



# Department for Transport

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National Highways  
Bridge House  
1 Walnut Tree Close  
GU1 4LZ

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A47 BLOFIELD TO NORTH BURLINGHAM PROJECT DEVELOPMENT CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
  - the report of 22 March 2022 of the Examining Authority (“the ExA”) Alex Hutson MA MLPM MRTPI, CMLI, MArborA, who conducted an Examination into the application by Highways England (now known as National Highways; referred to here as “the Applicant”) for the A47 Blofield to North Burlingham Development Consent Order (“the Order”) under section 37 of the Planning Act as amended (“the 2008 Act”);
  - the responses to the consultations undertaken by the Secretary of State following the close of the Examination in respect of the application; and
  - late representations received by the Secretary of State following the close of the Examination.
2. The application was accepted for Examination on 27 January 2021. The Examination began on 23 June 2021 and was completed on 22 December 2021. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by four issue-specific hearings, two compulsory acquisition hearings, three open floor hearings and two unaccompanied site visits on 19 and 20 April 2021.

3. The Development Consent Order (“the Order”) as applied for would grant development consent to upgrade a section of the A47, running to the south of the existing A47 between Blofield and North Burlingham, to a new dual carriageway, the elements of which (collectively referred to as “the Proposed Development”) include:
- 1.61 miles of dual carriageway on the A47;
  - de-trunking of the existing A47 section between Blofield and North Burlingham;
  - improvements at Yarmouth Road junction, including closure of the central reserve, closure of High Noon Lane direct access, merge lane, realignment of Waterlow and local access improvements at the Sparrow Hall properties;
  - introduction of a compact grade separated junction at B1140 junction, including the B1140 overbridge;
  - a new overbridge at Blofield traversing the proposed A47 dual carriageway, connecting Yarmouth Road with the existing A47;
  - provision of new drainage systems including an infiltration basin and retention of existing drainage systems;
  - a retaining wall in the western extents;
  - introduction of lighting at the Yarmouth Road junction and new lighting layout at the B1140 junction;
  - closure of an existing layby and provision of a new layby;
  - walking and cycling routes connecting Blofield and North Burlingham;
  - provision of North Burlingham access;
  - an agricultural access track;
  - fencing, safety barriers and signage;
  - environmental mitigation; and
  - diversion of a medium pressure gas main and other utilities.
4. Published alongside this letter, on the Planning Inspectorate’s website, is a copy of the ExA’s Report of Findings, Conclusions and Recommendation to the Secretary of State (“the Report”). The ExA’s findings and conclusions are set out in sections 4 to 8 of the ExA’s Report, and the ExA’s summary findings and conclusions and recommendation are set out in section 9. All “ER” references are to the specified paragraph in the ExA’s Report. Paragraph numbers in the ExA’s Report are quoted in the form “ER x.xx.xx” as appropriate. References to ‘requirements’ are to those in Schedule 2 to the Order as the ExA recommended at Appendix D to the Report. This letter should therefore be read alongside the Order and the ExA’s Report that are published on the Planning Inspectorate’s website for the application.

### **Summary of the ExA’s Recommendation**

5. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the ExA’s Report under the following headings:
- Legal and Policy Context;
  - Planning Issues

- Air quality and emissions;
  - Biodiversity, ecology and the natural environment;
  - Climate change;
  - Compulsory acquisition (“CA”) and / or temporary possession (“TP”);
  - Cultural heritage;
  - Draft development consent order (“dDCO”);
  - Geology and soils;
  - Landscape and visual;
  - Material assets and waste;
  - Noise and vibration;
  - Population and human health;
  - Scope of development and environmental impact assessment (including cumulative and combined effects);
  - Transportation and traffic; and
  - Water environment.
6. For the reasons set out in the Report, the ExA recommended that the Order be made in the form set out in Appendix D to the Report.

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

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

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

8. The ExA recommended the Order be made, subject to the Secretary of State’s consideration of the matters in paragraphs ER 9.2.12 – 9.2.16 and 9.3.1 as follow:
- the adequacy of the Applicant’s consideration of cumulative carbon emissions / climate change effects for the purposes of the NNNPS and the 2017 Regulations, in light of the recent quashing of the A38 Derby Junctions DCO by the High Court.
  - the position on an agreement between the Applicant and NCC on matters relating to the future maintenance of assets to be transferred to NCC upon the satisfactory completion of the Proposed Development.
  - consideration of any change in status of NCC’s Local Transport Plan.
  - requesting amended land plans from the Applicant
  - a Written Ministerial Statement issued on 16 March 2022 relating to protected sites and nutrient pollution.

The Secretary of State is satisfied that all the matters in these paragraphs have been addressed as set out below.

9. The Secretary of State’s consideration of the Report, responses to his further consultations of 14 April and 5 May 2022, representations received after the close of the Examination and all other material considerations are set out in the following

paragraphs. Where consultation responses are not otherwise mentioned in this letter, it is the Secretary of State's view that these representations do not raise any new issues that were not considered by the ExA and also do not give rise to an alternative conclusion or decision on the Order.

10. Where not stated, the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.
11. The Secretary of State notes that the Applicant requested a change to the Application during the Examination to allow for:
  - the relocation of an existing block valve compound belonging to Cadent Gas Limited;
  - the provision of access to the relocated block valve compound site; and
  - to provide for the relocated block valve compound site and access to it, the subdivision of Plots 5/1a and 5/1b (on Sheet 5 of the original Land Plans to create Plots 5/1a, 5/1b, 5/1c, 5/1d, 5/1e and 5/1g, with the following implications:
    - Plot 5/1b – change from TP (green) to TP with Rights to be Acquired Permanently for access purposes (blue);
    - Plot 5/1e – change from TP with Rights to be Acquired Permanently (blue) to CA (pink); and
    - Plot 5/1g – change from TP with Rights to be Acquired Permanently (blue) to TP with additional Rights to be Acquired Permanently for access (blue).

(These items are set out in the ExA's procedural decision dated 22 November 2021 [PD-013]).
12. The ExA invited comments from all Interested Parties on these proposed changes by Deadline 4a. The Secretary of State notes the ExA did not accept these changes as the ExA was of the view, on the basis of the evidence provided, that: s123 of the 2008 Act had not been complied with; the prescribed procedures of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ("the CA Regulations") would thus have been engaged; and there was insufficient time left in the Examination to accommodate the time constraints of the CA Regulations [ER 2.2.2].
13. The Applicant made a subsequent change request at Deadline 6 which was updated at Deadline 7 which mirrored those of its previous Deadline 4 request. On the basis that Interested Parties had been consulted on the changes at Deadline 4a, the ExA considered it unnecessary to formally invite further comments from Interested Parties. However, Deadline 7 of the Examination provided an opportunity for Interested Parties to comment on documents submitted at Deadline 6 [ER 2.2.3]. The Secretary of State notes this was examined by the ExA including further information provided by the Applicant and agrees with the ExA, that the Applicant has adequately demonstrated that section 123 of the 2008 Act has been complied with because, per section 123(3), all persons with an interest in the land consent to the inclusion of the provision [ER 7.3.8]. Owing to this, the prescribed procedures of the CA Regulations were not engaged [ER 7.3.8]. The Secretary of State also agrees with the ExA that there would be no new or different likely

significant environmental effects. The Secretary of State is satisfied that these changes do not result in a significant change to the Application as applied for [ER 2.2.6].

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

14. The development site lies within the administrative county of Norfolk and the administrative district of Broadland.
15. Section 104(2) of the 2008 Act has effect in relation to the Proposed Development to which the application relates. In determining this application, the Secretary of State must therefore have regard to the relevant National Policy Statements ("NPS"), and Local Impact Reports ("LIR") submitted, any matters prescribed in relation to development of the description to which the application relates, and any other matters the Secretary of State considers to be both important and relevant to the decision [ER 3.1.3]. Under section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with any relevant NPS which in this case is the National Policy Statement for National Networks ("NPSNN"), subject to any of the exceptions in section 104(4) to (8) of the 2008 Act applying.
16. The Secretary of State does not consider any of them do on the facts of this case. The Secretary of State has also had regard to the environmental information associated with this scheme as defined in regulation 3(1) of the 2017 Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.
17. With regard to the NPSNN, in a Ministerial Statement issued on 22 July 2021, the Secretary of State advised that a review of the NPSNN would begin later in 2021 and would be completed no later than Spring 2023. While the review is undertaken, the NPSNN remains relevant government policy and has effect for the purposes of the 2008 Act. The NPSNN will, therefore, continue to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.
18. The LIRs and the relevant development plans the Secretary of State has had regard to are described in ER 3.9 and 3.10. The Secretary of State also notes the ExA's assessment set out in section 3 of the Report with regard to European Law and related UK regulations, other relevant legal provisions, previous DCOs, transboundary effects, other relevant policy statements and the National Planning Policy Framework ("the Framework") and agrees these are matters to be considered in deciding this application. The Secretary of State notes that European Law and related UK regulations set out in ER 3.3 remain in place despite the UK having left the EU on 31 January 2020 and despite transition arrangements ending on 31 December 2020. These are therefore still relevant to this application.
19. During the Examination the Norfolk County Council ("NCC") were in the process of refreshing its Local Transport Plan to cover 2020-2036 ("LTP4"). The Secretary of State notes the ExA recommended that the Secretary of State may wish to request further information on the status of NCC's LTP4 [ER 9.2.14] The Secretary of State

notes that the LTP4 strategy was adopted on 29 November 2021<sup>1</sup> and that the Development is listed as a priority for NCC. The Secretary of State notes that the final LTP4, which includes the Implementation Plan, is yet to be adopted. The Secretary of State is therefore content that this does not change the ExA's consideration of the Proposed Development.

### Need for the Proposed Development

20. The Secretary of State notes the ExA's consideration of the general need for development of the national networks at ER 4.4. The Proposed Development is one of six A47 schemes identified in the Roads Investment Strategy ("RIS") 1 and RIS 2 to improve journeys on a 115-mile section of the A47 between Peterborough and Great Yarmouth [ER 4.10.11, ER 6.2.2].
21. The Applicant's Transport Assessment identified that the single carriageway section of the A47 between Blofield to North Burlingham acts as a bottleneck resulting in congestion and leading to longer and unreliable journey times [ER 4.10.12]. It was also noted that this section of the A47 has a poor safety record [ER 4.10.13]. The Applicant's key objectives of the Proposed Development are to support economic growth, make a safer network, make a more free flowing network, protect the environment, provide an accessible and integrated network and to ensure value for money [ER 4.10.14].
22. The Secretary of State notes that NCC and Broadland District Council ("BDC") both support the principle of the Proposed Development and that it would also accord with the relevant local transport policies [ER 6.2.7.]
23. Paragraph 2.2 of the NPSNN sets out a critical need to improve national networks and address road congestion. Paragraphs 2.12 to 2.14 of the NPSNN highlight the importance of the strategic road network in providing critical links between areas, enabling safe and reliable journeys and the movement of goods in support of national and regional economies [ER 6.2.20]. The Secretary of State considers that the Proposed Development supports this and agrees with the ExA that the Proposed Development would deliver a significant benefit to the strategic road network supporting a prosperous and competitive economy and would meet the critical need to address congestion [ER 6.2.8]. The Secretary of State agrees with the ExA that substantial weight is afforded to the contribution the Proposed Development would make to meeting the need set out in the NPSNN to deliver national networks that meet the country's long term needs as part of a wider transport system [ER 6.2.9] and considers that the need for the Proposed Development has been established in the NPSNN.

### Consideration of Alternatives

24. The Secretary of State notes that in accordance with paragraph 4.26 of the NPSNN, the Applicant included within the ES an outline of the main alternatives studied and provided an indication of the main reasons for the preferred route, taking into account the environmental effects. He further notes that in accordance

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<sup>1</sup> [Local Transport Plan - Norfolk County Council](#)

with paragraph 4.27 of the NPSNN, that the ExA was satisfied that the project has been subject to the full options appraisal in achieving its status within the RIS, and that proportionate option consideration of alternatives have been undertaken as part of the investment decision making process [ER 4.5.10 – 4.5.12].

### **Habitats Regulations Assessment**

25. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ('the Habitats Regulations'), the Secretary of State, as the competent authority, is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site [ER 5.1.1].
26. Where likely significant effects cannot be ruled out, the Secretary of State must undertake an appropriate assessment ("AA") under regulation 63(1) of the Habitats Regulations to assess potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking a plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the plan or project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest apply (regulation 64). Where a plan or project is agreed to in accordance with regulation 64, notwithstanding a negative assessment of the implications for a European site, regulation 68 also requires that the appropriate authority must secure that any necessary compensatory measures are taken to ensure the overall coherence of the national site network is protected.
27. The Secretary of State notes that the Applicant submitted a 'Report to inform Habitats Regulations Assessment' ("the Habitats Assessment") which was revised during the Examination ("the updated Habitats Assessment") following questions from the ExA [REP4-038] [ER 5.3.1]. This concluded no likely significant effects on the identified European sites or on their qualifying features as a result of the Proposed Development alone or in combination with other considered developments [ER 5.3.16]. The conclusion was not disputed [ER 5.3.18]. The following sites were considered;
- The Broads Special Area of Conservation ("SAC");
  - Broadland Special Protection Area ("SPA");
  - Broadland Ramsar site;
  - Breydon Water SPA;
  - Breydon Water Ramsar site; and
  - Paston Great Barn SAC.
28. The updated Habitats Assessment states that Natural England ("NE") were consulted on the Report's conclusions and concurred with its findings. The Secretary of State notes that, in the absence of evidence of NE's concurrence, the ExA sought confirmation from it. The Secretary of State notes that during the Examination NE requested a table with a reason for why each designated site was

scoped out / not carried forward in the assessment. The Applicant provided this at Deadline 4 [REP4-053] and NE agreed with the updated Habitats Assessment findings and the approach taken in respect of all the assessments relating to the identified European sites. [ER 5.3.17].

29. The Secretary of State also notes that the ExA, having given careful consideration to all relevant evidence, said that there are no likely significant effects of the Proposed Development on any European sites or their qualifying features. Having considered the assessment material submitted during the Examination, the Secretary of State concurs with the Applicant, ExA and NE that there would be no likely significant effects arising from the Proposed Development, either alone or in combination with other plans or projects, on the above listed sites and agrees with the ExA's view that there is no need to undertake an Appropriate Assessment [ER 5.5.1].

### Nutrient Neutrality

30. The Secretary of State notes the ExA highlighted that shortly before submission of the Report, a Written Ministerial Statement was issued on 16 March 2022 by Defra regarding the impact of nutrient pollution in water courses on water dependent protected sites [ER5.5.2].

31. The Secretary of State notes advice issued by NE dated 16 March 2022 setting out its advice for development proposals that have the potential to affect water quality in such a way that adverse nutrient impacts on designated habitats sites cannot be ruled out. It confirms, in Table 2 of Annex C that catchments of the River Wensum SAC and The Broads SAC are impacted by the advice<sup>[2]</sup> due to their being habitats sites in unfavourable condition due to nutrients.

32. During the Examination it was concluded and accepted by NE (the Government's statutory nature conservation advisor) that none of the qualifying habitats for the Broads SAC and Ramsar or River Wensum are located where there is a hydrological link between the Proposed Development and these qualifying habitats [ER 5.3.11, 5.3.17]. As there is no hydrological link (direct or indirect) to any of the National Site Network the Secretary of State is therefore satisfied that the Proposed Development will have no likely significant effect on Broads SAC and Ramsar site or Wensum SAC.

### Transportation and Traffic

33. The Secretary of State notes the ExA's consideration of the policy frameworks relating to Transportation and Traffic set out in ER 4.10.2 - 4.10.9, the case for the Applicant set out in ER 4.10.10 - 4.10.19, and the position of Interested Parties in ER 4.10.20 – 4.10.34.

34. The Secretary of State notes that a number of transportation concerns were considered during the Examination as set out at 4.10.20 - 4.10.34. The Secretary of State notes one of the dominant concerns, including from NCC, was in relation

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<sup>[2]</sup> [letter-from-ne-water-quality-and-nutrient-neutrality-advice.pdf \(north-norfolk.gov.uk\)](#)

to the severance of the Burlingham Footpath (“FP3”) and the lack of a central crossing point over or under the proposed A47 for non-motorised users including walkers, cyclists and horse riders [ER 4.10.21 - 4.10.24]. This is considered below at paragraphs 108-114.

35. The Secretary of State also notes that NCC raised concerns about responsibility for ongoing maintenance and management of the sections of the existing A47 that are to be de-trunked which would fall to NCC as the Local Highway Authority. No agreement on this was reached at the close of Examination and the ExA recommended that the Secretary of State may wish to seek further information on this matter [ER 9.2.13]. This is considered below in paragraphs 121-123.
36. NCC also raised concerns about the effect of the Proposed Development on congestion at the A47/Brundall roundabout [ER 4.10.21]. The ExA was satisfied that the cause of congestion would not be solely as a result of the Proposed Development and that any improvement works to this roundabout would be outside the scope of the application and a matter for the Applicant and NCC to address separately. It is noted that NCC welcomed the Applicant’s indication that it would discuss the potential for future monitoring of the roundabout with NCC and that NCC accepted that the Applicant cannot commit to improvement works at this time [ER 4.10.26]. The Secretary of State therefore agrees with the ExA that congestion at the A47/Brundall roundabout would not weigh significantly against the Proposed Development [ER 4.10.38].
37. The Secretary of State notes concerns were raised about the safety of the junction of The Windle and the A47 and that there was a request that access be maintained to Acle Hall Farm to the south of the A47 [ER 4.10.25]. The ExA considered that no substantive evidence was presented to demonstrate that safety at the Windle would be materially compromised by the Proposed Development and the Secretary of State also notes that the Applicant set out a list of measures included in the Proposed Development that it considered would improve safe use of the Windle [ER 4.10.27]. The ExA considered that they had no substantive reason to take a different view to the Applicant with regard to the safe use of the Windle. The ExA was also satisfied that adequate access to Acle Hall Farm would be maintained [ER 4.10.28].
38. The Secretary of State notes that in response to his consultation of 5 May 2022 Blofield Parish Council stated in their email of 19 May 2022 that they continued to have concerns about the impact on traffic in Blofield, highlighting the matters around this that were not agreed in the Statement of Common Ground (“SoCG”) between the Applicant and the Parish Council. The Secretary of State is satisfied that these matters have been adequately considered by the ExA as part of the Examination as set out above and in section 4.10 of the Report.

#### The Secretary of State’s Conclusion on Transportation and Traffic

39. The Secretary of State agrees with the ExA’s findings that the Applicant has used reasonable endeavours to address the needs of pedestrians and cyclists in designing the Proposed Development. The ExA also concluded that through the creation of new footpaths, footways and cycling routes, overall provision for non-

motorised users (“NMUs”) would be enhanced and severance effects reduced as a result of the Proposed Development [ER 4.10.37]. The Secretary of State agrees with this and is satisfied that the application conforms with paragraph 2.9 of the NPSNN in respect of NMUs.

40. Taking all the relevant documents and policies into account the Secretary of State agrees with the ExA’s conclusions as set out in ER 4.10.35 – 4.10.38 that traffic and transportation matters generally weigh in favour of the Proposed Development but that the severance of FP3 and the increased walking distance to cross the A47, which would have an adverse effect on NMUs, would weigh against the Proposed Development.

### **Air Quality and Emissions**

41. The Secretary of State notes the ExA’s consideration of this matter at ER 4.11.2 – 4.11.26. The Secretary of State notes that based on the air quality assessment in the Applicant’s Environmental Statement (“ES”) the Applicant concluded that the Proposed Development would not give rise to any significant effects in respect of human or ecological receptors [ER 4.11.19].
42. The Secretary of State notes that Public Health England and BDC had no concerns in respect of air quality and emissions [ER 4.11.21 and 4.11.22]. Whilst NCC raised no substantive concerns they did suggest that air quality monitoring continue beyond construction and during operation [ER 4.11.23]. The ExA did not consider they had been presented with any compelling reasons why further monitoring would be required or to indicate that the Proposed Development would be unacceptable without it [ER 4.11.24]. The Secretary of State agrees with this conclusion.

### **The Secretary of State’s Conclusion on Air Quality and Emissions**

43. The Secretary of State notes that the ExA considered that the Applicant’s ES 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, and that the Proposed Development is unlikely to lead to a breach of the air quality thresholds set out in legislation. The ExA also agrees with the Applicant’s assessment that the Proposed Development would not affect the UK’s ability to comply with the Air Quality Directive. In addition, the ExA was satisfied that no significant air quality effects would result during construction and operation of the Proposed Development and that the relevant policies of the NPSNN are satisfied. Furthermore, the ExA concluded that appropriate mitigation and control measures would be contained within the Record of Environmental Actions and Commitments (“REAC”), within the Environmental Management Plan (“EMP”) and secured through Requirement 4 of the recommended dDCO, and concludes that air quality matters are a neutral consideration in the planning balance [ER 4.11.28]. The Secretary of State agrees with this conclusion.

## **Biodiversity, Ecology and The Natural Environment**

44. Paragraphs 5.20 - 5.38 of the NPSNN relate to biodiversity and ecological conservation [ER 4.12.2] and paragraph 5.23 states that “the Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests” [ER 4.12.5].
45. The Secretary of State notes and accepts the ExA’s consideration of the policy frameworks relating to biodiversity, ecology and the natural environment set out in ER 4.12.2 – 4.12.5, and notes the case for the Applicant is set out in ER 4.12.6 - 4.12.19 and the position of the Interested Parties is set out in ER 4.12.20 – 4.12.29.
46. The Secretary of State notes that the ExA highlighted that Chapter 8 Table 8-8 of the Applicant’s ES identifies net gain or loss of habitat types associated with the Proposed Development. Following questions from the ExA about whether there would be an overall biodiversity net gain and, if there would, to what extent, the Applicant clarified that there would be a greater than 40% biodiversity net gain and provided evidence of its calculations to support this. The Secretary of State notes that the ExA concluded that they had no reason to dispute the calculations and that no other parties commented on this [ER 4.12.23].
47. The Secretary of State notes that NCC raised a concern about the protected species survey, in particular the Great Crested Newt (“GCN”) survey work, not being completed fully due to Covid-19 restrictions [ER 4.12.21]. The Applicant considered the data collected, which considered a spread of ponds across the Order land and found no evidence of GNC, provided a sufficiently robust baseline for the ecology assessment. The Applicant also confirmed that further surveys would be carried out around 6 months prior to the start of construction and that this would provide sufficient time to secure a protected species licence from NE should the presence of GCN be confirmed. The ExA sought the views of NCC and NE on the Applicant’s proposed approach, and both confirmed it was acceptable under the circumstances. Like the ExA, the Secretary of State has no reason to take an alternative view and is satisfied that Requirement 7 of the Order makes provision for protected species surveys to take place prior to commencement works and for any necessary licences to be secured.
48. The Secretary of State notes that the Applicant’s ES sets out that there will be a moderate adverse and thus significant effect on bats [ER 4.12.16] due to the potential for increased mortality through traffic collisions given the additional lanes of traffic and uncertainty about the effectiveness of the proposed bat hops. The Secretary of State is satisfied that in line with NPSNN the ExA has given full consideration to this [ER 4.12.24 - 4.12.28] and that the proposals to mitigate or reduce adverse effects are adequately secured through Requirement 4.
49. The ExA concluded that the Proposed Development, through a variety of mitigation measures, would not give rise to any significant residual effects on statutory and non-statutory wildlife sites, protected species (with the exception of bats) and habitats and other species of notable importance for the conservation of biodiversity [ER 4.12.30].

## The Secretary of State's Conclusion on Biodiversity

50. The Secretary of State agrees with the ExA that the biodiversity net gain that would result from the Proposed Development weighs in its favour [ER 4.12.32] but that the adverse effect on bats weighs against it [ER 4.12.33]. The ExA was satisfied that consideration has been given to alternative developments and, as required by paragraph 5.35 of the NPSNN, that the strategic benefits of the Proposed Development are such that they would clearly outweigh the potential adverse impact on bats, and that the potential harm would be outweighed by the benefits of the Proposed Development in meeting Government policy as set out in the NPSNN [ER 4.12.34, 6.3.12]. The Secretary of State agrees with this and is satisfied that the Proposed Development conforms with the NPSNN.

## Climate Change

51. The Secretary of State notes the ExA's consideration of the policy frameworks relating to climate change, including any potential effects in relation to climate change targets and climate change adaptation set out in ER 4.13.2 – 4.13.5. The case for the Applicant is set out in ER 4.13.6 – 4.13.16 and the position of the Interested Parties is set out in ER 4.13.17 - 4.13.31.

52. It is noted that the Applicant's assessment of Greenhouse gas ("GHG") emissions (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development is included in Chapter 14 (Climate) of its ES. Within this, carbon emissions are set out between the Do-something and Do-minimum scenarios [ER 4.13.9].

53. The Secretary of State notes that as construction is not planned to start before winter 2022, the third carbon budget (2018-2022) is not considered to be impacted as the initial months of work are unlikely to have a material impact [ER 4.13.10]. All construction emissions have thus been assessed against the fourth budget (2023-2027) as a worst-case scenario. The Applicant's ES concludes that the increase in carbon emissions resulting from the Proposed Development would represent approximately 0.001% of the fourth (2023-2027), fifth (2028-2032) and sixth (2033-2037) carbon budgets [ER 4.13.10]. The ExA were satisfied that this would be unlikely to have a material impact on the ability of Government to meet published carbon budgets or to meet nationally determined contributions under the Paris Agreement. The ExA therefore concluded that the Proposed Development was not anticipated to give rise to any significant effects [ER 4.13.33].

54. The Secretary of State notes that concerns were raised about the effects of the Proposed Development on climate change/carbon emissions including: that the assessment of cumulative climate change effects / carbon emissions was inadequate; a lack of assessment of carbon emissions on a local and regional scale; a lack of assessment of climate change effects/carbon emissions beyond the published carbon budget periods; an inadequate use of the affected road network as a study area; and lack of information and data in respect of traffic models [ER 4.13.18].

55. With regard to a local and regional assessment of carbon emissions, the Secretary of State notes the 2017 Regulations guidance and IEMA Guidance 'Assessing Greenhouse Gas Emissions and Evaluating their Significance' 2017<sup>2</sup> highlighted by the ExA as referenced by Dr Andrew Boswell as well as the 2<sup>nd</sup> Edition of this guidance<sup>3</sup> published in 2022 ("the IEMA Guidance") referenced by Dr Andrew Boswell in correspondence received after the close of Examination and agrees with the ExA, whose comments in respect of the 2017 IEMA Guidance apply equally to the 2022 version, that these are guidance documents only and that the 2017 Regulations and NPSNN which are legislation and policy respectively do not specify a requirement for local and regional carbon assessments [ER 4.13.20]. The Secretary of State also notes that Dr Andrew Boswell considered that the authority areas of Broadland, Breckland, South Norfolk and Norwich ("BBSNN") should be used as a study area to assess individual and cumulative effects of carbon emissions [ER 4.13.22] but agrees with the ExA that the BBSNN carbon budgets are not adopted and the NNNPS sets out only a requirement to consider national carbon budgets, which the Applicant has done.

56. The Secretary of State notes that NCC's Environment Policy 2019 sets out that it will work towards carbon neutrality by 2030 but that NCC highlighted that work had not yet begun on how this would be achieved. NCC also confirmed that they were not aware of any carbon reduction budgets at a regional level to make an assessment against and BDC also confirmed the same in respect of the local level [ER 4.13.21]. Like the ExA, the Secretary of State does not consider that there are substantive reasons to conclude that the Proposed Development would have a material impact on NCC's Environmental Policy around neutrality by 2030 [ER 4.13.21]. The Secretary of State also notes emails were received from a number of parties in June 2022 highlighting that NCC's Cabinet met on 6 June and have resolved to approve and recommend to Full Council that LTP4 is adopted in July 2022 and that this includes a local carbon reduction target accompanied by annual trajectories towards it. Some of those parties considered (amongst other things) that a decision on this DCO should be deferred until a local carbon assessment against the LTP4 annual carbon emission targets had been undertaken by the Applicant. The Secretary of State notes that the LTP4 is not yet adopted and considers that the only statutory carbon targets are those at a national level. The Secretary of State is satisfied that the Applicant has considered the national carbon budgets and that the Applicant has therefore provided sufficient information to enable the Secretary of State to consider the application in terms of its GHG emissions and that it is not necessary for the Applicant to provide a further assessment of the Proposed Development against what are emerging rather than adopted LTP4 targets. Given the LTP4 is not yet adopted, the Secretary of State does not consider that it is appropriate to attach material weight to these LTP4 targets in the determination of this application.

57. With regard to a lack of assessment of climate change effects/carbon emissions beyond the published carbon budget periods, the Secretary of State notes that this relates to 61% of the Proposed Development's carbon emissions and that the

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<sup>2</sup> Assessing Greenhouse Gas Emissions and Evaluating their Significance, Institute of Environmental Management and Assessment, 2017

<sup>3</sup> Assessing Greenhouse Gas Emissions and Evaluating their Significance, Institute of Environmental Management and Assessment, 2<sup>nd</sup> Edition 2022

Applicant suggested that 97% of these emissions would be from tail-pipe emissions. The Secretary of State agrees with the ExA that having regard to the Department for Transport's, 'Decarbonising Transport: A Better, Greener Britain' ("the Transport Decarbonisation Plan"), published in July 2021 and the Applicant's own 2030/2040/2050 Net Zero Highways plan, that it is unlikely that the Proposed Development would of itself have a material effect on the Government's ability to meet published carbon budgets, future budgets, or the Government's carbon reduction "Net Zero" target for 2050 [ER 4.13.24].

58. With regard to the assessment of cumulative climate change effects, the Secretary of State notes that the ExA asked the Applicant whether a cumulative effects assessment should take into account other proposed major road schemes such as those identified in RIS2. The Applicant argued that this was not necessary as its carbon emissions / climate change assessment was compliant with the NPSNN, 2017 Regulations and relevant Design Manual for Roads and Bridges ("DMRB") guidance [ER 4.13.25-26]. The Applicant states the climate assessment methodology is inherently cumulative because the traffic models used include data on the emissions resulting from the Proposed Development and other locally committed development (including A47 North Tuddenham to Easton and A47/A11 Thickthorn Junction and the Norwich Western Link). The Secretary of State further notes that the Applicant also highlighted the High Court judgment delivered in *R (Transport Action Network Ltd.) v Secretary of State for Transport and Highways England* [2021] EWHC 2095 (Admin) to the effect that the total amount of GHG emissions from the schemes listed in RIS2 is de minimis in the context of appropriate comparators for assessing the effect on climate change [4.13.28]. The ExA considered that this judgement indicated that the Proposed Development, along with other schemes associated with RIS2, would be unlikely to give rise to significant climate effects but that the Secretary of State may wish to consider the adequacy of the Applicant's consideration of cumulative carbon emissions/climate change effects for the purposes of the NPSNN and 2017 Regulations [ER 4.13.30].
59. The Secretary of State is aware of the context of that case and the Court's conclusion that a RIS is essentially a high level strategy document, rather than an environmental-decision making document which was required to be supported by an environmental assessment of the type required for the Proposed Development. The Secretary of State considers that as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions, there are a number of ways such an assessment can acceptably be undertaken and that this does not necessarily need to be done at RIS level.
60. The Secretary of State is also conscious that the impact and effect of carbon emissions on climate change, unlike other EIA topics, is not limited to a specific geographical boundary and that the approach that needs to be taken to assess the cumulative impact of carbon emissions is different from other EIA topics. Noting this, and that there is no defined distance for assessing the impact of carbon emissions, the Secretary of State considers that the Applicant's approach to assessing the impact of the Proposed Development on carbon is acceptable as it takes into account the Proposed Development as well as all other developments likely to have an influence both on the Proposed Development and on the area the Proposed Development is likely to influence.

61. The Secretary of State also notes that the Applicant argued that consideration of the Proposed Development against the UK carbon budgets is inherently cumulative as these account for carbon contributions across all sectors [ER 4.13.25]. The Secretary of State agrees that assessing a scheme against the national carbon budgets is an acceptable cumulative benchmark for the assessment for EIA purposes with regard to both construction and operation. This is because carbon budgets account for the cumulative emissions from a number of sectors and it is therefore appropriate to consider how the carbon emissions of the Proposed Development compare against this.
62. The Secretary of State considers the assessment that has been undertaken by the Applicant is proportionate and reasonable in relation to the information the Applicant has access to and it enables the impacts of carbon to be understood and accounted for in the decision making process. The Secretary of State considers that the Applicant's approach overall, to both the assessments of the Proposed Development's impact on carbon emissions and its cumulative impact, is adequate.
63. In relation to the ExA's conclusion that the Proposed Development is not anticipated to give rise to any significant effects [ER 4.13.33], the Secretary of State considers that there is no set significance threshold for carbon. The Secretary of State notes that the Proposed Development will result in an increase in carbon emissions and considers that, as set out in NPSNN paragraph 5.18, it is necessary to continue to evaluate whether (amongst other things) the increase in carbon emissions resulting from the Proposed Development would have a material impact on the ability of Government to meet its carbon reduction targets. The Secretary of State considers this aligns with the approach to significance set out in the IEMA guidance. The Secretary of State considers that the approach set out in the NPSNN continues to be relevant in the light of international and domestic obligations related to reducing carbon emissions that have been introduced since the NPSNN was designated.
64. Taking this into consideration, the Secretary of State considers that the majority of operational emissions related to the Proposed Development result from vehicle usage and that the Transport Decarbonisation Plan includes a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time (including policies to decarbonise vehicles and radically reduce vehicle emissions) and help to ensure that carbon reduction commitments are met. Beyond transport, Government's wider policies around net zero such as 'The Net Zero Strategy: Build Back Greener', published by Government in October 2021 sets out policies and proposals for decarbonising all sectors of the UK economy to meet the net zero target by 2050. It is against this background that the Secretary of State has considered the Proposed Development. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, the Secretary of State considers that the Proposed Development is consistent with existing and emerging national policies designed to achieve the UK's trajectory towards net zero. The Secretary of State therefore considers the Proposed Development's effect on climate change would be minor adverse and not significant and that this assessment aligns with section 6.3 and

Figure 5 of the IEMA guidance. The Secretary of State is satisfied that the Proposed Development complies with the NPSNN, will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own policies and legislation relating to net zero.

65. Overall, the Secretary of State considers that the information provided by the Applicant on the impact of the Proposed Development on carbon emissions (including the cumulative effects of carbon emissions from the Proposed Development with other existing and/or approved projects in relation to construction and operation) is proportionate and reasonable and is sufficient to assess the effect of the Proposed Development on climate matters. The Secretary of State is satisfied that the assessment reflects information that the Applicant can reasonably be required to compile having regard to current knowledge and in light of the information about the national carbon budgets and that it enables the impacts of carbon to be understood and fully accounted for in the decision making process.
66. The Secretary of State notes that concern was raised about the Applicant's assessment of the Proposed Development's vulnerability to climate change particularly relating to cumulative effects. The ExA was satisfied that the Applicant had adequately demonstrated that the Proposed Development would be resilient to climate change effects and had had regard to the most recent UK climate projections (UKCP18) as part of the assessment. The Secretary of State's agrees with the ExA's conclusion on this matter and is satisfied that through measures secured in the EMP, matters relating to vulnerability to climate change will be reviewed should UK climate projections be updated [ER 4.13.31].

#### The Secretary of State's Conclusion on Climate Change

67. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development is consistent with existing and emerging policy requirements to achieve the UK's trajectory towards net zero. The Secretary of State therefore considers the Proposed Development's effect on climate change would be minor adverse and not significant and this assessment aligns with the IEMA guidance. The Secretary of State is satisfied that that the Proposed Development complies with the NPSNN, will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own policies and legislation relating to net zero. The Secretary of State also agrees with the ExA that the Proposed Development would be resilient to climate change over its lifetime [ER 4.13.36].
68. Given that the Proposed Development will increase carbon emissions, it is given negative weight in the planning balance. In relation to climate change vulnerability and adaptation, the Development attracts neutral weight in the planning balance.

## **Cultural Heritage**

69. Paragraphs 5.128 – 5.138 of the NPSNN identify the historic environment decision-making considerations to be taken into account by the Secretary of State [ER 4.14.2 – 4.14.4]. The Secretary of State notes that the Applicant’s study area for heritage assets, which comprises the footprint of the Proposed Development, identified a total of 142 heritage assets within the study area comprising [ER 4.14.8]:

- 25 designated heritage assets (Grade I (“GI”) or Grade II (“GII”) listed buildings); and
- 117 non-designated heritage assets (including buildings, archaeological features, findspots, landscapes and structures such as milestones and guideposts).

70. The ExA recorded that following a screening exercise, the following designated and non-designated heritage assets were identified in the Applicant’s ES as having the potential to experience significant effects as a result of the Proposed Development [ER 4.14.9]:

- the Church of St Andrew (North Burlingham) (GI);
- the Church of St Peter (North Burlingham) (GII);
- Owls Barn, Blofield (GII);
- house at Owls Barn, Blofield (GII);
- Poplar Farm;
- Oaklands Former Rectory;
- Old Post Office;
- Beighton House (also known as the White House);
- North Burlingham Park;
- a guidepost on Acle Road;
- a milestone on Yarmouth Road, Blofield;
- a milestone on Main Road, North Burlingham; and
- a number of archaeological remains, geophysical anomalies, cropmarks and findspots.

71. The ExA recorded that mitigation measures were included in the Applicant’s dDCO to reduce potential adverse temporary and permanent impacts from construction and impacts from operation [ER 4.14.14]. The ExA noted that specific measures are included within CH1 to CH8 of the REAC within the EMP, and measures to mitigate impacts from noise and vibration are also included within the EMP [4.14.16]. The Secretary of State notes that the EMP is secured under Requirement 4, the Written Scheme of Investigation is secured under Requirement 9, and that landscaping is secured under Requirement 5 of the Order.

72. The ExA noted that with these measures, the Applicant’s ES concluded that there still remained a potential for effects on heritage assets from the construction and operation of the Proposed Development ranging between moderate beneficial and slight adverse [ER 4.14.15]. In respect of the potential slight adverse effects, the Secretary of State is aware that these would be on Poplar Farm, North Burlingham Park, Beighton House, Oaklands Former Rectory and the guidepost on Acle Road

due to impacts on their settings, and in respect of North Burlingham Park due to an element of physical loss also.

73. The ExA stated that there were no significant matters of concern raised by Interested Parties in respect of cultural heritage [ER 4.14.18]. Nonetheless, the Secretary of State notes that the ExA carefully considered and explored, through a number of questions addressed to Interested Parties such as Historic England, NCC, BDC and the Applicant, the potential for residual impacts on heritage assets [ER 4.14.19 - 4.14.30].

#### The Secretary of State's Conclusion on Heritage Assets

74. The Secretary of State agrees with the ExA that the information provided in the Applicant's ES and submitted during the Examination was sufficiently comprehensive for the ExA to take into account heritage assets and their significance, and identify the potential impacts to that significance from the Proposed Development [ER 4.14.31]. The Secretary of State agrees with the ExA's conclusions that:

- there would be no residual harm to the significance of any designated heritage assets, including The Church of St Andrew (GI); The Church of St Peter (GII); Owls Barn (GII) and the House at Owls Barn (GII), and that in respect of The Church of St Andrew and The Church of St Peter, there would be a degree of improvement to their settings from the movement of the A47 further away from them [ER 4.14.32]
- while there would be some beneficial residual effects during construction and operation on the significance of a number of non-designated heritage assets, there would also be some residual adverse effects including on North Burlingham Park, Poplar Farm, Beighton House, Oaklands Former Rectory and a guidepost. Nonetheless, the effects on non-designated heritage assets would not be significant and do not weigh materially in favour of or against the Proposed Development.
- as set out in paragraph 71 above, measures to reduce and mitigate potential adverse effects on heritage assets are adequately identified in the REAC within the EMP and secured in relevant requirements within the Order.
- the potential for the loss of some archaeological remains from the construction of the Proposed Development would be adequately addressed and mitigated through Requirement 9 of the Order; and
- the Proposed Development accords with the requirements of the NPSNN relating to heritage.

75. The Secretary of State has also had regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess, as required by regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, and agrees with the ExA that the Proposed Development would achieve this [ER 4.14.31].

#### Geology and Soils

76. The ExA's consideration of impacts on geological and soil receptors is contained within section 4.15 of the Report. The Secretary of State notes paragraph 5.168 of the NPSNN regarding agricultural land and its quality and the risk posed by land contamination and how it is proposed to address this [ER 4.15.2 – 4.15.3].
77. The ExA recorded that there were no significant matters of concern raised by Interested Parties, apart from a relevant representation referring to 'the loss of good farmland' [ER 4.15.12].
78. The ExA noted that on impacts from the Proposed Development on geological receptors, the Applicant's ES confirmed that there will be no impact on any geological sites as there are none located within the study area [ER 4.15.6]. In relation to contamination issues, the ExA noted that the Relevant Representation ("RR") submitted by the Environment Agency ("EA") confirmed that it was generally satisfied with the approach taken by the Applicant on the issue of contaminated land and with the level of detail provided in the application [ER 4.15.13]. The Secretary of State notes that the dDCO was amended to the EA's satisfaction during the Examination to reflect the change they requested in their RR on the text of Requirement 6, which makes provisions for the remediation of any previously unknown contaminated land. This amendment ensures that the EA would be party to a risk assessment and any decisions taken in the event any unexpected contamination is found during the construction of the Proposed Development [ER 4.15.13]. The Secretary of State also notes that the signed SoCG between the Applicant and the EA confirms that there is agreement that the Proposed Development is unlikely to disturb any historical contamination [ER 4.15.13]. The ExA concluded that with the controls and measures secured in Requirement 6 mentioned above and in Requirement 8, which relates to surface water drainage and includes means of pollution control, it was satisfied that the Proposed Development would not result in any significant effects on geology or in respect of ground contamination [ER 4.15.15].
79. In terms of soil function and quality, the Applicant's ES stated that the Proposed Development would not affect the function or quality of soil as a resource outside of its function for agriculture. During the Examination the Applicant updated the REAC to secure the Agricultural Land Classification ("ALC") survey which would confirm the ALC grade of agricultural land affected by temporary possession, in order that the land can be reinstated to its baseline condition. The REAC was further updated during the Examination at the request of the ExA so that it is clear in all columns of the REAC that the ALC survey is to be carried out prior to construction [ER 4.15.14].
80. The ExA also noted that the majority of the Proposed Development would occupy undeveloped agricultural land currently in commercial use, and that NE's Provisional ALC map indicated that the agricultural land affected is classified as the best and most versatile ("BMV") Grade 1 and Grade 2 land. The ExA also noted that the Applicant's assessment has assumed a worst-case that all affected agricultural land is Grade 1 land [ER 4.15.7]. The ExA records that for temporary land take during construction, this has been assessed as having a significant effect on agricultural land due to the potential for reduction in soil function due to degradation, compaction and erosion [ER 4.15.9]. The ExA considered, however,

that the mitigation measures proposed in the dDCO [ER 4.15.10 and 4.15.16] would go some way in mitigating the temporary loss of high-quality agricultural land. In respect of permanent land take, the ExA records that during construction, the Proposed Development would result in both permanent and temporary land take of Grade 1 agricultural land. The permanent land take has been assessed as having a significant effect as it would be greater than 20 hectares. The Applicant concluded in its ES that because there are no measures that could mitigate against the loss of Grade 1 agricultural land for commercial use that the permanent loss of this land remains a residual significant effect [ER 4.15.8].

### The Secretary of State's Conclusion on Geology and Soil

81. The Secretary of State agrees with the ExA's conclusion that the Proposed Development would not result in any significant effects on geology or in respect of ground contamination. On the impacts from temporary land take, the Secretary of State also agrees with the ExA that the controls and measures secured in the Order will go some way in mitigating the temporary loss of high-quality agricultural land. On the impacts from the permanent loss of high-quality agricultural land, the Secretary of State notes paragraph 5.176 of the NPSNN, but agrees that there are no measures that can mitigate against the loss of Grade 1 agricultural land for commercial use, and therefore agrees with the ExA that there remains a significant residual effect in this respect.
82. The Secretary of State agrees with the ExA's overall conclusion that the Proposed Development would, in general terms, meet all legislative and policy requirements relating to geology and soils, including those of the NPSNN, albeit that residual adverse effects, primarily relating to the permanent loss of high-quality agricultural land, is a disbenefit which weighs against the Proposed Development [ER 4.15.15 – 4.15.18]. The Secretary of State has considered the permanent loss of high-quality agricultural land further in the Planning Balance section in paragraph below.

### Landscape and Visual Effects

83. The ExA's consideration of Landscape and Visual impacts from the Proposed Development is covered in section 4.16 of the report. The ExA noted that the ES submitted in support of the Application considers impacts from the Proposed Development at:
- construction (temporary effects);
  - year one (winter) during operation (temporary effects); and
  - year 15 (summer) during operation (permanent effects) [ER 4.16.8].
84. The Applicant's assessment considered potential effects from which the Proposed Development may be visible as well as a range of visual receptors including those associated with residential, footpath, community, commercial and highway locations [ER 4.16.9 – 4.16.10]. The assessment identified that there are no specific landscape designations in the study area [ER 4.16.11]. A description of the landscape is provided by the ExA at paragraphs 4.16.12 – 4.16.14 of the report.
85. The ExA noted that the Applicant's ES states there is potential for the following effects as a result of the Proposed Development:

- temporary landscape and visual effects during construction due to the loss of some woodland (including Lingwood Community Woodland “LCW”), hedgerows and trees, earthworks and the presence of site compounds and machinery [ER 4.16.17]; and
- permanent landscape and visual effects during operation due to the creation of the new dual carriageway, presence of overbridges, moving traffic (aural and visual), changes to landform, changes to footpaths, loss of vegetation and the introduction of new street furniture and lighting [ER 4.16.18].

86. The ExA noted that the Applicant’s assessment considered that with its proposed mitigation measures, there would be no significant effects on landscape features or the night-time environment during construction. However, it identified that there would be adverse significant effects on:

- the following Landscape Character Areas (“LCA”): LCA2 Blofield / Lingwood valley; LCA3 Blofield / Lingwood plateau; LCA4 Burlingham plantation; and LCA5 Freethorpe plateau; and
- various viewpoints set out at ER 4.16.20 and a number of visual receptors including those associated with 53 residential, one footpath, three community, one commercial and six highway locations [ER 4.16.20].

87. The Secretary of State notes the Applicant’s assessment of significant effects at ER 4.16.21 - 4.16.23 and its conclusion that by year 15 of the Proposed Development, any residual effects and landscape features, landscape character, viewpoints and visual receptors would either be slight adverse or neutral in significance due to the establishment and maturing of planting. The Applicant therefore concluded that the Proposed Development would not result in any residual significant effects [ER 4.16.22].

88. The ExA received concerns from private individuals relating to lighting impacts on property, visual impacts from the Proposed Development and concerns in general about visual impacts and light pollution [ER 4.16.26].

89. The ExA noted that NCC’s RR and LIR confirm that it was of the view that the assessment carried out by the Applicant in this respect, and that the identification of receptors and their sensitivities were appropriate, as was the mitigation proposed for the construction and operation of the Proposed Development. The ExA also noted that the NCC considered that while there would be some adverse effects on landscape and visual receptors during construction and on the opening of the Proposed Development, these adverse effects would decrease to negligible adverse once planting matures. The ExA also noted that while the NCC considers that the area is not particularly noted for its dark skies, it raised a concern relating to the impacts from artificial lighting, and raised the need to ensure that all trees to be removed are properly identified and that those to be retained to be adequately protected [ER 4.16.25]. The ExA agreed with NCC’s suggestion that there was potential for improvements to the landscape / integrity of the LCW. The ExA noted that although unsigned, the SoCG between the Applicant and NCC, which was submitted towards the end of the Examination, indicates that the Applicant has secured additional funding to review potential biodiversity opportunities and that there was agreement that the Applicant would work with NCC to develop a feasibility study to assess further opportunities for LCW [ER 4.16.31].

90. During the Examination, in response to the ExA's written questions, BDC confirmed the general acceptability of the spatial arrangement and the general design of the planting proposals. The BDC also confirmed that it was content with the content with the viewpoint and photomontage locations, the Applicant's approach to defining landscape character areas, and that it had no objection to the lighting proposals. The ExA noted that BDC suggested some minor changes to the indicative list of plant species, which the Applicant accepted. The ExA was satisfied that Requirement 5 of the dDCO will ensure that BDC will have the opportunity to comment on any further detailed landscape proposal. The ExA also noted that BDC also confirmed both in the signed SoCG with the Applicant and in its LIR that it was content that the Proposed Development would not conflict with its development plan policies relating to landscape and design [ER 4.16.24]. The ExA also noted that as streetlighting is to be designed to minimise light spill, and this is secured through G2 of the REAC within the EMP, it was satisfied that there would be no conflict with policy ENV5 of the Blofield Parish Neighbourhood Plan 2016 which relates to limiting impacts on dark skies. It was also satisfied that the overall lighting impacts of the Proposed Development would be acceptable in terms of the character of the area and in terms of visual amenity, including for nearby residents [ER 4.16.28].
91. The Secretary of State notes that during the Examination, the ExA asked a number of questions relating to landscape and visual impacts and various amendments were made to the dDCO and supporting documentation including the inclusion of a provision in G2 of the REAC within the EMP for removing some of the existing streetlighting along the de-trunked section of the A47 [ER 4.16.27], and amendments [REP1-036] to the Arboricultural Impact Assessment and a provision under the EMP relating to the completion of arboricultural method statements and tree protection measures [ER 4.16.29].
92. Given that the Proposed Development requires numerous landscape and ecological works to mitigate or reduce adverse effects, the ExA requested the Applicant to submit an outline Landscape and Ecological Management Plan ("oLEMP") to demonstrate to the ExA that the mitigation features would function effectively in the long term. The ExA was satisfied that the oLEMP will aide in the development of a more detailed LEMP which is secured under the EMP and Requirement 4 of the dDCO, in addition to LV1 of the REAC [ER 4.16.29 and 4.16.33].
93. The ExA also records that in response to the ExA's written questions relating to the concerns raised on the impacts from lighting, the Applicant explained that new street lighting around the A47 / Yarmouth Road junction at Blofield and new / replacement street lighting at the A47 / B1140 junction and overbridge (where street lighting already exists) would be designed to minimise light spill and is required for highway safety purposes [ER 4.16.27]. The ExA noted that the Applicant also agreed to include within G2 of the REAC within the EMP a provision for removing some existing streetlighting along the de-trunked section of the A47.

#### The Secretary of State's Conclusion on Landscape and Visual Effects

94. The Secretary of State agrees with the ExA that there would be some significant adverse landscape and visual effects during construction and during the early stages of operation, and that this is to be reasonably expected for a project of this type and scale. The Secretary of State also agrees with the ExA that the Applicant's mitigation measures are reasonable, proportionate and adequately secured through Requirements 4 and 5 of the Order. The Secretary of State notes the temporary nature of the effects from construction and agrees with the ExA that the adverse effects would diminish considerably and would no longer be significant by year 15 of operation once landscaping establishes and matures [ER 4.16.35]. The Secretary of State, noting paragraphs 5.149 and 5.156 – 5.161 of the NPSNN [ER 4.16.2 – 4.16.5], is also satisfied that the Proposed Development would accord with the relevant aims of the NPSNN with regard to landscape and visual matters, and that these matters are of neutral weight in the planning balance [ER 6.2.48].

### **Material Assets and Waste**

95. The ExA's consideration of the Applicant's assessment of material assets and waste is contained within section 4.17 of the Report. The ExA noted that Chapter 10 of the Applicant's ES considered material assets that would be used during construction, the potential for the sterilisation of mineral sites, and waste generation from construction [ER 4.17.5].

96. The ExA records that no significant matters were raised by Interested Parties in respect of material assets and waste issues [ER 4.17.18]. The Secretary of State notes that the ExA identified an error in the Applicant's construction waste figures in its ES in respect of unbound aggregates, and that the ES was amended and updated by the Applicant to address this error [ER 4.17.20]. The ExA noted that the amended figures reduced the Applicant's expected reduction or alternation of the regional capacity of waste infrastructure from approximately 0.7% to approximately 0.3% [ER 4.17.21]. This matter was discussed further during ISH3 and the ExA was satisfied with the Applicant's response on the matter [ER 4.17.22].

97. The Secretary of State notes that during the Examination, Requirement 4 was updated to take into account the EA's request that it be added as a consultee, including in respect of reviewing the Site Waste Management Plan [ER 4.17.23].

### **The Secretary of State's Conclusion on Material Assets and Waste**

98. The Secretary of State, noting paragraphs 5.43 - 5.45 of the NPSNN [ER 5.17.2], agrees with the ExA that the Proposed Development would not result in any significant effects on material assets or waste during construction or operation. The Secretary of State is satisfied that appropriate measures to minimise and control impacts are secured within the Order [ER 4.17.24]. The Secretary of State also agrees with the ExA that the Proposed Development meets all legislation and policy requirements including those in the NPSNN, and that there are no matters relating to material assets and waste management that weigh against the Proposed Development [ER 4.17.25].

## **Noise and Vibration**

99. The Secretary of State notes the ExAs consideration of the impacts from noise and vibration is set out at ER 4.18 of the Report. The ExA noted that the Applicant concluded that with the measures it proposed to reduce and mitigate effects of construction related noise and vibration set out in paragraph 4.18.12, no significant residual effects are anticipated during construction. The Applicant noted that there remained significant residual noise effects predicted for two residential receptors during construction but that the monitoring of noise would allow for a change in the methods of work when noise approaches Significant Observed Adverse Effect Level (“SOAEL”) levels [ER 14.18.13].
100. The ExA noted that the Applicant’s ES set out that there would likely be short term significant adverse noise effects predicted for 94 residential receptors and three non-residential receptors [ER 4.18.16]. Furthermore, there would likely be long term significant adverse noise effects as a result of the Proposed Development during operation, due to the changes in traffic patterns, to 55 residential and 1 non-residential receptor in the vicinity of Yarmouth Road and the B1140 High Road [ER 4.18.17]. The ExA also noted that for the same reason there would also be long-term significant beneficial effects for other receptors due to a reduction in traffic on the surrounding road network [ER 4.18.18].
101. The Secretary of State notes that there were a no significant matters raised by BDC and NCC in respect of noise and vibration issues [ER 4.18.22] and that impacts from noise and vibration was considered extensively during the Examination by the ExA. The Secretary of State notes that following concerns raised, changes were made to the EMP during the Examination to secure long-term maintenance of the low noise road resurfacing over the lifetime of the Proposed Development [ER 4.18.23], and to make provisions to provide clarity on construction working hours limitation [ER 4.18.27].
102. The Secretary of State notes that the ExA questioned whether the Applicant had explored all reasonable options for mitigation in relation to the long term significant adverse effects on the 55 residential and one non-residential receptor. The ExA concluded that they were satisfied that the benefit of low noise road surfacing where traffic speed is low, such as in the vicinity of Yarmouth Road and the B1140 High Road, is limited and that noise barriers are not a practical solution. BDC agreed with the Applicant’s conclusion that no significant adverse health effects are expected due to levels of road traffic noise and that mitigation is not necessary. The ExA considered that they had no substantive reason to take a different view on this matter [ER 4.18.25 - 4.18.26] and concluded that they were satisfied that the Applicant had explored reasonable options for mitigation, that the noise levels would remain below SOAEL and would not give rise to any significant health impacts for these receptors [ER 4.18.32].
103. In response to the ExA, the Applicant also confirmed that:
- the low noise road resurfacing work to mitigate adverse operational effects and avoid significant effects from the Proposed Development on two residential receptors in the area of NIA 5206 had been completed [ER 4.18.19 and 4.18.24];

- good indoor conditions, as defined within the WHO Guidelines for Community Noise and in 'BS8233:2014' within the properties closest to the B1140 High Road and Yarmouth Road would be achieved [ER 4.18.26];
- the number of HGV trips in any phase of construction would be limited to below 150 vehicles (or 300 movements) [ER 4.18.27]; and
- it has taken actions which are proportionate and reasonable to avoid significant adverse impacts on health and quality of life from noise, providing compliance with the main objectives of national policy and guidance [ER 4.18.33].

104. The Secretary of State also notes that Appendix 11.3 of the ES was updated by the Applicant to include missing noise data [ER 4.18.28].

105. The Secretary of State notes that a number of Interested Parties raised concerns regarding noise impacts from the Proposed Development on their properties, primarily during operation. The ExA concluded that while noise levels would remain above the SOAEL at the façade of one of the properties facing the A47, taking into consideration the Applicant's noise assessment, responses to the ExA's written questions and the exploration of noise matters during the Examination, no significant effects would arise for these receptors in respect of noise[4.18.28].

#### The Secretary of State's Conclusion on Noise and Vibration

106. The Secretary of State, noting paragraphs 5.193 – 5.200 of the NPSNN [ER 4.18.2 – 4.18.4], agrees with the ExA that the Applicant has demonstrated proportionate and reasonable mitigation measures in respect of noise and vibration to avoid significant adverse impacts, and as such, the Proposed Development would be in general compliance with the policies of the NPSNN and the Noise Policy Statement for England. However, there would be some residual significant adverse noise effects for 2 residential receptors during construction and to a number of receptors along Yarmouth Road and the B1140 during operation, and these are matters which weigh against the Proposed Development [ER 4.18.33]. The Secretary of State has considered this further in the Planning Balance section below.

#### Population and Human Health

107. The ExA considered in detail the social, economic, human health and land use effects from the Proposed Development [ER 4.19] and noted that concerns raised by Interested Parties during the Examination in this respect tended to focus on matters relating to effects on and opportunities for non-motorised users ("NMUs") such as walkers, cyclists and horse riders [ER 4.19.20].

108. The Secretary of State notes that a number of updates and improvements were made to the Rights of Way and Access Plans during the Examination as set out at ER 4.19.27.

109. The Secretary of State notes that NCC, BDC and a number of other parties noted concern about severance of the Burlingham Footpath ("FP3") and the lack of a central crossing over the A47 to mitigate this. It is also noted that parties were

been for a pedestrian and cyclist route between North Burlingham and Acle to be provided [ER 4.19.21 - 4.19.26].

110. Following questions from the ExA, the Applicant maintained its position that notwithstanding the moderate adverse and thus significant effects of the severance and that the A47 can currently be crossed informally from this footpath, a central crossing point as part of the Proposed Development was unnecessary and unjustified for the reasons set out in ER 4.19.28 - 4.19.29. These included:

- surveys showing a low number of walkers and cyclists crossing the A47;
- current walking and cycling provision being limited and discontinuous; and
- 3.73 miles of new infrastructure for pedestrians and cyclists being provided as part of the Proposed Development.

111. The Applicant also considered that a dedicated link between North Burlingham and Acle was also unnecessary and unjustified for the reasons set out at ER 4.19.30 which included that other reasonable cycling options existed and that the distance between these two locations meant walking trips were more likely to be for leisure, rather than utility, reasons. The Applicant considered it had used reasonable endeavours to address the needs of pedestrians and cyclists in designing the Proposed Development and that this complied with the NPSNN [ER 4.19.31].

112. The ExA concluded that the NPSNN highlights a strong expectation that impacts on accessibility for NMUs should be mitigated. The ExA considered this case could have been achieved, and the Proposed Development enhanced overall, with the addition of a footbridge or underpass, albeit at an increased cost, and noted their disappointment that the Applicant did not seek to fully mitigate severance of FP3 [ER 4.19.33]. Notwithstanding this, the ExA accepted that FP3 tends to be used for recreational purposes only and the proposed east to west cycle track (for pedestrian use also) to the south of the A47 (which would link with FP3) would offer further recreational opportunities, whilst also providing an admittedly more circuitous option to connect with North Burlingham and BWW to the north. The ExA was satisfied that there would be no conflict with local policies [ER 4.19.34].

113. With regard to a link between North Burlingham and Acle, the ExA agreed with the Applicant that walking trips between these locations would likely be for recreational purposes rather than utility and that there are other cycling and walking routes available and that a dedicated route along the A47 is not necessary. The ExA was satisfied that this would not conflict with local policies [ER 4.19.35].

114. The ExA concluded that the Applicant had demonstrated reasonable endeavours to address the needs of NMUs in designing the Proposed Development and was satisfied that overall provision for NMUs would be enhanced and severance effects reduced as a result of the Proposed Development [ER 4.19.45]. The Secretary of State agrees with the ExA on these matters.

115. The Secretary of State notes that the ExA was satisfied that the dDCO as amended through the Examination secures, where necessary, measures that would mitigate adverse effects that may arise as a result of the Proposed

Development [ER 4.19.43]. The ExA concluded that with the mitigation measures in the dDCO, no significant adverse effects on human health, well-being and general quality of life have been identified [4.19.47]. The ExA also concluded that there would be general accord with the relevant policies of the NPSNN, and that the Proposed Development would provide a number of social and economic benefits [ER 4.19.48]. The ExA also considered that the Proposed Development would offer a solution to congestion and safety issues which otherwise without the Proposed Development are likely to get worse and that it would also assist with unlocking economic growth and development in the area. The ExA concluded that these matters weigh in favour of the Proposed Development [ER 4.19.44].

116. However, the ExA also recorded that it was disappointed that the Applicant did not seek to fully mitigate impacts from the severance of FP3 [ER 4.19.45] and the Secretary of State agrees as set above that this weighs against the Proposed Development [ER 4.10.33]. The Secretary of State also agrees with the ExA that the significant adverse effects reported in Chapter 12 of the Applicant's ES also weighs against the Proposed Development. These relate to: two agricultural holdings; temporary land take from four residential gardens, increased severance for some private properties along Blofield allotments; and permanent land take from increased severance of LCW [ER 4.19.46]. The Secretary of State has considered this in the planning balance below.

### **Water Environment**

117. The Secretary of State notes the ExA's consideration of this matter at ER 4.20.2 – 4.20.28 and accepts the policy considerations outlined by the ExA.

118. The Secretary of State notes that the Order land does not include any designated main rivers and, as such, there would be no requirement for any flood risk activity permits to be obtained. The EA was satisfied with the approach taken by the Applicant in identifying potential adverse effects on surface water and ground water, with the mitigations outlined. The Secretary of State also notes that the Proposed Development will be located wholly within Flood Zone 1 (low risk) land and that this remains the case when considering climate change allowances [ER 4.20.23].

119. The Secretary of State notes that concerns were raised by two Interested Parties around flood risk to properties along Waterlow as a result of the Proposed Development. The ExA confirmed that the Applicant responded to the concerns and no further submissions were made. The ExA was content with the outcome of the discussions and responses provided by the Applicant and Interested Parties [ER 4.20.27 – 4.20.28].

### **The Secretary of State's Conclusion on Water Environment**

120. The Secretary of State agrees with the ExA that the Proposed Development would accord with relevant legislation and policy requirements, including those of NPSNN and Water Framework Directive, and the effects on the water environment, including flood risk, are a neutral consideration in the planning balance [ER 6.2.63].

## **Maintenance Asset Transfers**

121. The Secretary of State notes that the ExA's Report records that the Applicant and NCC had not reached agreement on matters relating to the future maintenance assets to be transferred to the NCC on the completion of the Proposed Development, and recommended that the Secretary of State may wish to seek further information on this matter and confirmation of whether an agreement has been reached between parties [ER 9.2.13].
122. Through his consultation in the decision-making stage, the Secretary of State requested in his consultation letter dated 14 April 2022 that the Applicant and NCC confirm the status of their agreement. NCC responded on 26 April 2022 to confirm that negotiations were still in progress and requested the protective provisions provided following the close of the Examination be included in the Order to protect NCC's interest should the Applicant and NCC fail to reach an agreement. The Applicant responded on 27 April 2022 objecting to the inclusion of protective provisions in the Order and confirming that it intends to negotiate a suitable agreement with NCC.
123. After further consultation, the Secretary of State received confirmation on 1 June 2022 from the Applicant and NCC an agreement was to be legally agreed on 10 June 2022. The Secretary of State is satisfied this matter is resolved and that the protective provisions proposed by NCC are longer necessary.

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

124. The Secretary of State agrees with the ExA's finding that the Proposed Development would be in conformity with the NPSNN [ER 6.3.12] and the local Development plan [ER 6.2.14]. The Secretary of State notes the ExA's view that the Proposed Development accords with Government Policy to deliver national networks that meet the country's the long term needs, supporting a prosperous and competitive economy and achieves the transport objectives of NCC and BDC [ER 6.3.5].
125. As set out in paragraph 24 above, the Secretary of State is satisfied that the need for the Proposed Development has been established and agrees with the ExA's view that the improvement to the road network which is likely to be achieved by the Proposed Development including in terms of capacity, resilience and safety are important considerations in favour of the Order being made [ER 6.3.6].
126. The Secretary of State agrees with the ExA's conclusion that other positive impacts of the Proposed Development, which weigh in favour of the Proposed Development are those set out at ER 6.3.7, namely:
- overall biodiversity net gain of over 40%;
  - improvements to the setting of The Church of St Andrew (GI) and to a lesser extent, the setting of The Church of St Peter (GII);
  - noise improvements for some residential receptors during operation, in the long-term; and

- the general provision of new cycling and walking infrastructure which would, overall, result in an enhancement for non-motorised users and a reduction in severance effects.
127. The Secretary of State also agrees with the ExA's conclusion regarding adverse effects of the Proposed Development at ER 6.3.8 relating to:
- effects on bats;
  - permanent and temporary loss of high quality agricultural land;
  - noise effects for some residential receptors during construction and during operation;
  - effects on two agricultural holdings;
  - temporary land take from four residential gardens;
  - increased severance for some private properties along Lingwood Road and Lingwood Lane;
  - permanent land take from Blofield allotments;
  - permanent land take from and increased severance of LCW; and
  - the severance of FP3 and resulting increase in journey length involved for walkers to cross the A47.
128. As outlined above at paragraph 67 above, the Secretary of State also considers that there would be minor adverse effects caused by increased carbon emissions and that this too weighs against the Proposed Development.
129. The ExA considered that the strategic benefits of the Proposed Development are such that they would outweigh the adverse impacts and that the potential harms would be outweighed by the benefits of the Proposed Development in meeting Government policy as set out in the NPSNN [ER 6.3.12]. Having carefully weighed the benefits of the Proposed Development against the adverse effects of the Proposed Development the Secretary of State agrees with the ExA that the potential negative impacts do not outweigh the benefits or the need for the Proposed Development.

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

130. The Secretary of State notes the ExA's consideration of the powers sought by the Applicant for the CA and TP of land and the imposition of Permanent Rights over land in Chapter 7 of its Report. The Secretary of State agrees with the ExA that the changes to CA and TP provisions during the Examination are non-material, and the condition in section 123(3) of the 2008 Act was met in relation to this land and that the prescribed procedures in the CA Regulations do not apply [ER 7.3.7 - 7.3.8].
131. The Secretary of State notes the purposes for which CA and TP land is required [ER 7.4.1-7.4.11] and the ExA's Examination of the case for CA and TP [ER 7.5]. The Secretary of State notes the ExA's consideration of the parties' representations in relation to CA and/or the TP powers sought and notes that the majority of these were not formal objections to CA/TP [ER 7.5.19 - 7.5.70]. The Secretary of State accepts the ExA's conclusion in relation to each of these.

132. The ExA's identified an error with the Land Plans [REP4-002] for 'Plot 4/7c and recommended that the Secretary of State request an updated version. The Secretary of State requested an amended version from the Applicant during the 13 April 2022 consultation which was provided on 27 April 2022. The Secretary of State is therefore content that this matter has been addressed.
133. The Secretary of State notes that sections 122 and 123 of the 2008 Act set out the purposes for which CA may be authorised and the descriptions of land to which CA can relate. The Secretary of State agrees with the ExA that the legal interests in all the plots of land included in the Book of Reference and shown on the Land Plans would be required for the Proposed Development with respect to both CA and TP powers [ER 7.6.1]. The Secretary of State accepts that land subject to CA as part of the Proposed Development, is no more than would reasonably be required and the proposed land take would be proportionate [ER 7.6.1]. Therefore, the Secretary of State agrees with the ExA that the public benefit associated with the Proposed Development would outweigh the private loss [ER 7.6.2].
134. The ExA also concluded that there is adequate funding in place to ensure delivery of the Proposed Development [ER 7.5.93 – 7.5.95]. The Secretary of State agrees with this conclusion.
135. In respect of Crown land, the Secretary of State notes the Applicant provided a letter from the DfT, signed for and on behalf of the Secretary of State, authorising the CA of Crown land under s135 of the 2008 Act, with reference to 'The plots as shown on the Crown Land Plans' (Appendix A of [REP10-013]). The letter also confirms agreement to the wording of Article 50 of the Order, relating to Crown rights. As such, the Secretary of State is satisfied that matters in respect of the CA of Crown land do not present an obstacle to the Secretary of State granting the Order [ER 7.5.85].
136. With regard to statutory undertakers, the ExA noted that s127 of the 2008 Act does not apply as Cadent Gas Limited confirmed withdrawal of their objection. In relation to s138 of the 2008 Act, the ExA was satisfied that the extinguishment of the relevant rights or removal of statutory undertakers' relevant apparatus is necessary for the purposes of carrying out the Proposed Development in accordance with s138(4) of the 2008 Act [ER 7.6.4]. The Secretary of State agrees with this.
137. The Secretary of State notes, with regard to special category land there is no National Trust land, no common, open space or related land and there are no other considerations relating to special category land under the 2008 Act that need to be taken into account in respect of land which is subject to CA/TP [ER 7.6.5].
138. In respect of Human Rights considerations, the Secretary of State notes that the Applicant acknowledges that the Order engages a number of the articles of the European Convention on Human Rights ("ECHR") but submits that such interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. The Secretary of State notes the ExA's considerations that in each case while rights would be interfered with, that interference would be proportionate and justified in the public interest, and that the

CA and TP with Permanent Rights and TP would be compatible with the Human Rights Act 1998 and the ECHR [ER 7.5.91 - 7.5.92].

139. The Secretary of State has had regard to the benefits of the Proposed Development and is satisfied that with regard to the request for CA, Permanent Rights and TP powers there is a compelling case in the public interest for the reasons set out at ER 7.6.3 and the request is consistent with section 122(2) and (3) of the 2008 Act.

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

140. The ExA's consideration of the draft development consent order ("dDCO") is set out in Chapter 8 of its Report. The Applicant submitted a dDCO and Explanatory Memorandum ("EM"), describing the purpose and effect of the provisions in the dDCO, as part of the application for development consent [ER 8.1.1]. The Secretary of State notes that a number of revised dDCOs and EMs were submitted during the Examination [ER 8.3.1-8.3.6].

141. The Secretary of State notes that at the close of Examination, agreement had not been reached between the Applicant and Anglian Water Services Limited ("AWSL") with regard to Protective Provisions included at Part 3 of Schedule 9 to the dDCO. The Secretary of State asked, in his consultation letter dated 5 June 2022, that the Applicant and AWSL confirm the status of the agreement. While no response was received from AWSL, the Applicant confirmed in its letter dated 19 May 2022 that it did not consider there was a reasonable prospect of reaching an agreement with AWSL and requested that the Secretary of State proceeds to make a decision as to whether there will be serious detriment to AWSL if the order is made in the form submitted by the Applicant, which included protective provisions for the benefit of AWSL. AWLS's subsequent letter dated 21 June 2022 confirms this area of dispute and refers to the lack of "deferment" provisions in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016. However, the Secretary of State notes the arguments advanced by AWSL and the Applicant and agrees with the ExA that that the wording of paragraph 27(5) is reasonable and appropriate, and would be unlikely to place AWSL at any material financial deficiency or materially affect its undertaking or environmental obligations [ER 8.4.11 – 8.4.13]. It is also noted that an equivalent of paragraph 27(5) is included elsewhere in Schedule 9 at paragraphs 10(5) and 42(5) and in the majority of recent highways DCOs including a number in respect of other water utilities.

142. The Secretary of State also notes correspondence received from the Applicant on 16 June 2022 and AWLS on 21 June 2022 advising that they have agreed amendments to paragraph 18, as outlined in the Modifications section of this letter, and the wording contained in paragraph 29 of Part 3 of Schedule 9 to the dDCO, and is content that these two matters are resolved.

143. The Secretary of State notes the ExA's consideration of the outstanding areas of dispute and agrees with the ExA's conclusion on these, namely that the Protective Provisions for the benefit of AWSL are reasonable and appropriate [ER 8.4.2-8.4.18].

144. In his consultation letter dated 5 May 2022, the Secretary of State asked the Applicant to confirm the position in respect of whether it seeks a power to temporarily stop-up under article 16 (temporary alteration, diversion, prohibition and restriction of use of streets). In its response dated 19 May 2022, the Applicant confirmed it did not and provided suggested drafting amendments to article 16(3) of, and paragraphs 4(2) and 21(2) of Schedule 9 to, the Order to address this issue.
145. The Secretary of State has accepted these amendments and updated the Order accordingly.
146. Where not previously stated, the Secretary of State is satisfied with the recommended changes set out in Table 2 of the Report.
147. The Secretary of State has made a number of minor textual amendments to the Order in the interests of clarity, consistency and precision. Further to the textual amendments the Secretary of State also makes the following modifications:
- in article 2 (interpretation):
    - “the 2004 Act” has been inserted as a defined term due to the number of times that the Traffic Management Act 2004 is referred to throughout the Order;
    - the definitions of “book of reference”, “engineering drawings and sections”, “environmental statement”, “general arrangement plans”, “hedgerow plan”, “land plans”, “rights of way and access plans”, “traffic management plans” and “works plans” have been modified to ensure that documents to be certified by the Secretary of State are referred to in a consistent way;
    - the definitions of “carriageway”, “footpath” and “footway”, and “highway” have been amended to improve clarity by including reference to section 329(1) of the Highways Act 1980;
    - the definition of “commence” is amended with the words “and site clearance” being omitted, as the Secretary of State agrees with the ExA’s recommendation that it be removed from the definition [ER 8.4.9 – 8.4.25];
    - the definition of “cycle track” has been amended to include “parts of a cycle track” to improve clarity;
    - the definition of “electronic transmission” has been amended to reflect the position taken by the Secretary of State;
    - the definition of “maintain” has been amended to improve clarity regarding the scope of such works where they differ from those reported in the environmental statement; and
    - the definition of “the Secretary of State” has been removed as this is an unnecessary definition;
  - in article 3 (disapplication of legislative provisions), paragraph (2) has been omitted to maintain consistency with highways DCOs as no justification is given for the variation in the Applicant’s Explanatory Memorandum (“the EM”);

- in article 6 (maintenance of authorised development), the references to “construction” have been removed to maintain consistency with highways DCOs as no justification is given for the variation from in the EM;
- in article 7 (planning permission), the “not” has been moved to sub-paragraph (a), as there appears no reason to apply it to sub-paragraph (b) and the revised drafting maintains consistency with highways DCOs;
- in article 11 (application of the 1991 Act):
  - references to sections 73A, 73B, 73C and 78A of the New Roads and Street Works Act 1991 have been inserted into paragraph (3) to maintain consistency with highways DCOs and since no justification for their omission is given in the EM; and
  - paragraph (7)(b) has been amended to ensure that the disapplication of article 12 is framed more clearly;
- in articles:
  - 14 (power to alter layout etc. of streets),
  - 16 (temporary alteration, diversion, prohibition and restriction of use of streets),
  - 20 (traffic regulation),
  - 21 (discharge of water),
  - 23 (authority to survey and investigate land), and
  - 39 (felling or lopping of trees and removal of hedgerows),
 paragraphs have been inserted requiring the Applicant to include in an application to the relevant authority to which a deeming provision applies, notification that the application will be deemed as being consented to if the authority does not notify the Applicant of its decision before the end of the relevant specified period;
- in article 15 (street works), paragraph (1)(c) is omitted (and paragraph (1)(e) amended accordingly) as it is not precedented in other highways DCOs and since no justification for its inclusion is given in the EM;
- in article 16 (temporary alteration, diversion, prohibition and restriction of use of streets) and paragraphs 4(2) and 21(2) of Schedule 9, the Secretary of State agrees with the reasoning provided by the Applicant and adopts the amendments proposed in part 3 of its 19 May 2022 response to the Secretary of State’s letter dated 5 May;
- in articles:
  - 16 (temporary alteration, diversion, prohibition and restriction of use of streets),
  - 17 (permanent stopping up and restriction of the use of streets and private means of access),
  - 22 (protective work to buildings),
  - 23 (authority to survey and investigate the lands),
  - 29 (private rights over land),
  - 34 (temporary use of land for carrying out the authorised development),
  - 35 (temporary use of land for maintaining the authorised development), and

- 39 (felling or lopping of trees and removal of hedgerows), “as if it were a dispute” is inserted to improve clarity.
- in article 19, the title is amended to maintain consistency with highways DCOs and, in paragraph 2(b)(iv), the reference to the repealed definition within the Postal Services Act 2011 is replaced with the legislation containing the current equivalent definition;
- article 20 (traffic regulation) has been moved from Part 7 of the Order to Part 3 to maintain consistency with highways DCOs, and cross-references throughout the Order have been revised accordingly;
- in article 21 (discharge of water):
  - noting the reference in the EM to “public sewers in addition to drains, references to “public sewer” are inserted, and the definition of “public sewer or drain” is amended to ensure consistency with other highways DCOs by including reference to an urban development corporation, and
  - the cross-references in paragraph (10) have been amended to ensure consistency with other highways DCOs,
- in article 27 (compulsory acquisition of rights and imposition of restrictive covenants), the caveats to paragraph (1) have been signposted and, in paragraph (3) and in accordance with other highways DCOs, a cross reference to paragraphs (1) and (2) has been inserted;
- in article 31 (application of the 1981 Act), paragraphs (4) and (9) have been amended to follow the approach used in the majority of highways DCOs, noting that no justification is provided in the EM for following the much less common approach used in the two precedents cited by the Applicant and, in particular, the proposed omission of the entirety of section 5 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- in article 34 (temporary use of land for carrying out the authorised development):
  - paragraph (4)(f) is omitted and the words “necessary mitigation works” are added to the end of sub-paragraph (e) to maintain consistency with highways DCOs and since no justification for the discrete sub-paragraph (f) is given in the EM, and
  - and in Schedule 7 (land of which temporary possession may be taken), the Secretary of State accepts the amendments to article 34(8) and Schedule 7 proposed by the Applicant as a result of the Secretary of State’s minded to agree letter in respect of the proposed Portishead Branch Line – Metrowest Phase 1B DCO, as outlined by the Applicant in part B of its 27 April 2022 response to the Secretary of State’s letter dated 13 April;
- in article 35 (temporary use of land for maintaining the authorised development), a requirement has been added to paragraph (3) that the notice of intended entry must include an explanation of the purpose of entry, which accords with the approach taken in other highways DCOs;

- in article 37 (apparatus and rights of statutory undertakers in stopped up streets):
  - a reference in paragraph (2) to article 17 has been substituted for one to article 16 to maintain consistency with highways DCOs and since no justification for the unusual reference to article 16 is given in the EM, and
  - the definition of “apparatus” in paragraph (8) has been omitted as it repeats the definition of that term in article 2.
- in article 44(1) (disregard of certain improvements etc.), the text in subparagraph (b) from “if the tribunal is satisfied” to the end of that subparagraph has been moved to be a tailpiece for the whole of paragraph (1), which is consistent with the approach in other highways DCOs and the precedents cited in the EM;
- in article 49 (arbitration), ex-paragraph (2) has been omitted to maintain consistency with highways DCOs and since, other than explaining the nature of the proposed provision, no justification is given for it in the EM;
- in Schedule 1 (authorised development) has been amended so that the additional works permitted where they are connected to the specific works identified in the Schedule, are limited to those which do not give rise to any materially new or materially different environmental effects compared to those reported in the environmental statement, which maintains consistency with highways DCOs;
- in Part 1 of Schedule 2 (requirements):
  - the definition of the outline landscape and ecology management plan in paragraph 1 is amended as it is not a document certified by the Secretary of State for the purposes of the Order – although it forms part of the first iteration of the environmental management plan, which is a certified document,
  - in paragraph 3(1), the local highway authority is added to the authorities that must be consulted by the Applicant if it seeks permission to deviate from the works plans and engineering drawings and sections, and
  - paragraph 13 is amended to improve clarity and so that it refers to the provisions of the relevant requirement within Part 1;
- in Schedule 5 (land in which only new rights etc. may be acquired), Land Plan 3/2d is inserted and is consequently removed from Schedule 7, as per the Applicant’s request in its letter to the Secretary of State dated 27 April 2022, as the Secretary of State notes the inconsistency identified and the desirability of correcting it, that Interested Parties were offered the opportunity to comment on the Applicant’s letter and none addressed Plan 3/2d, and that, given the provisions within the Order, that the correction makes no material difference to those affected by it;
- in Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), paragraph 8 is amended so that references to “the acquiring

authority” are substituted for those to “the undertaker”, to maintain consistency with highways DCOs;

- in Schedule 9 (protective provisions):
  - in Part 3 (for the protection of Anglian Water), sub-paragraphs (2) to (4) have been inserted into paragraph 18 (application) as the Secretary of State is content with the amendments requested by the Applicant in their letter to him dated 16 June 2022;
  - in Part 4 (for the protection of Cadent as gas undertaker), the definition of “authorised development” is omitted from paragraph 34 as the term is defined identically in article 2, and cross-references throughout the Part are corrected; and
- in Part 2 of Schedule 10 (documents etc. to be certified), the Land Plan revision number is updated to “Rev. 2”, which was provided by the Applicant alongside its letter to the Secretary of State dated 27 April 2022 following the request for updated Plans by the Secretary of State in his letter dated 14 April.

### **Late Representations (outside formal consultation)**

148. Following the close of the Examination, the Secretary of State received a number of late representations, which are published on the Planning Inspectorate’s website.

149. The Secretary of State does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to Interested Parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the ExA’s report.

### **General Considerations**

#### **Equality Act 2010**

150. The Secretary of State has complied with the public sector equality duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not. The Secretary of State notes the ExA’s conclusion that the Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such person and any person who does not have a protected characteristic [ER 9.2.7]. The Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics.

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

151. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 (‘the 2006 Act’) has to have

regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992 when deciding on whether to grant development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and biodiversity duty in the relevant sections of the Report [ER 3.4.6]. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

### **The Secretary of State's overall conclusions and decision**

152. For all the reasons set out in this letter, the Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

### **Challenges to decision**

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

### **Publicity for decision**

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

Yours faithfully

Natasha Kopala

## LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

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

The decision documents are being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/a47-blofield-to-north-burlingham/>

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