium, and that person is to, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10) the undertaker is to remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from

individual graves are to be reinterred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment of cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the local planning authority.

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (14) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State for Justice.

(15) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(16) Section 25 of the Burial Act 1857<sup>(a)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(17) Section 239 (use and development of burial grounds) of the 1990 Act applies—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

and in section 240(1) (provisions supplemental to sections 238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (15) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

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(a) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1).

(18) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950(113a) do not apply to the authorised development.

Signed by authority of the Secretary of State for Transport

Address  
Date

*Name*  
Head of the Transport and Works Act Orders Unit  
Department for Transport

# SCHEDULES

## SCHEDULE 1

Articles 2, 5 and 6

### WORKS DESCRIPTION

#### **In the administrative areas of Peterborough City Council**

The authorised development is a nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act (FN66) and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

**Work No. 1** – Dualling of the A47 mainline from the existing Wansford eastern roundabout for 2,600 metres to the termination point to the east for tie into existing A47 including earthworks and associated drainage, as shown on sheets 3, 4, 6 and 7 of the works plans;

**Work No. 2** – A new private means of access to 4 properties and a service vehicle turning point including earthworks and associated drainage, as shown on sheet 1 of the works plans;

**Work No. 3** – Diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables as shown on sheet 1 of the works plans;

**Work No. 4** – Protection of NGG gas pipeline as shown on sheet 1 of the works plans;

**Work No. 5** – Diversion and removal of underground electronic communication cables and apparatus, and underground electricity cables as shown on sheets 1 and 2 of the works plans;

**Work No. 6** – A new carriageway to create a free flow link from A1 southbound to the dualled A47 eastbound (Work No.1) for 634 metres including embankments and associated drainage, as shown on sheets 1, 2 and 3 of the works plans;

**Work No. 7** – Extension to the existing A1 southbound culvert and environmental mitigation to the existing burn and ditch for a length of 400 metres, as shown on sheets 2 and 3 of the works plans;

**Work No. 8** – Diversion of 11kV electricity cable as shown on sheets 2 and 3 of the works plans;

**Work No. 9** – Removal of underground electricity cables as shown on sheets 2 and 3 of the works plans;

**Work No. 10** – A new balancing pond west of the new free flow link from A1 southbound to the dualled A47 eastbound (Work No. 6) and north of Work No. 11 including earthworks, drainage inlets/outlets and a maintenance access track as shown on sheets 2 and 3 of the works plans;

**Work No. 11** – Improvements to the existing A1/A47 on and off ramps to the Wansford eastern roundabout including earthwork widening for 203 metres from the A1 southbound diverge to the Wansford eastern roundabout with a spur 116 metres from the Wansford eastern roundabout, for 65 metres, to the A1 southbound merge as shown on sheets 2 and 3 of the works plans;

**Work No. 12** – Improvement to the eastbound carriageway of the existing A47 from a point 42 metres west of the Wansford western roundabout for 268 metres over the A1 including the of realignment of the central reserve at the Wansford western roundabout as shown on sheet 2 and 3 of the works plans;

**Work No. 13** – Improvements to the existing A47 Wansford eastern roundabout including widening, earthworks and drainage as shown on sheet 3 of the works plans;

**Work No. 14** – Diversion and removal of electricity cables as shown on sheet 3 of the works plans;

**Work No. 15** – A new 900.20 metre length of carriageway to form a new link road from A47 Wansford eastern roundabout (Work No.13) a new A47 westbound off slip from the dualled A47 (Work No.1) including earthworks, associated drainage and along part of a cycle track as shown on sheets 3 and 4 of the works plans;

**Work No. 16** – Diversion and removal of electronic communication and cables and apparatus and diversion of water pipes and construction of a site office and construction areas as shown on sheets 3 and 4 of the works plans;

**Work No. 17** – Two new balancing ponds and construction areas east and north of the new link to filling station and Sacrewell Farm (Work No. 15) and south of the dualled A47 (Work No. 1) including earthworks and drainage inlets and outlets between ponds an outlet to the river Nene and a maintenance access track as shown on sheet 3 of the works plans;

**Work No. 18** – Diversion and removal of electricity cables as shown on sheet 3 of the works plans;

**Work No. 19** – Realignment pumping station access road for 45 metres including earthworks and drainage as shown on sheet 3 of the works plans;

**Work No. 20** – Realignment of footpath to the south of the dualled A47 (Work No.1) as shown on sheet 4 of the works plans;

**Work No. 21** - A new Sacrewell Farm access road connecting to Work No.15 and running north for 312.75 metres passing through the Sacrewell Farm underbridge including earthworks and drainage as shown on sheet 3 of the works plans;

**Work No. 22** – A new access track from Sacrewell Farm access road (Work No. 21) for 21.30 metres to the existing access track including improvements to the existing access as shown on sheet 3 of the works plans;

**Work No. 23** – Realignment of shared cycle track and permissive bridleway and formation of a means of access as shown on sheet 3 of the works plans;

**Work No. 24** – Temporary welfare and compound area including a haul route to Works Nos. 6, 7, 8, 9 and 10 as shown on sheets 2 and 3 of the works plans;

**Work No. 25** – A new Sacrewell Farm Underbridge under the dualled A47 (Work No.1) including structural units, concrete foundations, drainage and waterproofing as shown on sheet 3 of the works plans;

**Work No. 26** – Diversion and removal of electricity cable to mobile mast as shown on sheet 3 of the works plans;

**Work No. 27** – Protection, diversion and resilience works to large diameter water pipelines and associated apparatus as shown on sheet 3 of the works plans;

**Work No. 28** – A new balancing pond to the north of the dualled A47 (Work No.1) including drainage inlets, an outlet to river Nene to the south and an access track as shown on sheet 4 of the works plans;

**Work No. 29** – Diversion and removal of overhead electrical cables as shown on sheets 4 and 6 of the works plans;

**Work No. 30** – Replacement of Wansford Sluice under the dualled A47 (Work No. 1) between Willow Brook and the existing ditch outlet to river Nene on the south as shown on sheet 4 of the works plans;

**Work No. 31** – A new balancing pond to the south of the existing A47 (Work No. 41) including drainage inlets and an outlet to Wansford Sluice (Work No. 30) to the west and an access track as shown on sheet 4 of the works plans;

**Work No. 32** – A flood compensation area to the south of the dualled A47 (Work No.1) consisting of tree clearance, ground works and ground stabilisation as shown on sheet 4 of the works plans;

**Work No. 33** – New access track to balancing pond (Work No. 31) and together with a new bridleway over the access track and access ramps north and south of the dualled A47 (Work No. 1) leading to the new underpass (Work No. 35) to create a walking, cycling, horse riding route including earthworks and drainage as shown on sheet 4 of the works plans;

**Work No. 34** – Demolition of Station House and construction of a new bat hotel as shown on sheet 4 of the works plans;

**Work No. 35** – A new underpass below the dualled A47 (Work No. 1) for walking, cycling and horse-riding including embankments, drainage and waterproofing as shown on sheet 4 of the works plans;

**Work No. 36** – Diversion and removal of electronic communication cables and apparatus, electrical cables and potable water pipes and associated apparatus as shown on sheets 4, 5 and 6 of the works plans;

**Work No. 37** – A new turning head on Sutton Heath Road adjacent to Station House as shown on sheet 4 of the works plans;

**Work No. 38** – A temporary welfare and compound area including a haul road to the north of the dualled A47 (Work No. 1) and a new temporary access track from Work No. 37 as shown on sheets 4, 5 and 6 of the works plans;

**Work No. 39** – Ecological works and landscaping area to the south of the dualled A47 (Work No. 1) as shown on sheet 6 of the works plans;

**Work No. 40** – Conversion works to the existing A47 to create a new private means of access, part cycle track and part bridleway from the dualled A47 (Work No. 1) running east for 590 metres to the new link road to Sutton Heath roundabout (Work No. 45) as shown on sheets 4 and 6 of the works plans;

**Work No. 41** – A realigned carriageway Sutton Heath Road for 150 metres to Work No. 42 including earthworks and drainage as shown on sheet 5 of the works plans;

**Work No. 42** – A new carriageway from the new Sutton Heath roundabout (Work No. 44) north for 718 metres to Sutton Heath Road including earthworks and drainage and access points as shown on sheets 5 and 6 of the works plans;

**Work No. 43** – Realignment of the existing junction between Sutton Heath Road and Langley Bush Road to create a new junction with the new link to Sutton Heath Road (Work No.42) for 57 metres including earthworks and drainage as shown on sheet 5 of the works plans;

**Work No. 44** – A new Sutton Heath roundabout including earthworks, drainage and a safety barrier as shown on sheet 6 of the works plans;

**Work No. 45** – A new part improved carriageway from Sutton Heath roundabout (Work No. 44) for 1,019 metres to Peterborough Road to form the new link road including earthworks, drainage and cycle track as shown on sheets 6 and 7 of the works plans;

**Work No. 46** – A new infiltration pass with drainage inserts to a pond and an access track, to the north of the new link road (Work No.45) and to the south of the dualled A47 (Work No. 1) as shown on sheet 6 of the works plans;

**Work No. 47** – Alterations to The Drift to prevent vehicular traffic and provide a bridleway together with a new turning head to the existing Drift including fencing and gates as shown on sheet 6 of the works plans;

**Work No. 48** – Diversion and removal of existing electronic communication cables and apparatus, underground electricity cables, and potable water pipes as shown on sheets 6 and 7 of the works plans;

**Work No. 49** – Protection, diversion and resilience works to potable water pipes and associated apparatus as shown on sheets 6 and 7 of the works plans;

**Work No. 50** – A new attenuation basin to the south of the dualled A47 (Work No.1) including inlet and outlets with a connection to positive drainage, an access track and breaking up and removal of existing carriageway as shown on sheet 7 of the works plans;

**Work No. 51** – Realignment of the junction between Peterborough Road and Nene Way for 28 metres including earthworks, drainage and footways as shown on sheet 7 of the works plans;

**Work No. 52** – Diversion and removal of electricity cables to the east of Work No. 51 as shown on sheet 7 of the works plans;

**Work No. 53** – A new turning head and access on Upton Road adjacent to Lower Lodge Farm including fencing and gates as shown on sheet 7 of the works plans;

**Work No. 54** – Diversion and removal of existing underground electricity cables, electronic communication cables and apparatus and potable water pipes along Upton Road as shown on sheet 7 of the works plans;

**Work No. 55** – Improvements to the existing Upton Drift including passing places, widening the metalled surface into highway verge, straightening of the S- bend and sight lines and widening of its existing junction with Langley Bush Road and the existing injunction adjacent to Model Farm for 639 metres including earthworks and drainage as shown on sheet 5 of the works plans;

**Work No. 56** – Diversion of electronic overhead and underground communication cables and apparatus as shown on sheet 5 of the works plans;

**Work No. 57** – Diversion of a 11kV electricity cable as shown on sheet 5 of the works plans;

**Work No. 58** – Diversion of the underground cables and protection of the foul sewer as shown on sheet 5 of the works plans;

**Work No. 59** – A new traffic sign indicating The Drift is closed to vehicles as shown on sheet 7 of the works plans.

And for the purposes of or in connection with the construction of any of those works mentioned above, further development within the Order limits which does not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement consisting of:

- (a) alteration to the layout of any street permanently or temporarily, including as part of detrunking or stopping up orders, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level of any such kerb, footpath, footway, cycle track or verge; installing low noise surfacing; and landscaping sections of disused sections;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;

- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (f) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, soakaways, pipes, cables, ducts, traffic signals and lights;
- (g) works to alter the course of or otherwise interfere with a watercourse;
- (h) landscaping, noise bunds and barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works for the benefit or protection of land affected by the authorised development;
- (j) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (k) the felling of trees;
- (l) construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;
- (m) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (n) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 5

### PART 1 REQUIREMENTS

#### **Interpretation**

**1. In this Schedule—**

“contaminated land” has the same meaning as that term is given in section 78A of the Environmental Protection Act 1990<sup>(a)</sup>;

“DMRB” means the Design Manual for Roads and Bridges, which accommodates all current standards, advice and other documents relating to the design, assessment and operation of trunk roads and motorways, or any equivalent replacement to the DMRB published;

“EMP (First Iteration)” means the first iteration of the environmental management plan produced in accordance with the DMRB during the preliminary design stage and certified by

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(a) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 (c. 37).

the Secretary of State as the environmental management plan for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“EMP (Second Iteration)” means the second iteration of the environmental management plan produced in accordance with the DMRB, which is to be a refined version of the EMP (First Iteration) including more detailed versions of the outline plans contained or listed within the EMP (First Iteration) or any other plans as required;

“EMP (Third Iteration)” means the third iteration of the environmental management plan produced in accordance with the DMRB, which is a refined version of the EMP (Second Iteration) and which relates to the operational and maintenance phase of the authorised development;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(a);

“the Landscape and ecology management plan” means the management plan included at Annex B.5 to the EMP (First Iteration);

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England or any equivalent replacement published for that document;

“the masterplan” means the environmental masterplan certified by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(b) or which are European protected species;

“REAC” means the Register of Environmental Actions and Commitments forming table 3.1 of the EMP (First Iteration).

### **Time limits**

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

### **Detailed design**

3.—(1) With the exception Works 21, 22 and 25 as set out in Schedule 1 the authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority and local highway authority on matters related to their functions, Sutton and Wansford Parish Councils in respect of matters within their geographic areas, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) No works shall commence on site until preliminary scheme design engineering sections for Works 21, 22 and 25 as set out in Schedule 1 have been submitted to and agreed in writing by the Secretary of State. Thereafter the authorised development must be designed in detail and carried out so that it is compatible with these approved drawings, following consultation by the undertaker with the relevant planning authority and local highway authority on matters related to their functions and Wansford Parish Council and the Official Custodian of Charities on behalf of The William Scott Abbott Trust, provided that the Secretary of State is satisfied that any amendments to the these approved drawings showing departures from the preliminary scheme design would not

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(a) S.I. 2017/1012.

(b) 1981 c. 69.

give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement

(3) Where amended details are approved by the Secretary of State under sub-paragraphs (1), and (2) those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

### **Environmental Management Plan**

4.—(1) No part of the authorised development is to commence until an EMP (Second Iteration) for that part, in accordance with the EMP (First Iteration) has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, the relevant local highway authority, the Environment Agency, Natural England, the lead local flood authority, Cambridgeshire County Council and the Historic Buildings and Monuments Commission for England to the extent that the content of the EMP (Second Iteration) relates to matters relevant to their functions and Sutton and Wansford Parish Councils in respect of matters within their geographic areas.

(2) The EMP (Second Iteration) for any part of the authorised development must be written in accordance with ISO14001 and so far as is relevant to that part of the authorised development, must reflect the mitigation measures required by the REAC and set out in the environmental statement and must include as many of the following plans and strategies as are applicable to the part of the authorised development to which it relates—

- (a) Site waste management plan;
- (b) Materials management plan;
- (c) Soil management plan, which includes:
  - (i) a soil resource plan;
  - (ii) a soil handling strategy;
- (d) Construction noise and dust management plan;
- (e) Construction communication strategy;
- (f) Landscape and ecology management plan;
- (g) Biosecurity management plan; and
- (h) Water monitoring and management plan;
- (i) Detailed heritage written statement of investigation (mitigation strategy);
- (j) Non Native Species management plan; and
- (k) Operational Unexploded Ordnance emergency response plan.

(3) The relevant part of the authorised development must be constructed in accordance with the approved EMP (Second Iteration).

(4) On completion of construction of each part of the authorised development the EMP (Third Iteration) relating to that part must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, the relevant local highway authority, the Environment Agency, Natural England, the lead local flood authority and the Historic Buildings and Monuments Commission for England to the extent that the content of the EMP (Third Iteration) relates to matters relevant to their functions.

(5) The relevant part of the authorised development must be operated and maintained in accordance with the EMP (Third Iteration).

### **Landscaping**

5.—(1) The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation by the

undertaker with the relevant planning authority on matters related to its functions and Sutton and Wansford Parish Councils in respect of matters within their geographic areas.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and be based on the masterplan.

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels;
- (e) implementation timetables for all landscaping works; and
- (f) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged.

(4) All landscaping works detailed in the approved landscaping scheme referred to in paragraph (1) must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards and other recognised codes of good practice.

(5) Any tree or shrub planted as part of a landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation by the undertaker with the relevant planning authority, gives consent to a variation.

### **Contaminated land and groundwater**

**6.**—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the risk assessment prepared in accordance with sub-paragraph (1) determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

### **Protected species**

**7.**—(1) No part of the authorised development is to commence until for that part, final preconstruction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by that part of the relevant works, or in any of the trees and shrubs to be lopped, removed or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;

- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in subparagraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation by the undertaker with Natural England, and under any necessary licences.

### **Surface and foul water drainage**

**8.**—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, in accordance with the drainage strategy and the mitigation measures set out in the REAC including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and the lead local flood authority on matters related to their functions.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and the lead local flood authority on matters related to their functions, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

### **Flood compensatory storage**

**9.**—(1) Subject to paragraph (2) below, no part of the authorised development is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(2) No part of the authorised development which will reduce the capacity of the floodplain is to commence until a detailed floodplain compensation scheme design for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency.

(3) A floodplain compensation scheme prepared under paragraphs (1) and (2) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 35% climate change allowance event.

(4) Construction of the authorised development must be sequenced so that at no point will the capacity of the floodplain be reduced below pre-construction levels.

(5) Any floodplain compensation scheme must be constructed as approved under paragraphs (1) and (2) and subsequently maintained.

### **Archaeological remains**

**10.**—(1) No part of the authorised development is to commence until for that part a written scheme of investigation (“WSI”) of areas of archaeological interest, reflecting the relevant mitigation measures set out in the REAC, has been submitted to and approved in writing by the

Secretary of State, following consultation by the undertaker with the relevant planning authority and the Historic Buildings and Monuments Commission.

(2) The authorised development must be carried out in accordance with the approved scheme referred to in sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the WSI must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported by way of a notice to the relevant planning authority, and to the Historic Buildings and Monuments Commission in the case of the scheduled monument area, as soon as reasonably practicable from the date they are identified.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date of any notice served under sub-paragraph (4) unless otherwise agreed in writing by the relevant planning authority or, in the case of the scheduled monument area, Historic England.

(6) If the relevant planning authority or, in the case of a scheduled monument, the Historic Buildings and Monuments Commission determines in writing that the archaeological remains referred to in sub-paragraph (4) require further investigation or mitigation, no construction operations are to take place within 10 metres of the remains until provision has been made for such mitigation or the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority or, in the case of a scheduled monument, the Historic Buildings and Monuments Commission.

### **Traffic management**

11.—(1) No part of the authorised development comprising the construction, alteration or improvement of Work No. 1 is to commence until a traffic management plan in accordance with the outline traffic management plan, for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the local highway authority on matters related to its function and Sutton and Wansford Parish Councils in respect of matters within their geographic areas.

(2) The authorised development must be constructed in accordance with the approved traffic management plan referred to in sub-paragraph (1).

### **Fencing**

12. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the EMP (First Iteration) maintained by or on behalf for the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

### **Non-motorised route across A1 overbridge**

13. Before Work 6 as defined in Schedule 1 is first brought into operation, a cycleway, as shown as Option 1a on drawing HE551494-GTY-HGN-000-DR-CH-38004, shall be completed and therefore made available for use as a public right of way.

### **Approvals and amendments to approved details**

14. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

## PART 2

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### **Applications made under requirements**

1.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (4), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where the Secretary of State requests further information pursuant to requirement 15, and no further information has been submitted eight weeks from that day immediately following that on which the application was received by the Secretary of State, the application or (if applicable) the part of the application to which the request for further information relates is taken to have been refused by the Secretary of State.

(4) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

#### **Further information**

2.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the Secretary of State does not give such notification within that 21 day business period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 1 (applications made under requirements) and in this paragraph.

### Anticipatory steps towards compliance with any requirement

3. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

### Details of pre-submission consultation

4.—(1) In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 42 days for any response to the consultation.

(2) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and an account as to how the undertaker has had regard to the responses received.

(3) At the time of submitting an application to the Secretary of State, the undertaker must provide a copy of the summary report to the requirement consultees referred to in the requirement under which approval is being sought.

(4) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(5) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under subparagraph (1) the reasons why the consultation responses have not been reflected in the submitted details with the reasons published in the public register published pursuant to Article 47.

## SCHEDULE 3

Articles 12, 13 and 19

### CLASSIFICATION OF ROADS, ETC

#### PART 1

#### TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheets 3-4 and 6-7</b>	
Wansford Sutton	A length of highway to be classified as part of the proposed A47 Trunk Road  (1) On the eastbound carriageway:  (a) from point A (sheet 3), east of the Wansford eastern roundabout, in an easterly direction to point A1 (sheet 6), a distance of 1752 metres; and  (b) from point A2 (sheet 6), 25 metres north west of the junction where the Drift joins the existing A47, in an easterly direction to point B (sheet 7), a distance of 829 metres.

	<p>(2) On the westbound carriageway:</p> <p>(a) from point C (sheet 3), at the Wansford eastern roundabout, to point C1 (sheet 6), a distance of 1747 metres; and</p> <p>(b) from point C2 (sheet 6), 88 metres north west of the junction where the Drift joins the existing A47, in an easterly direction to point D (sheet 7), a distance of 828 metres.</p>
<b>The classification of roads plans – sheets 1, 2 and 3</b>	
Thornough Wansford	Proposed free flow link from A1 to A47 new eastbound diverge slip road to be classified as part of the A47 Trunk Road From point E, 350 metres south of the junction between A1 and Windgate Way, in a south-easterly direction to point F (sheet 3), a distance of 2490 metres.
<b>The classification of roads plans – sheet 2 and 3</b>	
Wansford	Improved existing A47 eastbound roundabout connector road to be classified as part of the A47 Trunk Road. From point K, on the Wansford western roundabout, in an easterly direction to point L (sheet 3), a distance of 254 metres.
<b>The classification of roads plans – sheet 3</b>	
Wansford	Improved Wansford eastern roundabout to be classified as part of the A47 Trunk Road with reference AA, the centrepoint of the roundabout is 114 metres east of the A47/A1 overbridge.
Wansford	Improved westbound roundabout connector road to be classified as part of the A47 Trunk Road. From point N, at the Wansford eastern roundabout, in a westerly direction to point M, a distance of 66 metres.
Wansford	Existing A1 southbound diverge slip road to be classified as part of the A47 Trunk Road From point G, 135 metres north west of the A47/A1 overbridge, in a south easterly direction to point I, a distance of 230 metres.
Wansford	Existing A1 southbound merge slip road to be classified as part of the A47 Trunk Road From point H, 65 metres north of the A47/A1 overbridge, in an easterly direction to point J, a distance of 187 metres.
<b>The classification of roads plans – sheet 6</b>	
Sutton	New Sutton Heath roundabout to be classified as part of the A47 Trunk Road with reference BB, the centrepoint of the roundabout is 84 metres north west of the junction where the Drift joins the existing A47.

## PART 2

### CLASSIFIED C ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheet 3</b>	
Wansford	New link to filling station and Sacrewell Farm to be classified as C Road. From point O, 30 metres south of the centre of the Wansford eastern roundabout, in a southerly and then easterly direction to point P (sheet 4), a distance of 869 metres.
<b>The classification of roads plans – sheet 4</b>	
Sutton	Proposed turning head along Sutton Heath Road to be classified as a C Road. From point EE, 1326 metres east of Wansford western roundabout, to point FF, a distance of 12.5 metres.
<b>The classification of roads plans – sheet 5</b>	
Sutton	New link road from the new Sutton Heath roundabout linking into Sutton Heath Road and Langley Bush Road to be classified as C Road. From point Q, 131 metres north west of the existing Langley Bush Road junction with existing Sutton Heath Road, in a south easterly direction to point R (sheet 6), a distance of 729 metres.
Sutton	Improved Langley Bush Road to be classified as C Road. From point S, 13 metres east of the existing Langley Bush Road junction with existing Sutton Heath Road, in an easterly direction to point T, a distance of 60 metres.
Sutton	Realigned Sutton Heath Road to be classified as C Road. From point U, 93 metres to the south east of the existing Langley Bush Road junction with existing Sutton Heath Road, in a south westerly direction to point V, a distance of 60 metres.
<b>The classification of roads plans – sheet 6</b>	
Sutton	New connector road to the new Sutton Heath roundabout and De-trunked A47 to be classified as C Road. From point W, 77 metres north west of the junction where the Drift joins the existing A47, in a south easterly direction to point X (sheet 7), a distance of 865 metres.

## PART 3

### UNCLASSIFIED ROADS

<i>(1)</i>	<i>(2)</i>
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<i>Area</i>	<i>Length of road</i>
<b>The classification of roads plans – sheet 3</b>	
Wansford	Proposed route to pumping station. From point CC, in a south easterly route to point DD, a distance of 50 metres.
<b>The classification of roads plans – sheet 5</b>	
Upton	Existing Upton Drift Existing carriageway to be an unclassified road From point AC, at the junction between Upton Drift and Langley Bush Road, in an easterly direction to point AD, as distance of 639 metres.
<b>The classification of roads plans – sheet 7</b>	
Sutton	Existing Nene Way Existing carriageway to be an unclassified road from point Z, 157 metres to the south west of the centreline of the existing Nene Way roundabout, in a northern-easterly direction to point Y, a distance of 58 metres.
Sutton	Proposed new turning head to be an unclassified road. From point GG, 304 metres north east of the existing Nene Way roundabout, to point HH, a distance of 23 metres.

## PART 4

### SPEED LIMITS

Note: where speed limits are indicated on the plans relating to this Part (the traffic regulation plans) but are not referenced in this schedule they indicate that national speed limits apply in accordance with either:

- (a) the national speed limit set out in—
  - (i) Section 86 and Schedule 6 of the Road Traffic Regulation Act 1984; and
  - (ii) the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 as varied by the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 and continued indefinitely by Regulation 2 of the 70 Miles Per Hour, 60 Miles Per Hour and 50 Miles Per Hour (Temporary Speed Limit) (Continuation) Order 1978 (SI 1978/1548)(a); or
- (b) the provisions of the Road Traffic Regulation Act 1984 (which defines speed limits on ‘restricted roads’ by reference to street lighting),

and are not subject to this Order.

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed Limit</i>
<b>The traffic regulation plans – sheets 2</b>		
Wansford	A47 trunk road	Removal of Restricted Road

- (a) SI 1978/1548. The Road Traffic Regulation Act 1984 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 were not statutory instruments.

	From point J at the eastern side of the Wansford western roundabout , in an easterly direction to point H (sheet 3), a distance of 242 metres.	Status.
<b>The traffic regulation plans – sheet 3</b>		
Wansford	A1 southbound diverge to Wansford eastern roundabout From point A, in an easterly and southerly direction to point C, a distance of 180 metres.	Removal of Restricted Road Status.
Wansford	A1 southbound merge from Wansford eastern roundabout From point B, in an easterly and southerly direction to point C1, a distance of 57 metres.	Removal of Restricted Road Status.
Wansford	A47 trunk road westbound west of Wansford eastern roundabout From point K, 145 metres east of the Wansford eastern roundabout, in an easterly direction to point G, a distance of 66 metres.	Removal of Restricted Road Status.
Wansford	Wansford eastern roundabout The whole roundabout from point I around the roundabout to point I, a distance of 170 metres.	Removal of Restricted Road Status.
Wansford	A47 trunk road eastbound From point D, at the eastern side of the Wansford eastern roundabout in an easterly direction to point L, a distance of 127 metres.	Removal of Restricted Road Status.
Wansford	A47 Trunk road westbound A47 trunk road From point E, at the eastern side of the Wansford eastern roundabout in an easterly direction to point M, a distance of 127 metres.	Removal of Restricted Road Status.
Wansford	New link to filling station and Sacrewell Farm southbound From point N, 128 metres south of the southern side of the Wansford eastern roundabout in an easterly direction to point O (sheet 4), a distance of 750 metres.	30 miles per hour.
<b>The traffic regulation plans – sheet 6</b>		
Sutton	New link to Sutton Heath Road	Removal of Restricted Road Status.

	From point S at the northern side of Sutton Heath Roundabout on the northbound carriageway in a northerly direction to point X, a distance of 98 metres.	
Sutton	Sutton Heath Roundabout The whole roundabout from point AB around the roundabout to point AB, a distance of 175 metres.	Removal of Restricted Road Status.
Sutton	A47 trunk road eastbound From point T at the eastern side of the Sutton Heath roundabout in a south-easterly direction to point Z, a distance of 132 metres.	Removal of Restricted Road Status.
Sutton	A47 trunk road westbound From point U, at the eastern side of the Sutton Heath roundabout. in a south-easterly direction to point AA, a distance of 127 metres.	Removal of Restricted Road Status.
Sutton	Sutton Heath Roundabout southern arm From point V, in a south-easterly and then easterly direction to point Y, a distance of 133 metres.	Removal of Restricted Road Status.
Sutton	A47 trunk road westbound From point W, at the western side of the Sutton Heath roundabout, in a north-westerly direction to point Q, a distance of 148 metres.	Removal of Restricted Road Status.
Sutton	A47 trunk road eastbound From point R, at the western side of the Sutton Heath roundabout, in a north-westerly direction to point P, a distance of 179 metres.	Removal of Restricted Road Status

## PART 5

### REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Revocations or Variations</i>
<b>The traffic regulation plans – sheets 3, 4, 6 and 7</b>			
	Detrunked A47	The A47 Trunk Road (Wansford, City of Peterborough to Great Yarmouth, Norfolk)	Paragraph 1 of the said order will not apply to the former A47 trunk road from

		(24 Hour Clearway) Order 2013.	point X7 (sheet 3), at the eastern exit of the Wansford eastern roundabout, in an easterly direction to point X9 (sheet 7) a distance of 2,486 metres
	Detrunked A47	The A47 Trunk Road (Wansford, City of Peterborough to Great Yarmouth, Norfolk) (24 Hour Clearway) Order 2013.	Paragraph 1 of the said order will not apply to the whole Nene Way roundabout from point X10 around the roundabout to point X10, a distance of 106 metres.
	Detrunked A47	The A47 Trunk Road (Wansford, City of Peterborough to Great Yarmouth, Norfolk) (24 Hour Clearway) Order 2013.	Paragraph 1 of the said order will not apply to the A47 trunk road westbound from point X11 at the eastern exit of the Nene Way roundabout, in an easterly direction to point X12 a distance of 76 metres.
	Detrunked A47	The A47 Trunk Road (Wansford, City of Peterborough to Great Yarmouth, Norfolk) (24 Hour Clearway) Order 2013.	Paragraph 1 of the said order will not apply to the A47 trunk road eastbound from point X13 at the eastern exit of the Nene Way roundabout, in an easterly direction to point X14 a distance of 70 metres.

## PART 6

### FOOTPATHS, CYCLE TRACKS, FOOTWAYS AND BRIDLEWAYS

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Length of Footpath/Cycle track/Footway/Bridleway</i>
<b>The rights of way and access plans – sheet 2</b>	
Wansford	Reference SU1 to SU2 A new cycle track across the central reservation of the A47 trunk road 25 metres west of the Wansford western roundabout from point SU1 in a southerly direction to SU2, a distance of 2.7 metres.
<b>The rights of way and access plans – sheet 3</b>	
Wansford	Reference SU3 to SU4

	A cycle track on the south side of the new link to filling station and Sacrewell Farm from point SU3 at junction of Nene Way permissive bridleway with the existing unnamed access road to picnic site from Leicester Road in a north-easterly direction joining the new link road to Point SU4 at the western side of the realigned pumping station access road, a distance of 135.64 metres.
Wansford	Reference SU5 to SU6 A cycle track on the south side of the new link to filling station and Sacrewell Farm from point SU5 at the eastern side of the realigned pumping station access road in an easterly direction to the western side of the existing western access to the filling station at Point SU6, a distance of 295 metres.
Wansford	Reference SU7 to SU8 A cycle track on the south side of the new link to filling station and Sacrewell Farm from Point SU7 at the eastern side of the western access to the filling station in an easterly direction to Point SU8 at the western side of the eastern access to the filling station, a distance of 28 metres.
<b>The rights of way and access plans – sheet 4</b>	
Sutton	Reference SU9 to SU10 A shared cycle track on the south side of the new link to filling station and Sacrewell Farm and the A47 trunk road from Point SU9 at the eastern side of the existing eastern access to the filling station in an easterly direction to Point SU10, a distance of 649 metres.
Sutton	Reference FP1 to FP2 A new footpath to the south of the A47 trunk road in a southerly and then easterly direction from point FP2, 1,112 metres east of the Wansford eastern roundabout in an easterly direction, to point FP1 at Wansford footpath 4, a distance of 67 metres.
Sutton	Reference BR7 to BR1 A bridleway crossing the A47 trunk road in the vicinity of Sutton Heath Road:  (1) from point BR7 on the stopped up A47, 1,275 metres east of the Wansford eastern roundabout, in a southerly direction to point BR6, a distance of 21 metres;  (2) from point BR6 in an easterly direction to point BR5, a distance of 18 metres;  (3) from point BR5 in a northerly direction under the existing bridge under the stopped up A47 and through a new underpass under the A47 trunk road to point BR4, a distance of 53 metres;  (4) from point BR4 in an easterly direction to

	<p>point BR3, a distance of 49 metres;</p> <p>(5) from point BR3 in a northerly direction to point BR2, a distance of 10 metres; and</p> <p>(6) from point BR2 in a westerly direction to point BR1, a distance of 38 metres.</p> <p>(7) NOTE: between point BR5 and point BR4 the bridleway is subject to:</p> <p>(a) the existing road bridge carrying the de-trunked A47; and</p> <p>(b) the underpass under the A47 trunk road where headroom for users is subject to a limitation of 2.7 metres.</p>
Sutton	<p>Reference BR7 to BR8 (sheet 6)</p> <p>A bridleway along the southern side of the stopped up A47 Roman Road from point BR7 in an easterly and then south-easterly direction to point BR8 (sheet 6) at the junction with The Drift, a distance of 577 metres.</p>
<b>The rights of way and access plans – sheet 6</b>	
Sutton	<p>Reference SU11 to SU14 (sheet 7)</p> <p>A cycle track along the southern side of the detrunked A47 from point SU11, 67 metres east of the Wansford eastern roundabout, in a south-easterly direction to point SU14 on the western side of Nene Way, a distance of 682 metres.</p>
Sutton	<p>Reference BR8 to BR9</p> <p>A bridleway along the stopped up The Drift from point BR8 at the western access to The Drift from the detrunked A47, in a south-easterly direction to point BR9 on The Drift, a distance of 278 metres.</p>
Sutton	<p>Reference SU12 to SU13</p> <p>A cycle track along the stopped up The Drift from point SU12 at the eastern access to The Drift from the detrunked A47, in a south-westerly and then south-easterly direction to point SU13 on The Drift, a distance of 50 metres.</p>
<b>The rights of way and access plans – sheet 7</b>	
Sutton	<p>Reference FW1 to FW2</p> <p>A footway on the eastern side of Nene Way, from point FW1, 17 metres south of its junction with Peterborough Road passing onto the southern side of Peterborough Road, to point FW2, a distance of 40.11 metres.</p>
Sutton	<p>Reference FW3 to FW4</p> <p>A footway on the northern side of Peterborough, from point FW3, 30 metres east of its junction with Nene Way in an easterly direction to point FW4, a distance of 81.40 metres.</p>

## PART 7

### ROADS TO BE DETRUNKED

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Length of Road</i>
<b>The detrunking plans – sheets 3 &amp; 4</b>	
Wansford	A length of 334 metres of the existing A47 Trunk Road from point A, 87 metres north-west of the Pumping Station, to Point B.
<b>The detrunking plans – sheets 6 and 7</b>	
Sutton	A length of 512 metres of the existing A47 Trunk Road from point C, 50 metres north-west of the junction between A47 and the Drift, to point D.

## PART 8

### TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
<b>The traffic regulation plans – sheet 3</b>		
Thornhaugh Wansford	New free flow link A1 Southbound to A47 eastbound From point X1 122 metres south of Thornhaugh bridleway 8 (Windgate Way), in a southerly then south-easterly then easterly direction to point X2 (sheet 3), a distance of 1,246 metres.	Clearway (including verges, hardshoulders).
<b>The traffic regulation plans – sheet 3</b>		
Wansford	Wansford eastern roundabout The whole of the roundabout from point I around the roundabout to point I, a distance of 151 metres.	Clearway (including verges, hardshoulders).
Wansford Sutton	A47 Trunk Road eastbound From point D in an easterly direction to point R (sheet 6), a distance of 1,751 metres.	Clearway (including verges, hardshoulders).
Wansford Sutton	A47 Trunk Road westbound From point E in an easterly direction to point W (sheet 6), a distance of 1,747 metres.	Clearway (including verges, hardshoulders).
<b>The traffic regulation plans – sheet 6</b>		
Sutton	Sutton Heath Roundabout The whole roundabout from point AB around the roundabout to point AB, a distance of 175 metres.	Clearway (including verges, hardshoulders).
Sutton	A47 Trunk Road eastbound	Clearway (including verges,

	From point T in an easterly direction to point X14 (sheet 7), a distance of 825 metres.	hardshoulders).
Sutton	A47 Trunk Road eastbound From point U in an easterly direction to point X12 (sheet 7), a distance of 824 metres.	Clearway (including verges, hardshoulders).

## SCHEDULE 4

Article 17, 28 and 29

### PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule to the rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

- (a) Existing highways are to be stopped up, as described in column (2) of Parts 1 and 2 of this Schedule, are shown by black diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in column (3) of Parts 1 and 2 of this Schedule and given a reference label in a square box (a capital A followed by a number).
- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 2 of this Schedule, are shown by red honeycomb-hatching (for motorways and trunk roads), blue cross-hatching (for other classified roads and highways) yellow continuous lines (for cycle tracks) and a blue continuous line (for public footpaths) (as shown in the key on the rights of way and access plans) and are given a reference label in a square (D for new highway to be substituted, SU for cycle tracks and FP for footpaths) followed by a number and will be a road unless the word ‘footpath’, ‘bridleway’, ‘footway’ or ‘cycle track’ appears beneath its reference letter in column (4) of Part 2 of this Schedule.
- (c) Private means of access to be stopped up, as described in column (2) of Parts 3 and 4 of this Schedule, are shown by blue diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of stopping up described in column (3) of Parts 3 and 4 of this Schedule, and are given a reference label in a square (a capital B followed by a number).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 3 of this Schedule, are shown by purple hatching (as shown in the key on the rights of way and access plans) and are given a reference label in a square (a capital C followed by a number).
- (e) Private means of access to be altered are included in column (2) of Part 5 of this Schedule, are shown by purple line hatching (as shown in the key on the rights of way and access plans) and are given a reference label in a square (a capital C followed by a number).

## PART 1

### HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Highway to be stopped up	<i>(3)</i> Extent of stopping up
<b>The rights of way and access plans – sheet 3</b>		

Wansford	Reference A2 Part of the Unnamed Access Road to Picnic Site from Leicester Road and link to the pumping station	Reference A2 A length, from a point 103 metres north-west from the pumping station, south of its junction with stopped up A47 in a south westerly and then southerly direction, a distance of 95 metres.
Wansford	Reference A9 Part of the width of Unnamed Access Road to Picnic Site from Leicester Road	Reference A9 A length, from its boundary with the A1 trunk road in a north-easterly direction, for a distance of 326 metres.
<b>The rights of way and access plans – sheet 6</b>		
Sutton	Reference A6 Part of The Drift	Reference A6 From the junction of The Drift with the de-trunked A47 in a south-easterly direction for a distance of 271 metres
<b>The rights of way and access plans – sheet 7</b>		
Sutton Parish	Reference A8 Part of Upton Road and part of the Nene Way roundabout	Reference A8 Part of the Nene Way roundabout and a length of Upton Road from its junction with the Nene Way roundabout in a north-easterly direction for a distance of 298 metres.

## PART 2

### HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
<b>The rights of way and access plans – sheet 3</b>			
Wansford	Reference A1 Part of the A47 Leicester Road	Reference A1 A length from its junction with the Wansford eastern roundabout, in an easterly direction, to the new link to filling station and Sacrewell Farm a distance of 504 metres.	References D1 and D2 Part of new link to filling station and Sacrewell Farm To be substituted by the following lengths of new highway: (1) Reference D1 from the Wansford eastern roundabout in a southerly and then easterly direction for a distance of 205 metres; and

			(2) Reference D2 from a point 205 metres south of the Wansford eastern roundabout in an easterly direction for a distance of 368 metres
<b>The rights of way and access plans – sheet 4</b>			
Wansford	Reference A3 Wansford Footpath 4	Reference A3 From its junction with the existing A47 in a south-easterly direction for a distance of 27 metres.	Reference FP1 and FP2 To be substituted by a new footpath from point FP1, 27 metres south-east of the existing junction of Wansford Footpath 4 with the existing A47, in a westerly and then northerly direction for 83 metres to Point FP2 on the A47 Trunk Road.
Sutton	Reference A11 Part of Sutton Heath Road	Reference A11 From its junction with the existing A47 in a northerly direction for a distance of 28 metres.	Reference D3 and D5 To be substituted by the following lengths of new highway:  (1) Reference D3 (sheet 5) from a point 75 metres south-east of the junction of Sutton Heath Road with Langley Bush Road in a south-westerly direction for a distance of 117 metres; and  (2) Reference D5 (sheets 5 and 6) from Sutton Heath Roundabout for a distance of 537 metres in a northerly direction to the existing Sutton Heath Road
Wansford Sutton	Reference A5 Existing A47	Reference A5 A47 Leicester Road from a point 1,245 metres east of the Wansford eastern roundabout in an easterly and then south-easterly direction to its	References D6 and D7 To be substituted by the following lengths of new highway:  (1) Reference D6 (sheets 4 and 6) from a point 1245 metres east of the Wansford

		junction with The Drift (Sheet 6), a distance of 586 metres.	eastern roundabout in an easterly direction along the A47 Trunk road to Sutton Heath roundabout, a distance of 557 metres; and  (2) Reference D7 (sheet 6) from a point on the Sutton Heath roundabout, 1,800 metres east of the Wansford eastern roundabout, in a southerly direction to the junction of the stopped up A47 with The Drift, a distance of 94 metres.
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**The rights of way and access plans – sheet 5**

Sutton	Reference A4 Sutton Heath Road	Reference A4 From the junction of Sutton Heath Road with Langley Bush Road, in a southerly and then south-westerly direction for a distance of 172 metres.	References D4 and D3 To be substituted by the following lengths of new highway:  (1) Reference D4 from the junction of Sutton Heath Road with Langley Bush Road in a south-easterly direction, for a distance of 101 metres; and  (2) Reference D3 from a point 75 metres south-east of the junction of Sutton Heath Road with Langley Bush Road in a south-westerly direction for a distance of 117 metres.
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**The rights of way and access plans – sheet 7**

Sutton	Reference A7 Part of the existing A47 and part of Nene Way roundabout and Peterborough Road	Reference A7 A length of the existing A47, from its junction with Peterborough Road in a westerly direction or a distance of 285 metres and a length of the existing Nene Way roundabout and a length of	Reference D8 (sheets 6 and 7) To be substituted by a new highway Reference D8 from the junction of the Existing A47 with Nene Way in a westerly direction for a distance of 695 metres.
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		Peterborough Road from its junction with the Nene Way roundabout in a southerly direction for a distance of 52 metres.	
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### PART 3

**PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED**

<i>(1) Area</i>	<i>(2) Private means of access to be stopped</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted or provided</i>
<b>The rights of way and access plans – sheet 1</b>			
Thornhaugh	Reference B1 Access to the A1 Houses from the A1 trunk road southbound	Reference B1 The whole of the private access from the northern boundary of Thornhaugh Bridleway 8 (Windgate Way) in a northerly direction for a distance of 72 metres.	Reference C1 New private access road to the A1 Houses from the junction of the A1 trunk road with the access to Abbott's Cottages and Sacrewell Lodge in an easterly direction for a distance of 37 metres, and then a southerly direction for a distance of 260 metres to the northern boundary of Thornhaugh Bridleway 8 (Windgate Way).
<b>The rights of way and access plans – sheet 3</b>			
Wansford	Reference B3 Access to Sacrewell Farm from the unnamed access road to picnic site from Leicester Road.	Reference B3 The whole of the private access track from its junction with the stopped up A47 in a northerly direction for 232 metres to where the access road diverges, and including the north-westerly diverge towards Sacrewell Farm for a distance of 35 metres and the north-easterly diverge for a distance of 9 metres.	Reference C2 A new private means of access to Sacrewell Farm from the new link to filling station and Sacrewell Farm in a northerly direction passing through the Sacrewell Farm underbridge and continuing in a northerly and then easterly direction to tie in with the existing private access road which leads to the east of Sacrewell

			Farm, a distance of 404 metres.
Wansford	Reference B4 Access to field to the north of the existing link to the A47.	Reference B4 Private access along the existing link from the existing A47, 280 metres south west of the Wansford eastern roundabout	Reference C8 New private access from the new link to the petrol station to the existing road to be stopped up to the west of the pumping station. This access will be used for the maintenance of existing utilities along that existing road and also, for maintenance of the proposed ecological mitigation area to the west to the petrol station road.
Wansford	Reference A2 Part of the Unnamed Access Road to Picnic Site from Leicester Road and link to the pumping station	Reference A2 A length, from a point 103 metres north-west from the pumping station, south of its junction with stopped up A47 in a south westerly and then southerly direction, a distance of 95 metres.	Reference C9 New private access from the new link to the petrol station to the existing road to be stopped up. This access will be used for the maintenance of existing utilities along that existing road to the east of the pumping station.
Wansford	None	None	Reference C10 New private access from the new link to the petrol station to the proposed A47 west bound verge. This access will be used for maintenance of the proposed traffic monitoring equipment in the mainline verge.
<b>The rights of way and access plans – sheet 4</b>			
Sutton	Reference B6 Access to Old Station House on the Western Side of Sutton Heath Road 51 metres north of the junction of Sutton Heath Road with the existing A47.	Reference B6 The whole of the private access from a point 51 metres north of the junction of Sutton Heath Road with the existing A47 in a northerly direction for a distance of 1 metre.	Reference C3 A part new and part improved private means of access to Old Station House from a point 51 metres north of the junction of Sutton Heath Road with the existing A47 in a northerly direction, for a distance of 7 metres.

<b>The rights of way and access plans – sheet 6</b>			
Sutton	None	None	Reference C4 A new private means of access on the western side of the new link to Sutton Heath Road from a point 320 metres south of the junction of Sutton Heath Road and Langley Bush Road (sheet 5) for a distance of 8.5 metres.
Sutton	None	None	Reference C5 A new private means of access on the eastern side of the new link to Sutton Heath Road from a point 323 metres south of the junction of Sutton Heath Road and Langley Bush Road (sheet 5) for a distance of 8.5 metres.
Sutton	None	None	Reference C7 A new private means of access to Deep Springs along the line of the stopped up A47 from a point 60 metres south of the Sutton Heath roundabout in a westerly direction for a distance of 266 metres.
<b>The rights of way and access plans – sheet 7</b>			
Sutton	Reference B7 Field access on the western side of Upton Road	Reference B7 The whole of the private access from a point 312 metres north east of the Nene Way roundabout in a north-easterly direction for a distance of 5 metres.	Reference C6 A new private means of access on the western side Upton Road at the north-western end of the new turning head on Upton Road from a point 317 metres north east of the Nene Way roundabout in a north-easterly direction for a distance of 9 metres.

## PART 4

### PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Private means of access to be stopped up</i>	(3) <i>Extent of stopping up</i>
<b>The rights of way and access plans – sheet 2</b>		
Wansford	Reference B2 Access to Sacrewell Farm from the A1, 472 metres south of Thornhaugh Bridleway 8 (Windgate Way).	Reference B2 Part of the private access from a point 14 metres south of Thornhaugh Bridleway 8 (Windgate Way) in an easterly direction for a distance of 39 metres.
<b>The rights of way and access plans – sheet 4</b>		
Wansford Parish	Reference B5 Private access road from existing A47 64 metres north of the river Nene.	Reference B5 A point extending 7 metres south from the existing A47.
Sutton Parish	Reference B8 Access along the Eastbound carriageway of the existing A47, 65 metres west of the existing bridge over the abandoned railway.	Reference B8 A point extending for 34 metres heading north east from the existing eastbound A47 carriageway.

## PART 5

### ALTERATIONS TO PRIVATE MEANS OF ACCESS

(1) <i>Parish(es)</i>	(2) <i>Private means of access to be altered</i>
<b>The rights of way and access plans – sheet 3</b>	
Wansford	Reference C2A Modified southern access to Sacrewell Farm from a point 2 metres north-west of the diverge in the current access road in a north westerly and then westerly direction, a distance of 30 metres.

## SCHEDULE 5

Article 27

### LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot reference number shown on land plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Works for which rights over land may be acquired</i>
1/3f	Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection	2, 3

	<p>chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
1/4b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	2, 3
1/5a	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	2, 3
1/6b	Place, divert, alter, remove or maintain apparatus	2, 3

	<p>including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
1/7b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	2, 3
1/8b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the</p>	2, 3

	installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	
1/10d	Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	5
3/1h	Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure. Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	16, 18
3/1m	Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure. Right to pass and repass with or without plant and vehicles and including access to highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	16
3/1n	Place, divert, alter, remove or maintain apparatus	16

	<p>including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
3/2j	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	27
3/2l	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	26
3/3h	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure</p>	26

	<p>including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
3/4d	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	16
3/4f	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables and 11kv electricity cable together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	8, 16, 26, 27
3/4j	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent</p>	16

	access to the installed apparatus being made materially more difficult.	
3/4k	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	16, 18
3/6b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	16, 18
3/7b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p>	16, 17, 18

	<p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
3/7c	<p>Divert, install, underground, alter, create new connections to, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	17
3/7d	<p>Divert, install, underground, alter, create new connections to, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	17
3/8b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, create new connections to, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	27
4/3e	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with</p>	29

	<p>accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
4/6c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, create new connections to, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	29, 31, 33, 36
4/7b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights, bat hotel and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	33, 34, 36
4/9e	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use,</p>	33, 36, 37, 38

	<p>monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
4/10a	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	36
5/2c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	36
5/4b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic</p>	55, 56

	<p>communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
5/4c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables and 11kV electricity cable together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	57
5/4e	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables and 11kv electricity cable together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	55, 57
5/4f	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	55, 56

5/6d	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	56
5/6j	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	58
5/7b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	56
5/7d	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	58
6/4f	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic</p>	49

	<p>communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
6/5c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	49
7/3d	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	48
7/4c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p>	49

	<p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
7/4e	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	48, 52

## SCHEDULE 6

Article 27

### MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

#### Compensation enactments

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

**2.**—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5(1) (5A) (relevant valuation date) of the 1961 Act substitute—

“**5.**—(1) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the A47 Wansford to Sutton Development Consent Order 202[X] (“the A47 Wansford to Sutton Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(7) of Schedule 4 to the A47 Wansford to Sutton Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (1).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(2)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

### **Application of Part 1 of the 1965 Act**

4. Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27(1) (compulsory acquisition of rights and imposition of restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For Section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the Special Act.”

(4) The following provisions of the 1965 Act which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

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(a) 1973 c. 80.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 24), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections—

- (a) 11A(b) (powers of entry: further notices of entry),
- (b) 11B(c) (counter-notice requiring possession to be taken on specified dated,
- (c) 12(d) (unauthorised entry), and
- (d) 13(e) (refusal to give possession to acquiring authority)

of the 1965 Act are modified correspondingly.

(6) Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30 is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

### **Introduction**

**1.**—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 31 (application of the 1981 Act) of the A47 Wansford to Sutton Development Consent Order 202X in respect of the land to which the notice to treat relates.

(2) But see article 32(acquisition of subsoil or airspace only) of the A47 Wansford to Sutton Development Consent Order 202[X] which excludes the acquisition of subsoil or airspace only from this Schedule.

**2.** In this Schedule, “house” includes any park or garden belonging to a house.

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- (a) 1965 c. 56. Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), Section 103 of the Planning and Compulsory Purchase Act 2004 c. 5 and S.I. 2009/1307.
  - (b) 1956 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
  - (c) 1956 c. 56. Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
  - (d) 1956 c. 56. Section 12 was amended by section 56(2) of, and part of Schedule 9, to the Courts Act 1971 (c. 23).
  - (e) 1956 c. 56. Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunal, Courts and Enforcement Act 2007 (c. 15).
  - (f) 1956 c. 56. Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

### **Response to counter-notice**

5. On receiving a counter-notice, the undertaker must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The undertaker must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the undertaker decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the undertaker does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the undertaker serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they are included the owner’s interest in the house, building or factory.

### **Determination by the upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the undertaker ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the undertaker ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the undertaker withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”

## SCHEDULE 7

Article 34

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Location	<i>(2)</i> Plot Reference Number shown on land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Works for which temporary possession may be taken
Parish of Thornhaugh	1/1a	Temporary storage and working area to support construction of the following in adjoining land parcels: a new private means of access to 4 properties, diversion, protection and removal of potable water pipes and the protection of the NGG gas pipeline including the crossing of Work No. 2.	2, 3, 4
Parish of Thornhaugh	1/1c	Temporary storage and working area to support construction of the following in adjoining land parcels: a new private means of access to 4 properties, diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables.	2, 3
Parish of Thornhaugh	1/1e	Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, overhead and underground electricity cables crossing Work No.2 and protection of NGG gas pipeline.	3, 4
Parish of Thornhaugh	1/3a	Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables and adjacent utility works.	3
Parish of Thornhaugh	1/3c	Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables	3

		and apparatus, and overhead and underground electricity cables and adjacent utility works.	
Parish of Thornhaugh	1/9a	Protection, diversion and removal of existing water pipes, electricity and telecommunications cables and associated apparatus Temporary storage and working area to support construction of the following in adjoining land parcels: new private means of access to 4 properties and a service vehicle turning point including earthworks and associated drainage. Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables and adjacent utility works.	2, 3
Parish of Thornhaugh	1/10a	Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables and adjacent utility works.	3, 5
Parish of Wansford	2/1d	Temporary protection of electricity and telecommunications cables and associated apparatus. Temporary storage and working area to support construction of the following in adjoining land parcels: improvement to the eastbound carriageway of the existing A47 including the realignment of the central reserve and a new cycle crossing point at the Wansford western roundabout.	12
Parish of Thornhaugh	2/3b	Temporary storage and working area to support construction of the following in adjoining land parcels: new carriageway to create a free flow link from A1 southbound to the dualled A47 eastbound including embankments and associated drainage. Temporary storage and working area to support diversion and removal of underground electronic communication cables and apparatus and adjacent utilities works.	5, 6
Parish of Wansford	3/1c	Temporary protection of electricity and telecommunications cables and associated apparatus. Temporary storage and working area to support construction of the following in	1, 2, 6

		<p>adjoining land parcels new carriageway to create a free flow link from A1 southbound to the dualled A47 eastbound including embankments and associated drainage.</p> <p>Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline including earthworks and associated drainage.</p> <p>Temporary storage and working area to support diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and adjacent utilities works.</p>	
Parish of Wansford	3/1j	<p>Temporary protection of electronic communications cables and associated apparatus.</p> <p>Temporary access to facilitate construction of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes and construction of a site office and construction areas.</p>	16
Parish of Wansford	3/1l	<p>Temporary protection of water pipes, sewers, electricity and telecommunications cables and associated apparatus.</p> <p>Temporary access to facilitate construction of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes and construction of a site office and construction areas.</p>	16
Parish of Wansford	3/1o	<p>Temporary protection of electronic communications cables and associated apparatus.</p> <p>Temporary access to facilitate construction of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes and construction of a site office and construction areas..</p>	16
Parish of Wansford	3/2c	Temporary welfare and compound area including a haul route.	24
Parish of Wansford	3/2e	<p>Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the existing A47 including earthworks and associated drainage.</p> <p>Temporary storage and working area to facilitate construction of the following in adjoining land parcels: a new Sacrewell Farm access road connecting to Work No.15 and running north passing through</p>	1, 21, 24

		<p>the Sacrewell Farm underbridge including earthworks and drainage.</p> <p>Temporary welfare and compound area including a haul route.</p>	
Parish of Wansford	3/2i	<p>Temporary protection of water pipes and associated apparatus.</p> <p>Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the termination point to the east for tie into existing A47 including earthworks and associated drainage.</p> <p>Temporary storage and working area to facilitate construction of the following in adjoining land parcels: a new Sacrewell Farm access road connecting to Work No.15 and running north passing through the Sacrewell Farm underbridge including earthworks and drainage.</p> <p>Temporary welfare and compound area including a haul route</p>	1, 21, 24
Parish of Wansford	3/2k	<p>Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the termination point to the east for tie into existing A47 including earthworks and associated drainage.</p> <p>Temporary welfare and compound area including a haul route</p>	1, 24
Parish of Wansford	3/3d	<p>Temporary storage and working area to support provision of a new Sacrewell Farm access road connecting to Work No.15 and running north passing through the Sacrewell Farm underbridge including earthworks and drainage.</p>	23
Parish of Wansford	3/3g	<p>Temporary storage and working area to support provision of a new Sacrewell Farm access road connecting to Work No.15 and running north passing through the Sacrewell Farm underbridge including earthworks and drainage and access link to Sacrewell Farm.</p>	23
Parish of Wansford	3/4h	<p>Temporary protection of electronic communications cables and associated apparatus.</p> <p>Temporary access to facilitate construction of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes, provision of a site office and construction area and a new Sacrewell Farm Underbridge under the</p>	16, 25

		dualled A47 (Work No.1) including structural units, concrete foundations, drainage and waterproofing.	
Parish of Wansford	3/4i	Temporary protection of electronic communications cables and associated apparatus. Temporary access to facilitate construction of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes, provision of a site office and construction area and protection, diversion and resilience works to large diameter water pipelines and associated apparatus and adjacent utility works.	16, 27
Parish of Wansford	3/5a	Temporary storage and working area to facilitate construction of the following in adjoining land parcels: the removal of underground electricity cables crossing Work Nos. 1, 8, 10, 11, 13, 16, 17, 21 and 26, and improvements to the existing A1/A47 on and off ramps to the Wansford east roundabout including earthwork widening	9, 11, 27
Parish of Wansford	4/2b	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the existing A47 including earthworks and associated drainage, the provision of support for a new balancing pond to the north of the dualled A47 (Work No.1) including drainage inlets, an outlet to river Nene and an access track. Temporary storage and working area to support the diversion and removal of overhead electrical cables and adjacent utilities works.	1, 28, 29
Parish of Wansford and Parish of Sutton	4/2f	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the existing A47 including earthworks and associated drainage and adjacent utilities works.	1, 16, 26
Parish of Sutton	4/2i	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the termination point to the existing A47 including earthworks and associated drainage and adjacent utilities works and provision of a new balancing pond to the north of the	1, 16, 26, 27, 28

		dualled A47 (Work No.1) including drainage inlets, an outlet to river Nene and an access track.	
Parish of Wansford	4/3d	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the existing A47 including earthworks and associated drainage, a new length of carriageway to form a new link road from A47 Wansford eastern roundabout (Work No.13) and a new A47 westbound off slip from the dualled A47 (Work No.1) including earthworks, associated drainage and a cycle track, and adjacent utilities works.	1, 15, 16, 29
Parish of Wansford	4/3f	Temporary storage and working area to support diversion and removal of overhead electrical cables crossings and utilities works in adjoining land parcels.	29
Parish of Sutton	4/5b	Temporary storage and working area to support diversion and removal of electronic communication cables and apparatus and utilities works in adjoining land parcels.	36
Parish of Sutton	4/6b	Temporary storage and working area to support diversion and removal of overhead electrical cables crossings and utilities works in adjoining land parcels.	29, 32
Parish of Sutton	4/9a	Temporary access route from Work No. 37 turning to temporary welfare and compound area including a haul road to the north of the dualled A47 (Work No. 1) and a new temporary access track from Work No. 37.	38
Parish of Sutton	5/3a	Temporary storage and working area to facilitate construction of the following in adjoining land parcels: new Sutton Heath House roundabout (Work No.44) north to Sutton Heath Road including earthworks and drainage and access points.	42
Parish of Sutton	5/3b	Temporary storage and working area to facilitate construction of the following in adjoining land parcels: new Sutton Heath House roundabout (Work No.44) north to Sutton Heath Road including earthworks and drainage and access points.	42
Parish of Upton	5/4d	Temporary storage and working area to support diversion of electronic overhead and underground communication cables and apparatus crossings in adjoining land parcels.	56
Parish of Upton	5/5b	Temporary storage and working area to support improvements to the existing Upton Drift including passing places and other works in adjoining land parcels.	55

Parish of Upton	5/6a	Temporary storage and working area to support construction of the following in adjoining land parcels: improvements to the existing Upton Drift including passing places, widening the metalled surface into highway verge, straightening of the S-bend and sight lines and widening of its existing junction with Langley Bush Road and the existing junction adjacent to Model Farm.	55
Parish of Upton	5/6c	Temporary storage and working area to support improvements to the existing Upton Drift including passing places in adjoining land parcels.	55
Parish of Upton	5/6e	Temporary storage and working area to support improvements to the existing Upton Drift including passing places and connected works in adjoining land parcels.	55
Parish of Upton	5/6g	Temporary storage and working area to support diversion of electronic overhead and underground communication cables and apparatus crossings in adjoining land parcels.	56
Parish of Upton	5/6h	Temporary storage and working area to support diversion of electronic overhead and underground communication cables and apparatus crossing in adjoining land parcels.	56
Parish of Upton	5/6k	Temporary storage and working area to support diversion of the underground cables and protection of the foul sewer crossings in adjoining land parcels.	58
Parish of Upton	5/6l	Temporary storage and working area to support improvements to the existing Upton Drift including passing places, widening the metalled surface into highway verge, straightening of the S-bend and sight lines and widening of its existing junction with Langley Bush Road and the existing junction adjacent to Model Farm including earthworks and drainage in adjoining land parcels.	55
Parish of Upton	5/7a	Temporary storage and working area to support improvements to the existing Upton Drift including passing places, widening the metalled surface into highway verge, straightening of the S-bend and sight lines and widening of its existing junction with Langley Bush Road and the existing junction adjacent to Model Farm including earthworks and drainage in adjoining land parcels.	55
Parish of Upton	5/7c	Temporary storage and working area to support improvements to the existing Upton Drift including passing places, widening the metalled surface into	55

		highway verge, straightening of the S-bend and sight lines and widening of its existing junction with Langley Bush Road and the existing junction adjacent to Model Farm including earthworks and drainage in adjoining land parcels.	
Parish of Upton	5/8a	Temporary storage and working area to support diversion of the underground cables and protection of the foul sewer crossings in adjoining land parcels.	58
Parish of Sutton	6/1e	Temporary storage and working area to support with the creation of a new turning head to the existing Drift with gated access for service providers for 250 metres including earthworks, drainage, sub-base layers, pavement, signage, fence and gates in adjoining land parcels	47
Parish of Sutton	6/2a	Temporary storage and working area to support a new access route from Work No. 37, temporary welfare and compound area including haul road to the north of the dualled A47 in adjoining land parcels.	38
Parish of Sutton	6/3f	Temporary storage and working area to support creation of new turning head to the existing drift with gated access for service providers for 250 metres including earthworks, drainage, sub-base layers, pavement, signage, fence, and gates in adjoining land parcels.	47
Parish of Sutton	6/3h	Temporary storage and working area to support diversion and removal of existing electronic communication cables and apparatus, underground electricity cables, and utility works in adjoining land parcels.	48
Parish of Sutton	6/4a	To support access route from Work No. 37. Temporary welfare and compound area including haul road to the north of the dualled A47 (Work No.1). To support diversion and removal of electronic communication cables and apparatus, electrical cables and potable water pipes and adjacent utility works in adjoining land parcels.	36, 38
Parish of Sutton	6/4e	Temporary storage and working area to support a new access route from Work No. 37. Temporary welfare and compound area including haul road to the north of the dualled A47 (Work No.1) and a new temporary access track from Work No 37.	38
Parish of Sutton	6/4g	Temporary storage and working area to support a new access route from Work No. 37. Temporary welfare and compound area including haul road to the north of the	38, 49

		dualled A47 (Work No.1) and a new temporary access track from Work No 37. Temporary storage and working area to facilitate the protection, diversion and resilience works to potable water pipes and associated apparatus and adjacent utility works in adjoining land parcels.	
Parish of Sutton	6/5b	Temporary storage and working area to support the following in adjoining land parcel: diversion, and removal of existing electronic communication cables and apparatus, underground electricity cables, and adjacent utility works, ecological works and provision of landscaping area to the south of the dualled A47.	39, 48
Parish of Sutton	6/5e	Temporary storage and working area to support alterations to The Drift in adjoining land parcels.	47
Parish of Sutton	7/3a	Temporary storage and working area to support alterations to The Drift and to facilitate the protection, diversion and resilience works to potable water pipes and associated apparatus and utility works in adjoining land parcels.	47, 49
Parish of Sutton	7/4b	Temporary storage and working area to support alterations to The Drift and to support diversion and removal of existing electronic communication cables and apparatus, underground electricity cables, and potable water pipes and utility works in adjoining land parcels.	47, 48

## SCHEDULE 8

Article 39

### REMOVAL OF HEDGEROWS AND TREES

#### PART 1

##### REMOVAL OF HEDGEROWS

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Located at the A1 side road, next to the proposed access to the properties on the A1. H2 shown on sheet 1 of the Hedgerow Plans	Partial removal	Work nos. 2, 3 and 4
Located at A1 side road H3 shown on sheet 2 of the Hedgerow Plans	Full removal	Work nos. 5, 6 and 7
Located at the pond maintenance track next to the	Partial removal	Work nos. 9 and 10

new proposed free flow link road from the A1 to the A47. H4 and H6 shown on sheets 3 of the Hedgerow Plans		
Located at the proposed Sacrewell Farm Access Road. H7 shown on sheet 3 of the Hedgerow Plans	Partial removal	Work no. 21
Located at the existing A47 near the proposed Sacrewell Farm Access Road. H9 shown on sheet 3 of the Hedgerow Plans	Partial removal	Work nos. 1, 8, 9, 17 and 21
Located at the existing A47 nearby the proposed Sacrewell Farm Access Road. H11 and H13 on sheet 3 of the Hedgerow Plans	Partial removal	Work nos. 8, 17 and 21
Located at the existing A47 near the existing Sacrewell Farm link road. H15 shown on sheets 3 and 4 of the Hedgerow Plans	Partial removal	Work nos. 1, 15, 16, 27 and 28
Located at the existing A47 near the existing Sacrewell Farm link road. H16 shown on sheet 3 of the Hedgerow Plans	Full removal	Work nos. 8, 15, 16, 26 and 27
Located at the existing A47 where it overlaps with the proposed A47. H17 shown on sheet 4 of the Hedgerow Plans	Full removal	Work nos. 1, 15, 16, 28, 29, 30, 33, 36 and 40
Located at the existing A47 where it overlaps with the proposed A47. H19 shown on sheet 4 of the Hedgerow Plans	Partial removal	Work nos. 1, 16 and 28
Located at the new link to Sutton Heath Road and Langley Bush Road. H21 shown on sheet 5 of the Hedgerow Plans	Partial removal	Work nos. 36, 42 and 43
Located near the new A47 Sutton Roundabout. H29 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 1 and 38
Located at the new link to Sutton Heath Road. H31 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 36 and 42
Located at the new A47 Sutton roundabout. H33 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 1, 36 and 46

Located at the proposed A47 dual carriageway. H35 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 1 and 49
Located at the proposed A47 dual carriageway. H38 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 1 and 48
Located at the existing A47 where it is used as cyclepath/footway. H39 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 36 and 40
Located at the new link with Peterborough Road. H42 shown on sheet 6 and 7 of the Hedgerow Plans	Partial removal	Work nos. 45, 48 and 49
Located at the new pond near Nene Way. H44 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 48 and 50
Located at the new link with Peterborough Road. H46 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 45, 48 and 50
Located at the new link with Peterborough Road H49 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 45, 48, 50 and 52
Located at the proposed A47 dual carriageway. H51 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 1 and 48
Located at Upton Road. H53 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 53 and 54
Located at Upton Road. H54 shown on sheet 7 of the Hedgerow Plans	Full removal	Work nos. 53 and 54
Located at Upton Drift. H55 and H56 shown on sheet 5 (Inset 5B) of the Hedgerow Plans	Full removal	Work nos. 55, 56, 57 and 58

## PART 2

### REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Located at the new link to Sutton Road. H23 shown on sheet 5 of the	Partial removal	Work nos. 36, 42 and 43

Hedgerow Plans		
Located at the new link to Sutton Road. H25 shown on sheet 5 of the Hedgerow Plans	Partial removal	Work nos. 36 and 41
Located at the Wansford NMU Underpass to Sutton Heath Road. H27 shown on sheet 4 of the Hedgerow Plans	Partial removal	Work nos. 1, 33, 37 and 38

## SCHEDULE 9

Articles 36 and 46

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise identified in another Part of this Schedule or agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in that case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(c); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at future date) of that Act(e),

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(a) 1989 C. 29. The definition of “electricity plant” (in section 64) was amended by section 108 of, and paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Schedule 6, and Schedule 8 to the Utilities Act 2000 (c. 27), sections 1459(1) and (5) and 197(9) of, and part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.

(c) 1991 c. 56.

(d) 1991 c. 56. Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37) and section 56 of, and paragraph 90 of Schedule 7 to, the Water Act 2014 (c. 21).

(e) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003; section 42(3) of the Flood and Water Management Act 2010 (c. 29); and sections 11(1) and (2) and 56 of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014.

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation)(a) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary alteration, diversion, prohibition and restriction of the use of streets under the powers conferred by article 16 (temporary alteration, diversion, prohibition and restriction of the use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

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(a) There are amendments to section 219 which are not relevant to this Order.

## **Acquisition of land**

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

## **Removal of apparatus**

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

## **Facilities and rights for alternative apparatus**

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be

granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**9.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (5) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

### **Expenses and costs**

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph , that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**11.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

## Cooperation

**12.** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

**13.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**14.** For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

**15.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 (electronic communications, networks and services) of Part 2 (networks, services and the radio spectrum) of the 2003 Act(b);

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

**16.** The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

**17.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

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(a) See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c.21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

(b) See section 106 of the 2003 Act, which was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30). See also Schedule 3A to the 2003 Act, which was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017.

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 49 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 3

### FOR THE PROTECTION OF ANGLIAN WATER

#### **Application**

**18.** For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

#### **Interpretation**

**19.** In this part of this Schedule –

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited (company number 02366656), whose registered office is Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, PE29 6YJ;

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under The Water Industry Act 1991,
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to

adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act; and

- (d) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus

and for the purpose of this definition, where words are defined by section 219 (general interpretation) of the Water Industry Act 1991 they shall be taken to have the same meaning. “functions” includes powers and duties

“in” in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

### **On street apparatus**

**20.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

### **Schedule of apparatus**

**21.—**(1) Before commencement of any work set out in Schedule 1 to divert any apparatus the undertaker will provide Anglian Water with a schedule of apparatus which will be diverted as part of the authorised development setting out for each piece of apparatus whether those works are to be undertaken under this Schedule or under the 1991 Act and, where a diversion is to be carried out partly under this Schedule and partly under the 1991 Act, details of which part of the diversion is to be carried out under which power.

(2) The undertaker may from time to time provide to Anglian Water amendments to the schedule referred to in sub-paragraph (1).

(3) No amendment may be submitted under sub-paragraph (2) in respect of apparatus which is to be diverted as part of a work set out in Schedule 1, or which comprises such a work, after that work has commenced.

### **Apparatus in stopped up streets**

**22.—**(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 25 or the power of the undertaker to carry out works under paragraph 27.

(2) Regardless of the temporary alteration, diversion or prohibition of the use of or restriction of the use of any highway under the powers conferred by article 16 (temporary alteration, diversion, prohibition and restriction of the use of streets), Anglian Water is at liberty at all times to take all necessary access across any such altered, diverted, prohibited or restricted highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the alteration, diversion or prohibition of use of or restriction of use was in that highway.

### **Protective works to buildings**

23. The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of land**

24. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

25.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not (without the prior written consent of Anglian Water) be extinguished, until—

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 26.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) Notice under sub-paragraph (6) that Anglian Water desires the undertaker to execute any work, or part of any work, must be given within 14 days of agreement under sub-paragraph (4) or, in default of agreement, within 14 days of the date of settlement by arbitration under sub-paragraph (4).

(8) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(9) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to—

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

### **Facilities and rights for alternative apparatus**

**26.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

### **Retained apparatus**

**27.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 25(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 25(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances and will keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1), works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 451 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres.

### **Expenses and costs**

**28.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of the Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Anglian Water in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Anglian Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**29.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 23 or 25(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

## **Cooperation**

**30.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 25(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 27, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

**31.** Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

**32.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

33. Any time period in which an action must be taken in this part of the Schedule may be amended by written agreement between the undertaker and Anglian Water.

## PART 4

### FOR THE PROTECTION OF NATIONAL GRID AS GAS UNDERTAKER

#### Application

34.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 10 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 44(3)(b)).

#### Interpretation

35. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by National Grid for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in paragraph 42 and 44 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Gas Plc (company number 02006000), whose registered office is 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) or otherwise.

**36.** Except for paragraphs 37 (apparatus in stopped up streets), 42 (retained apparatus: protection), 43 (expenses) and 44 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in stopped up streets**

**37.—**(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 40 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 42.

(2) Notwithstanding the temporary alteration, diversion or restriction of any highway under the powers of article 16 (temporary alteration, diversion, prohibition and restriction of use of streets), National Grid will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the alteration, diversion or restriction was in that street.

### **Protective works to buildings**

**38.** The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld)

### **Acquisition of land**

**39.**—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 42 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**40.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 41(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**41.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 48 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of gas undertaker**

**42.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 34 to 36 and 39 to 41 apply as if the removal of the apparatus had been required by the undertaker under paragraph 40(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 11.

(11) The undertaker is not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11), "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**43.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 40(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**44.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

## **Enactments and agreements**

**45.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **Co-operation**

**46.**—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 40(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 42, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker’s or National Grid’s consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

## **Access**

**47.** If in consequence of the agreement reached in accordance with paragraph 39(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

**48.** Save for differences or disputes arising under paragraph 40(2), 40(4) and 41(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 49(arbitration).

## **Notices**

**49.** Notwithstanding article 50 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 42 must be sent to <https://lsbud.co.uk/> and National Grid Plant Protection at [assetprotection@nationalgrid.com](mailto:assetprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing

# **PART 5**

## **FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER**

## **Application**

**50.**—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 10 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 60(3)(b)).

## Interpretation

### 51. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in paragraph 59 and 60 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (company number 02366977), whose registered office is 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act ;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 56(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 56(2) or otherwise.

52. Except for paragraphs 53 (apparatus in stopped up streets), 58 (retained apparatus: protection), 59 (expenses) and 60 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations

between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in stopped up streets**

**53.**—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 56 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 58.

(2) Notwithstanding the temporary alteration, diversion or restriction of any highway under the powers of article 16 (temporary alteration, diversion, prohibition and restriction of use of streets), National Grid will be at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the alteration, diversion or restriction was in that street.

### **Protective works to buildings**

**54.** The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld)

### **Acquisition of land**

**55.**—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 58 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

## **Removal of apparatus**

**56.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 57(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

## **Facilities and rights for alternative apparatus**

**57.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 64 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus: protection of electricity undertaker**

**58.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in

accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 50 to 52 and 55 to 57 apply as if the removal of the apparatus had been required by the undertaker under paragraph 56(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) "emergency works" means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**59.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 56(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 64 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**60.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in

consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

### **Enactments and agreements**

**61.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**62.—**(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 56(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 58, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

### **Access**

**63.** If in consequence of the agreement reached in accordance with paragraph 55(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

64. Save for differences or disputes arising under paragraph 56(2), 56(4) and 57(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 51 (arbitration).

## **Notices**

65. Notwithstanding article 48 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 58 must be sent to <https://lsbud.co.uk/> and National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 6**

### **FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED (EAST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER**

## **Application**

66. For the protection of Western Power Distribution Limited (East Midlands) plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (East Midlands) plc.

## **Interpretation**

67. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by WPD in order to permit or authorise a diversion and to permit or authorise WPD to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by WPD;

“diversion” means an alteration to the WPD Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“WPD” means Western Power Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB; and

“WPD Network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act.

### **Precedence of 1991 Act in respect of apparatus in streets**

**68.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **No acquisition except by agreement**

**69.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

**70.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and WPD may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then WPD must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to WPD the necessary facilities and alternative rights for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or WPD requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then WPD shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and WPD is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and WPD shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), WPD will on the transfer of the benefit of the necessary provisions of this Order to WPD use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed in accordance with a timetable agreed between WPD and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 75 (expert determination).

(8) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 75 (expert determination), and after the acquisition by or grant to WPD of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and WPD, or, in default of agreement, determined in accordance with paragraph 75 (expert determination); and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

### **Facilities and rights for alternative apparatus**

**71.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights are to be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 75 (expert determination).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to WPD's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights WPD ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**72.**—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 70 (removal of apparatus), the undertaker must submit to WPD a plan of the specified

works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3).

(2) Subject to sub-paragraph (3) the undertaker must not commence any specified works to which sub-paragraph (1) applies until WPD has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted WPD has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in writing in accordance with sub-paragraph (2) by WPD and WPD shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Addition) (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 70(2) (removal of apparatus).

(7) Nothing in this paragraph 72 prevents the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by WPD under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents WPD from exercising its rights under sub-paragraph (6).

### **Expenses and costs**

**73.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule WPD requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, WPD shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) Any amount which, apart from this sub-paragraph would be payable to WPD in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on WPD any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**74.**—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

- (a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and
- (b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of WPD, its officers, servants, contractors or agents.

(3) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) WPD's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and WPD shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus

### **Expert determination**

**75.**—(1) Article 49 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between WPD and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of WPD and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

- (5) The expert must—
- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert’s appointment;
  - (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submissions;
  - (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
  - (d) give reasons for the decision.
- (6) The expert must consider where relevant—
- (a) the development outcome sought by the undertaker;
  - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
  - (c) the nature of the power sought to be exercised by the undertaker;
  - (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
  - (e) WPD’s service obligations and licence conditions; and
  - (f) any other important and relevant consideration.
- (7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 49 (arbitration).

## SCHEDULE 10

Articles 2 and 47

### DOCUMENTS TO BE CERTIFIED

#### PART 1

#### ENVIRONMENTAL STATEMENT

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Environmental Statement - Chapter 1: Introduction	TR010039/APP/6.1	0
Environmental Statement - Chapter 2: The Proposed Scheme	TR010039/APP/6.1	1
Environmental Statement - Chapter 3: Consideration of Alternatives	TR010039/APP/6.1	1
Environmental Statement - Chapter 4: Environmental Assessment Methodology	TR010039/APP/6.1	0
Environmental Statement - Chapter 5: Air Quality	TR010039/APP/6.1	0
Environmental Statement - Chapter 6: Cultural Heritage	TR010039/APP/6.1	1
Environmental Statement - Chapter 7: Landscape and Visual Effects	TR010039/APP/6.1	0
Environmental Statement - Chapter 8: Biodiversity	TR010039/APP/6.1	0
Environmental Statement - Chapter 9: Geology and Soils	TR010039/APP/6.1	2
Environmental Statement - Chapter 10:	TR010039/APP/6.1	0

Materials Assets and Waste		
Environmental Statement - Chapter 11: Noise and Vibration	TR010039/APP/6.1	1
Environmental Statement - Chapter 12: Population and Human Health	TR010039/APP/6.1	3
Environmental Statement - Chapter 13: Road Drainage and Water Environment	TR010039/APP/6.1	2
Environmental Statement - Chapter 14: Climate	TR010039/APP/6.1	0
Environmental Statement - Chapter 15: Cumulative Effects Assessment	TR010039/APP/6.1	0
Environmental Statement Figure 1.1	TR010039/APP/6.2	0
Environmental Statement Figures 2.1 to 2.3	TR010039/APP/6.2	0
Environmental Statement Figure 5.1 to 5.3	TR010039/APP/6.2	1
Environmental Statement Figure 5.4 to 5.8	TR010039/APP/6.2	1
Environmental Statement Figure 6.1 to 6.4	TR010039/APP/6.2	0
Environmental Statement Figure 7.1 to 7.5	TR010039/APP/6.2	0
Environmental Statement Figures 7.6.1a to 7.6.1d	TR010039/APP/6.2	0
Environmental Statement Figures 7.6.2a to 7.6.2d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.3a to 7.6.3d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.4a to 7.6.4d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.5a to 7.6.5d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.6a to 7.6.6d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.7a to 7.6.7d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.8a to 7.6.10b	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.11a to 7.6.12d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.13a to 7.6.14b	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.15a to 7.6.16b	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.17a to 7.6.18b	TR010039/APP/6.2	0
Environmental Statement Figure 8.1 to 8.4	TR010039/APP/6.2	0
Environmental Statement Figure 9.1 to 9.2	TR010039/APP/6.2	0
Environmental Statement Figure 11.1 to 11.8	TR010039/APP/6.2	0
Environmental Statement Figure 11.9 to 11.16	TR010039/APP/6.2	0

Environmental Statement Figure 11.17 to 11.23	TR010039/APP/6.2	0
Environmental Statement Figure 11.24 to 11.30	TR010039/APP/6.2	0
Environmental Statement Figure 12.1 to 12.4	TR010039/APP/6.2	2
Environmental Statement Figure 13.1 to 13.7	TR010039/APP/6.2	0
Environmental Statement Figure 15.1	TR010039/APP/6.2	0
Environmental Statement - Appendix 4.1: Scoping opinion responses	TR010039/APP/6.3	0
Environmental Statement - Appendix 5.1: Air quality modelling process	TR010039/APP/6.3	0
Environmental Statement - Appendix 5.2: Air quality verification and model adjustment	TR010039/APP/6.3	0
Environmental Statement - Appendix 5.3: Receptor results	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.1: Cultural heritage baseline	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.2: Geophysical survey	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.3: Geophysical and metal detector survey	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.4: Archaeological observation report	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.5: Geophysical survey of the scheduled monument	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.6: Archaeological trial trenching survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.7: Former Wansford Road Station Building advice report	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.1: Planning policy context	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.2: ZTV and verified photomontage methodology	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.3: Landscape character areas	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.4: Visual receptors	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.5: Representative viewpoints	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.6: Arboricultural impact assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.7: Lighting assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.1: Botanical and hedgerow update survey report	TR010039/APP/6.3	0

Environmental Statement - Appendix 8.2: Fungi survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.3: Terrestrial invertebrate survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.4 Aquatic invertebrate survey report (Sutton Heath)	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.5 Aquatic invertebrate survey report (Nene Valley)	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.6: Great crested newt survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.7: Reptile survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.8: Breeding bird survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.9 Barn owl survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.10: Wintering bird survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.11: Bat hibernation report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.12: Bat emergence / re-entry survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.13 Bat activity survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.14: Otter and water vole survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.15: Confidential badger survey report	TR010039/APP/6.3	1
Environmental Statement - Appendix 8.16: DMRB Biodiversity evaluation assessment methodology	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.17: Legislation and policy framework	TR010039/APP/6.3	0
Environmental Statement - Appendix 9.1: Hierarchy of screening criteria for generic quantitative risk assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 9.2: Agricultural land classification report	TR010039/APP/6.3	1
Environmental Statement - Appendix 9.3: Preliminary sources study report	TR010039/APP/6.3	0
Environmental Statement - Appendix 9.4: Construction workers risk assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 10.1: Legislation and policy framework	TR010039/APP/6.3	0
Environmental Statement - Appendix 10.2: Outline site waste management plan	TR010039/APP/6.3	0
Environmental Statement - Appendix	TR010039/APP/6.3	0

10.3: Mineral impact assessment		
Environmental Statement - Appendix 11.1: Glossary of terms	TR010039/APP/6.3	0
Environmental Statement - Appendix 11.2: Legislation and policy framework	TR010039/APP/6.3	0
Environmental Statement - Appendix 11.3: Baseline noise survey	TR010039/APP/6.3	0
Environmental Statement - Appendix 11.4: Model validation	TR010039/APP/6.3	0
Environmental Statement - Appendix 11.5: Construction noise assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 13.1: Flood risk assessment	TR010039/APP/6.3	1
Environmental Statement - Appendix 13.2: Drainage strategy	TR010039/APP/6.3	2
Environmental Statement - Appendix 13.3: Surface water quality assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 13.4: Groundwater assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 13.5: Geomorphological assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 14.1: Embodied carbon report	TR010039/APP/6.3	0
Environmental Statement - Appendix 15.1: Cumulative effects stage 2 screening	TR010039/APP/6.3	0
Environmental Statement – Addendum One	TR010039/EXAM/9.35	0
Environmental Statement – Addendum Two	TR010039/EXAM/9.36	0

## PART 2 OTHER DOCUMENTS

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of reference (parts 1-5) and Schedules	TR010039/APP/4.3	3
Classification of roads plans	TR010039/APP/2.11	0
Crown land plans	TR010039/APP/2.8	2
Detrunking Plans	TR010039/APP/2.8	0
Engineering drawings and sections	TR010039/APP/2.5	1
Environmental management plan	TR010039/APP/7.5	3
Environmental masterplan	TR010039/APP/6.8	3
General arrangement plans	TR010039/APP/2.6	2
Hedgerow plans	TR010039/APP/2.12	0
Land plans	TR010039/APP/2.2	4
Outline traffic management plan	TR010039/APP/7.6	1
Rights of way and access plans	TR010039/APP/2.4	3
Traffic regulation plans	TR010039/APP/2.10	0
Works plans	TR010039/APP/2.3	3

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises National Highways Limited to improve the A47 between Wansford and Sutton in Norfolk and carry out all associated works.

The Order permits National Highways Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, book of reference and environmental statement mentioned in this Order and certified in accordance with article 47 (certification of documents, etc.) may be inspected free of charge during working hours at National Highways, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.