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18 August 2022

Dear Sir/Madam,

Planning Act 2008

Application for the Proposed A428 Black Cat to Caxton Gibbet 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 18 May 2022 of the Examining Authority ('ExA'), comprised of lead panel member Menaka Sahai DipArch MSc (Urban Design) MSc (Planning) MRTPI, Andrew Parkin BA (Hons) DipTP MRTPI, and Matthew Scriven BA (Hons) MSc CMgr MCIHT MCMI, who conducted an Examination into the application made by National Highways ('the Applicant') for the A428 Black Cat to Caxton Gibbet Development Consent Order ('the DCO') under section 37 of the Planning Act 2008 as amended;
- The consultation responses received to the further consultations undertaken by the Secretary of State following the close of the Examination in respect of the application; and
- Other late representations received by the Secretary of State following the close of the Examination.

2. The application was accepted for Examination on 23 March 2021. The Examination began on 18 August 2021 and was completed on 18 February 2022. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook an accompanied site inspection and three unaccompanied site inspections.

3. The DCO as applied for would grant development consent for a new 10-mile (16km) two lane dual carriageway between Black Cat and Caxton Gibbet – the elements of which (collectively referred to as 'the Proposed Development') are:

- A new two-lane dual carriageway between Black Cat and Caxton Gibbet junctions;
- A new three-level grade separated junction at the Black Cat roundabout that would include the A1 at the lower level, the new dual carriageway on the upper level, and a roundabout between the two, in addition to slip roads and a new free flowing link between the A421 eastbound carriageway and the A1 northbound carriageway;

- A new grade separated all movements junction to the east of the existing Cambridge Road roundabout, which would provide access to the new dual carriageway and maintain access to the existing A428;
- At the Caxton Gibbet roundabout, a new grade separated all movements junction, incorporating the existing roundabout on the south side of the new dual carriageway and a new roundabout on the north side. The new dual carriageway would then tie-in to the existing A428 dual carriageway to the east of the new Caxton Gibbet junction;
- Changes to the local road network in the vicinity of the new Black Cat junction, including some local side roads and accesses to be closed and replaced with alternative routes. The existing Roxton Road bridge would be demolished and replaced with a new structure to the west to accommodate the realigned A421;
- New crossings over the River Great Ouse, East Coast Main Line railway, Barford Road, the B1046/Potton Road, Toseland Road, and the existing A428 at Eltisley;
- Detrunking of the existing A428 between St Neots and Caxton Gibbet and retention for local traffic and public transport with maintenance responsibility transferred to the Local Highway Authorities ('LHAs');
- Alternative accesses to side roads at Chawston, Wyboston and Eltisley;
- Changes to the public rights of way network affected by and near to the Proposed Development;
- Diversions of electricity lines, water pipelines, communications and telecommunications and gas pipelines.

4. The location of the Proposed Development lies within the administrative areas of Bedford Borough Council ('BBC'), Central Bedfordshire Council ('CBC'), Cambridgeshire County Council ('CCC'), Huntingdonshire District Council ('HDC') and South Cambridgeshire District Council ('SCDC') (ER 1.1.3).

5. The Secretary of State is content that the highway proposals qualify as a Nationally Significant Infrastructure Project ('NSIP') under sections 14(1)(h) and 22(1)(a) and (3) of the Planning Act 2008. As explained at paragraphs 168 to 173 of this letter, the Secretary of State also considers that the works to divert a high-pressure gas pipeline ('the pipeline diversion') currently operated by Cadent Gas Limited would also qualify as an NSIP under sections 14(1)(f) and 20 of the Planning Act 2008. As set out in ER 1.2.3 and in the letter of 30 July 2021 regarding handling of transport Development Consent Orders that include energy elements above the Planning Act 2008 threshold¹, the Secretary of State for Transport has decided this application. The Secretary of State for Business, Energy and Industrial Strategy (BEIS) has been consulted on the ExA's recommendation in relation to the pipeline diversion. The Secretary of State for Transport has taken into account the Secretary of State for BEIS's screening decision in respect of the pipeline diversion works. The Secretary of State for BEIS had no other comments on the ExA's recommendation.

6. 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 for Transport ('the Report'). All 'ER' references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form 'ER x.xx.xx' as

¹ Available on the Planning Inspectorate website at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2021/08/DfT-BEIS-TR010044-TR010032-Transport-DCOs-with-energy-elements.pdf>

appropriate. References to 'requirements' are to those in Schedule 2 of the DCO as the ExA recommended at Appendix D to the Report (the 'rDCO').

Summary of ExA's Recommendation

7. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad headings:

- Legal and Policy Context (Chapter 3);
- Issues Raised and Assessment of Effects (Chapter 4);
- The Need for Development (Chapter 5);
- Highways and Traffic Matters (Chapter 6);
- Biodiversity (Chapter 7);
- Historic Environment (Chapter 8);
- Climate Change and Carbon Emissions (Chapter 9);
- Good Design (Chapter 10);
- Construction Methods and Effects (Chapter 11);
- Air Quality (Chapter 12);
- Noise and Vibration (Chapter 13);
- Flood Risk, Water Quality and Resources (Chapter 14);
- Landscape and Visual Effects (Chapter 15);
- Land Use (Chapter 16);
- Socio-Economic Effects (Chapter 17);
- Diversion of High-Pressure Pipeline (Chapter 18);
- Significant Cumulative Effects (Chapter 19);
- Findings and Conclusions in relation to Habitats Regulations Assessment (Chapter 20);
- Compulsory Acquisition and Related Matters (Chapter 22); and
- Draft Development Consent Order and Related Matters (Chapter 23).

8. For the reasons set out in the Report, the ExA recommended that the DCO be made in the form set out in Appendix D to the Report (the 'rDCO').

Summary of Secretary of State's Decision

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

Secretary of State's Consideration

10. The Secretary of State's consideration of the Report, responses to his further consultations of 31 May, 22 June, 13 July, and 28 July 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 DCO.

11. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations as set out in the Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

12. The National Policy Statement for National Networks ('NPSNN') is the relevant national policy statement to be used by the Secretary of State for making decisions on development consent applications for nationally significant national networks infrastructure projects in England. In a Ministerial Statement issued on 22 July 2021, the Secretary of State for Transport 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 Planning Act 2008. 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. The National Policy Statements for Overarching Energy (NPS EN-1) and for Oil and Gas Supply and Storage (NPS EN-4) are also of relevance to the pipeline diversion (ER 3.3.2).

13. The Secretary of State has also had regard to: the Local Impact Report submitted by both BBC and CBC, the combined Local Impact Report submitted by CCC, HDC and SCDC ('the Cambridgeshire Councils', ER 3.9 and throughout); the Development Plans (ER 3.10 and throughout); environmental information as defined in regulation 3(1) of the 2017 Regulations; and all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the Planning Act 2008. 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.

Need for the Development

14. The ExA sought the Applicant's clarification as to whether Decarbonising Transport: A Better, Greener Britain ('the Transport Decarbonisation Plan') had a bearing on the information required by the ExA to assess the need for the Proposed Development (ER 5.4.4). The Secretary of State agrees with the ExA that the Transport Decarbonisation Plan does not undermine the need for roads in general to be built and that the Proposed Development can be assessed on the basis of the NPSNN without conflicting with commitments in the Transport Decarbonisation Plan (ER 5.4.9). The Secretary of State agrees with the ExA that the publication of the Transport Decarbonisation Plan does not require the Applicant to provide additional information or justification to enable the Proposed Development's need case to be assessed (ER 5.4.11).

15. The Applicant set out that there are two overarching factors driving the need for the Proposed Development: existing capacity issues and delays at Black Cat roundabout and along the A428, and the need for the road to be dualled to meet existing and forecast traffic demands, with additional capacity required to support local and regional economic growth (ER 5.4.14) and local authorities support the Applicant's case (ER 5.4.25). The Applicant also forecast the Proposed Development to save a large number of casualties over a 60-

year period (ER 5.2.9). The ExA considered the Proposed Development would improve journey times, journey time reliability, and safety (ER 21.2.4), and overall agreed there is a strategic need for the Proposed Development and that it would play a crucial role in facilitating economic and housing development in the area (ER 21.2.7).

16. A number of parties questioned the need for the Proposed Development in light of the proposed East West Rail scheme (ER 5.4.28-29), especially given the similarity in its potential route alignment to the Proposed Development (ER 5.4.30). The Secretary of State agrees with the ExA that, as only a small proportion of the Proposed Development's traffic would reassign to the East West Rail scheme, there will remain a need for the Proposed Development irrespective of whether the proposed East West Rail scheme is delivered (ER 5.5.4, 21.2.9).

17. The ExA concluded that reductions to the benefit-cost ratio were due to changes in nationally-agreed modelling (ER 5.5.2), that the cancellation of the Oxford-Cambridge Expressway would not affect the Proposed Development's economic assessment or eventual benefit-cost ratio (ER 9.4.67), and that there was no substantive evidence to doubt the accuracy of the mechanism for deriving the benefit-cost ratio (ER 9.4.66). Transport Action Network, in its response to the Secretary of State's consultation of 28 July 2022, argued that construction and fuel price rises would undermine the Proposed Development's benefits. The Secretary of State considers that there is no detailed evidence on the long-term impacts of the aforementioned changes which would call into question the need for the Proposed Development.

18. Noting the ExA's view that the demand for road-based travel appears to have been returning to pre-pandemic levels (ER 5.4.40), the Secretary of State agrees with the ExA's conclusion that the effects of the Covid-19 pandemic do not have a bearing on the need for the Proposed Development any more than has already been assessed in the sensitivity testing and revisions to the benefit-cost ratio (ER 5.4.41).

19. The Secretary of State agrees with the ExA that the case for the Proposed Development to alleviate traffic and safety issues and support economic growth has been made (ER 5.4.25, 5.5.1). The Secretary of State also agrees with the ExA's conclusion that there is an evidenced need for the Proposed Development (ER 5.4.26). The Secretary of State agrees with the ExA's conclusion that the need for the Proposed Development has been established in accordance with the NPSNN and that the presumption in favour of development (NPSNN paragraph 4.2) is engaged. The Secretary of State agrees with the ExA that the need for the Proposed Development significantly weighs in favour of making the Order (ER 5.5.6, 21.2.10).

Highways and Traffic Matters

Monitoring and impacts on the existing road network

20. The Secretary of State notes the sensitivity testing undertaken during the Examination and the ExA's satisfaction that this has provided a more accurate picture of the Proposed Development's likely traffic effects as it has been based on observed data rather than flows taken from the strategic model, although its results did not constitute a fundamental divergence from those originally provided and the methodology remains sound and adequate (ER 6.4.27). The ExA concluded that the modelling provided by the close of

the Examination adequately demonstrates the likely construction and operational effects on the local and strategic road networks and is therefore sufficient (ER 6.5.1). The Secretary of State notes that the Applicant, in its response to the consultation letter of 31 May 2022, confirmed that the traffic modelling reported in the Transport Assessment that underpins the Environmental Statement could still be relied on for a construction start date of March 2023. The Secretary of State therefore agrees with the ExA in this regard. The Secretary of State notes the ExA's comments that the Applicant should have involved local highway authorities earlier in the process of sharing and validating traffic modelling (ER 6.4.23) and to agree matters before the Examination (ER 6.5.1), but like the ExA is satisfied that the Applicant responded to the need for better local validation (ER 6.4.25).

21. With regard to construction, local highway authorities expressed concerns about traffic rerouting from the strategic road network onto the local road network during construction (ER 6.4.35). The Applicant's original position was not to monitor traffic flows on the local road network before or during construction as the local road network is a matter for the local highway authorities to monitor and manage effectively (ER 6.4.40). The local highway authorities proposed a requirement to secure monitoring at specific locations before and during construction (ER 6.4.41), which the Applicant accepted in part (ER 6.4.42) though with a reduction in the number of monitoring locations (ER 6.4.44) and no ongoing monitoring during construction; the Applicant considered that this was the role of the local highway authority (ER 6.4.45).

22. The Secretary of State agrees with the ExA that, given the scale and duration of the Proposed Development's construction, monitoring of traffic prior to commencement of construction should be integral to the Outline Construction Traffic Management Plan ('OCTMP') as without an agreed baseline position any comparison risks being the subject of dispute (ER 6.4.55). The Secretary of State also agrees with the ExA that, without monitoring of traffic flows across the local road network during construction, it would not be possible to robustly determine what interventions may be necessary (ER 6.4.53), given that several routes may experience an increase in traffic (ER 6.4.52). The ExA did not accept the Applicant's position that local highway authorities should have to, or may have the capacity to, absorb additional monitoring as part of their business-as-usual activities (ER 6.4.57) and considered that without the Proposed Development the likely need for such data would be less due to the existing network's rural nature (ER 21.2.14); the Secretary of State agrees with this. The ExA therefore proposed requirement 22 of the rDCO to secure traffic monitoring during the construction period to identify any adverse effects on the traffic on the local road network (ER 6.4.59). Given the likelihood of traffic re-routing onto the local road network (ER 6.4.49), the Secretary of State considers that the proposed requirement is necessary to avoid significant adverse effects of the Proposed Development on the local road network. The Secretary of State agrees with the ExA's decision not to include in its proposed requirement 22 any intervention that might be deemed necessary subsequent to the monitoring as this would lack sufficient clarity and preciseness. Such proposals should be discussed between the Applicant and the local highway authorities through the Traffic Management Forum secured in the OCTMP (ER 6.4.60).

23. The Secretary of State notes disagreement between CBC and the Applicant about the suitability of the use of Station Road in Tempsford by construction traffic (ER 6.4.66). CBC was concerned because of the proximity of homes fronting the road and the existing informal on-street parking arrangements, and proposed a requirement that the route should only be used by vehicles weighing under 7.5 tonnes. The ExA asked for the rationale for

using this section of the road; the Applicant explained that the route would be needed to access construction sites for specific works with no other realistic alternative access (ER 6.4.65). Like the ExA, the Secretary of State recognises CBC's concerns that there would be disruption to villages such as Tempsford during construction. The Secretary of State also recognises the ExA's consideration that there is no other realistic alternative and that through careful project planning and liaison between the Applicant and the local highway authority, any disruption can be minimised (ER 6.4.83). The ExA considers that a requirement relating to Station Road is not appropriate or necessary given that such matters would be discussed as part of the traffic management liaison meetings that are contained and secured in the Outline Construction Traffic Management Plan. The Secretary of State agrees with the ExA that a requirement would not be appropriate, noting that the ExA had no certainty that it would be practicable to utilise vehicles under 7.5 tonnes for those activities and that there was a mechanism for discussion to take place via the traffic management liaison meetings (ER 6.4.74). The effects of construction traffic in Tempsford are considered in greater detail below at paragraph 171 as they relate to the pipeline diversion.

24. The ExA considered that the Proposed Development would have the effect of creating a large employment site in a predominately rural location, and so given the duration of works, the number of workers involved, and the location of the main construction compounds, a workers travel plan would be appropriate (ER 6.4.84). The local authorities consider the workers travel plan adequate for this stage of the Proposed Development's preparation and they will be consulted on it as it is finalised. The Secretary of State agrees with this approach and is content that this has been secured in requirement 3 of the rDCO (ER 6.4.80).

25. With regard to operation, the Secretary of State agrees with the ExA's consideration that monitoring of operational traffic flow, where the Applicant's modelling anticipates worsening of traffic flow on the local road network, should not be absorbed within the day-to-day duties and existing budgets of the local highway authorities. The Secretary of State therefore agrees with the ExA's consideration that the Applicant should undertake operational traffic monitoring as detailed in requirement 23 of the rDCO (ER 6.5.9, 21.2.19), which secures monitoring at five selected locations agreed by the local highway authorities and the Applicant at the close of the Examination (ER 6.4.102). The Secretary of State notes that there is little evidence to suggest what, if any, intervention would be necessary on the local road network as a result of the traffic monitoring and whether any changes could be demonstrated to be solely as a result of the Proposed Development (ER 6.4.103, 6.4.158, 21.2.20). The Secretary of State therefore agrees with the ExA's conclusion that it is not appropriate for the Applicant to provide surety of funding for any such subsequent, undefined intervention (ER 6.4.104, 21.2.15). However, the Secretary of State agrees that the operational traffic monitoring secured in requirement 23, along with local highway authorities' routine monitoring, would assist in demonstrating any need for intervention on the local road network (ER 6.5.12).

26. The Secretary of State agrees with the ExA's findings that, for the reasons set out in ER 6.4.106-6.4.118, further enhancement measures would not be required at Barford Road roundabout as part of the Proposed Development (ER 6.4.118) or at Wyboston Roundabout to mitigate for the Proposed Development (ER 6.4.111). The Secretary of State however notes that the Applicant's modelling shows queues backing up on the A428's eastbound slip road with the A1303, and he shares the ExA's and the local highway authority's

concerns that this could potentially result in an adverse road safety issue (ER 6.4.133), resulting in a disbenefit of the Proposed Development (ER 6.4.135). The Secretary of State notes that the Applicant took a precautionary approach to its modelling (ER 6.4.132) and considers it to represent a worst case (ER 6.4.133) and he accepts the ExA's reasoning that the Applicant would under its Operating Licence be responsible for ensuring that any such effects on the strategic road network would be appropriately managed (ER 6.5.13, 21.2.23).

27. The Secretary of State agrees with the ExA's conclusion that, given that only minor worsening of traffic flows is predicted during the operational phase at existing junctions on the strategic road network, and given that the Applicant is required to effectively manage the strategic road network, no further monitoring of operational traffic effects at existing junctions on the strategic road network is necessary (ER 6.5.18).

Traffic effects of proposed highways layouts

28. The Secretary of State agrees with the ExA's conclusion that the Proposed Development's highway layouts would deliver the predicted traffic benefits and would operate safely, within capacity and effectively (ER 6.5.19).

29. The Secretary of State accepts the ExA's conclusion that various parties' alternative proposals and suggested amendments to road layouts would have worse environmental effects and require additional compulsory acquisition (ER 6.5.20) for the reasons set out at ER 6.4.187-188, 6.4.190-193, 6.4.198, and 6.4.211. The Secretary of State also agrees with the ExA that there is insufficient information to justify provision of a smaller junction at Eltisley Link (ER 6.4.213). The Secretary of State is therefore satisfied with the Applicant's refusal to accept these proposals.

30. Though CCC and the Applicant had not agreed matters regarding departures from standard at the Potton Road – B1046 junction at the end of the Examination (ER 6.4.202), the Secretary of State agrees with the ExA's conclusion that, should agreement not be reached, a departure from standard is appropriate, both from a road safety perspective (ER 6.5.203, 21.2.29) and because full compliance with the Design Manual for Roads and Bridges has not been demonstrated to be necessary in this instance (ER 6.4.205).

31. The Secretary of State agrees with the ExA that BBC's future development aspirations lack sufficient certainty for the Applicant to be required to provide access to BBC's land east of the Black Cat junction, and that if development did come forward, access would likely be achievable (ER 6.4.229).

32. The Secretary of State agrees with the ExA's acceptance of the Applicant's position that detail regarding private accesses should be dealt with on a case-by-case basis at the detailed design phase (ER 6.5.22, 21.2.30) as different landowners have differing needs (ER 6.4.227).

Other matters

33. Various parties proposed additional non-motorised user ('NMU', i.e. walker, horse-rider and cyclist) infrastructure to that included by the Applicant, as outlined at ER 6.4.244-6.4.249. The ExA considered that there are locations where apparent gaps in NMU

provision appear (ER 6.4.250) and that there would be scope to improve various existing NMU links and to fill missing links in the public rights of way network (ER 21.2.33). However, the Secretary of State agrees with the ExA that the Applicant has justified the extent of the proposed NMU infrastructure and that although additional NMU infrastructure would be desirable to interested parties, there is no robust justification for its provision (ER 6.5.26). The Secretary of State agrees that the Applicant's approach in its Walking, Cycling and Horse Riding Assessment and Review, which focuses on providing for that which is lost as a result of the Proposed Development and that for which there is an evidenced need, accords with the NPSNN paragraphs 5.215 to 5.217 (ER 6.4.251). The Secretary of State accepts the ExA's conclusions that the Applicant could have gone further to accommodate requests to encourage and facilitate NMU use but that additional NMU provision is not strictly required (ER 6.4.254). Nevertheless, the Secretary of State accepts that there is an overall improvement compared to that which currently exists (ER 6.4.255) and the Proposed Development includes adequate NMU infrastructure (ER 6.5.27).

34. For the reasons set out in the Report, the Secretary of State accepts the ExA's conclusions that appropriate handover mechanisms would be in place for the de-trunking of the existing A428 and the transfer of local highway infrastructure (ER 6.5.29, 21.2.35), and the maintenance of ditches and culverts (ER 6.5.31, 21.2.37). The Secretary of State agrees with the ExA that the Proposed Development would assist both the local highway authorities and the Applicant in meeting their Network Management Duty ('NMD', ER 6.4.308) as the Proposed Development's overall effect would be to the benefit of both the local and strategic road networks (ER 6.4.305) which would face a predicted significant worsening of traffic in the future without the Proposed Development (ER 6.4.306-6.4.307). The Secretary of State agrees with the ExA that the benefits regarding the NMD would be realised in the aforementioned operational benefits (ER 6.5.33).

Conclusion on Highways and Traffic Matters

35. The Secretary of State agrees with the ExA's conclusions on the Proposed Development's conformity with the NPSNN as outlined at ER 21.2. The Secretary of State further agrees with the ExA's conclusion that accordance with NPSNN paragraph 5.215 is subject to monitoring the effects on operation of the Proposed Development, secured in requirements 22 and 23 of the rDCO (ER 6.5.11).

36. The Secretary of State agrees with the ExA's approach to its conclusion on the totality of highways and traffic matters being given weight as three separate issues: construction traffic effects, operational effects and effects on NMUs (ER 21.2.40). On construction traffic effects, the Secretary of State agrees with the ExA that, although the OCTMP and requirement 22 would enable traffic effects to be monitored and mitigated, limited weight should be apportioned against the DCO because of inevitable disruption caused by construction (ER 6.5.7). On operational effects, the Secretary of State agrees with the ExA that the likely operational traffic effects of the Proposed Development on the local road network and strategic road network within the Order limits weigh substantially in favour of the DCO (ER 6.5.15, ER 6.5.24, 21.2.40). On the effects on NMUs, the Secretary of State agrees with the ExA that the Proposed Development includes adequate NMU infrastructure and as such neutral weight should be apportioned in relation to provision for NMUs to making the DCO (ER 6.5.27).

Biodiversity

37. NPSNN paragraphs 5.20 to 5.38 relate to biodiversity and ecological conservation 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 7.1.3).

38. The Secretary of State agrees with the ExA that the requirement imposed under the Environment Act 2021 for NSIPs to achieve a Biodiversity Net Gain (‘BNG’) of at least 10% if development consent is to be granted has not yet commenced (ER 7.4.2).

39. The Secretary of State notes that the Environment Agency, Natural England and the Cambridgeshire Councils raised concerns with the adequacy of the baseline survey data (ER 7.4.6), but that the Applicant subsequently submitted further updated survey information (ER 7.4.7) and confirmed that further updated surveys would be undertaken (ER 7.4.8). The ExA considered that the updated surveys have been helpful in understanding the area’s biodiversity and the Secretary of State agrees that the surveys that underpin the Environmental Statement assessment and findings are robust (ER 7.4.14, 21.2.43).

40. The Secretary of State notes that the Applicant, in deciding the route of the Proposed Development, sought to avoid sites important to local biodiversity as far as possible but considered that connectivity between the Sir Johns Wood County Wildlife Site (‘CWS’) and the nearby Boys Wood and Alington Hill wood would be disrupted during construction (ER 7.4.16). The Secretary of State notes that the Applicant proposes to mitigate the impact on the connectivity between these sites by creating a mammal tunnel for bats and ground-based mammals, although he recognises that the Environmental Statement still records a minor adverse effect from the operation of the Proposed Development (ER 7.4.17).

41. The Secretary of State notes that the ExA concluded that Madingley Slip Road Roadside Verge CWS would be at increased risk of nitrogen pollution from the Proposed Development (ER 7.4.20) but is satisfied that although there may be an adverse effect on some locally designated sites, overall, the effect of the Proposed Development on Designated Sites would not be significantly harmful (ER 7.4.22).

Biodiversity Net Gain

42. The Secretary of State notes that the Applicant’s assessment of whether the Proposed Development would achieve a net loss, neutral effect or net gain in biodiversity was initially undertaken using the Highways England Metric (‘HEM’). This assessment resulted in a 20.5% BNG which was attributed to the significant increase in woodland and grassland (ER 7.4.23). The Secretary of State notes the ExA’s conclusion that the Defra 2 Metric (‘D2M’) provides a more robust assessment of BNG because it includes linear features separately to area-based habitats and considers the conditions of habitats in more detail than the HEM (ER 7.4.46).

43. The Secretary of State notes that the results of a BNG assessment using the D2M were significantly different and showed a net gain of habitat units (16.5%) and river units (10%) but a net loss of hedgerow units (-31.5%) (ER 7.4.27). The Secretary of State notes the Applicant concluded that these results show an overall positive effect of the Proposed

Development on biodiversity but that the ExA considered that for there to be an overall positive effect on biodiversity, each of the three components of the D2M (listed above) would need to show a positive score. The ExA considers that the Proposed Development would not result in BNG (ER 7.4.49) and that the Applicant's D2M submission shows a substantial net loss of hedgerow units (ER 7.4.50). The Applicant considered that this was partly due to an overestimation of the length of hedgerows lost in land for temporary possession and despite there being an overall increase in hedgerow length (ER 7.4.28).

44. The Secretary of State further notes that the results of the D2M show that the Proposed Development would result in a loss of High and Medium distinctiveness habitats and agrees with the ExA that this loss cannot, under this metric, be replaced with a greater amount of lower value habitats ('trading down') because this would contravene Rule 3 of the D2M User Guide (ER 7.4.50).

45. The Secretary of State agrees with the ExA that there is no prescribed need for BNG offsetting to mitigate a loss of priority habitats (NSPNN paragraph 5.25, ER 7.4.51). Moreover, there is currently no requirement for a BNG assessment to be undertaken for a NSIP, as recognised by the ExA (ER 7.4.45). However, the ExA concludes that the D2M submission shows a substantial net loss of hedgerow units and this is a significant effect (ER 7.4.50) and subsequently that there is no certainty that there would not be an uncompensated loss of priority habitats which would significantly and adversely affect biodiversity and so should be reflected in the Environmental Statement (ER 7.4.52, 21.2.47). The ExA's proposed requirement in the rDCO is therefore to ensure that an updated BNG assessment is undertaken and, should it show an uncompensated loss of priority habitats, to require the Applicant to deliver a biodiversity offsetting scheme for priority habitats so as to avoid conflict with NPSNN paragraph 5.25 (ER 7.4.55). The Secretary of State notes that one of the reasons the ExA proposes this requirement is that it notes that the Applicant will undertake a further BNG assessment at the detailed design stage and considers that such an assessment is necessary, but it is not detailed in the First Iteration Environmental Management Plan ('EMP') or secured in the draft DCO (ER 7.4.53, 7.4.55). The Secretary of State notes that the Applicant did not consider that there was a need for an offsetting requirement as it did not accept that there would be a net loss of priority habitat (ER 7.4.42), but he is persuaded by the ExA's reasoning regarding the possible uncompensated loss of priority habitat. Further noting that NPSNN paragraph 5.35 states that, where appropriate, requirements may be used to deliver protection for priority habitats from the adverse effects of development, the Secretary of State considers the proposed requirement necessary to deliver protection for priority habitats through avoiding an unmitigated loss of such habitats and has included the requirement in the final DCO. The Secretary of State is mindful that the calculation of BNG is a distinct process and is not required for the purpose of preparing an Environmental Statement (ER 7.4.44).

46. The Secretary of State notes that there is no universally agreed metric in place (ER 7.4.45) but considers that the inclusion in the DCO of the need to approve the BNG assessment following consultation with Natural England and the local planning authorities will address this. The Defra biodiversity metric was updated to version 3.1 on 21 April 2022. The Secretary of State considers that the D2M method remains a relevant consideration, and notes that the Defra 3.1 Metric also prohibits 'trading down'. The Secretary of State notes that the proposed requirement specifies that the metric to be used must be agreed with Natural England and the relevant local planning authorities, and so considers that the eventual method used for any BNG assessment need not be the D2M.

Biodiversity effects

47. The ExA considered that the 3.4km minimum net increase in hedgerow length put forward by the Applicant (at deadline 4 after the D2M BNG calculation) should be relied on (ER 7.4.60) although also notes the concern that despite the increase in hedgerow, grassland and woodland, the quality of the proposed replacements, including mix of species, was inferior and that arable field margins were not assessed (ER 7.4.61). Natural England was generally satisfied that mitigation and monitoring arrangements in the Biodiversity Management Plan and EMP would address the generally minor adverse effects on these priority habitats (ER 7.4.63). Nevertheless, the Secretary of State agrees with the ExA's conclusion that the D2M shows that a negative effect in terms of the biodiversity value of this priority habitat cannot be excluded (ER 7.4.64).

48. Although the Secretary of State notes some initial concern raised by the local authorities, Natural England and the Environment Agency regarding the impact that the Proposed Development may have on aquatic habitats and species (ER 7.4.65, 7.4.68), he is satisfied that a consensus has been reached (ER 7.4.71-7.4.74) and is therefore content with the ExA's conclusion that there would not be significant residual harm to aquatic habitats and species as a result of the Proposed Development (ER 7.4.75).

49. The Secretary of State notes that Natural England indicated that European protected species including bats, great crested newts and otters may be affected as a result of the Proposed Development and that there may also be an impact on other nationally protected species such as badgers (ER 7.4.76). The local authorities also raised concerns in respect of the robustness of some of the evidence used to inform the effects on certain species and habitats (ER 7.4.77), the design of the entrance to the bat tunnel, the monitoring of the effectiveness of this and other mitigation measures and the measures to protect wildlife during construction (ER 7.4.78). The Secretary of State notes that the ExA questioned the adequacy of the proposed biodiversity mitigation measures (ER 7.4.79) during the Examination and considered further evidence from Natural England, the local authorities and the Applicant. Natural England was satisfied in principle with the Applicant's mitigation measures for farmland birds and otters and considered that the approach to great crested newts and badgers was not expected to cause difficulties (ER 7.4.80).

50. The Secretary of State notes that, following further evidence provided by the Applicant, (ER 7.4.83-7.4.84), Natural England agreed with the Applicant's biodiversity mitigation measures, including in relation to bats, and stated that detailed mitigation measures would be agreed during the detailed design stage (ER 7.4.85). The Secretary of State also notes the agreement of the Environment Agency (ER 7.4.86), CBC (ER 7.4.88) and the Forestry Commission (in its response to the Secretary of State's consultation of 28 July 2022) with the Applicant in respect of biodiversity mitigation measures but is mindful that at the close of the Examination, the Applicant remained in disagreement with the Cambridgeshire Councils in relation to the effect on bats, light sensitive invertebrates and elm tree specialist invertebrates, and with BBC regarding some of the construction and operational effects and mitigation measures (ER 7.4.89).

51. The ExA concluded that the Applicant had considered the lighting of the Proposed Development in relation to bats and some bird species during construction and operation and had adopted measures to limit adverse effects. The ExA also concluded that that it did not appear that the Applicant had considered the effect of artificial lighting on terrestrial

invertebrates and that there is likely to be an adverse effect but is satisfied that the detail in the EMP is adequate and that the finer details will be satisfactorily dealt with during the detailed design stage (ER 7.4.92).

Conclusion on Biodiversity

52. Overall, the Secretary of State agrees with the ExA that opportunities to promote biodiversity have been identified by the Applicant and that with appropriate mitigation there would be positive effects on certain habitats and species, although there would also be adverse effects on other types of habitat and species (ER 7.5.8, 21.2.49). The Secretary of State also takes into consideration that the Proposed Development would adversely affect some locally designated sites such as causing a minor increased risk of nitrogen pollution to Madingley Slip Road Roadside Verge CWS (ER 7.4.18), but that the overall effect of the Proposed Development on Designated Sites is not considered to be significantly harmful (ER 21.2.45). The Secretary of State has included the ExA's proposed requirement 24 in the DCO to avoid an uncompensated loss of priority habitats, which would constitute a significant adverse effect. In light of the above, and in accordance with the ExA's recommendations, the Secretary of State ascribes limited weight against making the Order to biodiversity.

Historic Environment

Brook Cottages

53. The Secretary of State notes that the Applicant considers it necessary to remove Brook Cottages, a Grade II listed building, as part of the Proposed Development to enable the construction of the proposed grade-separated Black Cat junction (ER 8.4.2). Brook Cottages is a designated heritage asset and the Applicant assessed that its removal would cause substantial harm and a total loss of significance. The Applicant considered the feasibility of dismantling and reconstructing Brook Cottages and if this would reduce the level of harm but concluded the level of harm would remain substantial (ER 8.4.6). BBC however considered that dismantling and reconstructing Brook Cottages may potentially reduce the level of harm to its significance, while Historic England concluded that the total loss of significance for Brook Cottages could potentially be avoided if it were dismantled and reconstructed elsewhere (ER 8.4.7-8.4.8). The Applicant, BBC and Historic England however all agreed that an intrusive survey of the building would be necessary to inform its potential relocation (ER 8.4.10). No intrusive survey has been conducted as the Applicant considers that vacant possession of the building would be required to do this (ER 8.4.12); the occupation of the building is further discussed at paragraphs 155 to 158 below.

54. Given the differing positions of the Applicant and Historic England/BBC including in relation to the level of harm that would result from dismantling and potentially relocating Brook Cottages, the level of harm resulting from the loss of Brook Cottages was raised by the ExA during Examination (ER 8.4.11, 8.4.15). Historic England and BBC did however identify that dismantling and relocating Brook Cottages was a potentially important mitigation measure (ER 8.4.20) and the Secretary of State echoes the ExA's satisfaction that the appropriate recording, dismantling and potential relocation of Brook Cottages would be secured by requirement 16 of the rDCO (ER 8.4.21). The Secretary of State agrees with the ExA's view that, even if relocation would be feasible and valuable, some aspects of the building's significance would almost inevitably be lost, including those relating to its location

and associated function (ER 8.4.18). However, the ExA concludes that without a structural survey there is no substantive evidence to show that substantial harm and total loss of significance would not be caused by Brook Cottages' removal (ER 8.4.19). In response to the Secretary of State's consultation of 31 May 2022, the Applicant referred to its statements of common ground with BBC and Historic England, which state that it would not be possible to establish the feasibility and value of relocating Brook Cottages other than through dismantling to reveal the historic fabric, with any interim condition survey being insufficient to establish the feasibility and value of relocation. The Secretary of State therefore considers that substantial harm and total loss of significance remain possible, and so agrees with the ExA's conclusion that the Proposed Development would cause substantial harm and a total loss of significance to Brook Cottages (ER 8.4.22) and gives no weight to any potential relocation (ER 21.2.52).

55. In examining the justification for substantial harm to Brook Cottages, the ExA's consideration, based on NPSNN paragraph 5.131 (ER 8.4.23), centred around testing whether the Applicant had:

- demonstrated that "great weight" had been given to Brook Cottages' conservation;
- provided a "clear and convincing justification" for the substantial harm and loss of significance to Brook Cottages; and
- demonstrated that this harm was "exceptional".

56. During the course of the Examination, the Applicant set out its option selection process for routes and the proposed Black Cat junction, including through its Project Control Framework (ER 8.4.36-8.4.57). This included the development of three options for the Black Cat junction for non-statutory public consultation: Option A which may affect Brook Cottages' setting, and Options B and C which may result in its removal (ER 8.4.45). Following non-statutory consultation, the three options were further developed and the work concluded that all three options may require Brook Cottages' demolition (ER 8.4.48). The Applicant then developed Option C+ with the specific aim of retaining Brook Cottages (ER 8.4.50), but then in its Scheme Assessment Report considered Option C+ more expensive to construct and unacceptable in terms of highways layout (ER 8.4.54). The ExA raised at Issue Specific Hearing 4 various issues regarding the Applicant's option identification and selection, summarised at ER 8.4.58. In response to this, the Applicant submitted an Update on Overview of the Alternatives Considered at the Black Cat Junction (ER 8.4.62). The ExA sought further justification from the Applicant for discounting Option C+; the Applicant explained it had unacceptable safety and technical issues, was initially considered significantly more expensive than Option C, and had poor operational resilience in a specific circumstance compared to Option C (ER 8.4.66). The Applicant also noted that none of the parties had argued that the process was defective or provided an alternative option that would deliver comparable benefits and emphasised the safety factors in rejecting alternatives with lesser impacts on Brook Cottages (ER 8.4.68).

57. The ExA does not consider that the Applicant has demonstrated that 'great weight' under NPSNN paragraph 5.131 was given to the conservation of Brook Cottages through the Project Control Framework process, with the ExA considering (ER 8.4.73) that:

- the objectives of the Proposed Development, despite references to noise, biodiversity and air quality, do not mention the historic environment;
- at Stage 0 and Stage 1 of the Project Control Framework process, the design of the Black Cat Junction was not addressed in a way that would enable a meaningful assessment of its effects on Brook Cottages to be undertaken;

- the sifting of the options for the Historic Environment often considered together the effect on multiple listed buildings, archaeological remains and other heritage assets and there was insufficient information to establish with confidence what the effects of the different options on Brook Cottages would be;
- during the sifting at Stage 2 the effects of the Proposed Development options on Brook Cottages were not certain because of the level of information available at the time. In some instances, the effects would change considerably. The information available was not detailed enough for firm conclusions to be drawn about the effects on Brook Cottages.

The ExA therefore considered it unclear what weight the retention of Brook Cottages in situ had in deriving and assessing options during Stage 2 and selecting options for non-statutory consultation, which ultimately led to the preferred option (ER 8.4.74).

58. In the context of the NPSNN requiring the demolition of a Grade II listed building to be clearly and convincingly justified, as well as exceptional, the ExA did not accept the Applicant's position that it would not be proportionate or feasible to revisit a previous stage of route option selection if undisputed and fundamental reasons for rejecting an option had already been identified (ER 8.4.75). The ExA also did not consider that such reasons have arisen in this case, given the limited levels of information available at earlier stages and the different conclusions for options from one sift stage to another (ER 8.4.76). The ExA notes how the option comparison table in the Scheme Assessment Report showed identical road safety and road network resilience effects for options A, B, C and C+, despite the strength of the Applicant's stated reasons for why option C+ was rejected both on resilience and particularly on safety grounds (ER 8.4.77-8.4.78). The ExA therefore regards either the Applicant's stated reasons or the option comparison table in the Scheme Assessment Report to be highly inaccurate (ER 8.4.77). The ExA notes that the benefit-cost ratio in the Update on Overview of the Alternatives Considered at the Black Cat Junction for the Orange Route (the finally chosen option (ER 4.6.9)) and Option C+ is better than that for the Orange Route and options A, B or C (ER 8.4.80). The ExA notes that the Scheme Assessment Report, said to compare major factors to be considered when selecting a preferred route, would have been part of the evidence base informing the preferred route decision. The ExA considers there to be contradictions within the Applicant's evidence and does not therefore find the Applicant's explanations at all plausible (ER 8.4.81). The ExA further notes that there was no consultation on option C+ and considers it unclear why a variation of option A, which the Applicant's own evidence stated would be the one option to retain Brook Cottages, was not reconsidered at this stage (ER 8.4.82).

59. Noting that the Applicant gave equal weight to the historic environment as to all other criteria, the ExA does not consider that the Applicant gave 'great weight', with reference to the NPSNN, to the conservation of Brook Cottages as a designated heritage asset in developing and assessing alternatives for the Black Cat junction (ER 8.4.83). The ExA further considers that the Applicant's comments on the lack of rarity of Brook Cottages and on Grade II being the lowest level of listing (ER 8.4.84) show that the Applicant has not given 'great weight' to its conservation; the ExA notes that any listed building has statutory protection as recognised by NPSNN paragraph 5.131 (ER 8.4.85). Nor does the ExA consider that the Applicant's Project Control Framework process has been adequate in this case where substantial harm to a designated heritage asset has been identified or that it is clear why, through this process, the loss of Brook Cottages is necessary and so should be exceptionally allowed (ER 8.4.86).

60. The ExA concludes that the Applicant's approach to, and process for, developing the Black Cat junction did not give 'great weight' to conservation of Brook Cottages. The ExA also stated that they cannot be sure that the Applicant could not have derived similar public benefits from the scheme using a design layout that retained Brook Cottages and so concludes that the Applicant has not provided a 'clear and convincing' justification for the substantial harm and loss of significance to Brook Cottages and so this harm is not 'exceptional'. The ExA therefore considers the Proposed Development to conflict with NPSNN paragraph 5.131 (ER 8.4.88).

61. The ExA then turned to NPSNN paragraph 5.133. The ExA considers the Applicant's points valid about the benefits, primarily in safety, of the proposed layout as opposed to other options – even though the Applicant did not provide the ExA's requested further evidence to substantiate its position on safety (ER 8.4.90). The ExA further considers that the Proposed Development's substantial benefits would outweigh the substantial harm and loss of significance caused by the removal of Brook Cottages. The ExA therefore considers the Proposed Development to accord with NPSNN paragraph 5.133 (ER 8.4.92) although it notes that this is a very finely balanced judgement (ER 8.5.5, 21.2.55).

62. The Secretary of State agrees with the ExA that the Proposed Development would cause substantial harm and a total loss of significance to a designated heritage asset, the Grade II listed Brook Cottages (ER 8.5.1) given that at this stage, the feasibility and value of dismantling and relocating Brook Cottages has not been determined and that no weight can be given to the potential for this to reduce harm (ER 8.5.2). The Secretary of State acknowledges that in accordance with NPSNN paragraph 5.131 such harm should be 'exceptional'.

63. The Secretary of State notes the ExA's conclusion that there is a conflict with NPSNN paragraph 5.131. The Secretary of State takes a different approach from the ExA in the way he has applied paragraph 5.131.

64. First, paragraph 5.131 says that when considering a proposed development's impact on a designated heritage asset's significance, the Secretary of State should give great weight to the asset's conservation. This is not a burden which falls on the Applicant as the ExA suggests. The ExA's consideration of whether paragraph 5.131 has been complied with (including whether there is clear and convincing justification for the harm) is underpinned by its consideration that the Applicant has not demonstrated that 'great weight' had been given to the asset's conservation. The fact that in making his decision the Secretary of State must give great weight to the conservation of heritage assets may shape the Applicant's approach to design, but the Applicant is not required itself to demonstrate that great weight has been given. As detailed in the paragraphs that follow, the Secretary of State has given great weight to the conservation of the heritage asset in this case.

65. Secondly, paragraph 5.131 says that harm or loss affecting any designated heritage asset should require clear and convincing justification and that substantial harm to or loss of a grade II listed building should be exceptional. The Secretary of State acknowledges some of the flaws identified by the ExA in the option design and selection process which led to the ExA saying that it could neither conclude that there is a clear and convincing justification for the loss of Brook Cottages or the harm arising from this, nor that the loss of the Grade II listed Brook Cottages is exceptional, as also required by NPSNN paragraph

5.131. For the reasons set out below, the Secretary of State does not agree with the ExA's overall conclusion.

66. In cases such as this where the harm is substantial, the Secretary of State considers that the test of whether there is clear and convincing justification for that harm, and whether a case is an exceptional one, is linked to the test in NPSNN paragraph 5.133, which sets out the circumstances in which the Secretary of State should refuse consent. The Secretary of State considers that test consists of two strands. The first strand is whether the substantial harm or loss of significance is necessary in order to deliver substantial public benefits. In testing this, the Secretary of State considers it necessary to evaluate whether there are any other solutions which could have avoided the substantial harm and loss of significance, and if so whether these solutions would amount to a reasonable means of achieving the Proposed Development's public benefits.

67. The four options for the Black Cat junction which, at some point during the option selection process, the Applicant considered to be able to avoid the substantial harm and loss of significance were:

- Options 1d and 1e in the option selection process (ER 8.4.42)
- Option A in advance of public consultation (ER 8.4.45)
- Option C+ following public consultation (ER 8.4.50)

The Secretary of State will consider in turn whether each of these would amount to a reasonable means of achieving the public benefits of the scheme.

68. Options 1d and 1e were the two of 12 options developed during the Applicant's option selection process which the Applicant considered would be unlikely to require Brook Cottages' demolition (ER 8.4.41, 8.4.42). The Applicant stated that these options were discounted for safety reasons, with high numbers of potential collision points and complex junction layouts giving high potential for road user confusion (ER 8.4.42), and further considered that both options would have a high impact on existing services, while their proximity to Roxton was associated with potential impacts on the village, including noise and air quality [REP4-032, Table 4-4]. The Secretary of State, noting that enhancing safety was one of the Proposed Development's seven objectives [APP-002], therefore considers that the Applicant has provided good reason for why these options would not amount to reasonable means of achieving the public benefits which will be realised from the delivery of the Proposed Development. The Secretary of State notes however that there is some uncertainty around the conclusions of these options' effect on Brook Cottages, as whether demolition would be required could only be determined with further design development; the Secretary of State agrees that the level of development of these designs was proportionate with a sifting exercise (ER 8.4.43).

69. Subsequently, Option A (based on a combination of two of the options of the previous stage) was developed for non-statutory consultation. It was the only one of the three options at that stage which was considered may not result in the removal of Brook Cottages (ER 8.4.45). However, the three options were further developed in greater detail following this consultation and this work resulted in the conclusion that all three options may require Brook Cottages' demolition (ER 8.4.48, 8.4.76). The ExA considered it unclear why a variation of Option A was not reconsidered at the stage following non-statutory consultation (ER 8.4.82); the Secretary of State does not agree with this, as the further consideration of Option A following this consultation was what resulted in the conclusion that this option may also require Brook Cottages' demolition (ER 8.4.48, 8.4.76). The

Secretary of State therefore considers that Option A was not a solution which could have avoided the substantial harm and loss of significance to Brook Cottages.

70. Option C+ was first put forward by the Applicant specifically to investigate whether there was a further option available after the options had been narrowed to three (options A, B and C). In its Overview of the Alternatives considered at the Black Cat Junction [REP4-032, paragraph 4.5.30], the Applicant determined that Option C+ presented an impact on safety because of the increased potential for accidents. This was explained further in Black Cat Design Options [APP-247 Sections 4.3 and 4.4, paragraph 4.4.1], which said that the A421/A1 to A1 northbound merge would result in an unacceptable impact on safety due to the likelihood of queuing on the slip road and that the unconventional junction design would be more difficult for road users to understand, potentially leading to a greater risk of accidents and a less safe design. The ExA notes (ER 8.4.52) that in the Scheme Assessment Report (REP4-033, Appendix K), the option comparison table stated that all the options would have the same traffic benefit and road safety effects and all were considered feasible and deliverable. The ExA, on the basis of this table, does not consider the relative significance of departures from standard for the different options to have been satisfactorily explained (ER 8.4.87). The Secretary of State notes however that the table did not contain a comparative analysis of the safety of the four options. The table simply said, in all four cases, that it is likely that the safety performance would not show an improvement on the existing junction owing to the greater extent and complexity of network. It did not say whether one option was less safe than another.

71. In response to a request for a list of departures from standard road design measures for the Proposed Development (i.e. Option C), the Applicant provided a list which showed some of those departures would have safety implications (ER 8.4.63). In its further request for justification for discounting Option C+ combined with the Orange Route, the ExA asked why Option C+'s departures from standard were considered so adverse, given the Proposed Development has numerous departures from the Design Manual for Roads and Bridges standards around the Black Cat junction and Brook Cottages [REP8-014]. The Applicant replied by saying that all the Proposed Development's departures from standard would also be included in Option C+, with the difference being that Option C+ included an additional departure from standard associated with the A1 northbound single lane slip road and Layout A merge which had been designed to avoid the loss of Brook Cottages. The Applicant went on to say that the Option C+ merge arrangement would be insufficient to cope with predicted traffic flows on the free flow link and slip road and that the absolute capacity would be exceeded in the peak hour and a two-lane slip is required, and so a single lane slip road and Layout A merge (the only merge arrangement that could be accommodated to retain Brook Cottages) would result in an unacceptable impact on safety due to the likelihood of queueing on the slip road. The Applicant considered the nature of this additional departure from standard so fundamentally unacceptable that it ruled out Option C+, regardless of any other departures from standards required (ER 8.4.66). The Secretary of State therefore disagrees with the ExA's conclusion that the relative significance of departures from standard is not explained satisfactorily (ER 8.4.87).

72. The Applicant considered that Option C+ had poor operational resilience compared to Option C (ER 8.4.50). The ExA however noted that, although the effect on resilience was a stated reason for the Applicant rejecting Option C+, the option comparison table states that the traffic benefits (which include the resilience of the road transport network) for each option show identical results, i.e. an increase in resilience (ER 8.4.78). The Secretary of

State does not consider that this contradicts the Applicant's conclusion; it simply states that all options considered would increase resilience but does not compare the different levels of increased resilience that each option would provide. The Applicant's Black Cat Junction Design Options [APP-247] elaborates that while Option C would allow a temporary diversion if the A1 through the junction was flooded or blocked, this would not be possible under Option C+, and so Option C+ did not meet the Proposed Development's objective relating to resilience. The Secretary of State therefore agrees with the Applicant's conclusion that Option C+ only partially addresses the Proposed Development's objectives (ER 8.4.52).

73. Finally, the Applicant emphasised safety factors in rejecting alternatives with lesser impacts upon Brook Cottages (ER 8.4.68) and confirmed that it had been unable to identify a reasonable alternative to the Proposed Development that would deliver the substantial public benefits that outweigh the substantial harm to Brook Cottages. The Secretary of State also notes that BBC considered it had been unable to identify a reasonable alternative to the Proposed Development that would deliver the highways benefits whilst retaining Brook Cottages, based on the Applicant's submitted information (ER 8.4.71).

74. Taking all the above into account, the Secretary of State disagrees with the ExA's analysis that on the strength of the evidence in Examination, it cannot be sure that the Applicant could have delivered similar public benefits, including in terms of road safety, using a design layout that retained Brook Cottages (ER 8.4.88). For this reason, and because the Secretary of State considers the burden of giving 'great weight' to the conservation of Brook Cottages does not fall on the Applicant, the Secretary of State does not agree that the Applicant has not provided a 'clear and convincing' justification for the substantial loss to Brook Cottages (ER 8.4.88). Not only did the Applicant provide clear evidence about its particular concerns over road safety and resilience, not shared by Option C, but it is clear from the ExA's report that the Applicant did take the harm being caused by the various options into account when considering the options at various stages.

75. The Secretary of State is satisfied that Option C+, taking into account the implications on road safety and resilience and noting that it only partially addresses the Proposed Development's objectives, is not a reasonable means of achieving the Proposed Development's public benefits. Taking this into account along with the conclusions relating to options 1d, 1e and A above (paragraphs 68 and 69), the Secretary of State concludes that the first strand of the test in NPSNN paragraph 5.133 is satisfied. For the substantial harm to be "necessary" there should be no other reasonable means of delivering similar public benefits to those delivered by the Proposed Development. In this case, the Secretary of State considers that options 1d, 1e, and C+ are not reasonable means of delivering those benefits for the reasons discussed above, while Option A is not a solution which could have avoided the substantial harm and loss of significance to Brook Cottages.

76. Having concluded there is no reasonable alternative, the second strand of the test is to consider whether the substantial public benefits of the Proposed Development (assuming they exist) outweigh the harm. The Secretary of State agrees with the ExA that the substantial harm and total loss of significance of Brook Cottages is outweighed by the public benefits of the Proposed Development as set out at paragraph 191, that those benefits are substantial, and that there is no reason for the Secretary of State to refuse consent in accordance with NPSNN paragraph 5.133.

Other heritage assets

77. At the end of the Examination, considerable disagreement on archaeological remains remained between the Applicant and the Cambridgeshire Councils. However, like the ExA, the Secretary of State is satisfied that the Applicant has considered the Cambridgeshire Councils' points and, in some cases, has updated the Archaeological Mitigation Strategy as a result (ER 8.4.107). The Secretary of State also agrees with the ExA that the Cambridgeshire Councils' sought changes would be unlikely to significantly change the scale of harm to archaeological remains (ER 8.4.108).

78. As part of his consideration of other designated heritage assets, the Secretary of State notes disagreement between the Applicant and Historic England about the Proposed Development's effects on Roxton Church and Croxton Park Registered Park and Garden (ER 8.4.110-8.4.111). The Secretary of State agrees with the ExA that there would be a slight beneficial effect for Croxton Park Registered Park and Garden and a slight adverse effect for Roxton Church, and that this level of harm would not affect the Environmental Statement's overall conclusion in terms of the historic environment (ER 8.4.115).

Conclusion on Historic Environment

79. The Secretary of State is satisfied that the Proposed Development's substantial public benefits outweigh the significant harm to Brook Cottages as set out above at paragraph 76, and that this is an exceptional case where such harm should be permitted in line with NPSNN paragraph 5.131, taking into account the considerable public benefits. The Secretary of State further agrees with the ExA that the Proposed Development would have effects no greater than moderate adverse and so cause less than substantial harm to other designated heritage assets (ER 8.4.116), and would cause less than substantial harm to archaeological remains (non-designated heritage assets) (ER 8.4.109). Taking all these matters into account, the Secretary of State agrees with the ExA that the Proposed Development's adverse effects on the historic environment should be ascribed substantial weight against making the Order (ER 8.5.7). In coming to this conclusion, the Secretary of State gives great weight to the loss of Brook Cottages and has had regard to the desirability of preserving it and other heritage assets in accordance with regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010.

Climate Change and Carbon Emissions

Background

80. Section 104 of the Planning Act 2008 states that the Secretary of State must decide an application for a national network NSIP in accordance with the NPSNN unless he is satisfied that one or more of the following applies: doing so would lead to him being in breach of any duty imposed on him by or under any enactment; doing so would be unlawful by virtue of any enactment; the adverse impact of the proposed development would outweigh its benefits; or doing so would lead to the UK being in breach of its international obligations. The UK's international obligations include its obligations under the Paris Agreement, which was ratified by the UK Government in 2016, after the NPSNN was designated in 2014.

81. In addition, the Climate Change Act 2008 (2050 Target Amendment) Order 2019 gave effect to a legally binding target for the Government to cut net carbon emissions to zero by 2050 against the 1990 baseline (the '2050 target'). The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the third ('3CB'), fourth ('4CB'), fifth ('5CB') and sixth ('6CB') carbon budgets are 2018-2022, 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target. Compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement.

82. The ExA considered issues relating to climate change to be important in the Examination of the Proposed Development (ER 9.4.42). The Secretary of State agrees with this and gives his full consideration of these issues in this section.

Carbon budgets, targets and obligations

83. The Applicant produced its Environmental Statement before 6CB was enshrined in legislation. In Chapter 14 of its Environmental Statement, the Applicant therefore assessed the Proposed Development's emissions against 3CB, 4CB and 5CB budgets based on construction beginning in March 2022 and the Proposed Development opening in May 2025. It set out that the Proposed Development's net carbon emissions would equate to 52,090tCO_{2e} during the 3CB period, 229,850tCO_{2e} during the 4CB period and 201,520tCO_{2e} during the 5CB period. The Secretary of State notes that this constitutes 0.002% of 3CB, 0.012% of 4CB and 0.011% of 5CB. The ExA during the Examination asked the Applicant to detail the likely effect of the Proposed Development on 6CB and on future carbon budgets up to 2050; in response, the Applicant [REP1-022] set out that the Proposed Development's net carbon emissions during the 6CB period would be 226,637tCO_{2e} (i.e. 0.023% of 6CB).

84. Later in the Examination, the Applicant produced figures showing the effects of the new Emissions Factor Toolkit (version 11 rather than version 9 used in the Environmental Statement) along with sensitivity testing for the effects of the Transport Decarbonisation Plan in relation to operational emissions. Both of these sets of figures are broken down by each of the four relevant carbon budgets. This lowered carbon emissions in comparison with the Environmental Statement (ER 9.4.59); the Applicant set out that the Proposed Development would result in emissions of 0.0515MtCO_{2e} during the 3CB period, 0.2257MtCO_{2e} during the 4CB period, 0.1730MtCO_{2e} during the 5CB period and 0.1695MtCO_{2e} during the 6CB period. The Secretary of State notes that this would constitute 0.002% of 3CB, 0.012% of 4CB, 0.010% of 5CB and 0.018% of 6CB.

85. In response to the Secretary of State's consultation letter of 31 May 2022, the Applicant clarified that the environmental impact assessment ('EIA') was conducted on the assumption of a worst-case scenario start date for construction in March 2023 and that this is the current schedule for the start of construction, with the opening year of 2026. The Applicant confirmed that the change in construction period did not affect the conclusion of significance and that the traffic modelling reported in the Transport Assessment that underpins the Environmental Statement could still be relied on. The Secretary of State notes that the revised construction period between March 2023 and 2026 now falls entirely

within 4CB. The Secretary of State in his consultation letter of 13 July 2022 therefore asked Applicant to provide an updated assessment of the Proposed Development's emissions against the carbon budgets which accounts for these dates.

86. The Secretary of State also acknowledged that Transport Action Network [REP1-097] considered that the Applicant included within the construction emissions figures for the third and fourth carbon budgets reductions in emissions that arise from land-use change which occurs over the 60-year lifetime of the Proposed Development. The Secretary of State in his consultation letter of 13 July 2022 therefore also asked the Applicant to confirm, and then to either justify or modify, its approach to assessing construction emissions figures against the carbon budgets.

87. In response to the 13 July consultation letter and the Secretary of State's subsequent request for clarification, the Applicant provided a Clarification on Scheme Construction and the UK Government's Carbon Budgets including updated figures (Table 1) which incorporate a revised methodology for land-use change emissions, in which emissions from clearance are included in construction, emissions from sequestration are spread over the 60-year operational period, and construction falls entirely within 4CB. This stated that the Proposed Development would result in emissions of 0MtCO_{2e} during the 3CB period, 0.2932MtCO_{2e} during the 4CB period (0.012% of 4CB), 0.1719MtCO_{2e} during the 5CB period (0.010% of 5CB) and 0.1670MtCO_{2e} during the 6CB period (0.017% of 6CB). The Secretary of State notes the Applicant's view in its response that splitting construction emissions between 3CB and 4CB would better align with the construction programme as some advance and enabling works are being conducted in 2022, but he considers that including construction entirely within 4CB provides a worst-case scenario for the Proposed Development's impact on 4CB which assumes that the construction authorised by the DCO would begin in 2023, as stated in the Applicant's response to his consultation letter of 31 May 2022. Transport Action Network, in its response to the Secretary of State's consultation of 28 July 2022, noted a mismatch between figures and percentages in the Applicant's response to the consultation of 13 July; the Secretary of State notes that this was rectified in the Applicant's response to the Secretary of State's subsequent request for clarification.

88. The Secretary of State therefore notes that the Applicant has estimated that the maximum impact of the scheme on any carbon budget will be 0.017%. The Secretary of State is aware however that the EFT v11 toolkit has some limitations around its use for predictions beyond 2030 where it is being used to estimate carbon for schemes that take traffic on or off London roads. The Secretary of State recognises that all modelling has limits and includes a level of uncertainty and, given the distance between the Proposed Development and London, considers that there is no evidence this issue would significantly affect the assessment of the Proposed Development's impact on the carbon budgets.

89. The Secretary of State therefore, like the ExA, is satisfied that the Applicant has assessed greenhouse gas emissions from the Proposed Development against UK carbon budgets, which are a means for the UK to achieve compliance with the Paris Agreement (ER 9.4.14, 9.5.1). The Secretary of State is satisfied with this assessment and that it complies with the requirements of the NPSNN.

Assessing carbon emissions and their significance

90. The Secretary of State considers that the majority of operational emissions related to the scheme result from vehicle usage and that the Government's Transport Decarbonisation Plan includes a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time (including policies to decarbonise vehicles and radically reduce vehicle emissions) and help to ensure that carbon reduction commitments are met. Beyond transport, Government's wider policies around net zero such as The Net Zero Strategy: Build Back Greener ('Net Zero Strategy'), published by Government in October 2021 sets out policies and proposals to decarbonise all sectors of the UK economy to meet the 2050 target. The Secretary of State acknowledges that since the close of the Examination, there has been a successful challenge to the Net Zero Strategy. This strategy will need to be updated to address the matters raised in this challenge. The Secretary of State has no reason to consider that the Proposed Development will hinder delivery of either the Transport Decarbonisation Plan or any future updated net zero strategy. It is against this background that the Secretary of State has considered the Proposed Development. The Secretary of State notes that the Applicant's most recent assessment of the Proposed Development's impact on the carbon budgets, provided in its updated response of 28 July to the Secretary of State's 13 July 2022 consultation letter, takes account of the Transport Decarbonisation Plan. Noting the ExA's discussion on the Transport Decarbonisation Plan (ER 9.4.4-9.4.8), the Secretary of State agrees that the commitments contained within it are outside the scope of the Examination (ER 9.4.13) and indeed considers these matters outside the scope of his decision on the DCO.

91. The Secretary of State notes that the issue of significance of carbon emissions is one that was considered at length during the Examination (ER 9.4.42). The Secretary of State is aware that all emissions contribute to climate change but considers that there is no set significance threshold for carbon. The Secretary of State does not consider that net zero means consent cannot be granted for development that will increase carbon emissions. The Secretary of State considers that, as set out in NPSNN paragraph 5.18, it is necessary to continue to evaluate whether (amongst other things) the increase in carbon emissions resulting from the Proposed Development would be so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. Like the ExA, the Secretary of State considers that the NPSNN allows for development consent if the Proposed Development's carbon emissions do not have a material impact on the Government's ability to meet its carbon reduction targets (ER 5.5.3). Though the Secretary of State agrees with the ExA that the Proposed Development will result in an increase in carbon emissions, adversely affecting efforts to meet the 2050 target (ER 9.4.47), he does not consider that this means the increase would be so significant as to have a material impact on the Government's ability to meet its carbon reduction targets.

92. The Secretary of State considers that the approach set out in the NPSNN continues to be relevant in light of international obligations and domestic obligations related to reducing carbon emissions that have been introduced since the NPSNN was designated and aligns with the approach to significance set out in the Institute of Environmental Management & Assessment ('IEMA') 2022 guidance Assessing Greenhouse Gas

Emissions and Evaluating their Significance² ('the IEMA Guidance'). This sets out that the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050 (section 6.2).

93. The IEMA guidance also addresses significance principles and criteria in section 6.3 and Figure 5 and advises (amongst other things) that: a project that follows a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets, results in significant adverse effects; a project that is compatible with the budgeted science-based 1.5 degree Celsius trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a minor adverse effect that is not significant – such a project may have residual emissions but it is doing enough to align with and contribute to the relevant transition scenario to keep the UK on track towards net zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects; and a project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory, and has minimal residual emissions, is considered to have negligible effect that is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.

94. The Secretary of State notes that the carbon budgets are economy-wide and not just targets in relation to transport. The Secretary of State considers that the Proposed Development's contribution to overall carbon levels is very low and that this contribution will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets. The Secretary of State therefore considers that the Proposed Development would comply with NPSNN paragraph 5.18.

95. With regard to the Paris Agreement, the UK announced its Nationally Determined Contribution ('NDC') in December 2020. NDCs are commitments made by the Parties (including the UK) under the Paris Agreement. Each Party's NDC shows how it intends to reduce its greenhouse gas emissions to meet the temperature goal of the Paris Agreement. The UK's NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the 5CB, which covers the period 2028-2032. The Net Zero Strategy published by Government in October 2021 identified how the UK will therefore need to overachieve on 5CB to meet its international climate targets and stay on track for 6CB. This strategy sets out the action Government will take to keep the UK on track for meeting the UK's carbon budgets and 2030 NDC and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State has already noted that there has been a successful legal challenge to the Net Zero Strategy and it will need to be updated to address the matters in the challenge. In the meantime, the Secretary of State is satisfied, in light of the net construction and operation emissions that have been identified, that consenting the Proposed Development will not affect the delivery of the Net Zero Strategy in its current form or net zero in principle, nor will it have a material impact on the ability to meet the national targets including the 6CB, and it will not lead to a breach of the UK's international obligations in relation to the Paris Agreement or any domestic enactments or duties. The Secretary of State agrees with the ExA that the Paris Agreement

² Assessing Greenhouse Gas Emissions and Evaluating their Significance, Institute of Environmental Management and Assessment, 2nd Edition 2022

and the 2050 target are unaltered by the 2021 United Nations Climate Change Conference in Glasgow (ER 9.4.14).

96. The Secretary of State notes the Applicant's mitigation measures secured in the DCO (ER 9.2.11-12). The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible and that such measures are secured by requirements in the DCO.

97. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the Proposed Development's operation will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions resulting from the Proposed Development is predicted to be a maximum of 0.017% of any carbon budget and therefore small; the Government has legally binding obligations to comply with its objectives under the Paris Agreement; and there are policies in place to ensure these carbon budgets are met, such as the Transport Decarbonisation Plan and the Applicant's own Net Zero Highways plan (ER 9.4.7). The Secretary of State is satisfied that the Proposed Development is compatible with these policies and that the small increase in emissions that will result from the Proposed Development can be managed within Government's overall strategy for meeting the 2050 target and the relevant carbon budgets. The Secretary of State considers that there are appropriate mitigation measures secured in the DCO to ensure carbon emissions are kept as low as possible and notes that the Applicant does not consider that any additional measures for the Proposed Development are necessary (ER 9.4.11). The Secretary of State is therefore satisfied that the Proposed Development would comply with NPSNN paragraph 5.19. The Secretary of State also considers that the Proposed Development will not materially impact the Government's ability to meet the 2050 target.

Assessment of the impact of carbon emissions, including cumulatively

98. The Applicant's assessment of carbon emissions, set out in Chapter 14 of its Environmental Statement, concluded that the Proposed Development would be likely to result in no significant climate effects during the construction or operational stages (ER 9.2.10). The Applicant established its baseline conditions for the greenhouse gas assessment using traffic modelling for the existing affected road network and its predicted future use (ER 9.2.5). The Applicant considered that the traffic modelling was inherently cumulative given its data sources within the model (ER 9.4.28). The Applicant also compared the Proposed Development's emissions to the UK carbon budgets, as set out above. The Applicant considered that national carbon budgets are inherently cumulative across sectors, and that emissions in the transport sector can be mitigated by reductions in other sectors within the national carbon budget context (ER 9.4.29).

99. The Cambridgeshire Councils in their Local Impact Report calculated the carbon emissions from all Road Investment Strategy 2 ('RIS2') schemes (ER 9.3.3). The ExA asked the Applicant what the cumulative effect of the RIS2 schemes was with regard to greenhouse gas emissions and UK carbon budgets (ER 9.4.31), as well as asking the Applicant and Transport Action Network how the Proposed Development's forecast greenhouse gas emissions compared to other RIS2 schemes (ER 9.4.32). The Secretary of State notes that the ExA's conclusion on this matter relies on the judgement in *R. (Transport Action Network) v Secretary of State for Transport and Highways England* [2021] EWHC 2095 (ER 9.4.47) which accepted that the total amount of GHG emissions from the

schemes listed in RIS2 would be insignificant in the context of appropriate comparators for assessing the effect on climate change. However, the Secretary of State notes the context of that case and the Court's judgement at paragraph 121 that a RIS is essentially a high level strategy document providing for investment in the strategic road network, rather than an environmental decision-making document (see paragraph 124 of the Court's judgement) which was required to be supported by an environmental assessment of the type required for the Proposed Development. The Secretary of State therefore, unlike the ExA (ER 9.4.47), has not relied on this judgement in coming to his decision.

100. 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. The Secretary of State also notes that the impact and effect of carbon emissions on climate change, unlike other EIA topics, is not limited to a specific geographical boundary and that the approach that needs to be taken to assess the cumulative impact of carbon emissions is different than for other EIA topics. Noting this and that there is no defined distance for assessing the impact of carbon emissions, the Secretary of State agrees with the ExA that there is no method which prescribes either a geographical boundary for the Proposed Development's cumulative assessment or for it to be assessed alongside other RIS schemes (ER 9.4.47).

101. The Applicant, in cumulatively assessing the Proposed Development's climate impacts, has provided an assessment against the national carbon budgets, as required by NPSNN paragraph 5.17 (ER 9.4.9). The Secretary of State notes discussion of the spatial scale for assessing carbon emissions (ER 9.4.15-9.4.25), in which interested parties suggested assessment of the Proposed Development's carbon emissions against local and regional carbon reduction targets and local carbon budgets produced by the Tyndall Centre (ER 9.4.23), as well as criticism of the approach of relating a single scheme's emissions to a national carbon budget. The Secretary of State also notes the Applicant's arguments in response: that it had limited information about the relationship between local and regional carbon budgets and legally binding national carbon targets, and that neither the 2017 Regulations nor the NPSNN require an assessment against local and regional carbon budgets (ER 9.4.25). The Secretary of State notes that the ExA considered the Applicant's approach consistent with the NPSNN (ER 9.4.44) and that, after exploring the assessment of the Proposed Development's effects at a local level, the ExA concluded that interested parties' proposed method for assessing against local carbon budgets cannot be relied on for an indication of the local significance of the Proposed Development in terms of greenhouse gas emissions (ER 9.4.45). The Secretary of State, like the ExA, accepts the Applicant's points as to the limitations of local and regional carbon budgets relative to the statutory national carbon budgets and as to the compliance of its approach with the NPSNN (ER 9.4.46). The Secretary of State accepts that the only statutory carbon targets are those at a national level. The Secretary of State notes the Cambridgeshire Councils' statement that the increased distance travelled due to the Proposed Development will affect the ability of the Cambridgeshire and Peterborough Combined Authority to meet the Cambridgeshire and Peterborough Independent Committee on Climate Change recommendation to reduce car miles by 15% (ER 9.3.5), but notes that the draft Cambridgeshire and Peterborough Local Transport and Connectivity Plan states support for the Proposed Development and that it will need to be offset against this target³. The Secretary of State notes that Transport

³ Draft Local Transport and Connectivity Plan (page 33), available at <https://yourltcp.co.uk/wp-content/uploads/2022/05/Draft-LTCP.pdf>

Action Network considered England's Economic Heartland's Regional Transport Strategy inconsistent with the Proposed Development (ER 9.4.19) but notes that the Regional Transport Strategy contains a commitment to the Proposed Development⁴.

102. As well as being a requirement of the NPSNN (ER 9.4.9), the Secretary of State considers 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 (ER 9.4.29) and it is therefore appropriate to consider how the carbon emissions of the Proposed Development compare against this.

103. The Secretary of State agrees with the ExA that the 2017 Regulations do not explicitly require a cumulative effects assessment of carbon emissions at different spatial levels (ER 9.4.48). Like the ExA, the Secretary of State accepts that there is a lack of a robust alternative method to assess the effects of greenhouse gas emissions at a local level (ER 9.4.49).

104. Regarding the amount of emissions and whether this would cause a significant effect on the climate, the ExA considers that there is no denying that the Proposed Development would increase greenhouse gas emissions over its lifetime (ER 9.4.47). The ExA notes uncertainty in the amount of emissions forecast (ER 9.4.63) and that the calculation of carbon emissions is the subject of continued disagreement with parties around the construction phase and land use (ER 9.4.81), but the ExA is satisfied that the documents the Applicant provided to address these concerns provide a reasonable indication of construction emissions and carbon sequestration from habitats associated with the Proposed Development (ER 9.4.82). The ExA is therefore satisfied that the Applicant's estimate for the Proposed Development's carbon emissions is reasonable and not, with reference to NPSNN paragraph 5.19, unnecessarily high in relation to construction emissions (ER 9.4.84). As stated above, the Applicant concludes that the increase in emissions resulting from the Proposed Development would not be likely to result in significant climate effects during the construction or operational stages (ER 9.2.10). The ExA accepts that the Applicant's approach to assessing the cumulative effects of greenhouse gas emissions and the corresponding outcome is reasonable and proportionate and so would accord with the NPSNN (ER 9.4.52). The Secretary of State notes Transport Action Network's response to the Secretary of State's consultation of 28 July 2022, which raises a number of disputes with the Applicant's methodology and figures in its responses to the Secretary of State's consultation of 13 July 2022. The Secretary of State considers that the Applicant has provided a sufficient explanation of how it has calculated the emissions figures and is satisfied with the Applicant's methodology. Like the ExA, the Secretary of State does not consider that any outstanding disagreements are significant in terms of the overall assessment of carbon emissions (ER 9.4.83).

105. The ExA recommended that the Secretary of State may wish to reassess the cumulative effects of the Proposed Development's greenhouse gas emissions in light of the emerging policy context and any new data that might be relevant. The ExA considered that the Secretary of State would need to satisfy himself that the Applicant has satisfactorily demonstrated that these adverse effects would not be significant (ER 9.4.53). The

⁴ Connecting People, Transforming Journeys: Regional Transport Strategy (pages 69 and 70), available at https://eeh-prod-media.s3.amazonaws.com/documents/Connecting_People_Transforming_Journeys_av.pdf

Secretary of State has considered the policy context and data provided by the Applicant in responses to his consultations above and will below conclude on the Proposed Development's climate effects, including cumulatively, and their significance.

106. The Secretary of State notes the consideration given to climate change resilience at ER 9.4.88-9.4.90 and agrees with the ExA that there has been an adequate assessment of the likely effects of future climate change on the Proposed Development including in a high emissions scenario consistent with the requirements of the NPSNN (ER 9.4.91), and that with appropriate mitigation and management, the Proposed Development would be resilient to the effects of forecast climate change (ER 9.4.92).

Other matters

107. The Secretary of State does not consider that the information provided on climate issues during and after the Examination constitutes 'further information' under the 2017 Regulations because he considers that it is not information which is necessary to include in an environmental statement or updated environmental statement, in addition to the information already contained in the Applicant's Environmental Statement. The Secretary of State has therefore treated the information in question as 'any other information', being substantive information provided by the Applicant in relation to the environmental statement or updated environmental statement. The ExA sought the views of interested parties on that information and the Secretary of State has taken into account the ExA's examination of that information (among the other matters which he must take into account) in reaching a reasoned conclusion on the significant effects of the Proposed Development on the environment, in accordance with regulation 21 of the 2017 Regulations.

Conclusion on Climate Change and Carbon Emissions

108. The Secretary of State is satisfied that the Environmental Statement, which includes the assessment relating to climate, has been drafted by competent experts as required by regulation 14(4) of the 2017 Regulations. The Secretary of State considers the assessment that has been undertaken firstly is proportionate and reasonable in relation to the information available to the Applicant and secondly 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 is in line with relevant policy and legislation (including the 2017 Regulations). 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, as journeys will not begin and end within the Proposed Development's boundary.

109. For the reasons set out above, the Secretary of State accepts the ExA's conclusion that the Applicant's approach to assessing the cumulative effects of greenhouse gas emissions is reasonable and proportionate and so would accord with the NPSNN (ER 9.4.52). 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 which will contribute to achieving the UK's trajectory towards net zero. The Secretary of State therefore considers the Proposed Development's effect on climate change alone and cumulatively would be minor adverse and not significant and that this assessment aligns with the IEMA guidance. The Secretary

of State is satisfied that that the scheme complies with the NPSNN, and 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.

110. Nevertheless, the scheme will increase carbon emissions and, given there is a need to reduce emissions, the Secretary of State gives this negative weight in the planning balance. However, due to the likelihood of the Government's legally binding targets decreasing carbon emissions over the lifetime of the Proposed Development, along with the mitigation measures which will be adopted to reduce emissions during construction, the weight the Secretary of State has given to this matter is limited.

Good Design

111. To ensure compliance with policy requirements in NPSNN and the National Planning Policy Framework (as set out in ER 10.1.3 – 10.1.4), the ExA asked the Applicant for further evidence to demonstrate that the Proposed Development embodied 'good design' (ER 10.4.2). In response to this request, and to address the response from the Cambridgeshire Councils, the Applicant provided the Scheme Design Approach and Design Principles ('SDADP') document, which set out the design approach for the preliminary design, the design vision and principles that would guide the development of the detailed design post consent (ER 10.4.4). The Secretary of State notes the SDADP was welcomed by the ExA and other parties (ER 10.4.7, 10.5.1) but that the Cambridgeshire Councils questioned its adequacy and suggested amendments to secure design outcomes related to the local context (ER 10.4.8). The Applicant did not accept the majority of these amendments and stated that local context was embedded in general design principles in the SDADP, elaborated in the EMP (ER 10.4.11).

112. The ExA considered that there is merit in the Applicant's argument that the consideration of local context is a requirement of the SDADP, but that the Applicant has not done enough to demonstrate that the Proposed Development would embody good design in terms of siting and sensitivity to place, nor that consideration has been given to relevant local policies (ER 10.4.14). The ExA considered that the general design principles listed in the SDADP and described in the EMP would, if delivered successfully, deliver outcomes that are sensitive to place, but that the design development process post consent would be crucial to ensure the Applicant is held to account (ER 10.4.15).

113. The Secretary of State notes that BBC, the Cambridgeshire Councils and EWR were unclear about the design development process proposed in the SDADP (ER 10.4.17), but notes that the Applicant considered the SDADP to be an initial draft document which would be developed during the course of the Examination (ER 10.4.19). The Secretary of State notes that the Applicant did not intend to consult further regarding the detailed design after the Examination (ER 10.4.19); the ExA expressed concerns with this approach, considering that the application of this approach to meet the policy requirements in NPSNN would be a matter of interpretation; the ExA therefore considered that the SDADP should be subject to scrutiny by relevant parties (ER 10.4.21). The Applicant however considered that any further formal consultation would not add any true value to stakeholders and could significantly impair its ability and efficiency in developing a detailed design that meets design standards that ensure the performance and safety of the final design (ER 10.4.22).

114. The Applicant objected to the inclusion of an additional paragraph 3 to requirement 12 to secure detailed design engagement by the Applicant, but provided alternative draft wording without prejudice to its position (ER 10.4.23). The Secretary of State also notes the wording proposed by the Cambridgeshire Councils (ER 10.4.24) and that the matter was not agreed at the close of the Examination (ER 10.4.25).

115. NPSNN paragraph 4.32 sets out that scheme design should be a material consideration in decision making and should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which need to be satisfied (ER 10.1.4).

116. The ExA considered that the broad framework in the SDADP is robust (ER 10.5.1), although without engagement with key local stakeholders there is no way to ensure that the application of the design principles in it would meet the policy requirements in the NPSNN and the NPFF as there would be no accountability for the Applicant (ER 10.4.26). The Secretary of State notes the Applicant's concerns that requiring engagement with relevant parties could cause delays to the programme but agrees with the ExA that early engagement could be managed to mitigate any potential delay (ER 10.4.27). The Secretary of State also agrees with the ExA that the Applicant's proposed wording does not secure the need for the Applicant to demonstrate how the detailed design has been refined in consideration of the points raised by key stakeholders and in accordance with the SDADP and is therefore satisfied that the proposed wording for the addition of a new paragraph (3) to requirement 12 as set out in ER 10.4.28 is more robust and should be incorporated; the Secretary of State has made minor amendments to this. With this inclusion, the Secretary of State is satisfied that the design development process for the Proposed Development and likely outcomes would meet the policy requirements in the NPSNN and NPFF and, in line with the ExA, accordingly ascribes neutral weight to good design in the planning balance (ER 10.5.2).

Construction Methods and Effects

Construction programme

117. The Secretary of State notes that the Applicant's revised construction programme anticipated that construction would commence in March 2022 and that the Proposed Development would be open to traffic in May 2026 (ER 11.2.5). The ExA was confident that the Applicant's worst-case construction programme is reliable (ER 11.4.4) but raised concerns about the Applicant's assumption of consent in March 2022. The ExA recommended that the Secretary of State may wish to confirm if the traffic modelling in the Environmental Statement can still be relied upon (ER 11.4.5). The Secretary of State therefore requested additional information from the Applicant regarding the implications of the change to the construction date on 31 May 2022.

118. In its response of 14 June, the Applicant stated that the current anticipated construction start date of March 2023 would not affect the conclusions of significance or alter the assessment undertaken in the Environmental Statement and that the traffic modelling underpinning the Environmental Statement could still be relied upon. This was on the basis that although the traffic forecasts were based on an opening year of 2025, they would remain valid for a 2026 opening year (as recorded in the foreword to the Transport Assessment) because the forecast traffic flows on the road between 2025 and 2040 would

be representative of the traffic flows on the network of the flows that would exist in 2026 and 2041 respectively. The Secretary of State notes that the Applicant considered that the Environmental Statement assumed a worst-case scenario for the advanced and enabling work to be completed, with each stage estimated to last six months, but that these activities could be completed in a shorter duration than anticipated. On the basis of this information, noting the ExA's view that the Applicant's worst case construction programme was reliable (ER 11.4.4), and noting that Natural England in its response to the Secretary of State's consultation of 22 June 2022 is satisfied with the Applicant's response to this matter and no other parties questioned this, the Secretary of State is therefore satisfied that the currently anticipated start date would not significantly affect the Environmental Statement or the traffic modelling and so updates to these are not required.

Borrow pits

119. The Applicant proposes to use four borrow pits to extract suitable materials for construction use (ER 11.2.12). The Secretary of State notes that the ExA, local authorities and landowners raised concerns regarding the limited information on borrow pits and requested additional information (ER 11.4.12). The Applicant subsequently included within the First Iteration EMP a Borrow Pits Management Plan ('BPMP', ER 11.4.17). Disagreement remained between the Cambridgeshire Councils, BCC and the National Farmers' Union ('NFU') for the reasons set out in ER 11.4.19 to 11.4.21. Nevertheless, the ExA considered that, although detail relating to borrow pits was not adequate in the application, the BPMP contains sufficient information regarding activities and mitigation measures and is secured in requirements 2 and 3 in the DCO (ER 11.4.22).

120. The ExA considered that the Applicant has missed an opportunity for committing to the restoration of the borrow pit land to an agreed agricultural land classification of grade 3a or 2. The ExA was however satisfied with the Applicant's approach to returning land to agricultural use, with the soil's condition expected to improve over time, and landowners would not be disadvantaged in the intervening period as they would be compensated if a lower yield resulted from soil disturbance (ER 11.4.23).

121. The Secretary of State appreciates BCC's concerns about the noise and dust effects from the borrow pits, but agrees with the ExA that there is little value in disaggregating the assessment of effects in the Environmental Statement and apportioning them to individual aspects such as the borrow pits and is satisfied that the assessment of effects in the Environmental Statement on sensitive receptors across the Proposed Development as a whole is satisfactory (ER 11.4.25). The Secretary of State also agrees with the ExA that although the Cambridgeshire Councils' proposal for providing beneficial biodiversity on restoration has merit, there is no reason why the restored borrow pits would be better for biodiversity provision than the Applicant's proposed sites and that returning the borrow pits to agricultural use is more appropriate, including in terms of economic benefits, than seeking to promote biodiversity there (ER 11.4.26). The Secretary of State also agrees with the ExA that as the borrow sites are all identified for compulsory acquisition, the interest of the landowners after acquisition is a matter to be agreed between the Applicant and landowners (ER 11.4.27).

Land adjacent to the Order limits

122. The Secretary of State notes that articles 4 and 23 in the draft DCO allow the Applicant to exercise powers on 'land adjacent to the Order limits' but that this was not defined in the draft DCO (ER 11.4.29). The Secretary of State notes that in response to the ExA, the Applicant stated article 4(2) had been included so that any enactments which may exist within the Order limits or surrounding area would be subject to the terms of the DCO which would take precedence and the relevant local Act would be disapplied to the extent that it was needed for the purpose of the DCO. The Applicant considered that this power should be included as there was a risk that unidentified provisions may affect the Proposed Development and gave examples of two precedent provisions in other DCOs but was unable to provide an example where this provision has been used in practice (ER 11.4.31).

123. The Secretary of State notes the concerns raised by the NFU as to why the Applicant would need to undertake surveys and investigate land outside of the Order limits as provided for by article 23. The ExA requested justification for including these powers (albeit subject to notice and compensation) given that the landowner may never have been consulted on the Proposed Development with potential human rights interference of affected landowners (ER 11.4.32). The Applicant considered that the power would only extend to land adjacent to the Order limits as far as reasonably necessary and that whilst it would not be possible to define the precise extent of the adjacent land, the provision would only apply to a survey connected with the Proposed Development and that it would only seek to use this power if consent could not be obtained from the landowner by agreement (ER 11.4.34). The Secretary of State notes the Applicant's proposed definition of 'land adjacent to the Order limits' at ER 11.4.35 and also NFU's concerns that the definition is not sufficiently detailed nor does it specify the extent of adjacent land (ER 11.4.36).

124. The Secretary of State is satisfied that there is a need for article 4 but agrees with the ExA that the extent of adjacent land should be defined more clearly (ER 11.4.38). With regard to article 23, the Secretary of State agrees with the ExA that the NFU's suggestion that the extent should be clearly defined would potentially place a disproportionate burden on the Applicant to consult with every landowner across the area, particularly given that the purpose of access would be for unintrusive surveys and over a limited time. The ExA therefore proposed, in the rDCO, to remove the words 'or maintain' from the definition to restrict the provision to construction only and to avoid the powers for land surveys being available in perpetuity (ER 11.4.40, 11.5.5). In light of this extensive discussion of this matter in the Examination, on this specific occasion the Secretary of State has agreed with the inclusion of the words 'land adjacent to the Order limits' in the DCO. However, he has removed this wording from article 23.

Royal Mail Group

125. In its response to the Secretary of State's consultation of 22 June 2022, Royal Mail Group requested a requirement for it to be consulted on proposed road closures, diversions, alternative access arrangements and the content of the final Construction Traffic Management Plan. The Secretary of State notes that the OCTMP provides for consultation with stakeholders during revisions to the traffic management plan. In light of the inclusion of this provision in the OCTMP, which is secured in the DCO, the Secretary of State does not consider such a requirement necessary.

126. Royal Mail Group also, repeating its request in its relevant representation [RR-094], requested a month-long notification period rather than the 10 days specified in the OCTMP. Noting that the ExA concluded that the OCTMP is fit for purpose (ER 6.4.85) and that Appendix A to the OCTMP considers impacts on Royal Mail, the Secretary of State does not consider that any change is required to the notification period .

Conclusion on Construction Methods and Effects

127. Overall, the Secretary of State is satisfied that the Applicant has assessed the construction effects of the Proposed Development in line with the 2017 Regulations, and that it meets the requirements in NSPNN paragraph 4.21. With regard to construction effects, particularly in relation to the borrow pits, the Secretary of State attributes limited weight against making the Order. Taking into account all adverse effects from construction, as discussed elsewhere in the Report and this letter, the Secretary of State attributes moderate weight against making the Order due to construction effects (ER 11.5.6).

Air Quality

128. The Secretary of State notes CBC's concerns regarding the effect of the Proposed Development on air quality on seven properties in the Air Quality Management Area ('AQMA') in Sandy (ER 12.4.4, 12.4.8-12.4.9, 12.4.12). The Secretary of State is satisfied that the Applicant was correct to use data from the SATURN model in its air quality modelling in line with national guidance (ER 12.4.13) and notes the methodology used and the findings were supported by PHE (ER 12.4.14). Although the Secretary of State is mindful of NPSNN paragraph 5.11 which explains that air quality considerations are likely to be particularly relevant where schemes are proposed within or adjacent to AQMAs (ER 12.4.16), he agrees with the ExA that an increase of less than 1% against the objective value of 40µg/m³ is so small as not to be accurately measurable or reliably monitored and that a small increase in annual mean concentrations at this location would not amount to a significant adverse effect (ER 12.4.15). Although CBC was not required to propose specific mitigation measures in response to the likely predicted effects of the Proposed Development on air quality, the Secretary of State notes such information would have helped the ExA to consider the appropriateness of mitigation measures (ER 12.4.12). Further, the Secretary of State is mindful that within one year of operation the projected minor increase would be wholly offset by a larger reduction (ER 12.4.15) and is, like the ExA, consequently satisfied that no further mitigation measures are required in relation to air quality impacts in Sandy (ER 12.4.17).

129. The Secretary of State notes the concerns raised by BBC on the effects of construction dust and whether the proposed management measures were sufficient. The main issue was that BBC considered insufficient detail was provided about borrow pits, making it difficult to understand the likely effects of construction dust and what would suffice as an appropriate management control (ER 12.4.18). The Secretary of State, however, agrees with the ExA, as set out above, that the Applicant's approach of considering the adverse effects of borrow pits as part of the wider adverse construction effects is sound and that there is no compelling reason for the adverse effects of a single component of the Proposed Development to be isolated and assessed separately (ER 12.4.23). The Secretary of State agrees with the ExA that the control measures in the First Iteration EMP are adequate and that the management of construction dust is adequately secured with the First Iteration EMP in requirement 1 of the rDCO. The Secretary of State is also content

with the post-consent process in which local authorities would be consulted on further detail in the Second Iteration EMP, and this is secured within requirement 3 of the draft DCO (ER 12.4.24).

130. The Secretary of State notes CBC's concerns, which were outstanding at the end of the examination (ER 12.4.22), about the level of information in the First Iteration EMP regarding liaison with stakeholders (ER 12.4.19). However, like the ExA, the Secretary of State is satisfied that the provisions secured in requirement 3 of the rDCO mean that liaison between the Applicant and local authorities would occur so as to ensure appropriate management of customer contact (ER 12.4.25).

131. In conclusion, the Secretary of State agrees with the ExA that the Applicant has adequately demonstrated the Proposed Development's likely effects on air quality in accordance with NPSNN paragraphs 5.3 to 5.15 and that the mitigation secured in requirements 3 and 5 of the DCO would ensure compliance with the policy requirements of NPSNN paragraphs 5.10 and 5.11. Considering the very minor and temporary nature of the likely effects on the Sandy AQMA, the Secretary of State agrees with the ExA and ascribes little weight against the making of the DCO to air quality and emissions matters (ER 12.5.3).

Noise and Vibration

132. The Secretary of State notes that local authorities raised concerns regarding the absence of additional baseline monitoring which the Applicant considered unnecessary as baseline noise levels are not used to determine the magnitude of the Proposed Development's impact so additional monitoring would not change the assessment outcomes, mitigation, or the outcome of the noise validation process reported in the Environmental Statement (ER 13.4.3). The ExA concluded that it had no evidence that there had been changes to the baseline noise environment. Consequently, the Secretary of State, like the ExA, is satisfied that the baseline monitoring is a reliable basis for the Applicant's assessment in the Environmental Statement and to determine mitigation measures (ER 13.4.6).

133. The Secretary of State notes the ExA's and local authorities' concern over the possible need for the Applicant to undertake noise monitoring during operation (ER 13.4.8-13.4.12). On the basis of the Applicant's commitment in the Environmental Management Plan to delivering all mitigation measures to the required design standards and this being secured in requirement 18 of the draft DCO (ER 13.4.15), the Secretary of State agrees with the ExA that no associated operational noise monitoring at specific receptor points is necessary (ER 13.4.14).

134. The Secretary of State notes the ExA's view that although receptors would be likely to suffer from noise disturbance during the construction period, the period of disturbance on any given day would be for a short duration and would only extend over the temporary construction period (ER 13.4.24). The Secretary of State agrees with the ExA that the Applicant's initial proposal to exclude activities from extended construction hours was not adequate (ER 13.4.25). The Applicant proposed changes to these exceptions to address local authorities' concerns (ER 13.4.22). Accordingly, the Secretary of State agrees with the Applicant's change to requirement 19 of the draft DCO which requires local authorities' approval prior to work commencing outside of agreed hours and agrees with the ExA that this would minimise the likelihood of disruption (ER 13.4.26).

135. The Secretary of State notes that CBC and the Cambridgeshire Councils considered the intended construction working hours to be too wide and likely to give rise to adverse noise effects for those living near to the construction sites and compounds, and on routes used by construction vehicles (ER 13.4.18). Both councils requested later starting of works (ER 13.4.23). The Secretary of State agrees with the ExA that, though this may be beneficial, particularly to residential dwellings, a blanket delay of start times across the Proposed Development would potentially extend its construction and also agrees that the adverse effects can be adequately managed through requirement 19 of the DCO without delaying construction start times (ER 13.4.27).

136. The Secretary of State notes disagreement between the Applicant and CBC regarding the increase in operational noise effects at The Barns, Rectory Farm and Hills Farm and whether mitigation should be provided (ER 13.4.29). The Secretary of State agrees with the ExA's consideration of noise effects at these properties (ER 13.4.39-13.4.43) and agrees that, given the imperceptible benefits of the additional mitigation modelled by the Applicant, this would not be required to meet the requirements of the NPSNN (ER 13.4.44). The Secretary of State notes that the local authorities did not challenge the Applicant's assessment and modelling results (ER 13.4.39) and agrees with the ExA that embedded mitigation measures proposed by the Applicant are adequate and that additional mitigation measures at these properties are not required (ER 13.4.44).

137. The Secretary of State acknowledges Interested Parties' concerns regarding the absence of detailed information on noise mitigation measures at Roxton, Great Barford and Loves Farm (ER 13.4.45), but is satisfied with the Applicant's approach and agrees with the ExA that the embedded mitigation measures would be adequate to alleviate adverse noise effects during the operation of the Proposed Development (ER 13.4.53). In reaching this conclusion the Secretary of State is satisfied that operational stage mitigation is secured in the First Iteration EMP (ER 13.4.55).

138. Overall, the Secretary of State is content that the Applicant has had regard to the Noise Policy Statement for England, the National Planning Policy Framework and national planning practice guidance on noise, in accordance with NPSNN paragraphs 5.193 and 5.194 (ER 13.5.5), and agrees with the ExA that the Proposed Development would likely worsen the effects of noise at specific receptor points, but that the levels would remain no greater than the Significant Observed Adverse Effect Level. The Secretary is content that, on balance, the marginal benefit of additional mitigation does not justify the cost of implementation and maintenance but, given the negative effect, apportions little weight against making the Order (ER 13.5.4).

Flood Risk, Water Quality and Resources

139. The Cambridgeshire Councils raised concerns over responsibility for drainage maintenance (ER 14.4.16, 14.4.21); the Secretary of State agrees with the ExA that the future maintenance of specified sustainable drainage systems by the local highway authority is not unreasonable (ER 14.4.22). The Secretary of State notes the Cambridgeshire Councils' further concerns about runoff rates and downstream flooding (ER 14.4.17-14.4.18). Like the ExA, the Secretary of State is satisfied that the minimum runoff rates from attenuation basins would be unlikely to cause flooding downstream and expects that this matter will be resolved between the parties at the detailed design stage (ER 14.4.23); he also agrees with the ExA that potential flooding downstream of Wintringham

Brook and the design of culverts beneath the Proposed Development have been appropriately considered, that the residual flood risk is low (ER 14.4.24) and that the low level of residual flood risk from the Proposed Development would be safely managed through measures secured in the DCO (ER 14.5.2).

140. The Secretary of State agrees with the ExA that the interaction between different sources of flooding, particularly at the Black Cat junction, highlighted as a concern by the Environment Agency (ER 14.4.28), has been considered appropriately (ER 14.4.49) and notes that the Environment Agency does not have objections to the arrangements (ER 14.4.31). However, like the ExA, the Secretary of State is not satisfied that the Environment Agency's proposed requirement concerning the sharing of modelling data would meet the tests of necessity or reasonableness (ER 14.4.31) and so has not included it in the DCO.

141. The Secretary of State notes that the route of the Proposed Development would pass through flood zones 3a and 3b and so must be considered against the Sequential and Exception Tests (ER 14.4.6). The Sequential Test is outlined at NPSNN paragraph 5.105. NPSNN paragraph 5.94 states that the Applicant should provide the evidence for the Secretary of State to apply the Sequential Test and Exception Test as appropriate, while NPSNN paragraph 5.98 states that the Secretary of State should be satisfied that the Sequential Test has been applied as part of site selection. The Secretary of State notes the Applicant's conclusion that all options considered had a broadly similar level of flood risk in terms of the Sequential Test (ER 14.4.59). The Secretary of State, like the ExA, is satisfied that the Applicant followed a sequential approach in determining the Proposed Development's route and that the levels of risk are generally low and broadly similar for the options considered (ER 14.4.72). The Secretary of State notes that the ExA stated that, as the route options are not seen alongside the flood zones and other areas of flood risk, it could not be certain that the route option selection process directed the development to the lowest flood risk areas as required by the Sequential Test (ER 14.4.71). In response to the Secretary of State's consultation of 22 June 2022, the Applicant provided plans of the route options considered alongside flood zones and other areas of flood risk. The Secretary of State is therefore satisfied that, as per the Sequential Test, there is no reasonably available site in Flood Zones 1 or 2 and so the Exception Test must be carried out, and is satisfied that the Sequential Test has been applied as part of site selection.

142. The Exception Test is outlined at NPSNN paragraph 5.106; NPSNN paragraph 5.108 sets out that there are two elements of the test that will have to be passed for development to be consented. The ExA does not disagree with the Applicant's Flood Risk Assessment's conclusion that the Proposed Development would provide sustainability benefits outweighing the identified flood risk (the first element of the Exception Test) (ER 14.4.73). The Flood Risk Assessment shows that with the specified mitigation measures, the Proposed Development would be safe for its lifetime and remain operational and safe for users during a flood (the second element) (ER 14.4.74). The Secretary of State therefore agrees with the ExA that the Flood Risk Assessment provides a suitable basis for conducting the Sequential and Exception Tests and demonstrates that the Proposed Development passes the Exception Test given the generally low level of flood risk and the low residual flood risk (ER 14.4.75, 14.5.3).

143. The ExA recommended that, in light of the fact that the Environment Agency did not respond to the ExA before the close of the examination (ER 14.4.70), the Secretary of State may wish to confirm with the Environment Agency that the certified Flood Risk Assessment

documents listed in the draft DCO are those agreed with the Applicant (ER 14.5.3). The Environment Agency confirmed, in response to the Secretary of State's consultation of 31 May 2022, its agreement with the flood risk assessment documents listed in the draft DCO.

144. The Cambridgeshire Councils disagreed with the Applicant over whether proposals for managing and treating water quality should be set out before the detailed design stage (ER 14.4.82). The Secretary of State agrees with the ExA that there would be no significant increase in the risk of pollution from the Applicant's approach and that this matter can be addressed at the detailed design stage (ER 14.4.86).

145. The Secretary of State agrees with the ExA that the Proposed Development, with the proposed mitigation and if well maintained, would not adversely affect water quality or resources and that this is secured in the DCO (ER 14.4.87, 14.5.5). The Secretary of State therefore agrees with the ExA's assignment of neutral weight to flood risk, water quality and resources (ER 14.5.6).

Landscape and Visual Effects

146. The Secretary of State notes the enquiries made by the ExA in relation to the Applicant's landscape and visual effects methodology (ER 15.4.7 to ER 15.4.11) and he agrees with the ExA that the Proposed Development's effects on the historic landscape have been appropriately considered and that the design of permanent structures has had due regard to the landscape in which they would be positioned (ER 15.4.12). The Secretary of State agrees with the ExA that the Applicant's assessment and conclusions regarding the landscape and visual effects of the Proposed Development are reasonable and have general support from the parties (ER 15.4.13).

147. The Secretary of State notes that the landscape within which the Proposed Development would be situated is predominantly agricultural and notes that the Applicant identified local landscape character areas and visual receptors that would be adversely affected during both construction and operation of the Proposed Development (ER 15.4.14). The Secretary of State notes the general agreement on matters concerning landscape and visual effects between the Applicant and interested parties (ER 15.5.1) and agrees with the ExA that despite the inherent tension between the use of land for agriculture or for landscaping or biodiversity, the Applicant's approach to landscaping and lighting is adequate and these measures would be secured through the First Iteration EMP (ER 15.4.26).

148. In conclusion, the Secretary of State agrees with the ExA that the Proposed Development would cause significant adverse landscape and visual effects even after mitigation and therefore concludes that moderate weight should be given against making the Order to landscape and visual effects (ER 15.5.3).

Land Use

149. The Secretary of State notes the NFU's concerns around soil restoration (ER 16.4.9) which remained outstanding at the end of the examination (ER 16.5.1). The Secretary of State notes that the updated soil surveys indicated that the quality of agricultural land is generally slightly lower than previously assumed in Chapter 9 of the Environmental Statement (ER 16.4.10), but he agrees with the ExA that the updated soil surveys and

analysis do not alter the conclusions of the Environmental Statement and as such the Applicant has adequately considered the Proposed Development's effect on agricultural land (ER 16.4.14).

150. The Secretary of State notes Natural England's concerns that the Proposed Development would result in the loss of, and disturbance to, best and most versatile ('BMV') agricultural land (ER 16.4.5). The Applicant stated that it endeavoured to minimise the BMV land required (ER 16.4.7). Nevertheless, the Secretary of State agrees with the ExA that the Proposed Development would result in the permanent loss and temporary disturbance of large areas of BMV agricultural land which is a significant adverse effect (ER 16.4.16).

151. The Secretary of State notes that within the Order limits are Mineral Safeguarding Areas (ER 16.4.17). The ExA was satisfied with the Applicant's consideration of the current supply of sand and gravel in the area and the environmental and other effects. The ExA considered that the Proposed Development's adverse effects on minerals have been addressed as far as possible (ER 16.4.21), and considered that it would not be appropriate for sand and gravel resources to be extracted prior to the commencement of the development (ER 16.5.2). The Secretary of State agrees that the Proposed Development would result in the permanent loss of sand and gravel minerals, a significant adverse effect (ER 16.4.22).

152. In conclusion the Secretary of State agrees with the ExA that the Proposed Development would result in significant and permanent adverse effects on BMV agricultural land and the permanent loss of sand and gravel minerals (ER 16.5.3). The Secretary of State agrees with the ExA that the geographical constraints of the Proposed Development mean it would not be possible for the route to avoid mineral safeguarding areas or BMV land (ER 16.5.2). The Secretary of State agrees with the ExA that the loss of BMV agricultural land and permanent loss of sand and gravel minerals cannot be mitigated and accordingly, ascribes moderate weight against making the Order to Land Use (ER 16.5.3).

Socio-Economic Effects

Eltisley Manor

153. The Applicant considered that Eltisley Manor, a psychiatric nursing home, would be affected by the Proposed Development. The Applicant assessed the sensitivity of this receptor to be medium and stated that the closure of part of the existing A428 would have a temporary slight adverse effect upon Eltisley Manor (ER 17.4.2). Public Health England ('PHE') however argued that the residents of Eltisley Manor should be considered highly sensitive to temporary and permanent changes and impacts (ER 17.4.3). In addition, Eltisley Manor residents were not included in the Equality Impact Assessment as the Applicant considered that the residents and staff were now aware of the potential journey delays (ER 17.4.5). PHE raised further concerns that the Proposed Development may affect access to Eltisley Manor (ER 17.4.3).

154. The Secretary of State agrees with the ExA that the residents of Eltisley Manor should have been included in the Equality Impact Assessment as they were covered by the protected characteristics of disability and finds the Applicant's argument that they were not considered due to having prior knowledge of the adverse effects unconvincing. Noting that PHE is satisfied with the Applicant's proposed mitigation measures and confirmation that

the proposed communication plan was discussed with the Eltislely Manor manager, the Secretary of State agrees with the ExA that the proposed measures would adequately mitigate the severance of access to Eltislely Manor and corresponding delays for its staff, residents and visitors. Although not included in the Equality Impact Assessment, the Secretary of State agrees with the ExA that the mitigation takes into special account the vulnerable residents of Eltislely Manor because the communication with Eltislely Manor is specifically mentioned in the OCTMP and secured through requirement 11 of the draft DCO (ER 17.4.8).

The tenant at Brook Cottages

155. The compulsory acquisition and subsequent removal of Brook Cottages (ER 17.4.10) would affect a tenant, living in one of the two cottages, who has protected characteristics under the Equality Act 2010 (ER 17.4.23) and faced the risk of homelessness if not rehoused in time (ER 17.4.20).

156. The Secretary of State is satisfied that due to the Applicant's decision to delay intrusive surveys until the tenant had been rehomed, BBC's decision to upgrade the tenant's re-housing priority level, and the landlord's decision not to disturb the tenant until alternative suitable accommodation had been found, adequate efforts and reasonable adjustments have been made to ensure the tenant has not been disadvantaged during the process of negotiation to acquire the property. The Secretary of State also agrees with the ExA's conclusion that the tenant had a fair chance to participate in the Examination with reasonable adjustments being made and that all parties have therefore complied with sections 19 and 20 of the Equality Act 2010 (ER 17.4.23).

157. The Secretary of State agrees with the ExA that interference with the tenant's human rights under the European Convention on Human Rights requires greater consideration because the effect of the Proposed Development is a greater upheaval on the tenant's life in light of his protected characteristics and disturbances to his longstanding living arrangements (ER 17.4.24). The Secretary of State is satisfied that the adjustments made by the Applicant and BBC to the negotiation process and the offer for compensation for a home move go some way in demonstrating that greater consideration has been given to this tenant (ER 17.4.24). However, the Secretary of State agrees with the ExA that this greater consideration is not reflected in the Environmental Statement, where the Applicant states that the loss of the property is not considered critical in the decision making process given fewer than five properties would be lost; correspondingly, no mitigation was proposed. The Secretary of State agrees with the ExA that this threshold of five properties is arbitrary and the effect on affected individuals should be considered on a case-by-case basis (ER 17.4.25).

158. The ExA concluded that the tenant would have to relocate from his longstanding home and the effect on him would undoubtedly be significant, with the possibility of the tenant being made homeless (ER 17.4.26). Because of the permanent and irreversible adverse effects of the Proposed Development on the tenant's life (in addition to that of the owners/occupiers of another property considered below at paragraphs 159 to 165), the ExA ascribed substantial weight against the Order being made (ER 17.5.8). The Secretary of State requested an update from the Applicant on the tenant's status in his consultation letter of 31 May 2022. In the Applicant's consultation response of 14 June 2022, the Applicant confirmed that the tenant had been re-homed. Consequently, although the Secretary of

State acknowledges that the permanent and irreversible adverse effect on the tenant from relocating from his home remain, he considers that this updated information provides mitigation for the possible effects of the tenant being made homeless.

The Black Cat Roundabout property

159. The Secretary of State notes that a residential property located above the commercial premises of A1 Keen Screens, and units on the site let by the owners and occupiers of the residential property ('the owners/occupiers') would be demolished due to the Proposed Development (ER 17.4.28).

160. The Secretary of State notes the ExA's position that the owners/occupiers may not have received sufficient notification and notes the various adjustments made to the Examination process to facilitate their participation in light of this (ER 17.4.29-17.4.36). The owners/occupiers confirmed that they have protected characteristics and that compulsory acquisition would entail them leaving their home and losing their current income from their business tenants (ER 17.4.45).

161. In light of the above, the Secretary of State agrees with the ExA that the ExA's procedural decisions allowed the owners/occupiers the opportunity to participate in the Examination (ER 17.4.55) and reasonable levels of advice and support to navigate the process (ER 17.4.59).

162. The Secretary of State, like the ExA, considers interference with the owners'/occupiers' human rights under the European Convention on Human Rights requires greater consideration because the effect of the Proposed Development is a greater upheaval on their lives in light of their protected characteristics and disturbances to their longstanding living arrangements and sources of income (ER 17.4.56). The Secretary of State agrees with the ExA that in light of the Applicant's engagement with the owners/occupiers, the Applicant has behaved reasonably with the owners/occupiers (ER 17.4.59) and offered them reasonable advice and support (ER 17.5.5). However, the ExA found that the necessary greater consideration required was not reflected in the Environmental Statement, where the Applicant states that the loss of the property is not considered critical in the decision making process given fewer than five properties would be lost; correspondingly, no mitigation was proposed. As set out above, the Secretary of State agrees with the ExA that this threshold is arbitrary and the effect on individuals should be considered on a case-by-case basis (ER 17.4.57).

163. The Secretary of State notes the support and adjustments the ExA and Applicant provided to the owners/occupiers, and so considers that the ExA and the Applicant have complied with sections 19 and 20 of the Equality Act 2010.

164. The Secretary of State notes that a second commercial tenant of the owners'/occupiers' property ('the second tenant') was identified late in the Examination and contacted by the Applicant on 20 January 2022, although the ExA was not aware of any communication since received from the second tenant (ER 17.4.49). The Secretary of State notes that, on the basis of the information available to the Applicant, the ExA could not fault the Applicant's due diligence with regard to identifying the second tenant (ER 17.4.60). The ExA concludes that, although the second tenant was notified a month before the end of the

Examination, this would have been adequate time for him to make a representation had he chosen to do so (ER 17.4.61).

165. The Secretary of State notes that compensation matters were raised during the Examination (ER 17.4.58 and 17.5.6). Matters of compensation are to be disregarded in deciding the application under section 106 of the Planning Act 2008 and so the Secretary of State has not considered such matters.

Conclusion on Socio-Economic Effects

166. The Secretary of State acknowledges the adverse effects caused by the Proposed Development upon the owners/occupiers of the Black Cat Roundabout property and, like the ExA, sympathises with them (ER 17.4.59). The Secretary of State considers it unfortunate that the owners/occupiers, and particularly their second tenant, were identified to the ExA only late in the Examination, but considers that, in light of the adjustments to the Examination and engagement with both parties, both had an adequate opportunity to participate in the Examination; the Secretary of State agrees with the ExA in this regard (ER 17.5.4, 17.5.7). The Secretary of State also agrees that the tenant of Brook Cottages had a fair chance to participate in the Examination (ER 17.5.3).

167. Nevertheless, the Secretary of State agrees with the ExA that the Proposed Development would adversely affect the specific parties considered in this section of the Report, creating permanent and irreversible effects on their lives due to the loss of their home and, in the case of the owners/occupiers, income. Despite one tenant with protected characteristics having been re-homed, the Secretary of State does not consider that this changes the ExA's conclusion and therefore ascribes substantial weight against the Order being made to this matter (ER 17.5.9).

Diversion of High-Pressure Pipeline

168. The Proposed Development includes the diversion of a high-pressure gas pipeline currently operated by Cadent Gas Limited ('Cadent'). The Applicant considered that the pipeline diversion would meet all but one of the tests to constitute a NSIP in its own right under section 20 of the Planning Act 2008 (ER 18.2.3), with the last pending test under section 20(3)(b) being whether it would be likely to have a significant effect on the environment (ER 18.2.4). The Applicant concluded that, to the extent that the pipeline diversion's adverse effect on high heritage value archaeology could be minimised or mitigated, it would not give rise to likely significant effects and so would not meet the threshold under section 20(3)(b) (ER 18.2.8). Nevertheless, the pipeline diversion was treated as a NSIP in its own right in the Examination and for the ExA's Report (ER 1.2.2).

169. Noting the need for the Proposed Development to cross the general area (ER 18.4.4) and given the extent of archaeological remains in this area, the Secretary of State agrees with the ExA that there is no alternative to deliver the pipeline diversion in a way that did not affect the archaeology (ER 18.4.11). The Applicant's approach to mitigate these effects is to excavate, analyse and assess the archaeology and produce a report for the archives in advance of delivering the Proposed Development; the ExA agrees with this approach (ER 18.4.12). In addition, CBC confirmed in the Examination that planning permission had been granted for the archaeological works (ER 18.4.3). Article 59 of the draft DCO makes provision for the pipeline diversion works to be carried out under planning permission

granted by CBC. Article 59 recognises that the pipeline diversion works would be carried out in advance of any consent to the DCO and therefore the Schedule 2 requirements would not apply. However, should the Applicant or Cadent serve notice that the pipeline diversion works are to be carried out pursuant to the DCO, the DCO's requirements would apply (ER 18.4.9). The ExA considers that the provision contained in article 59 is suitable (ER 18.4.12). Noting agreement between the Applicant and the CBC archaeologist regarding progress with the archaeological excavation (ER 18.4.13), the Secretary of State agrees with the ExA that the archaeological work would adequately mitigate the adverse effects on the archaeology in accordance with NPS EN-1 and NPS EN-4 (ER 18.5.1).

170. The ExA concluded that, upon satisfactory completion of the archaeological excavation work, the Secretary of State for Business, Energy and Industrial Strategy's (BEIS) screening opinion would likely determine that the pipeline diversion is not a NSIP (ER 18.5.2). However, the Secretary of State for BEIS's screening decision of 26 July 2022 determined that the pipeline diversion would have likely significant effects on the environment. The Secretary of State for Transport therefore concludes that the pipeline diversion meets all the tests under section 20 of the Planning Act 2008 and so would constitute an NSIP, and so has treated the pipeline diversion as part of the Proposed Development.

171. In coming to his decision, the Secretary of State for BEIS particularly noted potential traffic impacts of the pipeline diversion raised by CBC, and determined that there are likely significant effects on the environment arising from construction traffic impacts associated with the Proposed Development. As noted in the screening decision letter, this issue was considered in the Examination, with CBC's closing view being that the route should be avoided and alternative access provided (ER 6.4.66). The ExA considered that the limited use of the route for pipeline diversion works is proportionate as there is no realistic alternative route before the ExA, that it would be feasible to control the presence of parked cars (which limit visibility and passing opportunities) as described in the OCTMP, and that the disruption would be likely short-lived given the forecast HGV usage (ER 6.4.73). The Secretary of State agrees with these conclusions. The Secretary of State also agrees with the ExA that, although disruption would occur, this could be minimised through careful project planning and discussion at traffic management forums as secured in the OCTMP in addition to that which would typically be expected of any project affecting the local road network (ER 6.5.3). The Secretary of State has also considered the need to include a requirement in the DCO relating to this matter at paragraph 23 above and agrees with the ExA that such a requirement is not necessary.

172. The Secretary of State is therefore satisfied with the Applicant's approach to addressing the effects of the pipeline diversion on archaeology and traffic. He agrees with the ExA that the pipeline would be needed to enable the Proposed Development's delivery for the reasons given in ER 21.2.111 and as such its benefit is intrinsically linked to the Proposed Development's benefits (ER 18.5.3, 21.2.112). The Secretary of State considers that the benefits of the pipeline diversion in enabling the delivery of the wider scheme would outweigh the harm caused to archaeology and the adverse construction traffic effects. The Secretary of State therefore agrees with the ExA that on the planning balance the case is made for the pipeline diversion (ER 18.5.3, 21.2.112). The Secretary of State notes the ExA's outlining of the relevant policy considerations in NPS EN-1 and NPS EN-4 (ER 18.1.4) and considers that the Proposed Development is in conformity with these.

173. As noted above at paragraph 36, the Secretary of State agrees that limited weight should be apportioned against the Order because of inevitable disruption caused by construction (ER 6.5.7), and includes within this disruption the effects of construction traffic resulting from the pipeline diversion. Similarly, the Secretary of State concurs with the ExA's consideration that the Proposed Development's adverse effects on archaeology in the area of the pipeline diversion has been taken into account in the effects on the historic environment as a whole. The Secretary of State therefore agrees with the ExA that the pipeline diversion work itself does not carry weight in the planning balance (ER 21.2.115).

Significant Cumulative Effects

174. The Secretary of State agrees with the ExA's conclusion that the Applicant's approach to assessing combined and cumulative effects is effective and in line with the NPSNN (ER 19.4.7). The ExA considered the Applicant's approach not to propose additional mitigation for receptors experiencing moderate and large adverse effects to not be effective but concluded that the Community Relations Manager secured in the First Iteration EMP goes some way in providing a means for parties to report concerns and complaints. Like the ExA, the Secretary of State encourages the Applicant to proactively initiate early engagement with particular receptors (ER 19.4.8). On this basis, the Secretary of State agrees with the ExA's satisfaction with the Applicant's proposed methodology for assessing combined and cumulative effects and with the adequacy of the proposed mitigation (ER 19.4.9).

175. The ExA noted that negotiations between the Applicant and East West Rail could have been further progressed before the Examination to enable the ExA to focus on relevant matters (ER 19.4.24). However, the ExA acknowledged that the Proposed Development and the EWR project are two separate projects, and the difference between the stages of development and timescales of the two schemes means the coordination between East West Rail and the Proposed Development is beyond the scope of the Examination (ER 19.4.18, 19.5.2) and indeed the Secretary of State's consideration of the application. The Secretary of State agrees that the uncertainty and lack of detail around the East West Rail project mean it would not be appropriate to include East West Rail in the cumulative effects assessment (ER 19.4.17).

176. Noting the balance of adverse effects as assessed by the Applicant and the only limited mitigation of these adverse effects (ER 19.2.6-19.2.8), the Secretary of State agrees with the ExA in giving significant cumulative effects limited weight against the DCO. The Secretary of State agrees with the ExA's conclusion on policy conformity with the NPSNN (ER 19.5.3).

Assessment of Alternatives

177. The Secretary of State agrees with the ExA's conclusion that the Applicant's approach to assessing alternatives as described in the Environmental Statement is comprehensive and complies with the 2017 Regulations (ER 4.6.16) and the NPSNN (ER 4.6.17), noting that no parties raised concerns on this matter (ER 4.6.12). The Secretary of State has considered alternatives which could avoid the substantial harm and loss of significance to Brook Cottages above at paragraphs 56 to 75 and other parties' suggested amendments to road layouts above at paragraph 29.

Findings and Conclusions in Relation to the Habitats Regulations Assessment

178. 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. The purpose of the likely significant effects test is to identify the need for an 'appropriate assessment' ('AA') and the activities, sites or plans and projects to be included for further consideration in any AA (ER 20.3.1).

179. Where likely significant effects cannot be ruled out, the Secretary of State must undertake an 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).

180. The Secretary of State notes that the Proposed Development is not directly connected with, or necessary to, the management of a European site (ER 20.2.4), and that the European sites and qualifying features that were considered in the Applicant's assessment of likely significant effects were: Ouse Washes Special Area of Conservation ('SAC'), Special Protection Area ('SPA') and Ramsar site; Portholme SAC; and Eversden and Wimpole Woods SAC (ER 20.3.2). The Secretary of State notes that no interested parties raised concerns regarding the scope of the European sites considered and that Natural England concurred with the Applicant's screening (ER 20.3.4). In addition the Secretary of State notes that no interested parties raised concerns about the qualifying features of the European sites considered (ER 20.3.6).

Ouse Washes and Portholme

181. The ExA raised concerns regarding the Applicant's proposed embodied mitigation, i.e. that the negative screening conclusions for Ouse Washes SAC, SPA and Ramsar site and Portholme SAC relied on measures intended to avoid or reduce the harmful effects of the Proposed Development on the sites (contrary to the Sweetman judgement) (ER 20.3.10).

182. Natural England confirmed that the measures are embodied mitigation and would have been necessary regardless of the presence of the designated site and are therefore not relied on solely for the purposes of the assessment conclusions on likely significant effects. The Applicant provided further evidence that the intervening hydrological distances between the Proposed Development and the Ouse Washes SPA, SAC and Ramsar site and the Portholme SAC and natural dilution rates and settlement rates are sufficient to conclude that there would be no likely significant effects on these sites (ER 20.3.11).

183. The Applicant's conclusions regarding the impacts to these sites were not disputed by Natural England or any interested party (ER 20.3.12). The Secretary of State agrees with the ExA's conclusion that, on the basis of the information provided, there will be no likely significant effects for the Ouse Washes SPA, SAC and Ramsar site and Portholme SAC from the Proposed Development alone (ER 20.3.13).

Eversden and Wimpole Woods

184. Natural England and the Cambridgeshire Councils disputed the Applicant's conclusion of no likely significant effects on barbastelle bats for the Eversden and Wimpole Woods SAC (ER 20.3.14); Natural England disagreed that there was sufficient information available to rule out likely significant effects in this respect (ER 20.3.15), and requested additional bat survey work to be undertaken to fill the data gaps and improve understanding of how the barbastelle population from the SAC interacts with the wider landscape (ER 20.3.16, RR-076). The Applicant then, without prejudice to its position of no likely significant effects, provided additional survey information (ER 20.3.18-20.3.20) and information to inform an AA (ER 20.2.8) which it subsequently revised (ER 20.2.9). In light of this, the Applicant maintained the survey results provide support for its original conclusion that there would be no likely significant effect on Eversden and Wimpole Woods SAC (ER 20.3.25).

185. Natural England was satisfied that the Applicant's information was sufficient to demonstrate, beyond reasonable scientific doubt, that SAC barbastelles are not interacting with the Proposed Development (ER 20.3.23), and that no further mitigation measures are required for SAC barbastelle bats. Natural England concluded that the Proposed Scheme alone, and in combination with other projects and plans, will not adversely affect the integrity of the SAC (REP10-066).

186. However, Natural England considered that there was uncertainty with respect to the original conclusion of no likely significant effects, and therefore it was their view that the assessment should progress sequentially to the AA stage informed by the additional surveys. Natural England also considered that the level of survey and assessment undertaken to inform the Applicant's No Significant Effects Report equates to an AA (ER 20.3.26). The ExA considers that with the addition of the 2021 survey results into the totality of evidence presented to the ExA, the baseline survey data submitted to date is sufficient to demonstrate, beyond reasonable scientific doubt, that SAC barbastelles are not interacting with the Proposed Development (ER 20.3.27). The Secretary of State agrees with the ExA's conclusion that there would be no likely significant effects on the Eversden and Wimpole Woods SAC alone.

187. The Applicant considered in its application that for an in-combination effect to exist between the Proposed Development and another plan or project, the assessment must conclude a likelihood of an impact occurring in isolation (ER 20.3.28). Notwithstanding this position, the Applicant addressed in combination effects in relation to Eversden and Wimpole Woods SAC and concluded that there is no potential for in combination effects on this SAC (ER 20.3.31). The ExA agreed with the Applicant's conclusion of no likely significant effects from the Proposed Development alone or in combination with other plans and projects (ER 20.3.32).

188. The ExA concluded that, at the end of the Examination, there was no remaining reasonable scientific doubt in reaching its conclusion that the Proposed Development would

not result in a likely significant effect from the identified impacts on the qualifying features of the relevant European sites when considered alone or in combination (ER 20.4.5). The Secretary of State agrees with the ExA's conclusion that sufficient information was provided to conclude that the Proposed Development can proceed without the Secretary of State undertaking an AA (ER 20.4.6).

Secretary of State's HRA conclusion

189. The Secretary of State agrees with the Applicant, ExA and Natural England that there would be no likely significant effects arising from the Proposed Development, either alone or in combination with other plans or projects, on Ouse Washes SAC, SPA and Ramsar site and Portholme SAC.

190. Having considered the assessment material submitted during and since the Examination, the Secretary of State considers that there is sufficient information for him to conclude that there would be no likely significant effects arising from the Development on the Eversden and Wimpole Woods SAC. He therefore agrees with the ExA's conclusions that there are no likely significant effects of the Proposed Development on any European sites or their qualifying features and so no requirement to undertake an AA (ER 20.4.6).

Conclusion on the Case for Development Consent

191. The Secretary of State agrees with the ExA's apportioning of neutral weight to matters relating to: the HRA; flood risk, water quality and resources; good design; and effects on non-motorised users (ER 21.3.2). The Secretary of State agrees with the ExA that the need case for the Proposed Development has been made in that the Proposed Development would make an important contribution to the improvement and enhancement of the existing strategic road network, meeting key strategic objectives of the NPSNN; that it would assist the Applicant and local highway authorities in discharging their Network Management Duty; and that local authorities have stated their strong support for the strategic need for the Proposed Development, and that it is supported in local authorities' development plans. The Secretary of State agrees with the ExA's apportioning of substantial weight for the Proposed Development to relieving traffic congestion, providing more reliable journey times, encouraging traffic from local roads and the communities they serve onto the strategic road network, improving road safety, and facilitating local economic and housing growth (ER 21.3.11).

192. The Secretary of State notes the ExA's conclusions regarding the adverse effects on the historic environment in particular the removal of Brook Cottages; the ExA concluded that the Proposed Development would accord with NPSNN paragraph 5.133 as its substantial public benefits would outweigh the substantial harm and total loss of significance to Brook Cottages. The ExA however concluded that the Proposed Development would conflict with NPSNN paragraph 5.131 as the Applicant:

- (a) did not give 'great weight' to the conservation of Brook Cottages in developing the proposed Black Cat junction
- (b) did not provide a 'clear and convincing justification' for the substantial harm and total loss of significance that would be caused by its removal
- (c) did not provide justification that this harm is therefore 'exceptional' (ER 21.3.3).

Like the ExA, the Secretary of State has given great weight to the to the conservation of Brook Cottages and has concluded that the substantial harm and total loss of significance

to it is necessary in order to deliver the substantial benefits that outweigh the substantial harm and total loss. The Secretary of State takes a different approach to the ExA in the way he has applied NPSNN paragraph 5.131, and so disagrees with the ExA in its conclusion that no clear and convincing justification for the substantial harm was provided, and considers that the substantial public benefits that this particular scheme brings mean that this is an exceptional case (see paragraph 79). Nevertheless, like the ExA (ER 21.3.3), he considers this matter to be of greatest concern among the Proposed Development's adverse effects and accordingly ascribes it substantial weight against making the Order. In coming to these conclusions, the Secretary of State has had regard to the matters set out in regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010.

193. The Secretary of State agrees with the ExA's apportioning of substantial weight against the Proposed Development to the socio-economic effects on specific parties (ER 21.3.5). The Secretary of State also agrees with the ExA's apportioning of moderate weight against the Proposed Development to landscape and visual effects, land use (ER 21.3.6) and the totality of adverse effects of construction activities (ER 21.3.7). The Secretary of State agrees with the ExA's apportioning of limited weight against the Proposed Development to construction traffic, air quality, noise, biodiversity and significant cumulative effects (ER 21.3.9).

194. The Secretary of State notes the ExA's conclusion that the Proposed Development could have a significant residual adverse effect in terms of climate change and carbon emissions which carries limited weight against the Proposed Development (ER 21.3.8). For the reasons set out above, the Secretary of State considers that the effect on climate change carries limited weight against the Proposed Development.

195. In light of the Secretary of State for BEIS's screening decision of 26 July 2022, the Secretary of State for Transport has included the pipeline diversion as part of the DCO. He considers that the pipeline diversion's benefits in enabling the delivery of the wider Proposed Development would outweigh the harm to the identified archaeology and the construction traffic impacts. The Secretary of State agrees with the ExA that section 104(7) of the Planning Act 2008 is engaged and on the planning balance the case is made for the pipeline diversion (ER 21.2.112).

196. With the exception of matters relating to NPSNN paragraph 5.131 as discussed above, the Secretary of State agrees with the ExA's conclusions throughout the Report as to conformity of the Proposed Development with the NPSNN. The Secretary of State acknowledges that the NPSNN recognises that NSIPs will inevitably have adverse effects, and that while applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, some adverse local effects of the development may remain (ER 21.3.10).

197. The Secretary of State agrees with the ExA that the likely benefits of the Proposed Development outweigh the matters weighing against it (either in isolation or in combination). The Secretary of State has also engaged the presumption at NPSNN paragraph 4.2 in favour of granting development consent for national networks NSIPs (ER 21.3.12) which fall within the need for infrastructure in the NPSNN. The Secretary of State therefore considers there to be a case for development consent to be granted.

Compulsory Acquisition and Related Matters

198. The Secretary of State notes that the submitted application includes proposals for the Compulsory Acquisition ('CA'), i.e. the acquisition of land (outright acquisition) or the acquisition of rights over land, and the Temporary Possession ('TP') of land during the construction period for the Development (ER 22.1.1). The Secretary of State notes that there were no material or non-material changes sought during the Examination in relation to CA and TP (ER 22.4.4). The Secretary of State notes sections 122 and 123 of the Planning Act 2008. Section 122 sets out the purposes for which CA may be authorised and the descriptions of land to which CA can relate (ER 22.3.3) and that there must be a compelling case in the public interest to acquire the land (ER 22.3.4). Section 123 sets out that one of three procedural conditions must be met by the application proposal (ER 22.3.5).

199. The Secretary of State notes the purposes for which CA and TP land is required (ER 22.5) and accepts the description of the legislative requirements and national guidance as set out by the ExA at ER 22.3. The Secretary of State notes the ExA's examination of the case for CA and TP (ER 22.6).

Individual objections

200. The Secretary of State notes the ExA's consideration of individual objections at ER 22.7 (of which a number were outstanding at the end of the Examination) and agrees with its reasoning and conclusions (ER 22.10) on these matters. A number of objections are further considered below.

The Executors of N A Alington

201. The Applicant and the Executors of N A Alington ('the Executors') disputed the width of a proposed access bridge at Top Farm, with the Applicant having proposed a 4.7-metre-wide access bridge but the Executors stating that they require a wider bridge (ER 22.7.14). The ExA considers that the Applicant's proposed bridge would limit access more than is available currently. The ExA welcomes the Executors' confirmation of agreement for a 6-metre-wide access bridge but had not received confirmation from the Applicant and notes that this width is not secured in the draft DCO and so cannot give the said agreement any weight (ER 22.7.25).

202. The ExA suggested the Secretary of State may wish to seek confirmation in this regard from the Applicant (ER 22.7.25). In response to the Secretary of State's consultation letter of 31 May 2022, the Applicant stated that it had begun detailed design of a bridge of 6 metres in width between parapets. The Secretary of State notes that the Executors' final submission to the Examination [REP10-077] stated that a slightly larger width than 6m may be required; the Executors restated this position in their response to the Secretary of State's consultation letter of 22 June 2022. While the Secretary of State welcomes the Applicant's commitment to a bridge of 6 metres rather than the width originally proposed, he notes that this was not the position proposed in the Executors' submissions to the Examination or in their response to consultation, and so he considers that the dispute over the width of the bridge has not been settled. The Secretary of State strongly encourages the Applicant and the Executors to come to a final agreement on the bridge's width but, in the event that this cannot be agreed, he considers compensation, as suggested in the Applicant's consultation response, to be a possible solution for any disadvantage caused to the Executors.

Davison and Company (Great Barford) Limited

203. Davison and Company (Great Barford) Limited ('Davison & Company') holds land proposed for CA on which it has proposed an employment development. Davison & Company sought an agreement to safeguard this development (ER 22.7.31) and to avoid CA or TP and instead allow the Applicant temporary rights over the land for its works relating to a borrow pit and site compound on the land (ER 22.7.32). The Secretary of State agrees with the ExA that Davison & Company's development aspirations should not be compromised by the Proposed Development but also agrees with the ExA that, given the nature of the works proposed and the extent to which the land would be altered, the land in question should remain for CA in the DCO (ER 22.7.35).

204. Since the end of the Examination, Davison & Company has written to the ExA and Secretary of State regarding the risk which it considers the Proposed Development poses to its proposed employment site and the adequacy of engagement by the Applicant. Similarly, the Applicant provided an update on progress in negotiations in its response to the Secretary of State's consultation letter of 31 May 2022. The two parties both confirmed progression of the lease agreement but the Applicant considered that an Option Agreement was not possible due to requests for access arrangements over environmental mitigation land which it considered could not be accommodated. The Secretary of State notes that Davison & Company in its response to the Secretary of State's consultation of 22 June 2022 proposes alternatives to an Option Agreement; the Secretary of State encourages the Applicant to consider and progress the proposed alternatives to the extent that they are possible. The Secretary of State concludes below at paragraph 218 on the Applicant's engagement with other parties, including Davison & Company.

Duncan and Maxine Buchanan

205. The ExA noted that, at the end of the Examination, the Applicant stated it was reviewing aspects of the design of the highway over the Buchanans' land to determine the possibility of relocating flood compensation areas and balancing ponds (ER 22.7.71). In their response to the Secretary of State's consultation of 22 June 2022, the Buchanans outlined the outcome of this review, which concluded that relocating the flood compensation area would be feasible but would require greater land take from the Buchanans, while BBC would not be prepared to maintain a third balancing pond. The Secretary of State considers that this alternative is therefore not viable and agrees with the ExA that in the absence of a viable alternative, the need for the land is justified (ER 22.7.73) The Secretary of State notes that the Buchanans, in their response also continued to express dissatisfaction with the Applicant's engagement with them; the Secretary of State concludes below at paragraph 218 on the Applicant's engagement with other parties.

Bedford Borough Council

206. The Secretary of State agrees with the ExA that, without the restoration of the Black Cat Quarry and the CA of land for compensatory floodplain storage, there is no substantive evidence that flood risk from the River Great Ouse can be safely managed (ER 14.4.14) and, like the ExA, has no reason to believe this land take would be excessive (ER 22.7.97).

Crown Land

207. The Secretary of State notes that the draft DCO includes provision for the acquisition of land held by or on behalf of the Crown. These lands are listed in the Book of Reference as being held by the Secretary of State for Transport or the Secretary of State for Environment, Food and Rural Affairs. The Secretary of State notes that at the close of the Examination, consent from the relevant Crown authorities had not been received (ER 22.8.2). The ExA concludes that in the absence of such consent, the DCO cannot authorise the CA of the Crown land plots (ER 22.8.4).

208. The Secretary of State consulted the Applicant in his 31 May 2022 and 22 June 2022 consultation letters to request confirmation as to consent for acquisition from the relevant Crown authorities. In response to the 31 May consultation letter, the Applicant sent written consent for acquisition from the Secretary of State for Transport. In response to the 22 June consultation letter, the Applicant sent written consent for acquisition from the Secretary of State for Environment, Food and Rural Affairs.

209. The Secretary of State consulted the Applicant in his 28 July 2022 consultation letter to clarify matters relating to two plots of land listed in part of the Book of Reference as bona vacantia land. The Applicant in response stated that these two plots had been disclaimed as bona vacantia land and so were included in the most recent Book of Reference in error.

210. The Secretary of State therefore considers that the appropriate Crown authorities consent to the acquisition has been secured, and so the Crown land can be acquired in accordance with section 135(1) of the Planning Act 2008.

Statutory undertakers

211. The Secretary of State agrees with the ExA's considerations regarding statutory undertakers at ER 22.8 and with its conclusions that:

- the Proposed Development would, in accordance with section 127 of the Planning Act 2008, not lead to any serious detriment to statutory undertakers undertaking their functions (ER 22.8.46); and
- the rights sought by the Applicant from statutory undertakers would, in accordance with section 138 of the Planning Act 2008, be necessary for the purposes of the Proposed Development (ER 22.8.47).

212. The Secretary of State notes the ExA's recommendation that the Protective Provisions in Schedule 9 of the draft DCO should be adopted, with the exception of Anglian Water, National Grid Electricity Transmission plc ('NGET') and National Grid Gas plc ('NGG'), where the ExA recommended the Secretary of State should seek confirmation on the wording of the Protective Provisions (ER 22.8.48). The Secretary of State therefore consulted the Applicant, Anglian Water, NGET and NGG in his 31 May 2022 and 22 June 2022 consultation letters. In response, NGET and NGG confirmed in their response of 6 July 2022 that they had reached agreement with the Applicant on the terms of the Protective Provisions and had withdrawn their objections. Anglian Water, in its response of 5 July 2022, confirmed that it had withdrawn its objection. The Secretary of State is therefore content to adopt the Protective Provisions relating to Anglian Water, NGET and NGG.

Conclusions on CA and TP

213. The Secretary of State agrees with the ExA that:

- In accordance with section 123(2) of the Planning Act 2008, the application for the DCO included a request for the CA of the land to be authorised (ER 22.3.5);
- in accordance with section 122(2) of the Planning Act 2008, the Applicant is seeking CA for land that is required for the development to which the development consent relates, or to facilitate or is incidental to that development (ER 22.10.2);
- in accordance with section 122(2) of the Planning Act 2008, the Applicant has a clear idea of how it intends to use the land which it proposes to acquire (ER 22.10.2);
- in accordance with section 122(2) of the Planning Act 2008, all reasonable alternatives to CA have been explored and that there are no alternatives which ought to be preferred (ER 22.10.2);
- there is a compelling case in the public interest to acquire the land, meaning that the public benefit derived from the CA outweighs the private loss that would be suffered by those whose land would be affected – with special regard to the parties mentioned by the ExA (ER 22.10.3).
- on the basis that CA is not sought for any special category land, sections 131 and 132 of the Planning Act 2008 are not engaged (ER 22.10.7).

214. The Secretary of State notes the ExA's conclusions that funding would be available to cover the Proposed Development's capital expenditure and the cost of CA and TP in light of the Government's commitment to the Road Investment Strategy 2 (ER 22.8.69, 22.10.14), and that, in light of comparison with other schemes, the lowering of the benefit-cost ratio gives no reason to believe there to be a risk to the Proposed Development's delivery (ER 22.8.70). The Secretary of State therefore accepts that the Proposed Development would be fully funded.

215. The Secretary of State notes the ExA's consideration of specific proposed changes to the provisions in the draft DCO relating to CA and TP at ER 22.9. The Secretary of State agrees with the ExA's reasoning on these matters except in relation to articles 28 and 40(9) and has made further minor edits detailed at paragraph 221 below and in the final made DCO.

216. The Secretary of State considers that the ExA's procedural decisions gave the owners/occupiers of the property near the Black Cat Roundabout a fair opportunity to participate in the Examination, and, while their second tenant's late notification was regrettable, he agrees with the ExA that the second tenant had a fair opportunity to participate in the Examination (ER 22.8.59). The Secretary of State therefore agrees with the ExA's conclusion that in relation to human rights, the Examination has ensured a fair and public hearing and the requirement of Article 6 of the Human Rights Act 1998 is met (ER 22.8.59).

217. The Secretary of State agrees with the ExA that, in relation to Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights, the purpose sought for the CA of the DCO land is legitimate and sufficient to justify interfering with the interests of those with an interest in the land affected (ER 22.10.12), as well as proportionate and justified in the public interest (ER 24.2.9). In coming to this conclusion, the Secretary of State has considered that the owner/occupier of the Black Cat Roundabout property and

the tenant of Brook Cottages would have to relocate from their homes and (in the case of the former) lose their source of income, but, like the ExA, he considers that the purpose for which these properties would be acquired is legitimate and sufficient to justify interfering with the human rights of the tenant and the owners/occupiers (ER 22.8.58).

218. The Secretary of State agrees with the ExA's conclusion that the Applicant has consulted those with interests in relevant land before an application was made, in accordance with sections 42 and 44 of the Planning Act 2008, and that the delay in formal engagement with specific parties was not a lack of due diligence on the Applicant's part (ER 22.10.10). Like the ExA, the Secretary of State acknowledges many parties' (and the ExA's) concerns regarding limited engagement from the Applicant and slow negotiations (ER 22.10.11, 24.2.14 and throughout ER 22.7) but notes that progress in this respect may have been affected by Covid-19. Although the Secretary of State is disappointed to hear concerns from interested parties in their response to his consultation letters around the Applicant's lack of engagement, he welcomes the continuing negotiation with many parties outlined in the Applicant's response to the Secretary of State's consultation letter of 31 May 2022. The Secretary of State therefore considers that the Applicant has made sufficient effort to engage and negotiate with affected persons before and during the Examination. Nevertheless, the Secretary of State agrees with the ExA that there would have been great benefits to negotiations progressing at pace before submitting the application, for the reasons set out at ER 24.2.14. The Secretary of State also considers that earlier and further engagement with affected persons would have greatly assisted the Secretary of State's consideration, and strongly encourages the Applicant to make a focussed and comprehensive effort to complete outstanding agreements and resolve outstanding issues.

219. The Secretary of State is satisfied that, with the modifications in the DCO, the CA powers sought by the Applicant would be justified and should be granted. The Secretary of State agrees with the ExA that there would be a compelling case in the public interest for the land and interests to be acquired compulsorily, and considers that there would be compliance with the CA Guidance and the requirements of the Planning Act 2008, most particularly sections 122, 131 and 132.

Draft Development Consent Order and Related Matters

220. The ExA's consideration of the draft DCO is set out in Chapter 23 of its Report. The Applicant submitted a dDCO and Explanatory Memorandum describing the purpose and effect of the provisions in the draft DCO as part of the application for development consent (ER 23.2.1). The Secretary of State notes that a number of revisions to the draft DCO and Explanatory Memorandum were made during the Examination (ER 23.3.3).

221. Where not previously stated, the Secretary of State is satisfied with the recommended changes set out in Table 6 of the Report. The modifications which the Secretary of State has decided to make to the rDCO at Appendix D to the Report are as follows (references to article numbers and paragraphs in this paragraph are to the same as numbered in the rDCO, with the numbering in the DCO as made following where this is different):

- article 2(1) (interpretation): the definition of 'the 2017 Regulations' has been removed to reflect the removal of the substantive article; in the definition of 'pre-commencement works' sub-paragraph (o) has been removed as the Secretary of

State does not believe it is needed; and paragraphs (8) and (9) have been removed as the Secretary of State does not believe they are needed.

- article 6 (application of the 1990 Act): paragraph (3) has been removed as the Secretary of State can see no application with the 1990 Act and no explanation has been provided in the explanatory memorandum.
- article 8 (existing powers and duties of the undertaker) has been removed as the Secretary of State cannot understand why the operation of the DCO will affect the undertaker's powers in relation to the cited legislation.
- article 11 (consent to transfer benefit of Order, now article 10): the final clause of paragraph (2), paragraphs (3) and (4) have been removed as the Secretary of State is concerned about the transfer of powers to unknown parties without his approval.
- article 21 (discharge of water, now article 20): the Secretary of State is concerned about the effect of overriding the requirement for an environmental permit and so have reinstated that requirement.
- article 23 (authority to survey and investigate the land, now article 22): the usual wording has replaced 'or any land adjacent to the Order limits'.
- article 28 (compulsory acquisition of rights and imposition of restrictive covenants, now article 27) paragraphs (3) to (5) have been removed as the Secretary of State is concerned about the transfer of powers to unknown parties which circumvents the application of article 11.
- article 30 (private rights over land, now article 29) paragraph (10) has been removed. While the Secretary of State notes from the explanatory memorandum that it has been drafted for the Scheme it is unprecedented and it is unclear on the circumstances of this Scheme that means such a provision is necessary.
- article 34 (no double recovery) has been removed. It seems to the Secretary of State that the position covered by the provisions are reflected in the Compensation Code and do not therefore need to be repeated in the Order.
- article 37 (modification of the 2017 Regulations) has been removed. The Secretary of State has removed this provision from a number of DCOs and his position is that its inclusion is unnecessary.
- article 40 (temporary use of land for carrying out the authorised development, now article 37) paragraph (9) has been removed as the Secretary of State has concerns about the creation of undefined rights.
- article 50 (appeals relating to the Control of Pollution Act 1974) has been removed. The Secretary of State's position is that the provision is unnecessary as the 1974 Act provides the appropriate mechanism to be followed.

General Considerations

Equality Act 2010

222. 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 (ER 22.8.60). The Secretary of State notes the ExA's conclusion that the Applicant has had due regard to and complied with its duties under section 149 of the Equality Act 2010 throughout the process, and that, through the mitigation measures secured in the Environmental Statement and the ongoing actions

outlined in the Equality Impact Assessment, the Applicant would continue to comply with its duties through the Proposed Development's construction (ER 22.10.13). The Secretary of State has further considered the implications of the Proposed Development on specific parties with protected characteristics at paragraphs 153 to 167 of this letter. The Secretary of State therefore 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

223. 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. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

Secretary of State's overall conclusion and Decision

224. For all the reasons set out in this letter, the Secretary of State considers that there is a clear justification for authorising the Proposed Development, including the pipeline diversion. The Secretary of State has therefore decided to accept the ExA's recommendation at ER 24.3.1 and grant development consent, subject to changes in the DCO mentioned in paragraph 221. 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 Planning Act 2008 for the Secretary of State to make the DCO as now proposed.

Challenge to Decision

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

Publicity for the Decision

226. The Secretary of State's decision on this application is being publicised as required by section 116 of the Planning Act 2008 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 A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/a428-black-cat-to-caxton-gibbet-road-improvement-scheme/>

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).