



Department
for Transport

Natasha Kopala
HEAD OF TWA ORDERS UNIT
DEPARTMENT FOR TRANSPORT
ZONE 1/14 -18
GREAT MINSTER HOUSE
33 HORSEFERRY ROAD
LONDON
SW1P 4DR

transportinfrastructure@dft.gov.uk

Web Site: www.gov.uk/dft

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Dear Sirs,

**PLANNING ACT 2008
APPLICATION FOR THE PROPOSED GREAT YARMOUTH THIRD RIVER
CROSSING DEVELOPMENT CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
 - the report dated 24 June 2020 of the Examining Authority (“ExA”), led by one Examining Inspector, Dominic Young, who conducted an examination into the application made by your clients, Norfolk County Council (“the Applicant”) for the Great Yarmouth Third River Crossing Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
 - the responses to the further consultation undertaken by the Secretary of State in respect of the application; and
 - the late representations received by the Secretary of State following the close of the examination.
2. The application was accepted for Examination on 28 May 2019. The Examination begun on 24 September 2019 and was completed on 24 March 2020. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of meetings. The ExA also undertook one unaccompanied and one accompanied site inspection.
3. The DCO as applied for would grant development consent for the construction, operation and maintenance of a new crossing of the River Yare in Great Yarmouth. It would comprise a new dual carriageway road, including a road bridge across the river, linking the A47 at Harfrey's Roundabout on the western side of the river to the A1243 South Denes Road on the eastern side (“the Proposed Development”). The Proposed Development would feature an opening span double leaf bascule (lifting) bridge across the river, involving the construction of two new 'knuckles' extending the quay wall into the river to support the bridge. This would include a bridge span over the existing Southtown Road on the western side of the river and a bridge span on the eastern side of the river to provide an underpass for existing businesses, enabling the new dual carriageway road to rise westwards towards the crest of the new crossing.

4. Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The main features of the proposal and the site are set out in Chapter 2 of the ExA's Report, the ExA's findings and conclusions are set out in Chapters 4 to 8, and the ExA's overall conclusions and recommendation are in Chapter 9.

Summary of the ExA's Report and Recommendation

5. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA's Report under the following broad headings:
 - Legal and Policy Context (Chapter 3);
 - Findings and Conclusions in relation to main issues (Chapter 4); which include policy justification for the proposed development; effect on port navigation; flood risk; transport and traffic; landscape and visual impact; historic impact; socio-economic effects; biodiversity, ecology and nature conservation; air quality; water and resources; other important and relevant considerations;
 - Finding and conclusions in relation to Habitats Regulations Assessment (Chapter 5);
 - Conclusion on the case for Development Consent (Chapter 6);
 - Compulsory Acquisition and Related Matters (Chapter 7);
 - Draft Development Consent Order and Related Matters (Chapter 8);
6. For the reasons set out in the Summary of Findings and Conclusions (Chapter 9) of the ExA's Report, the ExA recommends that the Order be made, as set out in Appendix D to the ExA's 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 the 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 30 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations).

Secretary of State's Consideration of the application

8. The Secretary of State's consideration of the ExA's Report, and all other material considerations including the further representations received after the close of the ExA's examination in response to the Secretary of State's consultation letter of 21 July 2020 are summarised in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendation as set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations. All "ER" references are to the specified

paragraph in the ExA's Report and references to "requirements" are to those in Schedule 2 to the DCO as recommended by the ExA at Appendix D of the Report.

Legal and Policy Context

9. On 26 February 2018 the Secretary of State for Transport made a direction under section 35 of the 2008 Act that the proposed development is of "national significance". Although currently falling outside the definition of a "nationally significant infrastructure project" as provided for in section 14 of the 2008 Act, he directed that the development, together with any matters associated with it, be treated as development for which development consent is required. The reasons given are set out in ER 1.1.4.
10. Given that the application requires development consent, section 104(2) of the 2008 Act has effect in relation to the development to which the application relates. In determining this application, the Secretary of State must therefore have regard to the relevant National Policy Statements; any appropriate marine policy documents, determined in accordance with section 59 of the Marine and Coastal Access Act 2009; any Local Impact Reports ("LIR") submitted; any matters prescribed in relation to the development of the description to which the application relates; and any other matters that the Secretary of State considers to be both important and relevant to the decision (ER 3.2.5). Accordingly, this application needs to be considered in accordance with the National Policy Statement ("NPS") for National Networks ("NPSNN").
11. The Secretary of State agrees with the ExA that section 104 of the 2008 Act has effect in this case (ER 3.2.4) and that he must decide the application in accordance with the NPSNN designated in December 2014, subject to certain exceptions which are not relevant in this case. He also agrees that the National Policy Statement for Ports ("NPSP") has relevance for the reasons stated at ER 3.3.9.
12. The Secretary of State agrees with the ExA's assessment of the other legal provisions and agrees these are relevant and important matters to be considered in deciding this application (ER 3.6). The Secretary of State confirms that, in considering the application, he has had regard to all the legislation and policy identified by the ExA, including the East Inshore Marine Plan, the two Local Impact Reports from Great Yarmouth Borough Council ("GYBC") and Norfolk County Council ("NCC") referred to at ER 3.11.2 and all relevant development plan and strategies (ER 3.9).
13. It is the view of the Secretary of State that the requirements of the 2017 Regulations have been fully met by the environmental statement ("ES"). He confirms that, in coming to his decision to make the DCO, he has taken into consideration all the environmental information as defined in regulation 3(1) of the 2017 Regulations.

Purpose and justification for the Proposed Development

14. The Secretary of State agrees with the ExA that as stated above, the essential policy justification for the Proposed Development is contained in the NNNPS but

that due to the close connection with the River Port, the NPSP is also relevant and important (ER 4.4.1)

15. The NNNPS sets out a compelling need for the development of the national road network to address congestion, provide safe, expeditious and resilient networks and to support economic growth. Paragraph 4.2 of the NNNPS states that “there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS” (ER 4.4.5).
16. The Secretary of State notes that a principal aim of the Proposed Development is to support the role of the Port’s renewable energy sector and offshore gas and oil industries, and as an International Gateway (ER 4.4.8). The NNNPS identifies there is a need to improve integration between ports to reduce end-to-end journey times (ER 4.4.4) and that the need for the Proposed Development is supported by paragraph 2.1 of the NNNPS, which identifies that well-connected and high performing networks with sufficient capacity are vital to meet the country’s long-term needs and support a prosperous economy.
17. The Secretary of State notes that the Great Yarmouth Borough Infrastructure Plan 2014 describes how Great Yarmouth suffers from congestion within their built up areas and that the need for the third river crossing is identified as a strategic priority for unlocking future economic growth, addressing congestion problems and improving accessibility (ER 3.9.6 - 3.9.7).
18. The Secretary of State notes that the Applicant’s ‘Case for the Scheme’ set out in detail how the Proposed Development accords with the NNNPS and NPSP; including the need for the Proposed Development within the framework provided by the NPSs, and no instances of non-compliance were identified by interested parties, Affected Persons or in the Local Impact Reports (ER 4.4.9).
19. The Secretary of State notes that paragraph 3.1.9 of the Great Yarmouth Local Plan: Core Strategy 2013-2030 (“CS”) includes the Proposed Development, noting that a Third River Crossing over the River Yare is envisioned, along with improvements to public transport to relieve congestion and provide essential links to key facilities and services, including the outer harbour (ER 4.4.12). The Secretary of State further notes that the route alignment had been confirmed at the time of the CS adoption, and that the land required to deliver the Proposed Development has been safeguarded in the CS (ER 4.4.16).
20. The Secretary of State agrees with the ExA that taking all the relevant documents and policies into account the need for the Proposed Development accords with Governments policy to bring forward improvements and enhancements to the existing road network by addressing road congestion and supporting economic growth (ER 4.4.10). The Secretary of State is satisfied that the NPSs set out a national need for the Proposed Development and the making of the DCO would be in accordance with the NNNPS and relevant sections of the NPSP (ER 9.2.20). The Secretary of State also agrees with the ExA that there is unequivocal and overwhelming high-level policy support for the Proposed Development at a national, regional and local level (ER 4.4.22).

Effect on Port Navigation

21. The Secretary of State notes that a number of issues were raised during the Examination with regard to navigation (ER 4.5.10) and the ExA's consideration of these matters (ER 4.5.11-4.5.60).
22. The Secretary of State notes that concern was raised about the Applicant's Preliminary Navigation Risk Assessment and the vessel simulation modelling undertaken to examine the effect of the Proposed Development on vessel navigation (ER 4.5.1-4.5.18). However, although the simulations have not covered every conceivable set of conditions, the ExA considers that an appropriate range of every day conditions likely to be encountered by pilots navigating the Proposed Development have been covered and noted that the parameters of the simulations had been agreed with Great Yarmouth Port Company ("GYPC") (ER 4.5.19). The Secretary of State has no reason to disagree with this conclusion.
23. The ExA set out that the Applicant's ES concluded that once the Proposed Development was complete, the placement and opening of the proposed bridge would have the potential to affect vessel transport and port operations and that a number of parties highlighted the need for the Proposed Development to recognise and protect the primacy of the port particularly so that commercial activity upstream of the bridge was not fettered (ER 4.5.11). As the bridge would open on demand as and when required to allow the passage of commercial vessels the ExA did not consider that the Proposed Development would cause any unacceptable disruption to commercial port navigation or the viability of commercial businesses upstream of the bridge (ER 4.5.57). The Secretary of State agrees with this conclusion.
24. With regard to the impact of the Proposed Development on recreational vessels, the Secretary of State notes that they would need to use the waiting facilities or wait for the next scheduled recreational bridge opening (ER 4.5.41) and that concerns were raised about the location and appropriateness of the waiting facilities (ER 4.5.43). The Secretary of State notes the ExA's consideration of these matters (ER 4.5.44-4.5.47) and that the location and design of the waiting facilities for recreational vehicles was acceptable to the Harbour Authority (ER 6.2.1) and consider appropriate by the ExA (4.5.59). The Secretary of State notes the ExA's conclusion that for recreational vessels that would require the bridge to lift, there would be some minor inconvenience, and agrees that given the number of recreational vessels requiring a bridge lift would be relatively small, these factors do not weigh heavily against the Proposed Development (ER 4.5.59).
25. The ExA set out that one of the main concerns raised by interested parties was that a lack of a dedicated lay-by facility for large vessels meant that in the event of a bridge failure, they would have nowhere to go (ER 4.5.20). The Secretary of State notes that the ExA considered that the bridge design included multiple failsafe mechanisms, that the same bridge design had been well used in a number of locations over a period of many years and that there was no evidence to suggest it had inherent reliability issues or that even if a bridge failure did occur, it would lead to long term port traffic disruption. As a result, the Secretary of State agrees with the ExA that a dedicated emergency commercial vessel berthing facility is not necessary (ER 4.5.30).

26. The Secretary of State notes that there were concerns that river closures during the construction phase would place the Port at a competitive disadvantage (ER 4.5.34). The Secretary of State notes that article 23 of the DCO stipulates that there would be no more than three closures of the river for a period of 72 hours per closure for the purpose of construction of the new bridge; and a minimum of 21 days' notice would be required to close the entire width of the River Yare (ER 4.4.35). Given the frequency and duration of the river closures, together with the necessary notice periods, the Secretary of State agrees with the ExA and is satisfied that there would be no serious detriment to local Port businesses (ER 4.5.58).
27. Overall, the Secretary of State agrees with the ExA that navigation matters have been robustly Examined and that there are no issues outstanding that would likely cause navigational dangers (ER 6.2.1). The Secretary of State also agrees with the ExA that there would be some minor and unavoidable dis-benefits to Port navigation during the construction phase and thereafter to a small number of recreational vessels but that given the mitigation, there are no significant adverse effects in relation to Port navigation that weigh against the Order being made (ER 4.5.60).

Flood Risk

28. Where flood risks are a factor in determining an application for development consent, paragraph 5.98 of the NNNPS requires the Secretary of State to be satisfied that the application is supported by an appropriate Flood Risk Assessment ("FRA"); and that the Sequential Test has been applied as part of the site selection test, together with the Exception Test if required (ER 4.6.4).
29. The Proposed Development would be located predominately within Flood Zone 3a; therefore, a Sequential Test has been undertaken and found no opportunities to locate the Proposed Development within Flood Zones 1 or 2 (ER 4.6.7). As a result of the Sequential Test and as the Proposed Development is classified as essential infrastructure in Flood Zone 3a, the Exception Test is applicable (ER 4.6.7). The Secretary of State notes that the ExA concluded that the Proposed Development met the Exception Test and is therefore compliant with the NNNPS (6.2.1).
30. The ExA set out that the greatest flood risk to Great Yarmouth is from tidal flooding. As a result, a detailed hydraulic assessment has been undertaken to assess this (ER 4.6.8). The Secretary of State notes Environment Agency ("EA") had remaining concerns regarding the tidal residual (breach) risk and therefore modelling work continued after the examination (ER 4.6.17). In light of the additional information provided by the Applicant, the Secretary of State notes from the EA's letter dated 31 March 2020 that their concerns are now satisfied and their objection to the DCO is withdrawn.
31. Concerns were also raised that the Proposed Development would increase water levels upstream or lead to flooding in the Broads Basin, restricting natural flow rate (ER 4.6.20). The flood modelling has been undertaken and developed in liaison with the EA (ER 4.6.21), which shows that the general effect of the Proposed

Development in the channel is to increase water levels south towards the sea and decrease north of the Proposed Development; providing evidence that the Proposed Development would not increase water levels upstream or lead to flooding of the higher reaches within the Broads Basin (ER 4.6.22). The Secretary of State agrees with the ExA that flooding concerns have been appropriately assessed as part of the FRA and that the Proposed Development would not lead to an increased risk of flooding in the Norfolk Broads Basin (ER 4.6.23).

32. The Secretary of State notes the ExA's conclusion that the Applicant has effectively responded to the concerns of the EA and interested parties on the issue of flood risk (ER 4.6.30) and that the Proposed Development will have a broadly neutral effect on flood risk (ER 6.2.1). The Secretary of State therefore agrees with the ExA and is satisfied that the Proposed Development is policy compliant in flood risk terms (ER 4.6.30).

Transport and Traffic

33. The Secretary of State notes the ExA's consideration of this matter at section 4.7 and that few concerns were raised about the transportation and traffic case for the Proposed Development (ER 4.7.20). However, one of the concerns that was raised was by ASCO UK Ltd in relation to the highway and that it would incur increased travel times as the one way system would require vehicles leaving Fish Wharf to cross the bridge and return if needing to travel south (ER 4.7.23). The Secretary of State notes that ASCO's concerns were explored at the Compulsory Acquisition Hearing but that ASCO were unable to quantify how many trips from its Fish Wharf would travel south away from the Strategic Road Network ("SRN") (ER 4.7.24). In the absence of any evidence, the Secretary of State notes the ExA considers that vehicles travelling south from the Fish Wharf site would only account for a small fraction of the vehicle movements (ER 4.7.24) and that ASCO's concerns in respect of southbound trips were not justified.
34. The Secretary of State notes that a dedicated left turn only access onto the new bridge would provide direct access to Harfreys Roundabout and the SRN without the need to travel through the town centre. The Secretary of State notes the ExA considers this a significant benefit to ASCO. The Secretary of State further notes there would be some queuing at times when the bridge is raised, however agrees with the ExA that these related traffic impacts to ASCO would be outweighed by the benefits (ER 4.7.25).
35. The Secretary of State notes that the performance of the Proposed Development has been reviewed against all relevant policy and no conflicts have been identified (ER 4.7.31). The Secretary of State further notes that the ExA considers that the traffic information demonstrates that the Proposed Development would increase capacity and improve performance and resilience on the local highway network and SRN (ER 4.7.33).
36. The Secretary of State is satisfied there is a high level of policy support for the Proposed Development (ER 4.7.31) and agrees with the ExA that the transport and traffic effects would be positive and should be afforded significant weight in favour of the Proposed Development (ER 4.7.36).

Landscape and Visual Impact

37. The Secretary of State notes the ExA's consideration of this matter at section 4.8. Paragraph 5.157 of the NNNPS requires the Secretary of State to consider whether a project has been carefully designed in landscape impact terms (ER 4.8.3). The Secretary of State notes that no issues were raised in the relevant representations or written representations regarding landscape and visual impacts (ER 4.8.9).
38. The ExA considers that the Proposed Development would have a broadly positive effect in landscape and visual terms and would provide a welcome focal point to the area (ER 4.8.15). However, the Secretary of State notes there would be some slight adverse landscape and visual impacts, particularly during construction, but these would be limited in spatial extent and duration (ER 4.8.17) and mitigated appropriately (6.2.1). Once operational the ExA concluded that there would be some adverse visual effects on a small number of sensitive receptors such as private properties, but the Secretary of State agrees with the ExA that these are not unacceptable in planning terms (ER 4.8.18). The Secretary of State is satisfied that the Proposed Development is compliant with the NNNPS policy.

Historic Environment

39. The Secretary of State notes the ExA's consideration of this matter at section 4.9. The Applicant's assessment of the effect on the historic environment was agreed with Historic England at the pre-application stage and the Secretary of State notes that it was agreed that sufficient information has been submitted with the application (ER 4.9.12 first bullet point). The Secretary of State further notes that Historic England accepts the Applicant's assessment and agrees that there would be limited impact on heritage assets on the site and in the vicinity of the development (ER 4.9.12 second bullet point).
40. The Secretary of State notes that the ExA was satisfied that the impact of the Proposed Development on the historic environment has been appropriately assessed and where appropriate mitigated (ER 4.9.15). The ExA concluded that there would be 'less than substantial' harm to a small number of designated heritage assets (ER 6.2.1) and the Secretary of State agrees with the ExA that this would be clearly outweighed by the substantial public benefits arising from the Proposed Development (ER 4.9.15, 6.2.1).
41. Overall, the Secretary of State agrees with the ExA that taking account of the requirements in the NNNPS, any harmful impact on the significance of a designated heritage asset, when weighed against the public benefit of the Proposed Development, is not of such significance that the DCO should not be made (ER 4.9.16).

Socio Economic Effects

42. The Secretary of State notes that the Applicant's case that the Proposed Development would provide substantial support for the economic development of the local area and the region and represents high value for money was accepted.

The ExA considered that the economic case is not a matter of dispute and that the Proposed Development would have substantial economic benefits (ER 4.10.30).

43. The Secretary of State notes that ASCO and Perenco have suggested that they might need to relocate their businesses outside of Great Yarmouth. The Secretary of State also notes the Applicant has engaged with both businesses throughout the Examination in an attempt to find a solution that would enable them to stay in Great Yarmouth (ER 4.10.17). In the event either ASCO or Perenco do decide to relocate, the ExA considered that the Applicant has demonstrated that the land is likely to be occupied by another user resulting in an overall potential for employment benefit with the Proposed Development in place (ER 4.10.32). However, on the 1 September 2020 Perenco confirmed in a letter to the Secretary of State that its objection to the Proposed Development is withdrawn and that Perenco is now supportive of the Applicant's proposals.
44. The Secretary of State notes that concerns were raised during the Examination regarding the impact of construction on residential properties and businesses. The ExA considered that whilst there would be some disturbance and negative effects to local residents and businesses during construction these can be mitigated as far as reasonably possible and the impact on the living conditions of local residents are capable of being addressed at the detailed design stage (ER 4.10.31). The Secretary of State has no reason to disagree with this conclusion. The Secretary of State notes that there would be substantial connectivity benefits to travellers and community benefits through the provision of an attractive area of public realm at Bollard Quay as a result of the Proposed Development (ER 4.10.33).
45. The Secretary of State therefore agrees with the ExA that on balancing all the relevant issues, the overall social and economic effects of the Proposed Development would be positive due to the enhanced connectivity and economic development benefits (ER 4.10.34). The Secretary of State is therefore satisfied that the Proposed Development is compliant with the NNNPS in regard to socio economic effects.

Biodiversity, Ecology and Nature Conservation

46. The ExA considered that the Applicant has undertaken a thorough and rigorous assessment of the natural environment, biodiversity and ecology affected by the Proposed Development. The Secretary of State notes that the significance of assets and the effects upon them have been consistently assessed and mitigation measures designed where necessary (ER 4.11.19).
47. The Secretary of State notes that Protected Species Licences will be required for water voles and bats. Following the close of the Examination, the Applicant provided on 4 August 2020 a copy of a 'letter of no impediment' from Natural England ("NE") confirming that they see no impediment to a water vole licence being issued in the future. The potential for bat roosts to be found on site is low (ER 4.11.11), and pre-construction bat surveys to confirm whether a bat licence application is required are secured by the outline Code of Construction Practice (section 5.3). The Secretary of State is therefore content that this would not prevent the Proposed Development from being implemented.

48. The Secretary of State notes that no specific evidence of harm has been raised during the examination and there is no objection from NE, NCC or GYBC to the Applicant's assessment of these matters. The Secretary of State notes that the EA raised an issue regarding the absence of a quantified assessment of biodiversity net gain, as contained in the Environment Bill 2019-21. The Secretary of State notes that this Bill is yet to be passed and is therefore not currently law (ER 4.11.17). The Secretary of State is however content that due regard has been given to the conservation of biodiversity and agrees with the ExA that the Proposed Development is compliant with the NNNPS with regard to biodiversity, ecology and the natural environment (ER 4.11.20).

Air Quality

49. The Secretary of State notes that dust during construction had the most potential for an adverse air quality impact on sensitive receptors (ER 4.12.25) due to the scale and nature of the construction. However, the Secretary of State notes that GYBC and NCC agree with the Applicant that these matters could be addressed by the mitigation outlined in the outline Code of Construction Practice, secured by Requirement 6 of Schedule 2 to the DCO (ER 4.12.23).

50. The Secretary of State notes the Government's carbon emission reduction targets have changed since the Applicant's application was accepted by the Planning Inspectorate. The revised target for 2050 is for the net UK carbon account to be at least 100% lower than the 1990 baseline levels, prescribed by section 1 of the Climate Change Act 2008 (as amended) (ER 4.12.17).

51. The Secretary of State notes that the Applicant has addressed this 'net zero target' in its Closing Statement and considers that the net zero target does not alter the conclusion in the ES, that the Proposed Development would make an extremely limited contribution to the UK's Carbon Budget targets (ER 4.12.20). Having considered the Applicant's submissions, the Secretary of State notes and agrees with the ExA that the Proposed Development would not be incompatible with achieving the prevailing climate change policies and targets, nor with the UK meeting its international obligations. Therefore, the Secretary of State agrees with the ExA that the tests in s104(2)(d) and 104(4) of the 2008 Act are satisfied.

52. The Secretary of State further notes that the Applicant's ES has not identified any significant air quality impacts that would lead to non-compliance with relevant thresholds. The Secretary of State therefore agrees with the ExA and is satisfied that the Proposed Development would not conflict with the NNNPS nor affect the UK's ability to comply with the EU Ambient Air Quality Directive (ER 4.12.27).

Water Quality and Resources

53. The Secretary of State notes the ExA's consideration of this matter at section 4.13. The Secretary of State notes that a Water Framework Directive ("WFD") assessment was undertaken as part of the ES and that the EA had no concerns about the methodology and scope used in this assessment which was required for relevant transitional and groundwater water bodies only (ER 4.13.8). The EA also

agreed with the Applicant's conclusion that the Proposed Development would not conflict with the objectives of the WFD nor would it impact the status of the water bodies assessed (ER 4.13.7).

54. The Secretary of State notes that overall the ExA concluded that the Proposed Development would have a neutral effect on water quality and resources. The Secretary of State has no reason to disagree with this conclusion and is satisfied that the Proposed Development is compliant with the relevant WFD and the NNNPS (ER 4.13.10).

Findings and Conclusions in Relation to Habitats Regulations Assessment

55. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State is required to consider whether the Proposed Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site¹ (ER 5.1.2). The Proposed Development is not directly connected with or necessary to the management of any European Site (ER 5.3.1). The Secretary of State must therefore undertake an Appropriate Assessment ("AA") if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects, cannot be ruled out (ER 5.1.2).

56. The Secretary of State notes that the Applicant provided an 'Information to Inform the Habitats Regulations Assessment' report ("IHRA") with its DCO application, which was later updated at deadline 2 of the Examination to 'Habitats Regulations Assessment (Rev 1)' (ER 5.3.4). The Secretary of State further notes that the screening assessment in the IHRA concluded there were four sites where the Proposed Development is likely to give rise to significant effects, alone or in-combination with other projects or plans (ER 5.4.12). These being:

- Southern North Sea Special Area of Conservation (SAC)
- Outer Thames Estuary Special Protection Area (SPA)
- Breydon Water SPA
- Breydon Water Ramsar site

57. The Secretary of State notes the Applicant concluded that, with the implementation of the proposed pollution control mitigation measures, the integrity of these sites would not be adversely affected by the Proposed Development (ER 5.5.3).

58. The Secretary of State notes NE submitted representations during the Examination which agreed that the application IHRA adequately assessed the risks to European sites and agreed its conclusions (ER 5.4.6). Furthermore, the signed Statement of Common Ground between the Applicant and NE at deadline 7 confirmed that all HRA matters were agreed between the parties. In addition, the Secretary of State notes that in relation to the Marine Management Organisation ("MMO"), they deferred to the opinion of NE in relation to impacts on European sites. However, where mitigation measures are required to avoid or reduce any adverse effects on site integrity, the MMO would require such measures to be included as conditions

¹ The term 'European Site' in this decision letter includes Ramsar Sites.

in the Deemed Marine Licence (“DML”) or within an approved method statement. The signed Statement of Common Ground between the Applicant and the MMO states agreement that the mitigation secured by the DML (Schedule 13 to the DCO) and the agreed Code of Construction Practice (Requirement 6 of the DCO) is adequate to address the risks and avoid significant effects.

Secretary of State’s Conclusions

59. Having given consideration to the assessment material submitted during the Examination, the Secretary of State considers that likely significant effects in relation to construction and/or operations could not be ruled out. The Secretary of State therefore considered an AA should be undertaken to discharge his obligations under the Habitats Regulations. The AA is included in the HRA attached in annex B of this letter.
60. In the Secretary of State’s view, the material provided during the Examination contained sufficient information to inform consideration under regulation 63 of the Habitats Regulations as to the likely impact on the European Sites. The AA has considered the conclusions and recommendation of the ExA. The AA has also taken account of the advice of the Statutory Nature Conservation Body, which in this case is NE, and the views of other interested parties as submitted during the Examination.
61. The Secretary of State, having carried out the AA, is content that the construction and operation of the Proposed Development, with all the avoidance and mitigation measures secured in the DCO and the DML, will not adversely affect the integrity of any European Site. The Secretary of State therefore agrees with the ExA that the Proposed Development would have no adverse effect, either alone or in combination with other plans or projects, on any European site, as noted at paragraph 7.2 of the AA.

Conclusion on the case for Development Consent

62. The Secretary of State notes that in reaching its conclusions on the case for the Proposed Development, the ExA has had regard to the NNNPS as the relevant NPS, the NPPF, the LIRs and all other matters it considers are both important and relevant to the Secretary of State’s decision (ER 6.2.3). The Secretary of State agrees with the ExA that the Proposed Development would meet the need identified in the NNNPS for safe, expeditious and resilient networks that better support social and economic activity (ER 6.2.4).
63. The ExA gave consideration to the potential adverse impacts of the Proposed Development and the concerns raised by those who made submissions on the application (ER 6.2.5). The Secretary of State agrees with the ExA that the impacts identified should be considered alongside the identified benefits of the Proposed Development in relation to the SRN, together with meeting the needs of the network identified in the NNNPS and regional and local strategies. The Secretary of State agrees that substantial weight should be attached to those benefits (ER 6.2.6).

64. The Secretary of State notes and agrees with the ExA that the harms that have been identified would be substantially outweighed by the benefits of the Proposed Development in meeting Government policy set out in the NNNPS (ER 6.3.2). The Secretary of State therefore agrees with the ExA that development consent should be granted (ER 6.3.4).

Compulsory Acquisition and Related Matters

65. The Secretary of State has considered the compulsory acquisition (“CA”) powers sought by the Applicant in accordance with sections 122 and 123 of the 2008 Act, the Human Rights Act 1998 and relevant guidance set out at ER 7.2.1. The Secretary of State notes the ExA’s consideration of CA and temporary possession (“TP”) related matters at Chapter 7 of the ExA’s Report.

Perenco and ASCO

66. The Secretary of State notes that at the close of the Examination objections were outstanding from ASCO and Perenco with regard to the CA and TP powers sought in the DCO (ER 7.7.4-7.7.30).

67. The Secretary of State notes that in response to his consultation letter of 21 July 2020, the Applicant stated in their letter of 4 August 2020 that Heads of Terms documenting the basis of a solution for the relocation of Perenco within Great Yarmouth is now agreed between the parties and is due to be completed soon. As mentioned in paragraph 42 the Secretary of State notes from Perenco’s letter dated 1 September 2020 that Perenco has entered into a legal agreement with the Applicant and that its objection to the Proposed Development is now withdrawn.

68. However, notwithstanding this agreement the Secretary of State notes the ExA’s consideration of this matter (ER 7.8.1-7.8.12) and agrees with the ExA that there is a compelling case in the public interest for the CA of the Perenco and ASCO land, and that the public benefits associated with the Proposed Development strongly outweigh the private loss suffered. There is, accordingly, a compelling case for the CA and TP powers sought in relation to Perenco and ASCO (ER 7.8.13).

Cadent

69. The Secretary of State notes that the Applicant and Cadent had agreed, subject to contract, the sale of plots necessary to deliver elements of the Proposed Development. Despite that, Cadent’s objection remained outstanding at the close of the Examination on the basis that the protective provisions had not been agreed (ER 7.8.14). However, the Secretary of State agrees with the ExA that on the basis of the standard protective provisions in Schedule 14, together with article 29 of the DCO, there are appropriate restrictions and safeguards on the acquisition of Cadent’s land and existing rights (ER 7.8.15).

70. The Secretary of State notes the changes to the protective provisions requested by Cadent and agrees with the ExA that for the reasons sets out at ER 7.8.16-7.8.17 the standard protective provisions would ensure that ‘serious detriment’ is

not caused to Cadent's undertaking. Further that the extinguishment of rights and possible interference with Cadent apparatus would be necessary for the purpose of carrying out the Proposed Development (ER 7.8.18).

71. The Secretary of State notes and agrees with the ExA that whilst the purchase of the required land may be agreed on a negotiated basis, the CA powers are necessary to ensure the delivery of the Proposed Development and would not cause serious detriment to the carrying out of Cadent's undertaking. The Secretary of State is therefore satisfied that the tests in section 127 of the PA 2008 are met (ER 7.8.20).

Regaland and MIND

72. With regard to MIND, the Secretary of State notes that they did not register a formal objection to the Proposed Development but that concerns were raised regarding the impact of the construction works and new roads on the MIND centre, its users and local neighbourhood (ER 7.7.40).

73. The Secretary of State notes the ExA's consideration of the issues raised by MIND and the outstanding objection from Regaland and agrees with the ExA that there is a compelling case for the CA powers sought in relation to both MIND and Regaland (ER 7.8.21 & 7.8.25).

Conclusion on Compulsory Acquisition

74. Noting the ExA's considerations at section 7.9 the Secretary of State agrees with the ExA that the land subject to CA would be required and is proportionate for the Proposed Development; or to facilitate or be incidental to the Proposed Development to which the development consent relates (ER 7.9.6). The Secretary of State is satisfied that the CA and TP powers sought by the Applicant are justified and that for the reasons set out in ER 7.9.8 there is a compelling case in the public interest for land and interests to be compulsorily acquired and that the public benefit would outweigh the private loss of those affected to enable the construction, operation and maintenance of the Proposed Development (ER 7.9.10-7.9.11).

75. The Secretary of States notes the proposal for funding for the Proposed Development (ER 7.6.4-7.6.7) and like the ExA is satisfied that the Applicant has access to sufficient funds to implement the Proposed Development (ER 7.6.8) and for CA and TP compensation (ER 7.9.13). The Secretary of State agrees that any interference with human rights arising from the Proposed Development would be for legitimate purposes, proportionate and justified in the public interest (ER 7.9.14) and that although there would be interference with human rights, the DCO includes adequate compensation provisions (ER 7.9.15). The Secretary of State is therefore satisfied that the Proposed Development would comply with the conditions in sections 122 and 123 of the 2008 Act.

Revisions to the Development Consent Order

76. The ExA noted that at the close of the Examination, the Applicant and EA had not agreed the Protective Provisions that would enable the EA to grant its consent

under section 150 of the 2008 Act to allow the disapplication of a suite of relevant consents. The Secretary of State notes that following the close of the Examination, the EA confirmed on 2 June 2020 that Protective Provisions had been agreed and that they gave consent to the disapplication of the relevant consents under section 150 of the 2008 Act. A copy of the Protective Provisions was provided to the Secretary of State by the EA and the Applicant on 4 August 2020 in response to the Secretary of State's consultation of 21 July 2020. The Secretary of State has amended the DCO to include these.

77. The Secretary of State notes that the side agreement between Great Yarmouth Port Authority ("GYPA") and GYPC was completed on 3 April 2020 (ER 8.3.7), and that GYPA/GYPC confirmed in their letter dated 20 April 2020 that as legal agreements have now been entered into with the Applicant their objections are withdrawn. Following the ExA's recommendation at ER 8.3.7 the Secretary of State consulted the Applicant and GYPA/GYPC on 21 July 2020 on whether revisions to Schedule 14 and article 3 of the DCO had been agreed following the conclusion of their negotiations regarding the Construction Liaison Agreement. Both parties responded that revisions had been agreed and a copy of the revisions was provided to the Secretary of State. The Secretary of State has amended the DCO to reflect these.

Late Representations (outside formal consultation)

78. Following the close of the Examination, late representations were received from the following:

- EA dated 31 March 2020 withdrawing their objection. This is addressed in paragraph 30.
- EA dated 2 June 2020 regarding Protective Provisions. This is addressed in paragraph 76.
- GYPA/GYPC dated 20 April withdrawing their objection. This is addressed in paragraph 77.
- Perenco dated 1 September withdrawing their objection. This is addressed in paragraph 67.

79. The Secretary of State does not consider that anything in this correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision.

General Considerations

Equality Act 2010

80. The Secretary of State has had regard to the public sector equality duty set out in section 149(1) of the Equality Act 2010 and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not share it. The Secretary of State has concluded in light of the ExA's findings and conclusions that the Proposed Development is not likely to result in any significant differential impacts

on any of the protected characteristics referred to in section 149(7). On that basis there is no breach of the public sector equality duty.

Natural Environment and Rural Communities Act 2006

81. 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”), must have regard to the purpose of the conservation of biodiversity and must in particular have regard to the United Nations Environmental Programme on Biological Diversity of 1992 when making a decision on whether to grant development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and biodiversity duty as set out in the relevant sections of Chapter 4 and 5 of the ExA’s Report. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

Modifications to the Order by the Secretary of State

82. The following modifications have been made to the Order:

- in the final paragraph of the preamble footnotes have been provided in relation to the powers being relied upon to make the Order;
- in article 2 (interpretation), a new definition has been included for “electronic communications network”, which is now to form part of the terms now to be defined;
- in article 2(1), the definition of “maintain” has been amended to include “materially new or materially different” which is wording preferred by the Secretary of State. This amended wording has been incorporated in the appropriate provisions;
- in article 2(1), a definition for “statutory utility” has been inserted in this Order to reduce the need for this term to be further defined within the articles;
- in article 3 (disapplication of legislation, etc.); the provision relating to “byelaws 20, 48 and 56 of the Great Yarmouth Port Authority Navigation (Haven) Byelaws 1997”, has been removed (the change having been agreed by the Great Yarmouth Port Authority and Great Yarmouth Port Company);
- Article 8 (consent to transfer benefit of the Order) and article 28 (compulsory acquisition of rights), contain related provisions regarding the ability for the power of acquisition of rights to be transferred to a third party, but not liability for compensation. The provisions in article 28(2) and (3) create parallel provisions to that set out in article 8 except that the powers of compulsory acquisition of rights under the Order may be transferred to the statutory undertakers by written consent of the undertaker. This is in contrast to the procedure set out in article 8(1) which requires the consent of the Secretary of State. The Secretary of State notes there is no explanation for the need of this provision and how it would work, and further notes that these changes are not discussed within the ExA’s report. The Secretary of State is concerned that the effect of the transfer of benefit to any statutory undertaker would not transfer the liability for the payment of compensation to them. The Secretary of State is unclear how this would be expected to work in practice and is concerned that this may result in a lack of understanding or appreciation on the part of any affected landowners, which

the Secretary of State does not consider fair or reasonable. For these circumstances in relation to this application, the Secretary of State believes that fairness and transparency requires the removal of these provisions. Any transfer of functions or powers under the Order that needs to be made to a statutory undertaker can be undertaken by way of the procedure set out in article 8. The Secretary of State has accordingly deleted articles 8(4) and 28(2) and (3);

- Schedule 13 (deemed marine licence), the reference in paragraph 7(1) has been changed to read “paragraph 3(2)(a)(v), (2)(b)(ii) and (2)(f)(v); and references in paragraph 14 to “undertaker” were changed to “licence holder”;
- Schedule 14 (protective provisions), the agreed changes in relation to Part 4 For the Protection of the Environment Agency and Part 6 For the Protection of the Great Yarmouth Port Authority have been incorporated into the Order. This is set out in the letter from the Environment Agency and the letter from BDB Pitmans, on behalf of the Great Yarmouth Port Authority, respectively dated 4 August 2020.

Secretary of State’s overall conclusion and decision

83. For all the reasons given in this letter, the Secretary of State considers that there is a clear justification for authorising the Proposed Development and has therefore decided to accept the ExA’s recommendation at section 9.3 and make the Great Yarmouth Third River Crossing Order, subject to the changes referred to above. The Secretary of State is satisfied that none of these changes constitute a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed.

Challenge to decision

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

Publicity for decision

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

Yours faithfully,

Natasha Kopala

ANNEX A

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

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

The Great Yarmouth Third River Crossing 2020 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/great-yarmouth-third-river-crossing/>

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