



# Department for Transport

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National Highways  
Bridge House  
1 Walnut Tree Close  
Guildford  
Surrey  
GU1 4LZ

Dear Sir/Madam,

## **PLANNING ACT 2008**

### **APPLICATION FOR THE PROPOSED M3 JUNCTION 9 IMPROVEMENT 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 16 February 2024 ("the Report") of the Examining Authority ("ExA"), Wendy McKay and Matthew Sims, who conducted an Examination into the application made by National Highways ("the Applicant") for the M3 Junction 9 Development Consent Order ("the Application") under section 37 of the Planning Act 2008 as amended ("the 2008 Act");
  - The responses to the further consultations undertaken by the Secretary of State following the close of the Examination in respect of the Application; and
  - Late representations received by the Secretary of State following the close of the Examination.
2. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116(1)(a) of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 which apply to the Application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

3. Published alongside this letter on the Planning Inspectorate website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the Report"). All "ER" references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form "ER XX.XX.XX" as appropriate. References to "requirements" are to those in Schedule 2 to the Order as the ExA recommended at Appendix D to the Report.
4. This decision was delegated by the Secretary of State to the Minister of State Huw Merriman. While this decision has not been taken by the Secretary of State, by law, it must be issued in the name of the Secretary of State. All references to the Secretary of State are therefore to the Minister of State acting on behalf of the Secretary of State.

## THE APPLICATION

5. The Application was accepted for Examination on 15 December 2022. The Examination began on 16 May 2023 and was completed on 16 November 2023. 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 accompanied and unaccompanied site inspections [ER 1.4.3].
6. The Development Consent Order ("the Order") as applied for would grant development consent for an improvement to Junction 9 of the M3 motorway. The elements comprising the scheme (collectively referred to as "the Proposed Development") are:
  - widening of the M3 from a dual two-lane motorway (two-lane motorway with hard shoulders) to a four-lane motorway (with hard shoulders) between the proposed M3 Junction 9 gyratory north and south slip roads;
  - a new smaller grade separated gyratory roundabout arrangement within the footprint of the existing roundabout, incorporating new connections over the M3 with improved walking, cycling and horse-riding routes;
  - connector roads from and to the new gyratory roundabout;
  - improved slip roads to/from the M3;
  - new structures (in the form of gyratory bridges, underpasses, retaining walls, subway and a new cycle and footbridge over the River Itchen);
  - a new surface water runoff system with associated drainage and infiltration features;
  - new signage and gantries;
  - utility diversions;
  - new lighting (subways, underpasses and gantries);
  - modifications to topography through cuttings and false cuttings as well as re-profiling of existing landform;
  - new walking, cycling and horse-riding provision; and
  - creation of new areas of chalk grassland, woodland, scrub planting and species rich grassland.

## **SUMMARY OF THE EXA'S RECOMMENDATIONS**

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:
  - Principle and Need for the Development
  - Alternatives
  - Agriculture, Geology and Soils
  - Air Quality
  - Biodiversity and Ecology
  - Climate Change and Resilience
  - Flood Risk, Groundwater and Surface Water
  - Historic Environment
  - Landscape Impact, And Visual Effects and Design
  - Noise and Vibration
  - Population and Human Health
  - Traffic, Transport and Non-Motorised User Routes
  - Waste and Material Resources
  - Cumulative Effects
  - Habitats Regulations Assessment
  - Compulsory Acquisition and Related Matters
  - The Draft Development Consent Order and Related Matters
8. For the reasons set out in the Report, the ExA recommended that the Secretary of State should make an Order granting development consent for the Proposed Development [ER 8.3.1] subject to being satisfied in relation to the following matters [ER 8.3.2]:
  - Consideration in relation to the revised wording of requirement 6(4) of the DCO; and
  - Consideration of section 245 of the Levelling-up and Regeneration Act 2023 (LURA) amendment of section 11A of the National Parks and Access to the Countryside Act 1949.
9. The Secretary of State is satisfied that all matters listed above have been resolved, as described below.

## **SUMMARY OF SECRETARY OF STATE'S DECISION**

10. The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this Application. The letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation

31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).

## **SUMMARY OF SECRETARY OF STATE’S CONSIDERATION**

11. The Secretary of State’s consideration of the Report, responses to his consultations of 8 March 2024 and 22 March 2024, representations received after the close of Examination and all other material considerations are set out in the following paragraphs. Where consultation responses are not otherwise mentioned in this letter, it is the Secretary of State’s view that these representations do not raise any new issues that were not considered by the ExA and do not give rise to an alternative conclusion or decision on the Order.
12. 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.
13. The Secretary of State is content that the Proposed Development is a National Significant Infrastructure Project in accordance with section 14(1)(h) and section 22(1) to (3) of the 2008 Act for the reasons set out at ER 1.1.4, and that section 104(2) of the 2008 Act has effect in relation to the Proposed Development. In determining this Application, the Secretary of State must therefore have regard to any relevant National Policy Statements (“NPS”), and Local Impact Reports (“LIR”) submitted, any matters prescribed in relation to development of the description to which the Application relates, and any other matters the Secretary of State considers to be both important and relevant to the decision.
14. Under section 104(3) of the 2008 Act, the Secretary of State must decide this Application in accordance with any relevant NPS which in this case is the National Policy Statement for National Networks (“NPSNN”), subject to any of the exceptions in section 104(4) to (8) of the 2008 Act applying [ER 3.7.91]. The Secretary of State notes concerns were raised by the Climate Emergency Policy and Planning (“CEPP”) relating to the application of section 104(4), (5) and (6). CEPP’s concerns are summarised by the ExA at ER 3.7.95 - ER 3.7.97 and the ExA’s consideration of these matters etc. Overall, the ExA concluded that a robust and comprehensive ES assessment had been undertaken on the impact of the Proposed Development on climate in accordance with the DMRB LA 114 Climate (Highways England, 2021) and the NPSNN. This assessment showed that the increased in carbon emissions as a result of the Proposed Development would not be so significant in isolation to have a material impact on the ability of the Government to meet its carbon reduction budgets [ER 3.7.124]. The Secretary of State agrees with the ExA’s conclusions and therefore does not consider any of the exceptions apply to this case. The Secretary of State has also had regard to the environmental information associated with this scheme as defined in regulation 3(1) of the 2017 Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

15. With regard to the NPSNN, in a Ministerial Statement issued on 22 July 2021, the Secretary of State advised that a review of the NPSNN would begin later in 2021 for the reasons given in the Ministerial Statement. A new draft version was published on 14 March 2023 and, following public consultation and scrutiny by the Transport Select Committee, a revised version was laid before Parliament on 6 March 2024 and is subject to Parliamentary requirements set out in section 9 of the 2008 Act. It can only be designated for the purposes of section 104 of the 2008 Act following the completion of this Parliamentary process.
16. The Secretary of State has considered the policies in the draft revised NPSNN and notes that the modifications made to the revised NPS laid before Parliament do not materially affect the policy laid out in the draft revised NPSNN. In any event, the draft NPSNN is not yet adopted policy. The Secretary of State considers that neither the draft revised NPSNN nor the revised NPSNN support a different outcome in this case. For those reasons, he has not given the revised NPSNN or draft revised NPSNN any material weight. The Secretary of State is satisfied that as set out in the Ministerial Statement of 22 July 2021, the currently designated NPSNN remains government policy and continues 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.
17. The Secretary of State has had regard to the LIRs prepared by Winchester City Council (“WCC”), the South Downs National Park Authority (“SDNPA”), Eastleigh Borough Council, and Hampshire County Council (“HCC”) [ER 2.3.1] and the associated local policy documents, including the Local Plans [ER 2.2.5]. The Secretary of State also notes the ExA’s assessment, set out in section 3 of the Report, regarding European Law and related UK Regulations, other relevant legal provisions, previous Development Consent Orders, transboundary effects and other relevant policy statements and agrees these are matters to be considered in deciding this Application.

### **The Principle of and Need for the Proposed Development**

18. The ExA’s consideration of the principle of need for the proposed development is set out in section 3.2 of the ExA’s Report, and the main issues considered by the ExA during the Examination are set out at ER 3.2.34.
19. The Secretary of State notes that the Applicant set out five strategic objectives for the Proposed Development which are supported by the Highways England Delivery Plan 2015-2020 (Highway England 2015). Those objectives are listed at ER 3.2.30. He is aware that, during the Examination, a number of Interested Parties raised concerns regarding the extent to which those objectives are met [ER 3.2.45]. The ExA concluded that the Proposed Development would meet those objectives and that the Applicant has submitted sufficient evidence to support the need for the Proposed Development [ER 3.2.45 – 3.2.46]. The Secretary of State agrees with the ExA and is satisfied that the Proposed Development would meet the strategic need for the development of the national road network as set out in the NPSNN.
20. The Secretary of State notes that a number of Interested Parties raised the question of whether the need for the Proposed Development could be met

through other modes of transport, in particular rail-based options, and that this matter was considered by the ExA during the Examination [ER 3.2.59]. The Secretary of State notes that the Applicant as part of Project Control Framework Stage 0 assessed whether an alternative mode of transport could solve the identified problems at M3 J9 and concluded that the high level of congestion at M3 J9 and the expected growth in freight traffic could only be solved with a junction improvement that provided free flow movement between the M3 and the A34 [ER 3.2.55 & 3.2.60], and therefore he agrees that the identified need for the Proposed Development could not be met through modal alternative such as rail based options [ER 3.2.63].

21. The ExA recorded that HCC and WCC agreed with the principle of the Proposed Development [ER 3.2.100], and that in terms of the broad principles of need there would be no conflict with any Local Plans or Local Transport Policy [ER 3.2.83]. The Secretary of State is aware of the various representations submitted during the Examination on compliance with local policies, including a representation from CEPP which criticised HCC's position that the Proposed Development is consistent with LTP3 and emerging LTP 4 [ER 3.2.67]. For the reasons set out at paragraphs 3.2.79 – 3.2.82 of the Report, the ExA concluded that there would be no material conflict with any Local Plan or Local Transport Policies [ER 3.2.103]. The Secretary of State agrees with the ExA's conclusion.
22. The Secretary of State agrees with the ExA that, since the Application was accepted for Examination before designation of the amendments to the NPSNN which were laid before Parliament in March 2023, the designated NPSNN remains government policy and continues 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. However, the Secretary of State notes that the ExA had regard to the consultation draft NPSNN as an important and relevant consideration [ER 3.2.99]. The Secretary of State agrees with the ExA's conclusion that overall there is limited conflict between the Proposed Development and the draft NPSNN, which the Secretary of State notes was debated and approved by the House of Commons on 26 March 2024, but, in any case, that it is the NPSNN that was published in 2014 that continues to provide the basis for his decision-making. The Secretary of State has taken into account the ExA's consideration of National Highways Solent to Midlands Route Strategy [ER 3.2.94 – 3.2.98] and agrees with the ExA that the Proposed Development would be consistent with its objectives [ER 3.2.99].
23. The Secretary of State notes that the ExA concluded that the Proposed Development would meet the specific identified need for an improved M3 J9 and would contribute to meeting the strategic need for the development of the national road network in accordance with the NPSNN [ER 3.2.102]. The Secretary of State finds no reason to disagree. The ExA was satisfied that, subject to its consideration of specific design options, the fundamental and the identified need for the Proposed Development could not be met in some other way including modal alternatives such as rail-based options [ER 3.2.102]. The Secretary of State agrees.

### **The Secretary of State's Conclusion on Need for the Proposed Development**

24. As set out above, the Secretary of State notes that the broad principle of need for the Proposed Development was supported by the relevant planning authorities [ER 3.2.100] and where concerns have been raised about compliance with particular policies, these have been considered in the ExA's Report and the relevant sections below. The Secretary of State agrees with the ExA that the Proposed Development is fully in accordance with the compelling need case for the provision of new national network infrastructure established in accordance with the requirements of the NPSNN and reinforced by other relevant national policies and strategies. The Secretary of State has attached substantial positive weight in the planning balance to the need for the Proposed Development.

### **Consideration of Alternatives**

25. Chapter 3 of the ES sets out the Applicant's assessment of alternatives. The ExA's consideration of the Applicant's assessment of alternatives and options appraisals is set out in paragraphs ER 3.3.5 to 3.3.26 of the Report. The Secretary of State notes that the main issues considered during the Examination in relation to alternatives were [ER 3.3.27]:

- The ES approach to alternatives including the selections of the main construction compound ("the construction compound") and the suitability of the alternative locations proposed by Interested Parties.
- Whether the Proposed Development would comply with all specific legal requirements in relation to the Habitats Regulations and the Water Framework Directive.
- Whether the Proposed Development would comply with all policy requirements in any relevant NPSs in relation to the consideration of alternatives including the flood risk sequential test and the assessment of alternatives for development in National Parks.

26. The Secretary of State notes that the ExA was satisfied the Applicant had assessed the alternatives to the Proposed Development in a reasonable and proportionate manner in compliance with Regulation 14 of the 2017 Regulations, including the need to take into account the effects of the development on the environment [ER 3.3.72]. The Secretary of State agrees.

27. The Secretary of State agrees with the ExA that, as the M3 and M3 J9 are either within the South Downs National Park ("the National Park") or within its setting, that there is no scope for developing or meeting the need for the Proposed Development outside of the National Park or in some other way [ER 3.3.73]. In respect of the location of the construction compound, the Secretary of State agrees with the ExA that the Applicant has thoroughly assessed alternative sites during the selection process and agrees that none of the suggested alternative sites would provide a suitable and realistic alternative option [ER 3.3.74].

28. The Secretary of State notes that the ExA was satisfied that the Proposed Development would comply with all specific legal requirements in relation to the consideration of alternatives including in the Environmental Impact Assessment regulations, the Habitats Regulations, and the Water Framework Directive [ER 3.3.75]. The Secretary of State agrees.

### *The Secretary of State's Conclusion on Alternatives*

29. In conclusion, like the ExA, the Secretary of State is satisfied that the assessment of alternative options for the Proposed Development have been rigorously tested by the Applicant and that the requirements of the NPSNN and all other relevant policy requirements have been met and that there are no matters relating to alternatives that weigh for or against the Proposed Development in the planning balance [ER 3.3.76 – 3.3.77].

### **Agriculture, Geology and Soils**

30. The Secretary of State notes the assessment on geology and soils conducted by the Applicant as set out in Chapter 9 of the ES, including the study area [ER 3.4.10], and the matters taken into consideration in that assessment [ER 3.4.11].

31. Like the ExA, the Secretary of State is content that the Applicant's consideration accords with the policy aims of the NPSNN [ER 3.4.46] and he considers that the construction and operation effects of the Proposed Development on geology and soils have been adequately scoped and assessed.

32. He also notes the Agricultural Land Classifications were detailed in accordance with the Design Manual for Roads and Bridge ("DRMB") LA 109 [ER 3.4.12] and the assessment of the impact on agricultural land holdings was undertaken in accordance with DRMB LA 112 and notes that a total of 32.5 hectares of agricultural land will be permanently impacted and a further 16.6 hectares will be temporarily impacted by the Proposed Development [ER 3.4.13].

33. The Secretary of State has had regard to the preliminary Land Stability Appraisal in Chapter 9 of the ES and associated assessments of risk relating to land stability in areas of chalk, alluvium, and clay [ER 3.4.16 – 3.4.18]. The ES states that there are suitable, appropriate, and robust design and mitigation measures to mitigate potential land stability risks and, as such, it is considered unlikely that there would be significant effects in relation to land stability. The Secretary of State notes that the SDNPA generally agreed with the conclusions in the ES and were satisfied that the first iteration EMP and draft Order Requirements adequately addressed the issue of geology and soils, subject to clarification on the consideration of archaeology is considered in the Soil Management Plan [ER 3.4.19]. Like the ExA, the Secretary of State is satisfied that the ground investigations and land stability assessment have been undertaken in accordance with standard practice, with detail on risk management and mitigations contained within the first iteration EMP [ER 3.4.21].

34. As regards contamination, Chapter 9 of the ES states that only potential contamination from current and historic sites was considered [ER 3.4.22]. The Secretary of State notes that it was expected that there would be no contamination from historic landfill sites in the area following consultation with the local authorities, and that contamination was likely removed or remediated in relation to an historic filling station and sites to the north of the Proposed Development which has previously been redeveloped for business and office space [ER 3.4.23]. The Secretary of State notes that the Ground Investigation Report identified one case of marginal exceedance of the assessment criteria for public open space land use and so it is considered that there is a worst-case



low potential for a significant contamination hazard within the boundary of the Proposed Development [ER 3.4.24]. Chapter 9 of the ES also detailed consideration of the potential for new sources of contamination during construction and operation and the mitigation measures proposed are in line with industry best practice [ER 3.4.27]. Like the ExA, the Secretary of State is satisfied that the Applicant's contaminated ground investigations and an assessment of the potential for new contamination pathways has been undertaken in accordance with standard practice and the proposed mitigations, which will be subject to further updates with the second iteration EMP, have been undertaken in line with industry best practice [ER 3.4.29].

35. It is noted that there will be a permanent loss of 18.7 hectares of agricultural land designated Best and Most Versatile ("BMV") grade 2 and 3a soil, and 8 hectares of non-BMV grade 3b and 4 soil [ER 3.4.31], and a temporary loss of some grade 2 and 3a BMV land resulting in a significant temporary adverse effect [ER 3.4.34]. The Applicant states in the ES that it is not possible to mitigate against the permanent loss, and therefore results in a permanent adverse effect for the BMV land which leads to a very large adverse effect on the BMV land. In relation to non BMV land, there is a moderate adverse effect on the grade 3b land, and a slight adverse effect on the grade 4 land [ER 3.4.32]. Whilst the Secretary of State notes that this loss accounts for a relatively small percentage of the total BMV agricultural land within the Winchester City area, he agrees with the ExA that the permanent loss of this land has a large to very large adverse effect which is significant and cannot be mitigated [ER 3.4.36]. As regards the temporary loss of agricultural land required during the construction phase, including 12.1 hectare of BMV land, the Secretary of State notes that the reinstatement of the temporary agricultural land following construction of the Proposed Development is detailed in the soil management plan which is an appendix to the first iteration EMP and is secured through the draft Order in requirement 3 [ER 3.4.37 and 3.4.44].

#### *The Secretary of State's Conclusions on Agriculture, Geology and Soils*

36. In conclusion, the Secretary of State agrees with the ExA that, due to the large to very large adverse effect and significant impact of the loss of BMV land as a result of the Proposed Development [ER 3.4.45] that agriculture, geology and soil issues have a moderate weight against the Proposed Development [ER 3.4.47].

#### **Air Quality**

37. The Secretary of State notes that the Applicant's assessment of likely significant air quality effects is assessed in accordance with the Design Manual for Roads and Bridges LA105 (air quality) and is set out in Chapter 5 of the ES [ER 3.5.9]. The Secretary of State has had regard to the impacts set out in the ES, detailed at ER 3.5.10 – 3.5.16, on air quality during construction and operation as a result of the Proposed Development noting that, in all instances, these are not considered to be significant, there is no predicted exceedances of the PM2.5 annual mean AQS objectives and the conclusion in the ES that during construction and operation with the proposed mitigation there would be a neutral impact on human health from ambient.

#### *Examination Issues*

38. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.5.17.

#### *Assessment Methodology*

39. The Secretary of State recognises that WCC stated in its LIR that it had no high level objection to the assessment methodology used by the Applicant, as set out in the ES, and that this position was reaffirmed by WCC when questioned by the ExA during Examination with WCC confirming that the Applicant's approach was in line with the accepted standards and that they had no issues with the approach [ER 3.5.18 – 3.5.20]. As such, the Secretary of State agrees with the ExA's conclusion that the assessment methodology for air quality, including fine particulate matter, in accordance with the required standards and this has been supported by the WCC [ER 3.5.21].

#### *Operational Impacts (NO<sub>2</sub>)*

40. The Secretary of State notes that the ES details that no significant residual effects during construction or operation of the Proposed Development are identified and that no exceedances of the relevant air quality thresholds are predicted [ER 3.5.22].
41. Although not within an Air Quality Management Area ("AQMA"), the Proposed Development is bordered by the WCC AQMA and Eastleigh AQMA. The Secretary of State notes from Chapter 5 of the ES that the Proposed Development will have some positive and negative impacts on the receptors in the WCC AQMA, with diverging views being expressed by the Applicant and WCC, and, like the ExA, he has accepted that there would be a neutral impact as a minimum on the WCC AQMA [ER 3.5.24]. He further notes Eastleigh Borough Council did not consider that there would be significant adverse effects on the Eastleigh AQMA as a result of the Proposed Development that would warrant additional mitigation measures [ER 3.5.25] and agrees with the ExA's conclusion that neither of the AQMAs would be adversely affected [ER 3.5.30].
42. The Secretary of State notes that there are no anticipated exceedances of the National Air Quality Objective across all 49 receptors used for recording and predicted NO<sub>2</sub> at the year of opening (2027), and that, as there are no significant impacts anticipated, there is no requirement for essential mitigation in addition to embedded mitigation for the Proposed Development in accordance with NPSNN paragraphs 5.10 and 5.11. The Secretary of State notes that, in their SoCG, the Applicant will continue to consult with WCC through detailed design and as part of the development of the second iteration EMP regarding air quality matters [ER 3.5.26 – 3.5.28] as secured by requirement 3(1) of the Order which, like the ExA, he considers to be important [ER 3.5.31].

#### *Operational Impacts (Fine Particulate Matter PM<sub>10</sub> and PM<sub>2.5</sub>)*

43. The Secretary of State notes the representations made by a number of parties, including Winchester Action on the Climate Crisis, relating to the assessment of particulate matter and the Applicant's responses [ER 3.5.32 – 3.5.35]. Like the ExA, the Secretary of State considers that the Applicant has undertaken all relevant assessments and forecasts in relation to particulate matter in accordance with DEFRA guidelines [ER 3.5.36]. The Secretary of State notes that, as set out in the ES, the changes in annual mean concentrations of PM<sub>10</sub>

will be imperceptible at almost all receptors and in all cases concentrations will be below the annual and daily mean Air Quality Standard objectives and are not considered significant. He further notes that no predicted exceedances in PM<sub>2.5</sub> annual mean Air Quality Standard objectives [ER 3.5.37]. The Secretary of State agrees with the ExA's conclusion that the Applicant has assessed the potential impacts on particulate matter in accordance with existing guidelines and is content that the forecast for PM<sub>2.5</sub> is not likely to have a negative impact on the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 targets of 10 µg/m<sup>3</sup> annual mean concentration of PM<sub>2.5</sub> nationwide by 2040 or the interim target of 12 µg/m<sup>3</sup> by January 2028 [ER 3.5.38].

### *Construction Impacts*

44. The Secretary of State has had regard to the concerns raised by parties, including WCC in their LIR, about potential air quality impacts during the construction phase of the Proposed Development from changes that are likely to be seen from direct construction activities and from changes in traffic movements due to road and lane closures [ER 3.5.39 – 3.5.40]. Chapter 5 of the ES shows the modelling and consideration of changes to traffic movements and construction traffic on air quality and states that, in combination with the mitigation measures secured in the first iteration EMP, the predicted changes and increases from these activities will not be sufficient to result in significant air quality impacts [ER 3.5.41].
45. Whilst the overall assessment of air quality impacts was not considered to be significant during construction, the Secretary of State notes WCC's concerns relating to the air quality impacts of traffic using 'unofficial diversion routes' through the WCC AQMA, and further notes the agreement between WCC and the Applicant to continue consultation throughout the detailed design phase regarding monitoring and reporting arrangements secured, as a commitment in the first iteration EMP [ER 3.5.42].
46. The Secretary of State notes the concerns relating to dust and associated construction impacts raised by WCC but agrees with the ExA that these impacts will be subject to industry standard mitigation measures as detailed in the first iteration EMP [ER 3.5.43].
47. The Secretary of State agrees with the ExA that the Applicant has shown that the direct impacts of construction activities on air quality would be mainly from the potential for dust generation, and that the range of standard mitigation measures secured in the first iteration EMP are appropriate at this stage of design and are subject to further consultation during the development of the second iteration EMP. He considers that the effects of dust and the impact of construction on air quality is unlikely to exceed relevant limits across all receptors, and agrees with the ExA that the Applicant has satisfactorily assessed and mitigated the impacts of traffic diversions during construction where possible in the direct control of the Applicant and the first iteration EMP provides that the Traffic Management Plan will include monitoring and reporting arrangements during constructions which will be subject to further consultation prior to construction [ER 3.5.44 – 3.5.46].

### *Habitat Impacts and Nitrogen Deposition*

48. The Secretary of State notes that there are six Sites of Special Scientific Interest within or close to the application boundary of the Proposed Development [ER 3.5.47]. The Secretary of State has had regard to the concerns raised by Natural England regarding the assessment of nitrogen deposition and how in-combination impacts have been considered as set out in Chapter 5 of the ES [ER 3.5.48 – 3.5.49]. At the close of Examination, the ExA considered that the Applicant and Natural England were working to conclude this issue, with the SoCG with Natural England stating that the issue was ‘provisionally agreed’ [ER 3.5.51 – 3.5.57]. In his consultation letter dated 8 March 2024, the Secretary of State requested an update from the Applicant as to the position of the side agreement with Natural England in relation to air quality effects and biodiversity. In response, the Applicant confirmed that agreement with Natural England had been reached and provided evidence by the way of an email from Natural England to the ExA dated 18 December 2023 confirming as much. As such, the Secretary of State considers this matter has been resolved.
49. The Secretary of State has also had regard to the representations from Winchester Friends of the Earth regarding additional nitrogen deposition on sites that have an existing nitrogen overload in the soil and that any increase in anticipated deposition, however insignificant is unacceptable [ER 3.4.50].
50. The updated Appendix 8.3 of the ES following requests from NE states that increases in pollutants are mostly below the 1% threshold of perceptibility or, where exceeding this threshold, are over small areas. As such, and given that Natural England have confirmed they are content in their email to the ExA dated 18 December 2023, the Secretary of State agrees with the ExA that the impact of air quality on habitats will not be significant [ER 3.5.59 – 3.5.60].

#### *The Secretary of State’s Conclusions on Air Quality*

51. Like the ExA, the Secretary of State is satisfied that the Applicant has adequately dealt with air quality matters during construction and operation of the Proposed Development through the ES and first iteration EMP, as discussed above [ER 3.5.61] and that the Applicant’s assessment of air quality complies with the policy aims of the NPSNN [ER 3.5.68] as set out at paragraphs 5.6 – 5.11. He agrees with the ExA’s conclusions that air quality effects of the Proposed Development during the construction phase would result in localised, limited negative air quality effects including temporary effects [ER 3.5.62 and 3.5.67] and notes that there will be both positive and negative effects during operation both for NO<sub>2</sub> and particulate matter. As such, the Secretary of State agrees with the ExA that air quality impacts of the Proposed Development carry neutral weight in the planning balance [ER 3.5.67].

#### **Biodiversity and Ecology**

52. The Secretary of State notes that the Applicant’s assessment of the effect of the Proposed Development on biodiversity resources is set out in Chapter 8 of the ES and includes a description of the ecological baseline, evaluation of biodiversity, features present and assessment of impacts and effects on important biodiversity resources in line with relevant guidance [ER 3.6.13].

#### *Examination Issues*

53. The main issues considered during the Examination were those summarised at ER 3.6.24.

#### *Assessment and Mitigation Approach*

54. The Secretary of State notes that the Applicant's approach to the assessment of biodiversity and ecology was broadly accepted by relevant statutory bodies [ER 3.6.25] and that by the close of the Examination there was detailed agreement of the Applicant's approach to the scope and assessment methodology and the mitigation of biodiversity and ecology matters from WCC, NE and EA [ER 3.6.29] but while SDNPA agreed with the scope and assessment methodology, it did not agree to the approach to mitigation [ER 3.6.30].

55. The Secretary of State agrees with the ExA that the Applicant has undertaken the assessment of biodiversity and ecology impacts in accordance with the relevant guidance and legislation. He also agrees that the Applicant has updated the first iteration EMP responsively following ongoing consultation and discussions with IPs and statutory bodies. He considers the residual mitigation concerns of SDNPA later in this section [ER 3.6.31-33].

#### *Designated Sites, Habitat and Future Management*

56. The Secretary of State has noted that the ES details the potential impact of the Proposed Development on European Designated Sites within the appropriate study area, being the River Itchen Special Area of Conservation ("SAC") and Mottisfont Bats SAC [ER 3.6.34] The Secretary of State's consideration of these sites is set out section 256 – 260 below.

57. The Secretary of State notes that there were no specific issues raised in Local Impact Reports or relevant representations relating to Special Areas of Conservation or Sites of Special Scientific Interest (SSSI) [ER 3.6.36 and 3.6.40]. No issues were raised as to the integrity of the SSSIs during the Examination [ER 3.6.42] and the Applicant concludes in the ES that following mitigation (as set out in the ES and first iteration EMP) the effects on the River Itchen SSSI and St Catherine's Hill SSSI would not be significant [ER 3.6.43].

58. The Secretary of State notes that a number of non-statutory designated sites were identified with a 2km radius study area [ER 3.6.44] but, by the close of the Examination, there were no outstanding issues relating to non-statutory designated sites [ER 3.6.46].

59. Chapter 8 of the ES details the loss and creation of Habitats of Principle Importance (HPI) [ER 3.6.47] but states that there is no loss of ancient woodland or veteran trees which was confirmed during the Examination [ER 3.6.48]. The Secretary of State has taken account that there would be a net habitat gain of 17.59ha for the loss of existing lowland chalk grassland (which is a feature of the SDNP), a net habitat gain of 1.37ha for other woodland (including broadleaved and mixed woodland) and a net gain of 0.17ha for hedgerow while there would be a net habitat loss of 0.01ha for open mosaic habitat [ER 3.6.47 Table 1: summary of habitats of principle importance]. He notes that at the close of the Examination, WCC, EA and NE had no outstanding issues but that there were issues that were "not agreed" in the SoCG with SDNPA which related to habitats, particularly chalk grassland [ER 3.6.52-53]. SDNPA's issues are considered later in this letter.

60. The Secretary of State notes that SDNPA raised the issue of habitat connectivity and the potential for enhancements in their LIR [ER 3.6.54]. NE was consulted on this matter but did not raise any issues which is reflected in the final SoCG with NE [ER 3.5.56]. The Applicant considered that the Proposed Development would enhance connectivity through good design and the creation of new chalk grassland and connection between various habitats [ER 3.6.55].
61. The Secretary of State notes that the ES states the construction and operation effects on designated sites and habitats as being either slight adverse, neutral or slight beneficial and all effects being not significant [ER 3.6.59 Table 3: summary of effect on designated sites and habitats].
62. The Secretary of State notes that the Applicant and SDNPA differed on whether the proposed 5-year post-opening maintenance period for planting and habitat creation was sufficient [ER 3.6.66-67]. He notes that the ExA proposed that Requirement 6 in the Order should be amended from 5 years to 10 years for the reasons set out at ER 3.6.68 but that the Applicant continued to maintain that a 10-year replacement period would be contrary to the maintenance schedule of the landscaping works and therefore would not be appropriate [ER 3.6.69]. This is considered further at paragraphs 72 and 148.
63. The ExA considers that the Applicant has sought to minimise the impact on designated sites and habitats and overall, the loss of HPI is not significant although it encourages further attention to reducing impacts on hedgerows during detailed design which is stated as commitment reference LV2 in the first iteration EMP and secured by requirement 3 [ER 3.6.72]. While replacement and compensatory habitat has a slight positive impact due to the net increase in area being proposed, the ExA considered that further consultation and clarification is required prior to the finalisation of the second iteration EMP in respect of its maintenance and establishment [ER 3.6.73].

#### *Species-specific impacts*

64. The Secretary of State notes that during the early stages of the Examination a number of interested parties had requested additional information regarding mitigation and proposals for specific species and that the Applicant has sought to comply with these requests. The ExA sought to confirm at issue specific hearing 2 whether there were any outstanding concerns or issues with the proposals and mitigation proposals for specific species. The ExA considered that there was no reason to seek further confirmation of potential impacts on specific species. The Secretary of State has had regard to Table 4: summary of effect on identified species [ER 3.6.79] which summarises the conclusions of the ES that there are no significant impacts on any of the identified species. Natural England has issued a Letter of No Impediment (10 November 2023) which sets out NE's requirements for a final dormouse licence application to be submitted in due course together with the licence conditions, all of which have been agreed with the Applicant [ER 3.6.81].
65. In respect of species-specific impacts, the ExA concludes that with the proposed mitigation included in the first iteration EMP and which is secured by requirement 3, there is unlikely to be any significant impact on any identified species either during construction or operation of the Proposed Development [ER 3.6.83]. The Secretary of State agrees.

### *Biodiversity Net Gain (“BNG”)*

66. The Secretary of State notes that the requirements for providing BNG under the Environment Act 2021 is not currently a requirement for NSIP applications until 2025 [ER 3.6.84]. Nevertheless, the Applicant has provided a BNG Assessment as an appendix to Chapter 8 of the ES which shows that the Proposed Development would result in a predicted net gain in biodiversity of +4.14% and a predicted net gain in linear habitats (hedgerows) of +3.60% [ER 3.6.85].
67. Although, as the ExA explains, a BNG of 4.14% is below the potential future threshold of a 10% requirement for BNG, and this is because of the risk factors associated with the provision of chalk grassland and, if “other neutral grassland” were to be provided instead of chalk grassland, the overall BNG score would improve from 4.14% to 14.93%. SDNPA confirmed that it considered establishing chalk grassland is significantly more important in this instance than achieving a target for BNG and that a 4.14% increase with the appropriate habitat is appropriate even though it suppresses the BNG calculation [ER 3.6.87].
68. The ExA accepts that there is currently no legal requirement to provide BNG for this application and it was recognised that a BNG of 4.14% is a positive benefit and accepted by the ExA that providing the preferred habitat in this location is the correct approach [ER 3.6.88]. The Secretary of State agrees with the ExA’s conclusions.

### *The Secretary of State’s Conclusions on Biodiversity and Ecology*

69. The Secretary of State agrees with the ExA that he is satisfied that the Applicant has fully addressed the possible effects for construction and operation of the Proposed Development on biodiversity and ecology, that the overall approach to mitigation is appropriate for construction and operational effects and that the effects associated with the Proposed Development can be satisfactorily mitigated and managed [ER 3.6.89]. He further agrees that the Proposed Development complies with the relevant paragraphs of the NPSNN on conserving and enhancing biodiversity and ecology conservation interests and on mitigation measures [ER 3.6.99].
70. He agrees with the ExA that, with the agreed mitigation, the effects of the Proposed Development on designated sites are not significant [ER 3.6.90] (the Secretary of State’s particular consideration of the European Designated Sites under the Habitats Regulations is set out in paragraphs 251 – 264, below).
71. He agrees with the ExA’s conclusion that the Applicant has sought to implement enhancements to habitat and biodiversity [ER 3.6.93].
72. In respect of requirement 6 of the Order, he agrees that the requirement to replace failed planting of newly established habitats should be extended from a 5 year period to a 10 year period as this would accord with the duty to further the purposes of the National Park which is provided by the amendments to section 11A of the National Parks and Access to the Countryside Act 1949 made by section 245 of the Levelling Up and Regeneration Act 2023.
73. The Secretary of State has had regard to the ExA being satisfied that the opportunities for promoting biodiversity have been identified through the Proposed Development. In relation to habitats and species, he agrees with the ExA that, notwithstanding slight adverse effects in the short term on some types

of habitat, there will be slight beneficial effects on certain habitats and species in the medium term. It is recognised that in most cases the effects are between slight adverse and slight beneficial and in all instances, impacts are seen as not significant. When considering the positive effects of BNG and taking all other matters relating to biodiversity and ecology into account the Secretary of State notes the ExA attributed a little weight in favour of making the Order [ER 3.6.100].

## **Climate Change**

### *Background*

74. Section 104 of the 2008 Act states that the Secretary of State must decide an application for a national networks Nationally Significant Infrastructure Project in accordance with the NPSNN unless he is satisfied that one or more of the following exceptions contained in section 104(4) to (8) apply: 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.
75. 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. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008. In June 2019, the Government announced a new carbon reduction 'Net Zero' target for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050.
76. 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 ('GHG') 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. Article 4(2) of the Paris Agreement requires States Parties to prepare, communicate and maintain successive nationally determined contributions that it intends to achieve and to pursue domestic mitigation measures with the aim of achieving the objectives of such contributions.
77. The Secretary of State notes that the impact assessment methodology applied by the Applicant is set out in Design Manual for Roads and Bridges (DMRB) LA 114 Climate ("DMRB LA 114") as updated in June 2021, which requires the calculation of estimated carbon emissions from the construction and operation of the scheme and assessment of these against the carbon budget period in which they arise, The Applicant's position is that there is no reasonable basis upon which it can assess the potential likely significant effect of the carbon emissions of the Proposed Development at anything other than at a national level [ER 3.7.39].



### *The Applicant's approach to climate assessment*

78. The Applicant's assessment of the impact of the Proposed Development on climate is contained in the Applicant's ES Chapter 14 and is outlined at ER 3.7.17 – 3.7.31, setting out an assessment of GHG emissions compared to UK carbon budgets (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development. The Applicant's ES states in Chapter 14 at table 14.4 that construction phase emissions for the Proposed Development were calculated at 37,070 tCO<sub>2</sub>e with the total net operational emissions, excluding land use change benefits (shown at table 14.5) at 4,161,286 tCO<sub>2</sub>e for the 2027 annualised (modelled opening year) emissions, which is anticipated to reduce to 3,554,118 tCO<sub>2</sub>e for the 2042 annualised (modelled design year DS) emissions [ER 3.7.28]. The Secretary of State is satisfied that the information provided for construction and operation reflects an assessment of the impact of the emissions of the Proposed Development itself. The net carbon emissions would equate to 0.002% of 4CB, 0.001% of 5CB and 0.002% of 6CB [ER 3.7.29]. This means contributions in any of the carbon budgets are expected to be a maximum of 0.002% in the relevant carbon budget. The Secretary of State also considers that the Applicant's approach to cumulative effects is an acceptable way to approach an assessment of the in-combination carbon emission impacts of the Proposed Development for the reasons set out more fully below.
79. The Applicant's climate assessment in the ES concluded that emissions from the Proposed Development, in isolation, would be unlikely to materially affect the UK's ability to meet its carbon budgets and it is not anticipated to give rise to a significant effect on climate in line with paragraph 5.18 of the NPSNN and the DMRB LA 114 [ER 3.7.29].
80. The Secretary of State considers that there is no set significance threshold for carbon but as set out in paragraph 5.18 of the NPSNN, an increase in carbon emissions is not a reason to refuse development unless any increase is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. The question of whether there is a material impact is a judgement to be made by the decision maker. In this case, the Secretary of State is satisfied with the assessment of the Proposed Development's impact on carbon emissions (including cumulative effects), that it complies with the requirements of paragraphs 5.16, 5.17 and 5.18 of the NPSNN and, noting the predicted impact on carbon budgets as set out above, is satisfied that the Proposed Development would be unlikely to materially impact the ability of the Government to meet its carbon reduction targets. The Secretary of State further notes the IEMA Guidance, which 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. The Secretary of State also considers that the Applicant's assessments represent a worst-case scenario [ER 3.7.45 and 3.7.56] and, therefore, as recognised by paragraph 5.18 NPSNN, he considers that the impacts may ultimately be lower than those assessed given the approach taken by the Applicant and the range of non-planning policies adopted by Government which seek to reduce carbon emissions from road transport.

81. 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 that 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 are considered to have negligible effect that it is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.
82. The Secretary of state notes the measures the Applicant will impose to minimise carbon emissions and that the ExA found these to be adequate and no further mitigation was required (ER 3.7.137 - 3.7.145). The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible. Having regard to the foregoing, it is the Secretary of State's opinion that the effects identified in relation to the Proposed Development are considered to be not significant.
83. The Secretary of State notes that the draft revised NPSNN says at paragraph 5.42 that approval of schemes with residual carbon emissions is allowable and can be consistent with meeting net zero. In this respect, insofar as relevant to the Proposed Development, the Secretary of State does not consider there to be a material difference between the requirements of the NPSNN and the revised NPSNN and that emerging policy on carbon emissions does not weigh against granting consent for the Proposed Development.
84. With regard to the Paris Agreement, the UK's Nationally Determined Contributions ('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 Government has set out wider policies and proposals for decarbonising all sectors of the UK economy to meet the 2050 target in 'The Net Zero Strategy: Build Back Greener', published by Government in October 2021, and the Carbon Budget Delivery Plan, published in March 2023, (together referred to as the 'Net Zero Strategy'). It identified how the UK will therefore need to overachieve on 5CB to meet its international climate targets and stay on track for 6CB. This Net Zero Strategy sets out the action Government will take to keep the UK on track for meeting the UK's carbon budgets and the 2030 NDC and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State notes that there has been a successful challenge to the Secretary of State for Energy Security and Net Zero's assessment for the purposes of s.13 Climate Change Act 2008 reflected in the Carbon Budget Delivery Plan (CBDP) and that Government is required to produce a revised CBDP within the next 12 months (see *R (Friends*

*of the Earth) v Secretary of State for Energy Security and Net Zero* [2024] EWHC 995). He has also had regard to the representations made by Winchester Friends of the Earth, dated 13 May 2024, Dr Andrew Boswell, dated 14 May 2024, and Transport Action Network, dated 14 May 2024, which drew attention to this judgement. The CBDP was not quashed and remains government policy and sets out Government's commitment to comply with Carbon Budgets and the NDC in the Paris Agreement. The Secretary of State has no reason to consider that the Proposed Development will hinder delivery of the current Net Zero Strategy or any updated strategy. 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, or net zero in principle, nor will it have a material impact on the ability to meet the national targets, including 5CB (and overachievement in the Net Zero Strategy) or 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. Like the ExA, the Secretary of State is satisfied that the Applicant has, in a robust and comprehensive manner, assessed carbon emissions from the Proposed Development against UK carbon budgets, which are a means for the UK to achieve compliance with the Paris Agreement which has shown a small increase in the magnitude of emissions from the Proposed Development. Like the ExA, he is content that assessment against the carbon budgets is sufficient for consideration of compliance with the UK's international obligations and that, with a contribution of 0.002% towards any carbon budget, the Proposed Development, in isolation, would not have a material impact on the ability of Government to meet said obligations [ER 3.7.123 – 3.7.124]. The Secretary of State notes that Interested Parties consider that the Proposed Development should also be assessed against local targets, but there are no legally binding local targets in force and, for the reasons set out by the Applicant [ER 3.7.42] and the ExA [ER 3.7.142-143] the Secretary of State considers that an assessment at a national level is appropriate and sufficient. In considering the current, designated NPS under section 104 of the 2008 Act the Secretary of State agrees with the ExA that the Proposed Development would be unlikely to cause the UK to be in breach of its carbon budgets [ER 3.7.159 and 3.7.165] and, by extension, international obligations including the obligations contained in the Paris Agreement 2015.

85. The Secretary of State notes the progress report of the Climate Change Committee ("CCC") submitted to Parliament on 23 June 2023. The CCC's advice was that the rate of emissions reductions in the UK will need to significantly increase to meet its 2030 NDC and the 6CB. The CCC advice included a recommendation that the Government should carry out a systematic review of current and future road-building schemes to assess their consistency with environmental goals and to ensure that decisions do not lock in unsustainable levels of traffic growth and develop conditions that only permit schemes to be consented where they are consistent with net zero. The Government responded to the CCC's report on 26 October 2023 stating in particular that National Highways already provides environmental impact assessments to allow consenting authorities to take decisions that are consistent with environmental policy and legislation and that, as set out in the Transport Decarbonisation Plan, the Government will continue to adapt and take further action if needed to decarbonise transport. Whilst the Secretary of

State notes this has been raised by CEPP and WCC [ER 3.7.67 – 3.7.68], the Secretary of State notes that the CCC's advice is not planning policy but is advice to Government, which Government is free to accept or reject. Like the ExA, the Secretary of State considers that the degree of weight given to the CCC's advice is for him to determine as the decision-maker [ER 3.7.72]. The CCC's advice is directed at the issue of achieving compliance with carbon budgets overall and the CCC has not set out any recommendations with respect to individual planning decisions or development consent applications. The approach to development consent applications is set out in the NPSNN. There are other policy mechanisms available outside the 2008 Act and the NPSNN which can address any difficulties in meeting the NDC and/or the 6CB. The Secretary of State therefore gives the CCC's advice neutral weight.

### *Examination Issues*

86. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.7.32.

### *Adequacy of the ES Assessment [ER 3.7.33 – 3.7.62]*

87. The Secretary of State has had regard to the concerns put forward by CEPP regarding the use of the Institute of Environmental Management Assessment guidance [ER 3.7.33 – 3.7.38] and the Applicant's response which notes that, whilst recognising that there is more than one way to assess the impact of emissions of the Proposed Development, the current guidance and legal context is that road schemes should only be assessed against National Carbon Budgets [ER 3.7.39 and 3.7.42]. The Applicant went on to explain its methodology and notes that the Proposed Development would be highly unlikely to undermine securing the Carbon Budget Delivery Plan ("CBDP") [ER 3.7.43]. The Secretary of State agrees with the ExA that the methodology used by the Applicant is acceptable and satisfactory regarding the assessment of the cumulative impact [ER 3.7.62] and that the Proposed Development, as a single project, would be highly unlikely to undermine securing the CBDP [ER 3.7.115]. Notwithstanding the *Friends of the Earth* judgment, for the reasons set out in this section of the Decision Letter, the Secretary of State remains of the view that, in light of the scale of the carbon emissions generated by the Proposed Development and the existence of other non-planning policies in the TDP which will reduce emissions further from those assessed in the ES, granting consent is not inconsistent with the Government's legal obligations under the Climate Change Act 2008, or with its international obligations under the Paris Agreement.

88. The Secretary of State notes the concerns raised by WCC and CEPP regarding the impact of changes to policy relating to the sale of new petrol and diesel cars between 2030 and 2035 announced by the Prime Minister on 20 September 2023 [ER 3.7.44]. In its response, the Applicant explained that the GHG assessment was based on fleet projection data which predated the previous policy, which restricted sales of new petrol and diesel cars unless they had significant zero emissions capability from 2030 and, therefore, the announcement to remove this requirement between 2030 and 2035 (by 2035 a full ban on the sales of petrol and diesel cars will be in place) would not affect the GHG assessment in Chapter 14 of the ES [ER 3.7.45].

89. The Secretary of State has had regard to Dr Boswell's submission on behalf of CEPP regarding cumulative impacts of the Proposed Development and compliance with EIA regulations, as noted by the ExA [ER 3.7.46 – 3.7.49]. The lawfulness of the Secretary of State's assessment of cumulative carbon emissions (based on the Applicant's approach) has been challenged in the courts by Dr Boswell following the making of a number of other DCOs, as outlined at ER 3.7.50. In its judgment dated 7 July 2023 (R (on the application of) Andrew Boswell v Secretary of State [2023] EWHC 1710), the High Court dismissed the claims mentioned by the ExA. This decision was upheld by the Court of Appeal in its judgment dated 22 February 2024 (R (on the application of) Andrew Boswell v Secretary of State for Transport [2024] EWCA Civ 145). This makes clear that the approach to assessing cumulative effects was lawful and complied with the 2017 Regulations and that the Secretary of State had not acted unlawfully in concluding that he had sufficient information to assess the cumulative effects of the road schemes in issue in that case. The approach and methodology adopted by the Applicant for the Proposed Development is the same as that adopted for the A47 road schemes that were considered in the Boswell case. While the Secretary of State appreciates these cases may still be appealed to the Supreme Court, the position of the Secretary of State is that this ruling supports his overall view that the Applicant's assessments and methodology are reasonable and provide a sufficient basis for reaching a conclusion on the likely significant effects of the Proposed Development when taken together with other existing and/or approved projects on climate for the reasons set out by the Applicant [ER 3.7.54] and the ExA [3.7.55-3.7.62].
90. 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 and agrees with the ExA that the environmental assessment carried out for the Proposed Development complies with the 2017 regulations and that the cumulative assessment reported in the ES can be relied upon to have met the legal tests required of it [ER 3.7.62].

#### *Effects of the Proposed Development on Climate Change*

91. The Secretary of State notes the submissions from CEPP stating their position that it is no longer credible to rely on the delivery of net zero in the making of Development Consent Order decision [ER 3.7.63]. CEPP contend that the Applicant's ES states that the Proposed Development would create additional, and very significant carbon emissions which would have a material effect on the ability of Government to reach its carbon reduction targets [ER 3.7.64]. In response, the Applicant stated that it is for the Secretary of State to consider the question of reliance on the deliverability of national targets when deciding whether to make the Order, which CEPP agreed with [ER 3.7.65 – 3.7.66]. As discussed at paragraph 78 – 80, the Secretary of State considers that the Applicant has provided sufficient environmental impact assessments to allow him to take a decision consistent with environmental policy and legislation and that, as set out in the Transport Decarbonisation Plan, the Government will continue to adapt and take further action if needed to decarbonise transport through other policy mechanisms. The Secretary of State notes that the ZEV mandate, which was still subject to public consultation when the Transport Decarbonisation Plan was published, is now in force.

92. The Secretary of State notes the issues raised by CEPP relating to sectoral reduction strategies in the CBDP and the responses provided by the Applicant [ER 3.7.74 – 3.7.76] and agrees with the ExA’s conclusions at ER 3.7.116. The Secretary of State further notes the issues raised relating to the question of whether the Secretary of State is able to reach an adequately reasoned conclusion in relation to climate change, in the context of the 2017 Regulations. Under regulation 21 of the 2017 Regulations, the Secretary of State must reach a “reasoned conclusion” on the significant effects of the proposed development on the environment, which must be based on his Examination of the environmental information provided, and be up to date at the time of the decision as to whether to grant the order. That conclusion is taken to be up to date if, in the opinion of the Secretary of State, it addresses significant effects of the Proposed Development on the environment that are likely to arise as a result of the development described in the application [ER 3.7.79]. For the reasons given by the ExA at ER 3.7.117, the Secretary of State considers that the information provided by the Applicant as regards the environmental impact of the Proposed Development, including that within the ES, is sufficient to reach a reasoned conclusion.
93. For the reasons given at E.R 3.7.157, the Secretary of State agrees with the ExA that the “*latest evidence and risk analysis of the CBDP*” is not required in order for him to be able to reach a reasoned conclusion on whether approving the Proposed Development would lead to a breach of international obligations or statutory duty or be otherwise unlawful. The Secretary of State considers that any issues in terms of delivery risk of the Government’s overall strategy for achieving carbon budgets do not affect his conclusions in respect of the impacts of the Proposed Development in this case, in light of his conclusions on the significance of carbon emissions set out elsewhere in this section.
94. The Secretary of State has had regard to the points raised by CEPP relating to the case of *R (Friends of the Earth) v Secretary of State for Business, Energy, and Industrial Strategy* [2022] [ER 3.7.86 – 3.7.87]. He agrees that the assessments applied in the judgement related to the 2021 Net Zero Growth Plan and did not create a test for individual projects or schemes and he does not consider it to be applicable to the Proposed Development.
95. The Secretary of State notes the issues raised relating to section 104 of the Planning Act 2008 and the assertions made by CEPP that the Secretary of State cannot be certain that, by approving the Proposed Development, the UK would not be in breach of its international obligations, or of any statutory duty, or otherwise be in breach of the law [ER 3.7.91 – 3.7.97]. The Secretary of State agrees with the Applicant’s conclusions on the points raised. In relation to the security of carbon budgets, he agrees that even if there were any uncertainty over the delivery of the 2030 NDC or 6CB, that does not create any certainty that there would be such a breach [ER 3.7.99]. In this case, the construction and operation emissions from the Proposed Development are a very small proportion of the relevant carbon budgets and therefore, even in circumstances where a revised CBDP is to be published and delivery risk in the pathway to meeting carbon budgets on a whole-economy basis will be addressed through that process, the Secretary of State is satisfied that granting consent would not have any material impact on the Government’s ability to comply with carbon budgets. In addition, the Secretary of State is satisfied that

the impact on carbon budgets in percentage terms is likely to be lower than assessed in the ES due to the effects of non-planning policies relating to transport which are now in force (such as the ZEV mandate) or likely to come into force in the future through the TDP.

96. The Secretary of State has had regard to the concerns raised in relation to the relevance of the existing NPSNN paragraph 5.17 as it was written prior to the net zero target, the net zero strategy and the CBDP [ER 3.7.102] however, and as noted at paragraph 15, the currently designated NPSNN remains government policy and continues 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. Furthermore, the Secretary of State agrees that paragraph 5.17 of the designated NPSNN is consistent with the draft revised NPSNN (2024) paragraph 5.39 [ER 3.7.107].

*Proposed Mitigation: Effectiveness and Resilience*

97. The Secretary of State notes that WCC's aim is for the district's emissions to be carbon neutral by 2030 and that, at the close of the Examination, WCC maintained concerns relating to mitigation measures secured by the Proposed Development as set out in the SoCG between WCC and the Applicant [ER 3.7.126] and provided a view on additional opportunities for further mitigation to be achieved [ER 3.7.127 – 3.7.128]. In response, the Applicant said that the mitigation provided for by the Proposed Development is sufficient to ensure that carbon emissions would not be unnecessarily high and that all reasonable steps have been taken to mitigate carbon emissions in accordance with the NPSNN as set out in the ES and that additional mitigation measures are not required [ER 3.7.129 – 3.7.132]. Whilst the Secretary of State notes WCC's Carbon Neutrality Action Plan [ER 3.7.133], he agrees with the ExA that this is local policy, and that impact assessments on NSIP schemes such as the Proposed Development are rightly considered at a national level, as are carbon budgets, and therefore it is appropriate for the Applicant's assessments to reflect existing Government policy on reaching net zero by 2050 [ER 3.7.142 – 3.7.143]. The Secretary of State agrees with the ExA that the mitigation measures relating to design and construction of the Proposed Development are adequate [ER 3.7.145] and that, on the subject of resilience, based on the information provided in the ES, no critical features of the design would be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections as required by paragraph 4.43 of the NPSNN and would therefore be sufficiently resilient to possible future impacts of climate change [ER 3.7.154].

*The Secretary of State's Conclusions on Climate Change*

98. The ExA was satisfied that the Applicant has had regard to the applicable law and policy tests relating to carbon emissions and impacts [ER 3.7.163]. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted. Like the ExA, the Secretary of State does not consider WCC's Carbon Neutrality Action Plan represents an appropriate policy document for

assessing or managing carbon emissions of the Proposed Development, or that it provides justification for the offsetting and further mitigation sought by WCC. He is also satisfied that appropriate mitigation measures would be incorporated into the design and construction phase as discussed above [ER 3.7.165].

99. Overall, the Secretary of State considers that the information provided by the Applicant on the impact of the Proposed Development on carbon emissions (including the cumulative effects of carbon emissions from the Proposed Development with other existing and/or approved projects in relation to construction and operation) is sufficient to understand the impact on carbon emissions, to assess the effect of the Proposed Development on climate matters and represents the information that the Applicant can reasonably be required to compile having regard to current knowledge and in light of the information about the national carbon budgets.

100. Overall, the Secretary of State considers that: the carbon emissions from construction and operation of the Scheme on their own and cumulatively would not have a material impact on Government's ability to meet carbon budgets or the Government's international obligations; the magnitude of the increase in carbon emissions resulting from the Proposed Development is predicted to be a maximum of 0.002% of any carbon budget and therefore represents a very small increase in the overall magnitude of carbon emissions [ER 3.7.161 – 3.7.162]. The Secretary of State is therefore satisfied that granting consent would not have a material impact on compliance with carbon budgets. In addition, 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. There are also a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time such as the TDP, published in July 2021, and help to ensure that carbon reduction commitments are met such as the Net Zero Strategy and revised CDBP which will be published in the next 12 months. The Secretary of State is satisfied that the very small increase in emissions that will result from the Proposed Development can be managed within Government's overall strategy for meeting net zero and the relevant carbon budgets. The Secretary of State considers that the Applicant has presented evidence of appropriate mitigation measures secured in the Order to ensure carbon emissions are kept as low as possible and that the Proposed Development will not materially impact the Government's ability to meet its net zero targets. The Secretary of State is satisfied that the Proposed Development 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.

101. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in a very small increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development needs to be considered in the context of existing and emerging policy and legal requirements to achieve the UK's trajectory towards net zero. The Secretary of State agrees with the ExA that the application should be considered and determined in accordance with existing government policy under the designated NPSNN [ER 3.7.159]. As discussed at paragraph 85 and 91, the Secretary of State considers that the Government has other policy mechanisms by which to meet its legal obligations, and that these policies will



continue to be developed should that be necessary, and agrees with the ExA that the Proposed Development in isolation is unlikely to undermine these efforts [ER 3.7.160].

102. The Secretary of State agrees with the ExA that the proposed mitigation measures are appropriate in both design and construction in accordance with paragraph 5.19 of the NPSNN and would be effective in ensuring the carbon emissions of the Proposed Development will not be unnecessarily high [ER 3.7.165]. Taking this into account the Secretary of State agrees that the Proposed Development would be sufficiently resilient against the possible future impacts of Climate Change [ER 3.7. 166].

103. The Secretary of State notes that the ExA consider that issues relating to climate change were neutral in the decision to make the Order, however, given the increase in emissions that are likely as a result of the Proposed Development, although they are small and not significant in EIA terms, he has instead given them limited negative weight.

### **Flood Risk, Groundwater, and Surface Water**

104. The Secretary of State has had regard to the assessment of the impacts of the Proposed Development on road drainage and the water environment detailed at Chapter 13 of the ES [ER 3.8.14] and notes that it includes the summary and assessment of the Flood Risk Assessment and Water Framework Directive Compliance [ER 3.8.15].

#### *Examination Issues*

105. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.8.28.

#### *Watercourses and Groundwater*

106. The Secretary of State notes that the principal watercourse with the potential to be impacted by the Proposed Development is the River Itchen. As a result of mitigation measures in the first iteration EMP, other watercourses within the environs of the Proposed Development considered are unlikely to be impacted [ER 3.8.29].

107. The Applicant has minimised the impact of the Proposed Development on the River Itchen through the design process and in consultation with the Environment Agency. The Secretary of State notes that necessary elements of the Proposed Development requiring works in, over, or near to the river have the potential to create residual impacts on the river, however, he further notes that the Environment Agency confirmed that the draft Order and proposed mitigations contained within the first iteration EMP are acceptable and minimise the risk of these potential residual impacts during construction [ER 3.8.30 – 3.8.31].

108. The Secretary of State notes that the Environment Agency confirmed in its SoCG that the Proposed Development meets its requirements, and that the Water Framework Directive Compliance assessment shows that the Proposed Development would not result in a deterioration to the status of the River Itchen, nor prevent it from achieving a 'good' status by 2027 [ER 3.8.33 – 3.8.34].

109. The Secretary of State agrees with the ExA that the Applicant has sought to minimise the impact of the Proposed Development on the watercourses within the Order Limits and in the catchment area of the Proposed Development, with the Environment Agency confirming that risk during construction and operation have been assessed appropriately and that the mitigations proposed are acceptable. [ER 3.8.38].

#### *Drainage Design*

110. The Secretary of State notes that, in relation to drainage design, agreement had been reached between the Applicant, HCC and the Environment Agency that the measures proposed were acceptable and the ExA found that the proposed pollution control measures have been accepted by the local authority and the Environment Agency as effectively managing the risk of pollution events in watercourses and groundwater and that these measures are secured in requirement 13 of the Order [ER 3.8.41 – 3.8.42]. As such, the Secretary of State agrees with the ExA that drainage design has been undertaken to the relevant design criteria and complies with requirements for discharge and infiltration rates [ER 3.8.44 – 3.8.45]. The Secretary of State notes that, in its LIR, SDNPA had some concerns regarding the impact of some drainage basins on the landscape character, and has considered these at paragraphs 141 - 142, below [ER 3.8.43 and 3.8.46].

#### *Flood Risk*

111. The Secretary of State notes the Flood Risk Assessment carried out by the Applicant and the conclusions contained within the ES which states that, despite a high to very high level of sensitivity to flood risk, with the implementation of mitigation measures detailed in the first iteration EMP and the drainage strategy, the residual effect associated with flood risk is not significant. These conclusions were accepted by HCC as the Lead Local Flood Authority and the Environment Agency [ER 3.8.49].

112. The Secretary of State notes the sequential and exception tests set out in the NPSNN at paragraph 5.105 to 5.109 [and mentioned in draft revised NPSNN at paragraph 5.127 to 5.128 and 5.143 to 5.145]. Both tests apply in this case and the exception test requires that it be demonstrated that the Proposed Development provides wider sustainability benefits to the community that outweigh flood risk and that a flood risk assessment must demonstrate that the Proposed Development will be safe for its lifetime without increasing flood risk elsewhere and, where possible, will reduce flood risk overall [ER 3.8.50 – 3.8.51].

113. The Secretary of State notes that, in the flood risk assessment, the Applicant concludes that the wider community benefit has been met as detailed in the need for the Proposed Development [ER 3.8.52]. He further notes that the flood risk assessment states that modelling has confirmed that flood risk is not increased as a result of the Proposed Development and that users will not be affected by flooding for the lifetime of the Proposed Development [ER 3.8.52 – 3.8.53], with both the Environment Agency and the Lead Local Flood Authority confirming their agreement with the findings of the flood risk assessment in their SoCGs with the Applicant [ER 3.8.54 and 3.8.56].

114. As such, the Secretary of State agrees with the ExA that the Proposed Development does not give rise to unacceptable flood risk and that the flood risk assessment has fulfilled the requirements set out in the NPSNN as regards the sequential and exception tests [ER 3.8.57].

*The Secretary of State's Conclusions on Flood Risk, Ground Water, and Surface Water*

115. Like the ExA, the Secretary of State is satisfied that the Applicant has adequately addressed the risk and possible effects of flooding, ground water, and surface water for the construction and operation of the Proposed Development and that these can be satisfactorily mitigated and managed [ER 3.8.58]. The Secretary of State agrees with the ExA that the Applicant has shown that the Proposed Development has met the requirements set out in the NPSNN as regards flood risk, groundwater, and surface water, and that the Proposed Development will not result in a deterioration in the Water Framework Directive status of the River Itchen or any other watercourse or prevent achieving Good status by 2027. He notes that there is the potential for temporary negative effects on water quality during construction but there will be an improvement in pollution control in the operational phase due to improved drainage design [ER 3.8.59 – 3.8.64]. As such, the Secretary of State agrees with the ExA that flood risk, groundwater and surface water impacts carry a minor positive weight in favour of the Order being made [ER 5.4.54].

## **Historic Environment**

116. The Secretary of State notes that the Applicant's assessment regarding the historic environment is contained within Chapter 6 of the ES and associated documents and its approach is summarised by the ExA in ER 3.9.14 – 3.9.26. The Secretary of State notes that the Applicant assessment considers the impacts upon designated and non-designated cultural heritage assets (which the Applicant has considered under three subtopics of archaeological remains, historic buildings and historic landscapes) during both construction and operation of the Proposed Development [ER 5.9.14 – 5.9.15].
117. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.9.15.

*If the potential harm to historic assets has been adequately assessed*

118. The Secretary of State notes SDNPA agreement with the conclusion of the ES Chapter 6 acknowledging that adverse impacts on buried assets will occur but these can be satisfactorily mitigated. WCC in their LIR confirmed it found the ES assessment and conclusions valid and appropriate [ER 3.9.28].
119. The Secretary of State has taken note of the Applicant's consultation with the appropriate authorities, including Historic England, regarding the Historic Environment. Whilst there were some detailed questions and comments from WCC and SDNPA in their LIRs which were subject to further consultation, there were no other specific references or issues raised by Interested Parties (IPs) relating to historic environment [ER 3.9.31] and at the close of the Examination, the SoCGs with WCC, SDNPA and Historic England confirmed that all issues relating to cultural heritage were agreed [ER 3.9.33].

### *Archaeological remains including Scheduled Ancient Monuments*

120. The Secretary of State notes the Applicant has detailed the archaeological remains, and the effect of the Proposed Development on them, within the application boundary and a study area of 1km from the application boundary [ER 3.9.34]. The ES refers only the site of St Gertrude's Chapel Scheduled Ancient Monument (SAM) is likely to be subject to an impact on a small part of the wider setting during both the construction and operational phases [ER 3.9.35]. The Secretary of State notes whilst there were no specific concerns raised by IPs relating to archaeological remains, the ExA was asked to visit St Catherine's Hill SAM and the Dongas Ancient Trackway, which is broadly coincident with the Roman Road SAM detailed in the ES. The ES concluded that neither will be impacted by the Proposed Development [ER 3.9.38]. The ExA also concluded that there would be temporary and permanent slight adverse impacts on the site of St Gertrude's Chapel SAM [ER 3.9.41]. The Secretary of State agrees with the ExA's conclusions.

### *Built Heritage*

121. The Secretary of State notes the Applicant has also considered the historic buildings and conservation areas that are within the application boundary and the study area of 1km from the application boundary [ER 3.9.42]. The Secretary of State notes only Worthy Park House which is a Grade II Listed Building and Abbots Worthy and Kings Worthy conservation areas along with associated Grade II listed buildings (as referenced in Table 6.11 of ES Chapter 6) are likely to be subject to an impact [ER 3.9.43].

122. The Secretary of State agrees with the ExA that the Applicant's assessment in respect of the built heritage effects have considered relevant historic environment aspects [ER 3.9.51] and the Applicant's assessment on the designated built heritage assets in relation to both construction and operation of the Proposed Development and this is supported by agreement from Historic England [ER 3.9.52]. He agrees with the ExA that in respect of both Kings Worthy and Abbots Worth Conservation Areas, there will be a likely temporary and permanent impact which is not significant and in respect of Worthy Park House, he agrees there will be a negligible impact which is not significant [ER 3.9.53].

### *Historic Landscape*

123. The Secretary of State notes there are no designated historic landscapes within the study area of the Proposed Development and agrees with the Applicant's assessment of the effects on the non-designated historic landscapes in relation to both construction and operation phases which is supported by agreement from Historic England [ER3.9.62]. The Secretary of State agrees with the ExA the assessment of the non-designated historic landscapes as having temporary and permanent neutral to moderate impacts which are not significant [ER 3.9.63].

### *Recording and storage of archaeological assets and finds*

124. The Secretary of State notes that concerns were raised by WCC and SNDPA supported by Historic England about the recording and storage of finds and additionally how outreach and public engagement was secured within the

Order. The ExA found the primary issue related to available archive space and funds required to ensure that records and finds could be stored adequately without resources and funding required from local authorities [ER 3.9.68]. The Secretary of State notes during the Examination this was resolved between the parties and addressed in requirement 9 in the Order [ER 3.6.69].

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

125. The Secretary of State agrees with the ExA that the Applicant has fully addressed the possible effects on the historic environment and assets for the construction and operation of the Proposed Development and has demonstrated that such effects associated with the Proposed Development can be satisfactorily mitigated and managed [ER3.9.72]. Overall, the ExA concluded that for each of the designated heritage assets that the proposed development would result in less than substantial harm to the significance of those assets [ER 3.9.76 and 3.9.77]. The Secretary of State agrees with the ExA that the harm identified falls to be weighed against the public benefits of the proposed Development as required by paragraph 5.134 of the NPSNN [ER 5.4.62] and this is considered in the Planning Balance section below.

### **Landscape Impact, Visual Effects and Design**

#### *Section 245 of the Levelling-up and Regeneration Act*

126. Section 245 of the Levelling-up and Regeneration Act 2023 (“the 2023 Act”) amends section 11A of the National Parks and Access to the Countryside Act 1949 (“NPAC Act”) so as to impose a duty on relevant authorities, including the Secretary of State, to seek to further the purposes of National Parks. With regard to National Parks, which are relevant to this matter, the relevant purposes are set out in section 5(1) of the NPAC Act: conserving and enhancing the natural beauty, wildlife and cultural heritage of national parks and promoting opportunities for the understanding and enjoyment of the special qualities of national parks by the public. Before the amendment made by section 245 came into force, there was a duty to “have regard” to those purposes.

127. Chapter 7 of the ES outlines the effects of the Proposed Development in relation to landscape and visual matters, as summarised at ER 3.10.27 – 3.10.36, with the overall outcome of the assessment concluding that there would be a moderate adverse and significant effect on landscape and visual amenity as a result of the Proposed Development in the short to medium term whilst proposed mitigation is establishing, with the effects reducing to slight adverse and not significant in the long term [ER 3.10.36].

128. The Secretary of State notes the design features set out in the ES Non-Technical Summary have avoided adverse effects wherever practicable and reduces residual effects through appropriate mitigation measures identified in Figure 2.3 (Environmental Masterplan) of the ES [ER 3.10.37].

129. In his consultation letter of 8 March 2024, the Secretary of State invited the Applicant to provide comments on the implications of the 2023 Act from their perspective, and how he could be satisfied that the Proposed Development meets the requirements applied by the amendments made by the 2023 Act as regards section 11A of the NPAC Act. In their response dated 15

March 2024, the Applicant considered that some meaning must be applied to the words “seek to” until such a time that there is guidance and regulations to assist in the application of the duty, and the Secretary of State agrees. Furthermore, the Applicant stated that throughout the design of the Proposed Development measures to conserve and enhance the natural beauty, wildlife, and cultural heritage of the National Park and measures to promote understanding and enjoyment had been incorporated.

130. In his consultation letter of 22 March, the Secretary of State invited the SDNPA and other Interested Parties to comment on the Applicants letter of 15 March 2024. The Secretary of State notes that the SDNPA in their response of 5 April 2024 contend that the Applicant cannot have taken all reasonable steps to further the statutory purpose of the National Park and directing him towards Examination submissions which the SDNPA had previously submitted, including the location of, and design of, the construction compound.

#### *Examination Issues*

131. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.10.42.

#### *Effects on the Landscape Character During Construction and Operation*

132. The Secretary of State notes the SDNPA’s position as set out at ER 3.10.43 – 3.10.48, and notes that, in the opinion of the SDNPA, the Proposed Development would not be in accordance with national policies and a number of the policies within the South Downs Local Plan and would not meet the statutory purpose of conserving and enhancing the National Park. The Secretary of State has had regard to the Local Impact Report provided by the SDNPA wherein it sets out the negative impacts it has identified as a result of the Proposed Development, the seven special qualities of the National Park, and the designated boundary of the National Park. The Secretary of State notes that the designated boundary of the National Park includes the area to the north and west of the M3 due to the high-quality chalk landscape and the River Itchen [ER 3.10.44 – 3.10.46].

133. The Secretary of State notes that, whilst the SDNPA was supportive of the provision of improved access for walking, cycling and horse-riding in to the National Park which would contribute to the second purpose of the SDNP, it was critical of the alignment selected for the proposed bridleway between Easton Land and Long Walk, and consider that the land-take from the National Park as a result of the Proposed Development would result in significant adverse and permanent impacts on its special qualities and is therefore not in accordance with either National or Local policies or the statutory requirement to conserve and enhance [ER 3.10.47 – 3.10.48].

134. The Secretary of State notes the main negative impacts identified by the SDNPA as those summarised at ER 3.10.48, and has considered them each in turn below:

#### *Earthworks/Changes to Topography*

135. The Secretary of State notes the concerns of the SDNPA as set out in its Local Impact Report as regards earthworks and changes to topography, wherein it states that greater consideration should be given to landform proposals to ensure more seamless integration with the existing landscape [ER

3.10.49 – 3.10.50]. In response, the Applicant provided additional information on their proposals, contending that the placement of site-gained material provides for the basis of chalk grassland to better integrate the Proposed Development into the existing open rolling chalk downland landscape and to maximise screening of the existing M3 and the Proposed Development from the National Park [ER 3.10.51] which constitutes a positive use of this material to minimise land take, maximise visual screening and respond to the landscape characteristics of the National Park [ER 3.10.58].

136. The Secretary of State notes that, following consultation and engagement with the SDNPA developed proposals to avoid and minimise effects the removal of proposed artificial earthworks and removal of spoil deposition areas. The site-gained material would be used to aid visual screening of the highway corridor through the implementation of sympathetically designed earthworks which reflect the existing landform in supporting visual screening and integrating the highway corridor into its landscape context and this approach has reduced the footprint of the Proposed Development in the National Park [ER 3.10.52]. The Design and Access Statement contains a principle that earthworks would be sympathetic to the downland, and Figure 2.3 Environmental Masterplan of the ES shows the contours of placed material. While there would be a 9m fill in some areas, it would be limited to those areas where there would be a false cut. The design solution is to place the material over a sufficient area size to blend deposits into the landforms, reflecting the existing variable profiles [ER 3.10.54]. The Applicant submits that visibility analysis and the production of visualisations has identified that once landscape mitigation on these slopes has established, the earthworks would not be a dominant feature. This would be further mitigated by proposed woodland features reflective of the surrounding characteristic features found within the river valley and would further integrate the earthworks. The Secretary of State notes the added environmental commitment by the Applicant in the first iteration EMP to further explain the design intent and further develop the earthwork profiles during detailed design [ER 3.10.56].

137. The ExA considered that excavated material would be spread over a sufficient area with an appropriate volume of deposited material so that resulting changes to the topography would be reflective of the existing profiles and blend in to the landforms [ER 3.10.60]. Based on the proposed design and mitigation measures secured in the Order, the Secretary of State agrees with the ExA's conclusion that, whilst there would be a significant adverse effect on the landscape during construction and immediately following the construction of the Proposed Development, but once the mitigation has become established, the earthworks and topography will not have any significant adverse effects on the surrounding landscape [ER 3.10.62].

#### *Loss of Existing Vegetation and Proposed New Planting*

138. At the close of Examination, the SDNPA maintained concerns relating to vegetation loss and tree removal along the eastern edge of the M3 which currently provides screening and a buffer between the National Park and the motorway, and that this would have a significant detrimental effect on the landscape when considered in combination with the proposed increased height of the new junction elements [ER 3.10.63 – 3.10.64]. SDNPA also stated that the proposed width of tree planting along the eastern edge of the M3 would be

only 10m wide which they submitted was unlikely to be sufficient to provide a robust level of screening of the road infrastructure and activity and sought strengthening of the requirements in the order to ensure that tree planting along the eastern edge of the motorway would be no less than 25m in width and that at least half of this planting would occur on top where it would be more elevated and would provide a more effective screen [ER 3.10.65 - 3.10.66]. In response, the Applicant stated that the area where planting is less than that currently provided was relatively small, and required by the topography of the location, with planting located on the edge of the defined Open Downland landscape where topography profiles steepen. The first iteration EMP was updated during the Examination to provide additional commitments LV25 and LV26 in the REAC Table 3.2 to provide for additional woodland planting to support environmental visual screening and provide a total width of planting of 25m [ER 3.10.67 – 3.10.70].

139. The Applicant's closing statement points out that the SDNPA acknowledge that most of the proposed vegetation loss was unavoidable as it relates to vegetation within the footprint of the currently proposed works and requested that advanced planting was undertaken to minimise the opening-up of views as much as possible [ER 3.10.72]. In response, the Applicant provided additional materials to confirm the extent and reasoning for the inclusion of advanced planting and further amended LV16 of the first iteration EMP to provide for the advanced planting of new woodland and scrub/shrub planting to be undertaken for specified landscape plots and would be secured by requirements 3, 5 and 6 in the Order [ER 3.10.73 – 3.10.74].

140. The Secretary of State recognises that there would be an unavoidable loss of vegetation as a result of the Proposed Development [ER 3.10.75 – 3.10.76] which will have residual significant effects in the medium term. However, these will reduce to a slight adverse and not significant effect in the long term due to the proposed mitigation [ER 3.10.77]. The Secretary of State agrees with the ExA that the loss of this vegetation will open up views of the motorway corridor and the new infrastructure at the outset resulting in harm to the landscape in the short to medium-term. Whilst he notes the concerns of the SDNPA, he is satisfied that the proposed mitigations will result in effects that in the long term will not be significant [ER 3.10.79 – 3.10.81].

#### *The Impact of the Proposed Swale and Attenuation Ponds upon the Open Downland of the National Park*

141. The Secretary of State has had regard to the concerns raised by the SDNPA relating to the swale and attenuation ponds, contending that they would have a negative impact that, even with the proposed planting, would not restore the existing character of the National Park [ER 3.10.82 – 3.10.84]. In response, the Applicant stated that the basins and swale would have a form comparable to the existing chalk landscape and that the Proposed Development requires drainage features to the east of the highway to collect the natural flow of water in the surrounding areas, with two basins within the National Park boundary [ER 3.10.85 – 3.10.86]. The Secretary of State notes the consideration given to ensure sympathetic landform and mitigation of these basins as detailed at ER 3.10.87 – 3.10.92 and the Applicant's position that the introduction of planting at Basin 5 supports the integration of the Proposed Development into its



surroundings, supports the conservation of the wider National Park, and supports habitat connectivity [ER 3.10.93].

142. The Secretary of State agrees with the ExA's conclusion that the area of one of the basins (Basin 5) within the National Park acts as one of transition between two landscape character types and that, therefore, proposed planting could be successfully integrated and provide appropriate mitigation in the context of the existing local character, in contrast to the submissions of the SDNPA [ER 3.10.99 – 3.10.102]. He further notes that, in respect of a second basin, Basin 6, the form would have similar properties to the surrounding landscape and would be imperceptible within the landscape once mitigation had been established [ER 3.10.103 – 3.10.104].

#### *The Landscape Impact of the Proposed Construction Compound*

143. The Secretary of State notes that, following statutory consultation, further work was undertaken to reduce the impact of the main construction compound [ER 3.10.105].
144. The Secretary of State has had regard to the Applicant's position explaining how the sensitivity of the National Park has been determined, as detailed in Chapter 7 of the ES, noting the decision to consider the National Park as a whole and adopting a worst-case position considering its qualities and their influence. He has also taken account of the Applicant's contention on the application of paragraph 5.150 of the NPSNN that it does not apply to every individual element of the Proposed Development in isolation but the collective development as a whole which was why greater weight was not afforded to the impact of the construction compound in isolation on the SDNP given the context of the existing junction, the Proposed Development and the construction activity that would take place at this location [ER 3.10.106 – 3.10.107].
145. The SDNPA noted concerns in its Local Impact Report and SoCG with the Applicant relating to the proposed location of the construction compound, stating that it would be an unacceptable incursion beyond the boundary of the existing highway and exacerbate the impact of the Proposed Development on the National Park [ER 3.10.108]. In response, the Applicant identified the Area of Theoretical Visibility of the proposed construction compound as detailed at ER 3.10.109 – 3.10.112 and contended that a sensitive layout of the construction compound would minimise the visual effects as far as reasonably practicable [ER 3.10.113]. The Applicant also explained that they were seeking to minimise temporary reprofiling of the existing topography by locating cabins parallel to contours and ensuring that any static units within the compound would be single storey (not exceeding a height of 4m), as secured at requirement 15 in the Order [ER 3.10.115 – 3.10.116]. The Applicant in its indicative construction compound layout plan demonstrates that the Applicant would be able to locate the fixed elements lower in the landscape to respond appropriate to the site topography and ensure that visual effects would be minimised as far as reasonably practicable and that the proposed mitigation included in requirement 15 would serve to mitigate the adverse impact of the construction compound to an extent [ER 3.10.122 – 3.10.123]. Having consideration of the SDNPA's concerns, the Secretary of State agrees with the ExA that the impact of the construction compound in the proposed location would not materially increase the overall effects on the SDNP arising from the

wider construction activity, but that the overall adverse effects during the construction period and until restoration would be significant, regardless of the mitigation measures in place [ER 3.10.129].

#### *The Provision of Chalk Grassland as Mitigation*

146. The Secretary of State notes that chalk grassland is proposed as a form of mitigation and that, whilst supportive of the principle, the SDNPA has expressed some concerns that the proposals for the area east of the M3 to be managed as chalk grasslands would not correspond to the existing landscape and exacerbate the impacts of the Proposed Development. It instead seeks for all fields east of the M3 to be reverted to chalk grassland [ER 3.10.130 – 3.10.132]. Furthermore, the SDNPA questioned the long-term viability of some of the chalk grassland due to management requirements [ER 3.10.133]. In response, the Applicant disagreed with the need to provide additional chalk grassland, stating that the design proposals reflected the need to balance land-take within the National Park, the impacts on agricultural land, and provision of appropriate mitigation [ER 3.10.134 – 3.10.136]. The Applicant considered that further mitigation was not required, and that while it had discussed the use of Designated Funds to provide further grass chalkland, this did not form part of the application as submitted [ER 3.10.140]. The Secretary of State notes that, given the extension of the grassland beyond that proposed by the Applicant would result in the loss of additional BMV agricultural land, the ExA considered the proposed mitigation to be entirely reasonable and appropriate [ER 3.10.143].

147. The Secretary of State notes the Outline Landscape and Ecological Management Plan includes outline requirements for proposed landscape elements, including their management and maintenance, and outlines the rationale for the selection of planting stock [ER 3.10.137] and notes the Applicant's commitment to these measures as secured by the Order, in the ES, and first iteration EMP, the latter of which will be refined and updated in consultation with the SDNPA for inclusion in the second iteration EMP [ER 3.10.138 – 3.10.139]. The ExA was content that the arrangements in relation to management, maintenance and monitoring of the chalk grassland were secured by means of the Outline Landscape and Ecological Management Plan as secured by requirements 3, 5, and 6 of the Order [ER 3.10.144].

148. The ExA did, however, consider that amendments needed to be made to requirement 6(3) of the Order to extend the requirement to replace chalk grassland that had not established from 5 to 10 years [ER 3.10.144]. The Secretary of State consulted the Applicant on changes to requirement 6 in his letter of 8 March 2024, and requested that the SDNPA comment on the response in his letter of 22 March 2024. This is discussed further at paragraph 156 – 157.

149. Like the ExA, the Secretary of State considers that the chalk grassland as proposed by the Applicant is sufficient and would provide ecological mitigation that would contribute to biodiversity net gain for the Proposed Development, and would provide landscape mitigation and enhancement in this location and that these are appropriately secured, as discussed above [ER 3.10.146 – 3.10.147].

#### *The Tranquillity of the National Park*

150. The Secretary of State notes that tranquillity is one of the seven special qualities of the National Park, and that SDNPA policy states that development proposals in the National Park will only be permitted where they conserve and enhance relative tranquillity [ER 3.10.148 – 3.10.149]. Whilst noting that construction hours of working have been agreed, the SoCG between SDNPA and the Applicant stated that the extent of low noise road surfacing to be provided has not been agreed, with SDNPA seeking an extension to the use of low noise road surfacing throughout the Order limits. The Applicant's position remained that low noise road surfacing is only proposed for new road surfaces to be laid as a result of the Proposed Development [ER 3.10.150 – 3.10.151]. The Secretary of State has had regard to Chapter 7 of the ES which states that there would be an adverse effect on tranquillity in the immediate environs of the Proposed Development during construction and early in operation, however it is predicted that there will be no adverse effects on tranquillity once landscape mitigation has established [ER 3.10.152]. The Applicant considers that, in combination with this mitigation, landform modifications would result in some reduction in audibility and considers that the Proposed Development seeks to positively respond to the National Park's special qualities, including tranquillity [ER 3.10.153]. The Secretary of State notes, however, that the SDNPA considers that, even at Year 15, there would be a reduction in tranquillity as a result of the Proposed Development [ER 3.10.150].
151. Requirement 14 of the Order as drafted by the Applicant ensured that the Proposed Development could not commence before written details of proposed noise mitigation, including low noise surfacing, have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authorities. Noting that tranquillity is one of the special qualities of the National Park, the Secretary of State has amended requirement 14(1) to ensure that the SDNPA are consulted not only on the parts of the Proposed Development that fall within the National Park, but also the areas adjacent to it.
152. The Secretary of State agrees with the ExA that the Applicant has evidenced how the special qualities, including tranquillity, have informed the design of the Proposed Development, with the proposed mitigation measures providing satisfactory mitigation for the effects on tranquillity and some beneficial effects in the long term [ER 3.10.155 – 3.10.159].
153. The ExA considered that the provision of low noise surfacing in the Proposed Development was reasonable, and that it was not necessary for all roads in the National Park to be provided this surfacing as sought by the SDNPA. The Secretary of State agrees. Like the ExA, the Secretary of State considers that it is reasonable to specifically provide for consultation on noise mitigation measures and, whilst he accepts the suggested inclusion of such a requirement within the Order, has amended the drafting of this requirement to specifically include the SDNPA as detailed at paragraph 285 of this letter [ER 3.10.158].

*The South Downs National Park International Dark Sky Reserve*

154. The Secretary of State notes that the National Park is an International Dark Sky Reserve [ER 3.10.160]. The SDNPA were supportive of the general approach by the Applicant to avoid and minimise the impacts of lighting during

construction and operation of the Proposed Development and the commitments in the first iteration EMP that lighting would be designed in consultation with the SDNPA and in accordance with the SDNPA's Dark Skies Technical Advice Note Version 2 (May 2021). However, the Secretary of State notes that there is some disagreement between the Applicant and the SDNPA in relation to the lighting assessment methodology, including the Dark Night Skies [ER 3.10.161 – 3.10.162]. The Secretary of State has had regard to the information in Chapter 7 of the ES and the first iteration EMP as set out at EMP 3.10.163 – 3.10.165, and notes the Applicant's conclusion that there would not be a noticeable or attributable change to the dark sky conditions in the National Park as a result of the Proposed Development [ER 3.10.164]. Like the ExA, the Secretary of State is satisfied that there would be no discernible change in the dark sky conditions, and therefore the Proposed Development is consistent with South Downs Local Plan Strategic Policy on dark night skies [ER 3.10.166].

#### *Long-term Effects on the National Park*

155. The Secretary of State has had regard to Chapter 7 of the ES, wherein the Applicant states that, although in the short to medium term there are moderate adverse and significant effects on landscape and visual amenity as a result of the Proposed Development, this reduces to a slight adverse and not significant effect in the long term as landscape mitigation planting establishes to aid landscape integration and provide visual screening [ER 3.10.167]. The Secretary of State notes, however, that this is a source of disagreement between the Applicant and the SDNPA, where the SDNPA questions the reliability of the judgements reached by the Applicant on the long-term impact on the National Park despite additional information provided by the Applicant [ER 3.10.168 – 3.10.169]. The Secretary of State has had regard to the concerns raised by the SDNPA as detailed at ER 3.10.170 – 3.10.175, and notes that it considers there would be a significant residual and permanent adverse effect on the National Park as a result of the Proposed Development [ER 3.10.175].

156. The Secretary of State notes the Applicant's response, stating that it maintained the view that the effects of the Proposed Development on the National Park would not be significant in the long term once mitigation measures had established, with the vegetation belt providing necessary screening effects [ER 3.10.176 – 3.10.177]. The Secretary of State notes the amendments made by the Applicant to secure additional mitigation as discussed at paragraph 136 and 138 above and further notes the amendments sought by the SDNPA to requirement 6(3) of the Order [ER 3.10.178 – 3.10.179]. The Secretary of State notes that the ExA consider the amendments sought by the SDNPA were appropriate to ensure that proposed mitigation becomes successfully established, and therefore considered that a period of 10 years should be required given the sensitivity of the National Park [ER 3.10.183]. Whilst the Secretary of State agrees with this assessment, in his consultation letter of 22 March 2024, he requested that the SDNPA clarify the wording in the proposed requirement 6(3) as he considered the wording to be imprecise and unclear. In response the SDNPA stated that the wording of 'other elements' was intended to capture the other types of planting, such as chalk grassland and confirmed it would be content with the removal of 'other elements' from requirement 6, provided chalk grassland was added. The

Secretary of State has therefore amended requirement 6 in line with this to provide the precision and clarity required of such instruments.

157. The ExA also considered that the addition of a requirement 6(4) was required to provide further clarification on the need to replace vegetation that have not established after ten years to exclude those removed in accordance with approved landscape maintenance. In his consultation letter of 8 March 2024, the Secretary of State asked the Applicant to comment on the inclusion of this additional requirement. In response, the Applicant welcomed the inclusion of the requirement and the additional clarity it provided. When requested to respond on this point in the Secretary of State's consultation letter of 22 March 2024, the SDNPA provided no comment and therefore the Secretary of State considers this matter to be agreeable to all parties and has included requirement 6(4), as drafted, within the Order.

158. Given the above, the Secretary of State agrees with the ExA's conclusion that the reported effects on the National Park would not be significant in the long term once mitigation measures have sufficiently established, and he is content that these are appropriately secured within the Order as previously discussed [ER 3.10.188].

#### *Approach to Design*

159. The Secretary of State notes that, at the close of Examination, the SDNPA did not support the current draft Design Principles Report, the development of which would be secured by requirement 12 of the Order, and sought more detailed information that would be used to inform and guide the next design stage and how the different elements of the Proposed Development would support the special qualities of the National Park, specifically Policies SD4: Landscape Character and SD5: Design [ER 3.10.189 – 3.10.191]. The SDNPA and WCC suggested that further iterations of the Design Principles Report should require agreement by the relevant planning authorities and SDNPA prior to the detailed design stage and any construction commencing on site, and that these provisions should be secured within the Order [ER 3.10.192]. In response, the Applicant did not consider that it was necessary to include additional requirements within the Order as the preliminary design was developed in accordance with the Design and Access Statement which sets out design principles [ER 3.10.193].

160. The Secretary of State notes that the Design Principles Report makes a commitment that key design principles will be maintained and further developed in detailed design and delivery of the Proposed Development in accordance with the requirements set out in the NPSNN at paragraphs 4.28 – 4.35 and 5.194 [ER 3.10.194]. Having considered the concerns raised by the SDNPA and WCC in relation to design, the Secretary of State agrees with the ExA that the Design Principles Report is satisfactory for the reasons set out at ER 3.10.196 – 3.10.198. As such, like the ExA, the Secretary of State is content that the approach to design for the Proposed Development reflects the NPSNN guidance and design has been an integral consideration for the Proposed Development from the outset [ER 3.10.201].

#### *Whether the Proposed Development Constitutes Significant Road Widening or the Building of New Roads in a National Park*

161. The Secretary of State has had regard to the relevant sections of the NPSNN relating to the construction of new roads and significant road widening schemes, [para 5.152 in the NPSNN] and notes the strong presumption against any significant road widening or the building of new roads and strategic rail freight interchanges in a National Park unless there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly.
162. Whilst he notes that the SDNPA considers that the Proposed Development consists of both significant road widening and the construction of new roads [ER 3.10.202], having had regard to the Applicant's response, he agrees with the ExA that the Proposed Development is distinct from 'significant road widening' due to the relatively short distances of widening that will occur within the National Park, and agrees that the works within the National Park are appropriately defined as new links, alignments, slip roads and a new roundabout, roundabout. He also agrees that the works are distinct from 'new roads' for the same reasons set out by the ExA in ER 3.10.218 and that the most reasonable interpretation of NPSNN paragraph 5.148 is that 'building of new roads' implies the meaning to be entirely new roads that create a new route from one place to another [ER 3.10.216 – 3.10.218]. As such, the Secretary of State agrees that the test set out in NPSNN paragraph 5.152 is not applicable, nor does the Proposed Development fall within the scope of paragraph 5.148 [ER 3.10.219]. Although the tests as described above do not apply in the case of the Proposed Development, the Secretary of State notes that, having considered the overall planning balance in paragraphs 265 - 271 below, the benefits of the Proposed Development would very strongly outweigh the disbenefits.

*The Secretary of State's Conclusions on Landscape Impact, Visual Effects and Design*

163. As discussed above, the Secretary of State is content that the Applicant's approach to design reflects the NPSNN guidance, and design has been included as an integral element of the Proposed Development from the outset. He agrees with the ExA that, in accordance with NPSNN paragraph 4.32, the Proposed Development will be sustainable and as aesthetically sensitive, durable, adaptable, and resilient as it could reasonably be [ER 3.10.220]. Furthermore, the Secretary of State agrees with the ExA that the design approach taken by the Applicant will minimise the impact of the Proposed Development on the natural beauty, wildlife, and cultural heritage of the National Park over the long-term, consistent with the aims of the policies within the South Downs Local Plan. Like the ExA, he considers that design carries neutral weight in the planning balance [ER 3.10.221].
164. As discussed above, the Secretary of State agrees with the ExA that the Proposed Development should not be considered to be a 'significant road widening scheme' nor does it include 'new roads' for the purposes of the NPSNN. The strong presumption against any significant road widening or the building of new roads does not therefore apply to the Proposed Development [ER 3.10.223].
165. Regarding visual impacts and the character of the landscape of the National Park, like the ExA, the Secretary of State considers that once mitigation has established that the earthworks and associated topographical

changes, there would not be any significant adverse effects on the surrounding landscape [ER 3.10.224]. Whilst acknowledging that, in the short to medium term, there is a series of significant residual effects due to the loss of vegetation, like the ExA, the Secretary of State is content that the long-term effects would not be significant [ER 3.10.225] and considers that mitigation measures for the proposed swales and attenuation ponds will support the integration of the Proposed Development into its immediate surrounding and the conservation of the wider National Park and, in some cases, be imperceptible once mitigation has established [ER 3.10.226 – 3.10.227]. Furthermore, like the ExA, the Secretary of State considers that the proposed chalk grassland is entirely satisfactory and proportionate and provides landscape mitigation, some landscape enhancement and would contribute to an overall biodiversity net-gain for the Proposed Development in accordance with paragraph 5.153 of the NPSNN and paragraph 5.173 of the draft revised NPSNN [ER 3.10.230 – 3.10.231].

166. Regarding the proposed temporary construction compound, whilst the Secretary of State agrees with the ExA that the Applicant has taken appropriate steps to minimise the landscape impact and visual effects on the National Park, he also agrees that the overall adverse effects during construction will be significant even after mitigation measures [ER 3.10.228 – 3.10.229].

167. The Secretary of State agrees with the ExA that the effects of the Proposed Development on tranquillity, though adverse during construction and the early stages of operation, would ultimately result in no adverse effect in the long-term, and therefore this is consistent with the aims of the South Downs Local Plan policy on tranquillity [ER 3.10.232]. Furthermore, the Secretary of State agrees that there would be no discernible change to Environmental Light Zones or the dark skies of the National Park as a result of the Proposed Development [ER 3.10.233].

168. Whilst he notes that there is a significant adverse effect on Landscape and Visual Amenities during construction and the early stages of operation, the Secretary of State agrees with the ExA that these would reduce to slight adverse and not significant in the long-term, once mitigation measures secured in the Order have established to aid landscape integration and provide visual screening [ER 3.10.235 – 3.10.236].

169. Taking into consideration the above, the Secretary of State agrees with the ExA that, overall, and in the long-term, the Proposed Development will conserve the landscape and scenic beauty of the National Park and would not adversely affect its statutory purposes to which the Secretary of State has a statutory duty to have regard [ER 3.10.237]. Furthermore, and whilst he notes the response from the SDNPA and other Interested Parties to his consultation letter of 22 March 2024 as discussed above, the Secretary of State considers that, where possible, the Applicant has sought to enhance the purposes of the National Park and, has evidenced compliance with the policies of the South Downs Local Plan. In particular, the Secretary of State considers that the biodiversity net-gain afforded by the Proposed Development and the associated landscape enhancement provided by the chalk grasslands provide evidence that the Applicant has sought to further the purposes of the National Park. The Secretary of State, in making his decision, has also applied the duty

of seeking to further those statutory purposes. In the absence of further definitive guidance published by the Department for the Environment, Food and Rural Affairs, the Secretary of State is satisfied that the Applicant has sought to do so, for the reasons mentioned above. Whilst the Proposed Development will result in some harms (as identified above) the Secretary of State is satisfied that on the specific facts relating to the Proposed Development and in the absence of viable or less harmful alternatives (as considered at paragraphs 24 - 28), all necessary steps have been taken to seek to further the relevant purposes and to comply with the statutory duty in this particular case.

170. Having had regard to NPSNN paragraph 5.150, the Secretary of State attaches substantial weight to the impact of the Proposed Development on the National Park. Considering the mitigation measures taken by the Applicant discussed above, he considers that the statutory purposes and natural beauty of the landscape of the National Park are not significantly impacted by the Proposed Development in the long term, once mitigation measures have established, but notes the moderate adverse and significant effects in the short to medium term [ER 3.10.238]. The Secretary of State considers that the revised NPSNN would not support a different outcome in this case.

171. Taking in to account the duration of the harms to the National Park as a result of the Proposed Development and in accordance with paragraph 5.150 of the NPSNN, the Secretary of State agrees with the ExA that the issue of landscape impacts, visual effects and design carries moderate weight against making the Order [ER 3.10.239].

### **Noise and Vibration**

172. The Secretary of State notes the assessment on noise and vibration effects conducted by the Applicant as set out in Chapter 11 of the ES, including the mapped study area [ER 3.11.7], and that the assessment has been undertaken in accordance with DMRB LA 111 Noise and Vibration (Highways England, 2020) [ER 3.11.8]. The Secretary of State has had regard to the impacts set out in the ES, detailed at ER 3.11.9 – 3.11.26, on noise and vibration effects during construction and operation as a result of the Proposed Development and associated mitigations.

### *Examination Issues*

173. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.11.27.

### *Tranquillity of the National Park*

174. The Secretary of State has considered the impacts, including noise, of the Proposed Development on tranquillity at paragraphs 150 - 153, in the Landscape Impact, Visual Effects and Design section above.

### *Construction Noise and Vibration*

175. The Secretary of State notes that construction noise and vibration was raised as a concern by some parties during Examination [ER 3.11.32 – 3.11.33]. He further notes that, in their Local Impact Reports, WCC and the SDNPA had no objections to the assessment methodology used by the Applicant [ER 3.11.34]. The Secretary of State has had regard to the noise and vibration mitigations contained within the first iteration EMP following an



indication from WCC of not being willing to confirm their acceptance of the proposed mitigation and notes that the SoCG between the two parties stated that the first iteration EMP contained sufficient mitigation measures and commitments to ensure that noise issues could be managed subject to further consultation and detail in the second iteration EMP [ER 3.11.35].

176. The Secretary of State notes that, whilst it is accepted that a full understanding of the type and number of noise generating activities and plant and machinery is not known at this stage of the design development, the assessment carried out by the Applicant was, in its view, a likely worst-case scenario with further details being presented in the construction noise and vibration plan as part of the consultation for the second iteration EMP [ER 3.11.36 – 3.11.37]. The Secretary of State has noted that Chapter 11 of the ES maps the anticipated areas of adverse impact from each major stage of construction and summarises the receptors anticipated to experience temporary moderate to major adverse noise impacts during construction without mitigation measures in place [ER 3.11.38 – 3.11.39]. The Secretary of State has taken further note that the ES states that when mitigation, as detailed in the first iteration EMP is provided, all major impacts will become moderate, and all moderate impacts will become minor, with minor impacts considered to be not significant [ER 3.11.40]. The ES states that further mitigation measures detailed in the first iteration EMP will be provided for properties still expected to experience moderate impacts, with further detail to be provided in the second iteration EMP alongside a noise and vibration management plan [ER 3.11.41 – 3.11.42].

177. The Secretary of State has taken account that construction traffic is not anticipated to increase noise levels by more than 1dBA and therefore significant effects as a result of construction traffic noise is not anticipated [ER 3.11.43].

178. The Secretary of State has had regard to the information in the ES regarding noise impacts due to temporary traffic diversions as a result of the Proposed Development, concluding that these impacts are not anticipated to be significant. He notes that there were no specific objections or concerns raised during the Examination in relation to noise impacts of traffic diversions, and WCC confirmed that they would expect to see monitoring of traffic during diversions and that they would work with the Applicant to minimise the impacts that may arise [ER 3.11.44 – 3.11.47].

179. The Secretary of State notes that the ES states that vibration as a result of construction is primarily associated with piling and road surfacing activities, detailing the properties which may be impacted. These are considered to have a medium sensitivity to vibration effects, with low risk of damage, and an overall moderate effect which is not considered to be significant [ER 3.11.48 – 3.11.49]. The Secretary of State also notes the mitigation measures contained within the ES and first iteration EMP as relates to vibration effects [ER 3.11.50].

#### *Operational Noise and Vibration*

180. The Secretary of State has had regard to the modelled changes to operational noise and vibration impacts in the ES as detailed at ER 3.11.57 – 3.11.60. The Secretary of State notes that, in summary, the ES states that there are short-term significant adverse effects anticipated at twenty dwellings and one commercial property which are predicted to be negligible and not significant

in the long-term, and that there would be a number of short-term, moderate to major benefits to 44 commercial receptors and eight significant benefits to commercial receptors in the long term [ER 3.11.61 – 3.11.62]. The Secretary of State notes that there is expected to be a minor adverse impact in the short terms on noise levels at White Hill Cottage which will reduce over time as mitigation measures establish. He further notes that if further noise screening is required, this will be included in the second iteration EMP [ER 3.11.63]

181. The Secretary of State notes that the sole mitigation measure for reducing the impact of noise during operation is low noise road surfacing, with the threshold by which additional measures would be required having not been met. The inclusion of low noise surfacing was considered beneficial by all of the Local Authorities and was specifically required by WCC and the SDNPA [ER 3.11.64 and 3.11.68]. The Secretary of State further notes that, following questions as to ongoing maintenance of the surfacing, the Applicant and HCC have agreed a commuted sum to ensure the continuation of the embedded mitigation and that this is anticipated to be included in the side agreement between the two parties [ER 3.11.67] [Correspondence to update?]

*The Secretary of State's Conclusions on Noise and Vibration*

182. Like the ExA, and as discussed above, the Secretary of State is satisfied that the Applicant has fully addressed and mitigated the possible effects from noise and vibration for both the construction and operation of the Proposed Development and the Applicant has considered a standard worst-case scenario has been undertaken in their assessment of construction noise, including noise impacts from construction traffic and temporary traffic diversions [ER 3.11.73 and 3.11.75 – 3.11.76]. Whilst he notes that there is predicted to be some increase in noise level that result in major impacts anticipated at some residential properties, the Secretary of State notes that when mitigated these impacts would be reduced to moderate impacts, and further notes that additional mitigation measures are to be secured in the second iteration EMP where necessary [ER 3.11.74].
183. The Secretary of State agrees with the ExA that the Applicant has considered the worst-case potential impacts of vibration effects during construction of the Proposed Development and has proposed mitigation which would allow these impacts to be managed appropriately ER 3.11.77].
184. As regards the use of low-noise surfacing, the Secretary of State agrees with the ExA that, whilst the use of this form of mitigation is welcomed, with the large percentage of the highway already subject to low noise surfacing, the additional benefit may be limited. As such, he agrees with the ExA's recommendation that he should consider the noise mitigation measures when they are submitted for approval pursuant to requirement 14 of the Order [ER 3.11.78 – 3.11.79]. The Secretary of State agrees with the ExA's conclusion that the overall impact on noise important areas as a result of the Proposed Development will be between slight beneficial to slight adverse, which is not significant [ER 3.11.80].
185. Given the above, the Secretary of State agrees with the ExA that the Applicant has taken all reasonable steps to mitigate the effects of noise and vibration as a result of the Proposed Development [ER 3.11.81] and, whilst noting that there are some beneficial effects that may occur as a result of the

Proposed Development, there are also a number of adverse effects during construction and operation which have been identified lead him to consider that the issue of noise and vibration has minor weight against making the Order for the Proposed Development [ER 3.11.82].

### **Population and Human Health**

186. The Secretary of State notes the assessment of the impacts on land use and accessibility at Chapter 12 of the ES which takes into account the effects of the Proposed Development on private property and housing, community land and assets, business and development land, agricultural land, and walking, cycling and horse-riding provision during both construction and operation [ER 3.12.10 – 3.12.11].

187. The Secretary of State notes that, during construction, there is potential moderate adverse to very large adverse effects as a result of the Proposed Development, particularly for non-motorised users, agricultural land, and businesses, but that these effects are predicted to become moderate beneficial for businesses and moderate to large beneficial for non-motorised users during operation of the Proposed Development [ER 3.12.11]. The Secretary of State notes the ES assesses the impact of the Proposed Development on human health in both construction and operation and summaries the baseline study results as detailed at ER 3.12.12. He has further taken account that during construction and operation the ES details the main potential impacts of the Proposed Development on population and human health to be air quality, noise and vibration, visual amenity, disturbance and stress caused by construction activity, changes to accessibility to open spaces or facilities and services, and changes to physical activity levels. However, these impacts are considered to be neutral during construction following mitigation with the exception of temporary negative effects on ambient noise, and all effects are predicted to be either neutral or positive during operations [ER 3.11.13].

### *Examination Issues*

188. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.12.14.

### *Land Use Effects on Private Property and Businesses*

189. The Secretary of State has had regard to Chapter 12 of the ES, which details that one private property, White Hill Cottage, would experience a direct, temporary moderate impact on land use at the Cottage which would result in a significant adverse effect as during the operational phase the land use need at the property will be required for maintenance of a electricity cable, though he notes that the Applicant has stated this is anticipated that this would be an irregular and temporary impact and that the ES states this would result in a slight adverse effect. The Applicant explained that the land requirement from this property relates to the re-routing of overhead electricity cables and would not require intrusive work on the property [ER 3.12.15 – 3.12.18]. The ExA agreed that this property would see a temporary moderate adverse effect during construction and a slight adverse impact during operation [ER 3.12.24]

190. The Secretary of State notes that there are other private properties that may experience indirect effects as a result of the Proposed Development, but further notes that the ExA accepted the findings of the ES that these will not be

significant and in the case of the construction phase impacts, they are temporary [ER 3.12.19].

191. The Secretary of State notes that the ES details a moderate positive impact of the Proposed Development on a number of businesses when in operation as a result of improved journey time reliability [ER 3.12.21]. He does however agree with the ExA that there is likely to be some temporary adverse effects on these business during construction as a result of temporary traffic flow changes and diversions [ER 3.12.25].

192. The Secretary of State notes that there is no allocated development land within the study area of the Proposed Development, and the ExA considers that there will be no impact in this regard [ER 3.12.22 and 3.12.25]

### *Community Assets*

193. Chapter 12 of the ES states that there are no community assets within the application boundary, however, there are a number of high usage sensitive sites within the study area which is 500m from the application boundary. The Secretary of State notes that there will be no effect on access to community assets or open access land during the operation of the Proposed Development, and that any temporary impacts during construction will be mitigated to ensure access remains [ER 3.12.26].

194. The ES concludes that the area of the National Park affected by the Proposed Development is agricultural land, and therefore does not constitute public open space [ER 3.12.27]. However, the Secretary of State notes the obvious recreational access opportunities afforded with the network of public rights of way and non-motorised user routes which allow access to the National Park and other locations surrounding the Proposed Development. It is accepted that there will be temporary impacts on access to the National Park as a result of the Proposed Development during construction, and that the Applicant is engaging in consultation regarding temporary diversions and the need for effective communication of changes to access [ER 3.12.28]. The Secretary of State notes that at the close of Examination and in their SoCG, the SDNPA retained concerns relating to the temporary diversion of public rights of way and non-motorised users, all these matters have been resolved with HCC [ER 3.12.29]. The Secretary of State agrees with the ExA that the Applicant has sought to provide suitable alternative routes and will continue to develop mitigations through consultation in the detailed design stage [ER 3.12.31].

### *Human Health*

195. The Secretary of State notes that Chapter 12 of the ES has assessed the potential impacts on human health during the construction and operation of the Proposed Development as described at ER 3.12.32.

196. The Secretary of State notes that in their local impact report, HCC broadly accepted that the Proposed Development would provide positive outcomes on human health relating to reduced stress and reduced exposure to noise and air pollution, as well as possible improvements to access to recreational opportunities, including improvements for walking, cycling, and active travel [ER 3.12.34]. The summary of the assessments undertaken by the Applicant in the ES state that the only negative outcomes on human health would be ambient noise environment in two wards during construction, with all

other outcomes being neutral and during operation the health outcomes are predicted to be neutral or positive [ER 3.12.37], with which the ExA agreed [ER 3.12.40].

197. The Secretary of State notes that HCC were satisfied that the consolidated approach taken by the Applicant regarding health considerations met the same criteria as would be expected of a full Health Impact Assessment and were reassured that all matters had therefore been assessed and were satisfied on the acceptability of the assessment [ER 3.12.38]. Therefore, like the ExA, the Secretary of State considers that the ES has satisfactorily addressed the required health determinants to assess the impact of the Proposed Development on human health [ER 3.12.39].

#### *The Secretary of State's Conclusion on Population and Human Health*

198. Like the ExA, and as discussed above, the Secretary of State is satisfied that the Applicant has fully addressed the possible effects of the Proposed Development on population and human health and that these can be satisfactorily mitigated and managed [ER 3.12.41]. He agrees with the ExA's summary of the impact of these effects as detailed at ER 3.12.42 – 3.12.43 and their conclusion that the overall assessment is mostly neutral during construction, with some temporary negative effects, but which result in neutral or positive outcomes for human health during operation [ER 3.12.45].

199. The ExA concluded that, when considering the long-term benefits to health and the beneficial impacts on businesses during operation of the Proposed Development, the issue of population and human health had a moderate weight in favour of the Order being made [ER 3.12.47]. The Secretary of State agrees with this conclusion.

#### **Traffic, Transport, and Non-Motorised User Routes**

200. The Secretary of State notes that the Applicant's assessment of traffic and transport matters is set out within the Transport Assessment and its purpose is to assess the impact of the Proposed Development on the strategic and local highway network, road safety and local sustainable modes of transport [ER 3.13.13].

#### *Examination Issues*

201. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.13.46.

#### *The Traffic Model*

202. The Secretary of State notes that the ExA considered the modelling information as presented by the Applicant accords with Transport Analysis Guidance ("TAG") and further notes the details within the Transport Assessment. WCC queried the use of the pre-pandemic traffic models by the Applicant but the ExA accepts that this is appropriate as the 2022 National Trip End Models data was released after the application was submitted [ER 3.13.47 – 3.13.48]. The Secretary of State has had regard to the concerns raised by 'Winchester Friends of the Earth' and 'Winchester Action on the Climate Crisis' relating to Variable Demand Model traffic modelling and induced demand as summarised at ER 3.13.49 – 3.13.50. In response, the Applicant stated that Variable Demand Model was in accordance with the correct TAG requirements

and that it had considered the modal shift between private cars and public transport, noting a predicted limited impact from induced demand [ER 3.13.51]. The Secretary of State notes that HCC, as the local highway authority, considered that the traffic modelling for the Proposed Development was acceptable, stating that they had no residual concerns and considered that the model was suitable for its intended use [ER 3.13.52]. For the reason set out in the report, like the ExA, the Secretary of State considers that the traffic model developed to forecast potential impacts as a result of the Proposed Development to be acceptable and reliable [ER 3.13.53 - 3.13.56].

#### *Journey Times*

203. The Secretary of State notes that journey time reliability and reduced delays are a primary objective of the Proposed Development [ER 3.13.57]. A number of Interested Parties contended that the journey time savings as a result of the Proposed Development were not significant and as a primary objective for the Proposed Development believed they do not show a significant benefit, with the SDNPA and Winchester Action on the Climate Crisis questioning specifically the benefits to journey time [ER 3.13.58 – 3.13.59].

204. The Secretary of State notes the summary of the journey time savings from the Transport Assessment as detailed at ER 3.13.61 – 3.13.65. Like the ExA, and as discussed above, the Secretary of State considers that the traffic modelling for the Proposed Development is reliable and, therefore, the journey time savings in the Transport Assessment can be accepted, noting the ExA considers that the strategic aim to reduce journey time is met, the ExA's comments on whether the savings can be considered substantial [ER 3.13.67 – 3.13.69].

#### *Delays and Road Volume Capacity*

205. The Secretary of State has had regard to the forecast delays at the proposed M3 J9 gyratory as detailed at ER 3.13.73, and which is accepted by the ExA as being the primary location for delays and thus the focus on it is proportionate. He notes that, in its LIR, HCC concluded that there is a reduction in traffic flows as a result of the Proposed Development which they considered to have a mainly positive impact or neutral impact on the local highway network [ER 3.13.74]. The Secretary of State has noted that the ExA requested additional information from the Applicant [ER 3.13.77], with their response summarised at ER 3.13.77 – 3.13.80, including the provision of 'heatmap' visualisation of predicted delays.

206. The Secretary of State has taken note that Winchester Friends of the Earth raised concerns in relation to an increased volume of traffic on the M3 south of Junction 9 in the PM peak. In response, the Applicant stated that this increase is caused by the predicted increase in traffic associated with increased capacity and reduction of delay resulting strategic traffic rerouting to the M3, noting that a post-opening project evaluation will be undertaken three years after opening [ER 3.13.82].

207. Like the ExA, the Secretary of State considers that the evidence within the application shows that there will be a reduction to delays and, in most locations, road capacity improvements as a result of the Proposed Development and that the reduction in delay at M3 J9 will have a direct

beneficial impact on the Winnall industrial and employment area [ER 3.13.85 – 3.13.88].

### *Road Safety*

208. The Secretary of State notes that road safety is one of the five primary objectives of the Proposed Development [ER 3.13.89]. He notes that, with the exception of the A33/B3047 (Cart and Horses) Junction which is discussed at paragraphs 223 - 225, there were no concerns raised by interested parties regarding the assessment and presentation of road safety data. In their local impact report HCC suggested that updating the collision data beyond the five year period 2015 to 2019 would be beneficial and the Applicant provided details for the available years between 2012 and 2021. This showed less collisions during 2020 and 2021 and this is likely to be consistent with the changes of traffic patterns during the Covid-19 pandemic [ER 3.13.91].
209. The ExA found the collision data as presented led to a certain amount of confusion and ambiguity [ER 3.13.92] although in principle there was not considered to be errors in how the data was used but that the presentation may lead the reader to conclude the predicted collision savings and related cost savings are in direct relation to the observed data [ER 3.13.93]. The ExA sought to understand the forecast collision savings within the application boundary to allow a direct comparison with observed data and forecast data [ER 3.13.94]. The data presented indicates that there is a prediction of increased collisions of all severities at junctions within the application boundary as a direct result of the Proposed Development. The ExA understood from the Applicant's explanation that the Proposed Development will add a number of new nodes or junctions which increases the potential for collisions [ER 3.13.97].
210. The Secretary of State notes the ExA's concerns relating to the increase in predicted collisions at junctions within the Order limits. He accepts that this is a function of new junction nodes being introduced and agrees with the ExA that close attention should be paid to safe design and comprehensive safety audit during the detailed design [ER 3.13.101]. Like the ExA, the Secretary of State agrees that collision data and predictions have been undertaken in accordance with TAG requirements [ER 3.13.100] and notwithstanding the issues raised by the ExA during the Examination with regard to safety analysis it was accepted by the ExA that there is a predicted improvement in road safety and a forecast reduction in collisions across the wider area [ER 3.13.102 – 3.13.103].

### *Economic Benefits*

211. The Secretary of State notes that supporting economic growth is one of the five primary objectives of the Proposed Development [ER 3.13.104].
212. The Secretary of State notes that during Examination a number of parties raised concerns relating to the value for money of the Proposed Development, including the SDNPA, Winchester Action on the Climate Crisis, and Winchester Friends of the Earth [ER 3.13.108 – 3.13.110]. He has had regard to the assessment of value for money as detailed at ER 3.13.111 – 3.13.115 which showed an adjusted benefit-cost ratio of 1.72 when wider economic benefits were considered, including journey time reliability, wider structural and context specific impacts and social impacts.

213. The Secretary of State notes that the wider economic benefits of the Proposed Development include the potential stimulus of local development sites and land value uplift at the Winnall Industrial Estate and collisions savings [ER 3.13.117 – 3.13.123].
214. The Secretary of State notes that the Applicant has included costed risks in the estimate as required by the Treasury's Green Book and, whilst this has not been quantified, the Secretary of State accepts that this is in line with TAG requirements [ER 3.13.124 – 3.13.126].
215. Like the ExA, the Secretary of State considers that the Proposed Development provides medium value for money when wider economic benefits are considered [3.13.131].

#### *Construction Phase Traffic and Traffic Management*

216. The Secretary of State has had regard to the Applicant's Outline Traffic Management Plan which HCC have been consulted on and at the close of Examination the SoCG between the Applicant and HCC showed that issues on this matter had been addressed by the Applicant and are shown as agreed by HCC [ER 3.13.132 – 3.13.134]. The Secretary of State notes the concern raised by HCC regarding the use of unofficial diversion routes as a result of the Proposed Development. However, there is limited opportunity for the Applicant to manage this and has worked with HCC to mitigate the impact during construction. The Applicant and HCC agreed in the SoCG that they would maintain dialogue throughout construction of the Proposed Development to manage emerging issues [ER 3.13.135 – 3.13.136].
217. The Secretary of State notes that, at the close of Examination, there remained a disagreement with the SDNPA regarding the opportunity to reduce traffic generation from the construction workforce through the development of a site travel plan. At the close of the Examination the Applicant had committed to a travel plan secured through the first iteration EMP to address these concerns which will be included in detail in the second iteration EMP [ER 3.13.137].
218. Like the ExA, the Secretary of State considers that HCC acceptance of the Outline Traffic Management Plan and agreements in the SoCG show that there is a general consensus on the proposals and means of managing diversions, pending further consultation with other local authorities and stated as a commitment in the first iteration EMP which is secured by requirement 3 of the Order [ER 3.13.139 – 3.13.140].

#### *Local Highway Network – Local Highway Authority Interface*

219. The Secretary of State notes that HCC raised a number of issues regarding the impact and legal status of changes that would be required to the local highway network which HCC are responsible for including de-trunking, stopping-up of highways, future ownership and maintenance responsibilities, and requested a number of changes to the draft Order to reflect their concerns [ER 3.13.141 – 3.13.142]. HCC and the Applicant prepared a side agreement to address these concerns [ER 3.13.143 – 3.13.144] and in their letter of 15 March 2024 in response to the Secretary of State's consultation, the Applicant confirmed and provided evidence that the side agreement with HCC had been agreed, and that the only item in the SoCG which is not agreed is the issue



relating to the A33/B3047 (Cart and Horses) Junction. HCC confirmed this in its letter of 27 March 2024 in response to the Secretary of State's second consultation. In its letter, the Applicant said that the side agreement has no implications for the drafting of the proposed Order submitted at Deadline 8 of the Examination.

220. The draft Order as provided by the ExA had been drafted on the assumption that this side agreement was not complete. While the Secretary of State has taken note from the confirmation received from HCC that the side agreement now addresses the matters marked as 'provisionally agreed' in the Statement of Common Ground with Hampshire County Council, there remains the outstanding matter concerning the Cart and Horse Junction. In light of the Applicant's response detailed above, the Secretary of State has decided no drafting changes are needed.

#### *Impact on the B3335 and the Villages of Twyford and Colden Common*

221. The Secretary of State notes that the potential impact on the B3335 on the villages of Twyford and Colden Common were raised by a number of parties [ER 3.13.145]. In response, the Applicant stated that there was a small increase in the average daily traffic flows of less than 200 passenger car units 2-way per day in 2027 as a result of the Proposed Development [ER 3.13.147].

222. The ExA considered that the issues raised by interested parties were predominantly pre-existing issues which were known to the local highway authority. However, they did examine the issue of the uncontrolled crossing of the B3335 in the vicinity of M3 Junction 11 [ER 3.13.149 – 3.13.150]. Interested parties contended that this crossing is unsafe and therefore any additional traffic as a consequence of the Proposed Development would result in a further deterioration in safety. It was further argued that the Applicant should provide upgrades to a controlled crossing to improve safety [ER 3.13.151]. In response, the Applicant stated that the suggested improvements fell outside the scope of the Proposed Development and should be raised with HCC [ER 3.13.152]. The Secretary of State agrees with the ExA that changes to this crossing are not within the scope of the Proposed Development whilst noting HCC's comments in respect of review during approval of the TMP is acceptable and is covered by a commitment in the first iteration EMP which is secured by requirement 3 of the order [ER 3.13.157].

#### *A33/B3047 (Cart and Horses) Junction*

223. The A33/B3047 (Cart and Horses) Junction ("the Cart and Horses Junction") was raised as a significant concern by a number of interested parties, including HCC, WCC and the SDNPA who all strongly considered that improvements to this junction should have been included in the Proposed Development due to effects on its operation and safety [ER 3.13.159]. Whilst it was acknowledged that there would be a predicted increase in traffic flows on the A33, the Applicant contended that there would be decreases in peak flows, a decrease in traffic flows on the B3047 and a decrease in the number of turning movements which could lead to a reduction in potential collisions [ER 3.13.160]. To include the Cart and Horses junction within the Application would require significant further design, assessment and consultation and require a revised DCO application [ER 3.13.161].

224. The Secretary of State notes that, at the close of Examination, it remained the position of HCC that mitigation was required at the Cart and Horses junction, with the SoCGs between the applicant, HCC, WCC, and SDNPA all highlighting the outstanding disagreement on the issue [ER 3.13.162 and 3.13.164]. HCC also contended in their closing comments on the Examination that the Proposed Development would have a detrimental impact on safety at the Cart and Horses Junction [ER 3.13.165].

225. Whilst the Secretary of State acknowledges the concerns detailed above, the ExA considered that the impact of the Proposed Development on the Cart and Horses Junction would be slightly negative or neutral, and not of sufficient significance to set a requirement of or expectation on the Applicant to amend or add to the Application [ER 3.13.167 – 3.13.168]. The Secretary of State agrees with this assessment.

#### *Public Rights of Way and Non-Motorised Users – Operational Phase*

226. The Secretary of State notes that a number of parties including HCC, the SDNPA and Cycle Winchester commented on the public rights of way (“PROW”) and non-motorised user (“NMU”) provision within the Proposed Development [ER 3.13.171]. In their local impact reports, HCC and the SDNPA considered the proposed improvements to the existing PROW and NMU network would be positive, with Cycle Winchester agreeing that they represented an improvement [ER 3.13.174]. The Secretary of State notes that both HCC and the SDNPA will continue to be consulted on PROW and NMU in detailed design development to ensure that all positive opportunities are considered [ER 3.13.176].

227. However, the Secretary of State notes that there were some concerns raised by parties relating to NMU provision relating to routes, design standards, and legal status [ER 3.13.175]. As regards design, the Secretary of State notes that the Applicant stated all NMU routes had been designed in accordance with the DMRB, which HCC confirmed it was in agreement with, as reflected in their SoCG [ER 3.13.177 – 3.13.178].

228. As regards the legal status of some of the proposed and amended NMU routes, the Secretary of State notes that this had been contested by Cycle Winchester, primarily relating to the status of users who would legally be able to use the proposed routes. The proposed routes preclude use by horse-riders of the proposed Kings Worthy route and the National Cycle Network Route 23 to meet the bridleway at Easton Lane [ER 3.13.179]. The Secretary of State has had regard to the letters from Cycle Winchester of 8 April 2024 and the British Horse Society of 4 April 2024 regarding this issue. Whilst he notes the concerns detailed above, HCC have confirmed the legal status and design standard of the NMU routes for the proposed Development and, as the authority with responsibility for PROWS and local highway, the Secretary of State sees no reason to disagree with their assessment. He further notes that, overall, the Proposed Development will have beneficial effects for walking, cycling and horse-riding [ER 3.13.180 – 3.13.182]. The Secretary of State therefore finds that the proposed provision of NMU routes during the operational phase is acceptable.

#### *Public Rights of Way and Non-Motorised Users – Construction Phase*

229. The Secretary of State notes that a number of interested parties raised concerns regarding the temporary impact on NMUs relating to the length of disruption, practical issues, and safety of proposed diversions [ER 3.13.183]. The Secretary of State has had regard to the concerns relating to National Cycle Network 23 diversions raised by Cycle Winchester and the SDNPA, including the suggestion from the SDNPA that requirements within the Order should be amended to ensure consultation on any temporary routes for NMUs [ER 3.13.184 – 3.13.185]. The Applicant clarified the proposed diversion routes in response to these concerns, however, at the close of Examination Cycle Winchester were not in agreement with the Applicant on this issue [ER 3.13.186 – 3.13.187]. The Secretary of State notes that further discussions on a PROW management plan will be developed during detailed design as stated in the SoCG with HCC and secured in the first iteration EMP [ER 3.13.187]. As such, like the ExA, the Secretary of State considers that the proposed management of NMU routes during construction is acceptable [ER 3.13.188].

#### *The Secretary of State's Conclusions on Traffic, Transport, and Non-Motorised Users*

230. The Secretary of State agrees with the ExA that the Proposed Development is in accordance with the NPSNN strategic objectives and that all modelling has been conducted in accordance with relevant guidance, with the findings supported by HCC as the local highway authority, with the exception of the Cart and Horses Junction, as discussed above. [ER 3.13.189 – 3.13.190].

231. As discussed above, the ExA considered that although there will be temporary negative impacts during construction of the Proposed Development, it has been demonstrated that the Proposed Development would deliver a number of benefits relating to transport matters, including reduced journey times and delays, and improvements to NMU provision. As such, the ExA concluded that traffic, transport, and non-motorised user carries great weight in favour of making the Order [ER 3.13.198 – 3.13.199]. The Secretary of State agrees.

#### **Waste and Material Resources**

232. The Secretary of State has had regard to the assessment of the impacts of materials and waste associated with the Proposed Development at Chapter 10 of the ES, which states that the operational phase has not been considered as it is unlikely there will be any significant effects with respect to waste or material assets [ER 3.14.8 – 3.14.9].

233. The Applicant's assessment confirmed that the predicted reasonable worst-case scenario was that the predicted excavation waste required to be removed from site would be 65,000m<sup>3</sup> (135,300 tonnes) which equates to 65% of the construction material requirement for the Proposed Development and far exceeds the regional target of 26% [ER 3.14.11]. The ES goes on to state that waste generated by the Proposed Development is expected to be primarily non-hazardous and inert, but that any hazardous waste encountered would be handled at established construction site compounds prior to removal off-site [ER 3.14.12].

#### *Examination Issues*

234. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.14.17.

### *Waste Management and Recycling*

235. The Secretary of State notes that no specific issues relating to waste management were raised by Interested Parties, including HCC as the Local Waste Authority [ER 3.14.19]. In the ES, the Applicant has stated that removal of the material mentioned above to registered sites would reduce the regional landfill void capacity by 0.2% [ER 3.14.21]. The Secretary of State notes that the ExA explored whether this could be further reduced but, by the close of Examination, this had not been possible [ER 3.14.22]. The Secretary of State agrees with the ExA that this can be considered to be slight adverse on the regional landfill void capacity and is not significant [ER 3.14.26].
236. The Secretary of State notes that the 95% of inert waste is committed to being diverted from landfill, as secured through the first iteration EMP and by means of requirement 3 of the Order, resulting in 125m<sup>3</sup> to be disposed to landfill [3.14.23 – 3.14.25]. Regardless, the Secretary of State agrees with the ExA that he would expect to see further clarification from the Applicant on the commitments to waste management and recycling in further iterations of the EMP to ensure the intended outcomes are deliverable [ER 3.14.27 – 3.14.28].

### *Materials to be used in Construction and Mineral Safeguarding*

237. The Secretary of State has had regard to Chapter 10 of the ES which details the type of materials expected to be used in the construction of the Proposed Development, commits to the application of the Waste Hierarchy but notes that material will be imported. The first iteration EMP, provides a draft Material Management Plan which sets the expectations for future iterations of the EMP [ER 3.14.29 – 3.14.30].
238. The Secretary of State notes the concerns raised by Winchester Action on the Climate Crisis relating to the demolition of existing concrete structures. In response, the Applicant stated that design requirements for the Proposed Development meant that the existing structures could not be retained. The ExA found this approach to be appropriate [ER 3.14.31]. The Secretary of State agrees with the ExA's conclusion.
239. Like the ExA, the Secretary of State considers the commitments within the first iteration EMP to be non-specific but acceptable at this stage. It is expected that these will be solidified in future iterations of the EMP to include specific, measurable targets and recording and reporting criteria [ER 3.14.32 and 3.14.35].

### *The Secretary of State's Conclusions on Waste and Material Resources*

240. The Secretary of State agrees with the ExA that the Applicant has assessed the possible impacts of the Proposed Development on waste and material resources in line with the policy aims of the NPSNN but, as discussed above, expects the commitments relating to waste and material resources to be strengthened in future iterations of the EMP [ER 3.14.36 – 3.14.39].
241. Like the ExA, the Secretary of State considers that the issue of waste and material resources carries neutral weight in the planning balance [ER 3.14.41].

### **Cumulative Effects**

242. The Secretary of State notes the Applicant's cumulative and combined assessment as set out in Chapter 15 of the ES. It assesses the effects that would occur due to changes caused by other developments acting cumulatively with the effects of the Proposed Development and the effects from the combined effects of several different impacts acting together on a single receptor [ER 3.15.6]. The Secretary of State notes that the ES concluded that there would be an anticipated increase in traffic on the local network during construction as a result of developments ID 72 and ID 79 as identified in ES Appendix 15.2 which results in a minor impact on journey time reliability and that minor impact continues during operation [ER 3.15.16]. The Secretary of State further notes that the combined effects on residential dwellings is acknowledged by the ES to be significant, but it is not anticipated to result in greater significance of effect than for individual topic assessments so that mitigation measures discussed previously and as set out in the first iteration EMP on individual topics are considered by the Applicant to be appropriate to respond to these effects [ER 3.15.18].

#### *Examination Issues*

243. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.15.21.

#### *The Combined Effects During Construction and Operation*

##### *(a) White Hill Cottage*

244. The Secretary of State notes that the ES identifies that there will be a temporary significant combined effect at White Hill Cottage due to the combination of visual, noise, and land-take effects during construction [ER 3.15.19 and ER 3.15.22]. This is considered in the mitigation measures set out in the first iteration EMP, including the need for a stakeholder communications plan with community engagement, specifically noting engagement with the occupant/owner of White Hill Cottage to ensure they are provided with the contact details for a site representative and would be kept up to date on the construction works programme and the implementation of relevant mitigation [ER 3.15.20].

245. The Secretary of State notes the concerns raised by the SDNPA that the mitigation measures in the first iteration EMP are not sufficient to address the negative impacts of the Proposed Development on the occupants of White Hill Cottage and that it would be in contradiction with a number of the South Downs Local Plan policies [ER 3.15.23]. The Secretary of State has had regard to the responses from the Applicant as detailed at ER 3.15.24 – 3.15.29 and the commitments within the first iteration EMP as discussed above and secured through the Register of Environmental Actions and Commitments [ER 3.15.54].

##### *(b) Worthy Park Historic Park and Garden*

246. The Secretary of State notes that the ES concludes that there would be a temporary slight adverse effect on the Park due to long-distance views of a small part of the main works between the A34 and M3, but that this would not materially alter the quality of the Park's characteristics, and that no cumulative effect would result in a greater level of significance than for the individual ES topic assessments, and therefore a slight adverse and not significant overall effect is anticipated [ER 3.15.30 – 3.15.32]. The ExA concurred with the

Applicant's assessment of this issue, and the Secretary of State sees no reason to disagree [ER 3.15.55].

*(c) South Downs National Park*

247. The Secretary of State notes that the SDNPA disagrees with the conclusion of the ES that the combined effects on the National Park are not anticipated to be significant, contending that this assessment was based on the Applicant's conclusion that there would be no long-term significant landscape effects, something the SDNPA disagrees with as discussed at paragraphs 155 – 157 [ER 3.15.33 – 3.15.34]. In its response, the Applicant stated that 15 years after opening the ES identifies that the overall impact on the National Park would be slight adverse and not significant due to the effects being localised and resulting in a very small change to the National Park as a whole [ER 3.15.35 – 3.15.37]. Like the ExA, the Secretary of State agrees that overall, the combined effects on the National Park would be slight adverse and are not anticipated to be significant over the long-term [ER 3.15.56].

*The Cumulative Effect of the Proposed Development Together With Other Developments*

248. The Secretary of State notes that, following questions from the ExA and input from WCC, the Applicant updated the list of developments considered in the ES for cumulative assessment [ER 3.15.38]. As discussed above, the ES states that developments ID 72 and ID 79 are both anticipated to increase traffic on the local network during construction resulting in minor impacts on journey times. These increases were not considered to be severe for ID 79 due to comparatively low existing traffic [ER 3.15.40 – 3.15.41]. This was further shown to have only a minor adverse effect with the addition of the Travel Plan submitted with the application for development ID 79 to reduce use of cars to the site [ER 3.15.42]. The Secretary of State notes that there is some overlap with the construction of ID 72 and the Proposed Development which will result in increase in journey times, however these are considered to result in a minor cumulative effect due to the scale of traffic flow increases as a result of ID 72 [ER 3.15.43]. The ExA concurred with the assessment that the impacts on journey time reliability as a result of the cumulative impact of the Proposed Development and ID 72 and ID 79 were minor [ER 3.15.51]. The Secretary of State agrees.

*Whether Additional Mitigation Measures are Required*

249. The Secretary of State has had regard to Chapter 15 of the ES on cumulative effects and understands the relevant mitigation measures to be those that are included in the first iteration of the EMP as detailed at ER 3.15.45. Like the ExA, and considering the above, the Secretary of State does not consider that additional mitigation measures beyond that for which provision has been made through the first iteration EMP and requirements 3, 5, 6 and 14 of the Order would be appropriate for any of the cumulative adverse impacts identified above [ER 3.15.57].

*The Secretary of State's Conclusions on Cumulative Effects*

250. Like the ExA, the Secretary of State has no reason to disagree with the reasoning of the Applicant as to the scope of the ES assessment of cumulative effects [ER 3.15.47 – 3.15.48]. He agrees with the ExA that the information

provided shows that the cumulative effects of the Proposed Development in combination with other projects would be minor and not significant, and that the assessment accords with paragraph 4.16 of the NPSNN [ER 3.15.58]. Having noted the significant cumulative effect on White Hill Cottage, however, the Secretary of State notes that this is a temporary impact during construction and agrees with the ExA that it should be attributed only minor negative weight in the planning balance [ER 3.15.60]. The Secretary of State has separately considered cumulative carbon emissions at paragraph 87, above.

### **Habitats Regulations Assessment (HRA)**

251. This section should be read alongside the Secretary of State's Habitats Regulations Assessment for an Application under the Planning Act 2008 – M3 Junction 9 Improvement (16 May 2024).

252. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended ("the Habitats Regulations"), the Secretary of State as the competent authority is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in combination with other plans and projects, to have a likely significant effect on a European site forming part of the National Site Network. The purpose of the likely significant effects test is to identify the need for an Appropriate Assessment and the activities, sites or plans and projects to be included for further consideration in the Appropriate Assessment.

253. The Applicant submitted a 'Habitats Regulations Assessment Report'<sup>1</sup> (the Applicant's HRA report) as part of its Application which detailed two designated sites that are relevant to the HRA:

- River Itchen Special Area of Conservation ("SAC")
- Mottisfont Bats SAC [ER 4.2.1].

254. The Secretary of State notes that no IPs raised concerns about the scope of the European sites considered or their qualifying features [ER 4.3.1].

### *Assessment of likely significant effects (LSE)*

255. Section 3 of the Applicant's HRA report identified the European sites which met the DMRB screening criteria and requiring assessment of likely significant effects. The following impact pathways associated with construction and operation of the Proposed Development were identified as having potential to give rise to LSE:

- Changes in water quality;
- Changes in hydraulic / hydrological conditions;
- Other habitat degradation (including physical modification of habitat, spreading invasive species, increase in air-borne pollutants; increased shading of River Itchin, and inappropriate habitat management;
- Species disturbance;

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<sup>1</sup> [TR010055-001012-M3J9 7.5 Habitats Regulations Assessment \(Rev 3\) \(clean\).pdf \(planninginspectorate.gov.uk\)](#)

- Disturbance to otter;
- Mortality of white-clawed crayfish;
- Impacts of air quality [ER 4.3.2, Table 16: summary of Applicant's Assessment of LSE].

256. The Secretary of State notes that during the construction phase, the primary impact would be on the River Itchen SAC as construction would be adjacent to that SAC except for the installation of two new drainage outfall structures and one altered drainage outfall which would take place within the SAC itself [ER C.1.10]. The Proposed Development includes a new bridge over the SAC, although the abutments will be located outside the SAC and set back from the riverbank.

257. For the Mottisfont Bats SAC, the Applicant concluded that LSE from the Development alone and in combination with other plans and projects can be ruled out. The ExA noted that this conclusion was not disputed by any IPs during the Examination [ER C.2.22]. The Secretary of State agrees with this conclusion.

258. For the River Itchin SAC and its qualifying features, the Applicant concluded that LSE could not be ruled out in respect of a number of impact-effect pathways. The ExA notes that it was also agreed during Examination that impacts from air quality should be progressed to Stage 2 Appropriate Assessment [ER C.2.23].

259. The Secretary of State notes that the ExA was satisfied that, based on the information provided, the correct impact-effect pathways on each site were assessed and was satisfied with the approach to the alone and in combination assessment [ER C.2.24]. The Secretary of State has no reason to disagree.

260. The Secretary of State agrees with the ExA's conclusion that the Development was likely to have a significant effect both alone and in combination with other plans and projects on the qualifying features of the River Itchin SAC [ER C.2.25] and that therefore an Appropriate Assessment was necessary.

### *Appropriate Assessment*

261. The Secretary of State has undertaken an assessment of the implications of the Proposed Development on the qualifying features of the River Itchen SAC having regard to the conservation objectives for the SAC to determine whether there would be any adverse effects on the integrity of the European site, including the proposed mitigation measures. This assessment considered the following issues, evidenced in the Applicant's HRA Report in sections 4.2 – 4.10:

- changes in water quality (construction and operation);
- changes in hydraulic conditions (construction and operation);
- other habitat degradation (construction and operation);
- species disturbance (construction);
- disturbance to otter (operation);



- mortality to white-clawed crayfish, if present (construction); and,
  - impacts from air quality (construction).
262. The full details of the Appropriate Assessment are set out in the Secretary of State's Habitats Regulations Assessment for an Application under the Planning Act 2008 – M3 Junction 9 Improvement (16 May 2024).
263. Having carried out the Appropriate Assessment, the Secretary of State is satisfied that given the relative scale and magnitude of the identified effects on the qualifying features of this European site and where relevant, the measures in place to avoid and reduce the potential harmful effects, there would not be any implications for the achievement of the conservation objectives for the River Itchin SAC and that the Proposed Development would not affect the integrity of the SAC.
264. Based on the submissions to the Examination as summarised in the ExA's REIS and Recommendation Report together with further consultations undertaken by the Secretary of State after the close of Examination, the Secretary of State is satisfied that the views of Natural England, as the appropriate nature conservation body have been considered and that Natural England are in agreement with the scope and conclusions of the Applicant's HRA Report in that adverse effect on integrity of the River Itchen SAC can be excluded.

### **Planning Balance**

265. Like the ExA, and as discussed above, the Secretary of State considers that the Proposed Development would meet the specific identified need for an improved M3 J9 and would contribute to meeting the strategic need for the development of the national road network in accordance with the NPSNN ER 5.5.3].
266. The ExA considered that the following matters weigh in favour of the Proposed Development:
- In respect of Traffic, Transport and NMU Routes, the Secretary of State agrees with the ExA that, although there will be temporary negative impacts during construction and although the ExA expressed some reservation about this in relation to the extent of journey time saving and the value of the safety cost benefits over the wider area, it has been demonstrated that the Proposed Development would deliver a number of benefits relating to transport matters, including a reduction in congestion and delays, safety improvements, support for economic growth, particularly in and around the Winnall Industrial Estate, and improvements to NMU provision [ER 5.5.8]. As such, the Secretary of State agrees that that the benefits to traffic, transport, and non-motorised user routes carries great weight in favour of making the Order.
  - In respect of BNG and all other matters relating to biodiversity and ecology, the Secretary of State agrees with the ExA that this should be attributed a little positive weight in favour of the Order being made. In respect of Flood Risk, Ground Water and Surface Water effects, the Secretary of State with

the ExA that those effects carry a minor positive weight in favour of the Order being made.

- In respect of effects on Population and Human Health, the Secretary of State agrees with the ExA that those effects carry moderate positive weight in favour of making the Order.

267. The following are considerations the ExA has weighed against the Proposed Development:

- The Secretary of State agrees with the ExA that the issue of landscape impacts and visual effects carries moderate weight against making the Order. The Secretary of State agrees with the ExA that, due to the adverse effect and significant impact of the loss of BMV land that agriculture, geology and soil issues have a moderate weight against making the Order. [The Secretary of State considers that the issue of noise and vibration has minor weight against making the Order. The Secretary of State notes that the ExA considers that issues relating to climate change were neutral in the planning balance. However, given the increase in emissions that are likely as a result of the Proposed Development, although small, he has instead given limited negative weight against making the Order.
- The Secretary of State agrees with the ExA that cumulative impacts should be attributed limited negative weight in the planning balance.
- In respect of the historic environment, the Secretary of State agrees with the ExA that for each of the identified designated historic assets, the Proposed Development would result in less than substantial harm to the historic significance of those assets. The Secretary of State considers that in all instances the substantial public benefits of the Proposed Development would outweigh that less than substantial harm. He therefore considers the loss of significance is justified. He gives a little negative weight against making the Order to the identified harm to the designated and non-designated assets including the historic landscape.

268. For the reasons given above, the Secretary of State considers that the following other matters carry neutral weight in favour or against making the Order:

- Air Quality;
- Alternatives;
- Design;
- Waste and Material Resources.

269. As discussed above, the Secretary of State considers that the small increase in carbon emissions as a result of the Proposed Development should be given limited negative weight against making the Order, as opposed to the neutral weight prescribed by the ExA. Other than this, he agrees with the conclusions of the ExA on the weight of matters, above.

270. The Secretary of State has had regard to the consideration of alternatives to the Proposed Development and, given the junction already exists within the National Park, like the ExA, he considers that none of the proposed

alternatives would provide a suitable and realistic alternative option to the Proposed Development [ER 5.5.17 – 5.5.18].

271. As set out in paragraphs 18 – 24, above, the Secretary of State is satisfied that there is a need for the Proposed Development which accords with the need case established by the NPSNN and therefore affords substantial weight to the contribution the Proposed Development would make to meeting the need set out in the NPSNN. Like the ExA, the Secretary of State considers that the overall balance of benefits and adverse impacts falls very strongly in favour of the grant of development consent [ER 5.5.39]

## **COMPULSORY ACQUISITION**

272. The Secretary of State notes that ER 6.2 describes in general terms the Compulsory Acquisition (“CA”) and Temporary Possession (“TP”) powers sought for the Proposed Development. It is further noted that a full description of the extent and existing nature of land required for construction, operation and maintenance is set out in the Applicant’s Statement of Reasons, the Land Plans, and the Book of Reference and, in general terms, at ER 6.2. The Secretary of State has noted the legislative requirements and national guidance set out by the ExA at ER 6.5.

273. The Secretary of State notes that article 30 of the Order amends provisions of the Compulsory Purchase Act 1965 to be consistent with the terms and timeframes under the Order and the 2008 Act [ER 6.6.1].

274. The Secretary of State notes that the Applicant considers the land within the Order limits is considered to be the minimum land-take required for the construction, operation, maintenance and mitigation for the Proposed Development and that in all events the Applicant would seek to minimise the effects on land interests, particularly following detailed design, where less land is shown to be required [ER 6.8.6]. The Secretary of State notes that, where possible, the Applicant has sought to minimise the impact of CA on the National Park and that land-take has reduced throughout Examination [ER 6.8.24 – 6.8.25 and 6.8.30]. Where possible, the Applicant has sought and would seek to acquire land by negotiation [ER 6.8.44 – 6.8.47]. Like the ExA, the Secretary of State agrees that there are sufficient measures within article 24 of the Order and clear financial disincentive to acquiring more land than is ultimately required for the Proposed Development to ensure that the powers would be exercised in a proportionate manner [ER 6.10.12].

275. The Secretary of State agrees with the ExA that the relevant land subject to TP is required to implement and maintain the Proposed Development and, whilst interference with human rights is inevitable, that there is adequate compensation in place, and that all TP sought is proportionate, legitimate and in the public interest [ER 6.10.67 – 6.10.68].

276. The Secretary of State has had regard to the Applicant’s arguments as to the public benefit of the Proposed Development compared to the private loss as detailed at ER 6.10.41 – 6.10.44, and agrees with the ExA that the public benefits can only be sacrificed from the CA of the land required as detailed

above, and that the public benefits associated with the Proposed Development greatly outweigh the private loss [ER 6.10.48 – 6.10.49].

277. The Secretary of State notes the ExA's consideration of individual objections at ER 6.9.1 – 6.9.35 and agrees with the reasoning and conclusions on each of these matters. The Secretary of State is satisfied that the ExA has considered all the objections received. He concurs with the ExA that in each case, the relevant powers are necessary in order to implement the Proposed Development, that it would be reasonable and proportionate to exercise them, and that none of these objections lead to the view that its conclusion in relation to the Applicant's general case for CA and TP powers should be changed in any way.

#### *Statutory Undertakers*

278. The Secretary of State agrees with the ExA's considerations regarding undertakers at ER 6.9.36 – ER 6.9.60 and with its conclusions that:

- the CA powers sought for the Proposed Development would, in accordance with section 127 of the 2008 Act, not lead to any serious detriment to statutory undertakers undertaking their functions; and
- the rights sought by the Applicant from statutory undertakers would, in accordance with section 138 of the 2008 Act, be necessary for the purposes of the Proposed Development [ER 6.10.82].

279. Regarding Protective Provisions, the ExA considered that there were no outstanding concerns relating to Protective Provisions that would prevent the granting of CA powers [ER 6.9.60].

#### *Crown Land and Special Category Land*

280. The Secretary of State notes that there is no Crown Land included in or affected by Proposed Development and therefore there is no requirement for Crown Land Plans, and that there is no open space, common land or fuel or field garden allotments included in or affected by the Proposed Development and therefore there is no requirement for Special Category Land Plans [ER 6.1.3].

#### *Availability and Adequacy of Funding*

281. The Secretary of State has had regard to the ExA's consideration on the availability and adequacy of funding for CA at ER 6.10.32 – 6.10.39. Like the ExA, the Secretary of State is satisfied that the Applicant has demonstrated that there is a reasonable prospect of the requisite funds for CA being available within the statutory period following the making of the Order and also content that the availability of funding of the Proposed Development more widely would not be a potential impediment to implementation [ER 6.10.40].

#### *Human Rights*

282. The Secretary of State considers that the ExA's procedural decisions gave the owners/occupiers of the property whose rights would be interfered with a fair opportunity to participate in the Examination. And notes that there were no requests from affected parties to attend a compulsory acquisition hearing. For the reasons mentioned by the ExA, the Secretary of State agrees with its conclusion, that in relation to human rights, the Examination has ensured a fair and public hearing and the requirements of Article 6 of the

European Convention on Human Rights (“ECHR”), as incorporated in the Human Rights Act 1998 have been met [ER 6.10.59].

283. Like the ExA, the Secretary of State considers that the inclusion of CA and TP powers in the Order do not constitute any unlawful interference with rights under the Human Rights Act 1998 and that the powers sought are appropriate and proportionate [ER 6.10.60].

#### *Public Sector Equality Duty*

284. The Secretary of State has had regard to the Equality Impact Assessment submitted by the Applicant as detailed at ER 6.10.61 – 6.10.63. Whilst he notes that the Proposed Development has the potential to disproportionately affect age, disability, and pregnancy and maternity characteristics during construction as a result of temporary diversions, he agrees that the upgrades to walking, cycling and horse-riding facilities within the Proposed Development would likely benefit the elderly, disabled, children, and during pregnancy and maternity by providing safer and more accessible facilities [ER 6.10.63]. The Applicant has confirmed that these impacts would be considered when confirming diversion routes with HCC in order to limit the potential effect [ER 6.10.64].

285. Like the ExA, the Secretary of State is satisfied that the Applicant has complied with its duties under the Equality Act 2010 and he agrees that the ExA has due regard to the Public Sector Equality Duty when exercising its functions. He considers his duties under the Equality Act 2010 below. He concludes that the implementation of the Proposed Development would not disproportionately affect those with protected characteristics [ER 6.10.65].

#### *The Secretary of State’s Conclusions on Compulsory Acquisition*

286. Like the ExA, the Secretary of State considers that in respect of every plot of the CA land shown in the Land Plans, there is a compelling case in the public interest for the exercise of CA powers, and therefore the exercise of these powers is in compliance with the 2008 Act, including in relation to Statutory Undertaker’s land [ER 6.10.80 – 6.10.82]. Similarly, the Secretary of State agrees that the TP powers sought are necessary [ER 6.10.83].

287. The ExA was satisfied that all necessary consents to enable the Proposed Development to proceed have been identified by the Applicant and that there is no reason why such consents should not be secured or granted [ER 6.10.86]. For the reasons given by the ExA, the Secretary of State agrees.

## **DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

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

- the preamble setting out the vires has been amended to include a reference to paragraph 16 of Schedule 5 of the 2008 Act on the basis that paragraph (f) of the list of further developments in relation to the works set out (at the end of Schedule 1) allows for the alteration of the course of any watercourse;

- article 2(1) (interpretation) has been amended to:
  - remove the definitions of “general arrangement plans”, “the environmental management plan” and “the tribunal” as those terms are only used in one place elsewhere in the Order, and
  - vary the definition of “includes” in order to provide for a limitation on any construction that would result in materially different environmental effects from those reported in the ES;
- article 8, schedule 1, and requirements 12(1)(b) and 17(3)(c) have all been amended to amend the phrase “worse adverse” in relation to environmental effects with “new or materially different”;
- article 14(1) (construction and maintenance of new, altered or diverted streets and other structures) has been amended to provide that the obligation of the local highway authority to maintain highways under that paragraph is “subject to paragraph (6)”. It is the Secretary of State’s view that the inclusion of the words “or supporting it” with regards to other structures created a conflict between paragraphs (1) and (6) where the highway concerned a supporting bridge. The latter provides that the surface of a highway over a bridge constructed under the Order (i.e. a structure supporting a highway) over a special or trunk road is to be maintained by and at the expense of the undertaker, which would have been inconsistent with the generality of paragraph (1);
- articles 16, 20, 21 and 23 have been amended so that it provides for an obligation to issue correspondence containing certain information when applying for consent under those articles. This new provision will ensure the recipient of the request is made fully aware of the process being applied and will thus ensure fairness in the way it is to operate;
- article 34(8) (temporary use of land for carrying out the authorized development) has been amended to remove sub-paragraph (a) pertaining to the circumstances in which new rights may be compulsorily acquired over specified land for specified purposes. Without knowing the nature of the new rights it is difficult to see how a judgement can be made on whether there is a compelling case in the public interest for authorising the compulsory acquisition of the new rights because the burden of the right on the landowner and other persons with an interest in the land cannot be understood;
- article 44(1) (defence to proceedings in respect of statutory nuisance) has been amended to remove the reference to paragraph (h) of section 79(1) of the Environmental Protection Act 1990, as the Secretary of State is not satisfied that the explanatory memorandum justifies including this form of statutory nuisance;
- article 45 (Appeals relating to the Control of Pollution Act 1974) has been removed in full. It is the Secretary of State’s view that the appeal mechanisms under the 1974 Act and the provisions under article 48 (arbitration) are sufficient;
- Schedule 2, paragraph 1 (interpretation):

- the definition of “Environmental Management Plan” has been amended to adopt the language of the document referred to in the Examination library, and
- a definition of “protected species” has been inserted, which encompasses a wider definition than that provided by the definition of “European protected species”;
- Schedule 2, requirement 6(3) has been amended to remove the phrase “or other element” following consideration of the consultation response provided by the SDNPA on 5 April 2024 which conveyed the SDNPA’s intention that the phrase was to ensure the inclusion of chalk grassland. Given chalk grassland is now referred to in the requirement, and no other element is in contemplation, this phrase has been removed;
- Schedule 2, requirement 12 (detailed design) has been amended to insert a new paragraph (2) which requires, in relation to the detailed design, the undertaker to have regard to the amended duty introduced by section 245 of the Levelling up and Regeneration Act 2023;
- Schedule 2, requirement 14 has been amended to remove paragraph (4), and insert SDNPA as one of the consultees under paragraph (1) of that requirement. The Secretary of State notes that, as a planning authority for its area, the SDNPA is already required to be consulted under paragraph (1), irrespective of paragraph (4). In order to ensure that the SDNPA is consulted not merely in relation to its area as a planning authority, but in principle in relation to areas adjacent to it, the Secretary of State has modified this requirement to ensure there is consultation with the SDNPA in general;
- schedule 10, part 3, paragraph 32 (arbitration) has been amended to remove a reference to paragraph 11(5). This particular paragraph does not exist, and it was unclear to the Secretary of State what it was intended to refer to. As a general observation, the Secretary of State brings to the attention of the relevant parties that the cross-references for Schedule 10 had a significant number of errors, presumably due to misnumbering across versions of the document. These have been addressed where the error is obvious, but the parties should nevertheless review the provisions as amended.

## **LATE REPRESENTATIONS AND CONSULTATION RESPONSES**

289. Following the close of the Examination, the Secretary of State received late representations and responses to his consultation questions (that were outside of the questions posed). The Secretary of State has treated these correspondence as late representations and has published them as such alongside this letter on the Planning Inspectorate website.

290. The Secretary of State has had regard to the letter from Hampshire Chamber of Commerce dated 8 April 2024, where, whilst noting their general support for the improvements to M3 Junction 9, it states concerns relating to the impact of diversion routes on Winchester City Centre, the monitoring of the impacts of reduced speed limits during construction, and the impact of concurrent works on the M3 and M27. The Secretary of State is satisfied that the points raised by Hampshire Chamber of Commerce are adequately

addressed, as discussed in the Traffic, Transport and Non-Motorised Users section and the Cumulative Effects sections of the ExA's Report and this letter.

291. The Secretary of State notes the letter from the Winchester District Green Party regarding the economic appraisal of the Proposed Development and its alignment with local policies. As discussed above, the Secretary of State considers that the Proposed Development aligns with several of the policy aims of the relevant local plans and, like the ExA, considers that the Proposed Development provides medium value for money, as discussed at paragraphs 25 - 29, above.
292. The Secretary of State notes the response to his consultation from Winchester Friends of the Earth which contends that the Proposed Development is "economically unsound, contrary to the UK's climate commitments under the Paris Agreement, significantly damaging to the natural environment and damaging to the health of the local population." The Secretary of State is satisfied that all of these matters have been considered appropriately both by the ExA and in this letter as detailed above. They go on to raise concerns regarding the Applicant's consideration of alternatives to the Proposed Development, however, as set out at paragraphs 25 - 29, the Secretary of State is satisfied that the question of alternatives has been appropriately considered. Finally, the response provides comment on the application of the 2023 Act and the response from National Highway dated 15 March 2024. The Secretary of State has considered the comments made by Winchester Friends of the Earth on this matter when reaching his conclusions on the 2023 Act which is discussed at paragraphs 299 - 307.
293. The Secretary of State has had regard to the letter from Ruth Bradshaw dated 10 April 2024 on behalf of the Campaign for National Parks ("CNP") and the attached legal opinion which was provided for the A66 Northern Trans-Pennine Project DCO ("the A66 DCO") and the implications of the 2023 Act. The Secretary of State considers his duty in respect of the National Park at paragraphs 306 - 307.
294. The British Horse Society and Cycle Winchester both requested sight of the confidential side agreement made between the Applicant and Hampshire County Council. The Secretary of State considers that non-motorised user issues have been fully examined and considered by the ExA and does not consider that disclosure of the side agreement is necessary.
295. Unless addressed above, the Secretary of State considers that these late representations do not raise any new issues that are material to the decision on the Proposed Development which have not previously been considered by the ExA or in this letter. As such, the Secretary of State is satisfied that there is not any new evidence or matter of fact in these late representations that need to be referred again to Ips under rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

## **GENERAL CONSIDERATIONS**

### **Public Sector Equality Duty**



296. The Equality Act 2010 established the public sector equality duty. Which requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race.
297. 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.

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

298. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 has to consider what action he can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective and, in accordance with regulation 7 of the Decisions Regulations, have regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992. He has had regard to both of these 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 but did so with regard to the section 40(1) duty prior to it being amended by section 102(3) of the Environment Act 2021. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

### **Levelling Up and Regeneration Act 2023**

299. The Secretary of State notes that the Levelling Up and Regeneration Act 2023 (“the 2023 Act”) took effect from 26 December 2023. Section 245 of the 2023 Act amends (insofar as is relevant to this matter) section 11A of the National Parks and Access to the Countryside Act 1949 (“NPAC Act”) and so as to impose a duty on relevant authorities, including the Secretary of State, to seek to further the purposes of National Parks. With regard to National Parks, as is applicable here, the relevant purposes are set out in section 5(1) NPAC Act: conserving and enhancing the natural beauty, wildlife and cultural heritage of national parks and promoting opportunities for the understanding and enjoyment of the special qualities of national parks by the public.
300. The ExA was unable to examine this issue as the duty came into effect after the close of the Examination. However, in reaching its conclusions in relation to the purposes of the National Park, the ExA identified potential long-term enhancements to the National Park’s special qualities of tranquility, landscape and public access provision which it drew to the Secretary of State’s attention [ER 8.2.15].

301. As this issue had not been considered in the Examination, the Secretary of State consulted on it in order to give the Applicant and Ips the opportunity to comment.
302. In his consultation letter of 8 March 2024, the Secretary of State invited the Applicant to provide comments on the implications of the 2023 Act from their perspective, and how he could be satisfied that the Proposed Development meets the requirements applied by the amendments made by the 2023 Act as regards section 11A of the NPAC Act. In their response dated 15 March 2024, the Applicant considered that some meaning must be applied to the words “seek to” until such a time that there is guidance and regulations to assist in the application of the duty. Furthermore, the Applicant stated that throughout the design of the Proposed Development measures to conserve and enhance the natural beauty, wildlife, and cultural heritage of the National Park and measures to promote understanding and enjoyment had been incorporated.
303. In his consultation letter of 22 March 2024, the Secretary of State invited the SDNPA and other Interested Parties to comment on the Applicants letter of 15 March 2024. The Secretary of State notes that the SDNPA in their response of 5 April 2024 contend that the Applicant cannot have taken all reasonable steps to further the statutory purposes of the National Park and directed him towards Examination submissions which the SDNPA had previously submitted, including the location of, and design of, the construction compound.
304. Winchester Friends of the Earth consider that the Proposed Development does not seek to further the purposes of the National Park but rather “impacts negatively on the ‘natural beauty, wildlife and cultural heritage of the area comprised in the National Park’”.
305. The Campaign for National Parks responded to the consultation attaching legal advice. In the light of that advice, it considers that the Applicant has to show how it has taken all reasonable steps to seek to further the purposes of the South Downs National Park as part of developing proposals for M3 Junction 9, including showing how it has considered alternative approaches which might better further the purposes, and why these alternatives were rejected.
306. The Secretary of State has given careful consideration to his duty under section 11A of the NPAC Act and taken into account the representations received from the Applicant and Ips following his consultation on the matter. He has borne this duty in mind throughout his consideration of the potential benefits and impacts of the Proposed Development on the SDNP, for instance when considering landscape and tranquillity impacts in the relevant section above. While the ExA was unable to directly consider this matter during the Examination, the Secretary of State agrees with it that the Proposed Development has potential benefits for the National Park in terms of long-term enhancements to the National Park’s special qualities of tranquillity, landscape and public access provision which he considers would further the purposes of the National Park. He further agrees with the Applicant that it has demonstrated that the Scheme is justified and that its benefits cannot be delivered by any alternative route or means and there is no further mitigation that can be reasonably required to mitigate its effects on the National Park. This accords

with the conclusions of the ExA outside of any direct consideration of the section 11A duty which the ExA was unable to offer.

307. The Secretary of State considers that the requirements of the statutory duty have been satisfied, as discussed above, in the context of this decision. Regardless, as the Secretary of State attaches great weight to the importance of the National Park and the duties imparted by the 2023 Act, he has made provision in requirement 12 of the Order to ensure that at the detailed design stage the Applicant is to have regard to the amendments made by section 245 to the duty to seek to further the purpose of conserving and enhancing the protected landscapes. This is detailed at paragraph 288, above.

## **SECRETARY OF STATE'S OVERALL CONCLUSION AND DECISION**

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

## **CHALLENGE TO DECISION**

309. 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**

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

Yours faithfully,

Gareth Leigh

## **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 M3 Junction 9 Improvements Development Consent Order 2024 (as made) is being published on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR010055>

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).