



# Department for Transport

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16 November 2022

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A417 MISSING LINK DEVELOPMENT CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the report of 16 August 2022 of the Examining Authority (“the ExA”) Kenneth Stone MRTPI BSc (Hons) Dip TP and David Wallis MRTPI BSc (Hons) Dip EnvP who conducted an Examination into the application by Highways England (now known as National Highways; referred to here as the “the Applicant”) for the A417 Missing Link Development Consent Order (“the Order”) under section 31 of the Planning Act as amended (“the 2008 Act”);
- the responses to the consultations undertaken by the Secretary of State following the close of the Examination in respect of the application; and
- late representations received by the Secretary of State following the close of the Examination.

2. The application was submitted to the Planning Inspectorate on 1 June 2021 and accepted for examination on 29 June 2021. The Examination began on 16 November 2021 and was completed on 16 May 2022. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by five issue specific hearings, three compulsory acquisition hearings, two open floor hearing and three unaccompanied site visits on 14 September 2021, 28 February 2022 and 1 March 2022.

3. The Order as applied for would grant development consent for a new rural all-purpose dual carriageway for the A417. It would connect the existing A417 Brockworth

bypass with the existing dual carriage A417 south of Cowley. The works (“Proposed Development”) includes:

- a new junction at Ullenwood, connecting the A417 to the A436 and Leckhampton Hill;
- a new junction with slip roads at Shab Hill;
- a new junction at the Cowley roundabout;
- diversion of the Cotswold Way National Trail (“CWNT”) via a new overbridge;
- diversion of the Gloucestershire Way long distance footpath via a new wildlife crossing bridge;
- construction of overbridges at Cowley and Stockwell; and
- various landscape, temporary construction and access works.

4. Published alongside this letter, on the Planning Inspectorate’s website, is a copy of the ExA’s Report of Findings, Conclusions and Recommendations to the Secretary of State (“the Report”). The ExA’s findings and conclusions are set out in chapters 5 to 9 of the ExA’s Report, and the ExA’s summary findings and conclusions and recommendation are set out in Chapter 10. All “ER references” are references to specified paragraph in the ExA’s Report. Paragraph numbers in the ExA’s Report are quoted in the form “ER x.xx.xx” as appropriate. References to “requirements” are those in Schedule 2 to the Order as the ExA recommended at Appendix D of the Report. This letter should therefore be read alongside the Order and the ExA’s Report that are published on the Planning Inspectorate’s website for the application.

5. Please note that, although this letter refers to the decision of “the Secretary of State”, the Rt Hon Mark Harper has not personally been involved in this decision, which has in practice been allocated to and taken by the Minister of State for Transport, Huw Merriman, but by law has to be issued in the name of the Secretary of State. Accordingly, this letter refers to the Secretary of State throughout.

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

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

- The site and the proposal (chapter 2);
- Legal and policy context (chapter 3);
- The planning issues (chapter 4);
- Findings and Conclusions in relation to the planning issues (chapter 5)
  - Air Quality
  - Biodiversity
  - Cultural Heritage
  - Geology and Soils
  - Landscape and Visual
  - Noise and Vibration
  - Socio-Economics
  - Traffic and Transportation;
  - Water Environment including flooding;
- Findings and conclusions in relation to the Habitats Regulations Assessment (chapter 6);

- Conclusion on the case for development consent (chapter 7);
- Compulsory Acquisition (“CA”) and Temporary Possession (“TP”) (chapter 8); and
- Draft Development Consent Order (“dDCO”) (chapter 9)

7. For the reasons set out in the Report, the ExA recommended that the Order be made in the form set out in Appendix D to the Report.

## Summary of Secretary of State’s Decision

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

## Secretary of State’s Consideration

9. The Secretary of State has considered the Report, the further representations received after the close of the examination, responses to his further consultation of 2 September 2022, and all other material considerations. The Secretary of State’s consideration of these matters is set out in the following paragraphs. Where not otherwise stated in this letter the Secretary of State can be taken to agree with the ExA’s findings, conclusions and recommendations as set out in the ExA’s Report and the reasons given for the Secretary of State’s decision are those given by the ExA in support of the conclusions and recommendations.

10. The Secretary of State is aware that during the examination the Applicant submitted a non-material change request (“the change request”) in relation to the scope and extent of the CA and TP powers sought in relation to the premises of Flyup 417 Bike Park (Flypark Limited). The plots affected by the change request were listed as 1/19, 1/19a, 1/19b, 1/19c, 1/19d, 1/19e, 1/19f, 1/19h and 1/19j in the Book of Reference (Document Reference 4.3) submitted as part of the application, and the new plots 1/19o and 1/19v. The change sought was to allow for:

- the introduction of a new private means of access for FlyUp Limited;
- an amendment to reduce the limits of deviation to ensure that the footprint of the earthworks does not overlap with the existing car park at FlyUp 417 Bike Park;
- a revision to the draft Development Consent Order and Book of Reference to vary the type of compulsory acquisition powers sought in respect of specific plots; and
- consequential amendments to plans and drawings.

11. The Secretary of State notes that the Applicant carried out consultation with Flypark Limited prior to submitting the change request on 15 February 2022. The Applicant publicised the proposed change in accordance with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. The Applicant reported to the ExA that Flyup Limited asked for further alterations, but these were rejected [ER 5.8.34]. The ExA noted that following the change request, Flyup Limited did not make any further representations or request attendance at the third CA hearing [ER 5.8.35].

12. The ExA disagreed with the Applicant’s conclusion that the change would be non-material but was content that the conclusions in the environmental impact assessment submitted in support of the application on the significance of effects would remain the same. The ExA was also content that the change sought by the Applicant would make no

difference to the outcome of the Habitats Regulations Assessment [ER 2.3.3]. The ExA was satisfied that the change sought by the Applicant did not result in a change to the extent that a new application would be required [ER 10.2.5]. The Secretary of State is also satisfied that this change does not result in a significant change to the application as applied for.

### **Legal and Policy Context**

13. For the reasons set out in ER 1.1.6, the Secretary of State is content that the Development qualifies as a Nationally Significant Infrastructure Project (“NSIP”) under sections 14(1)(h) and 22(1)(b) and (3) of the 2008 Act. Under Section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with any relevant National Policy Statement (“NPS”), which in this case is the National Policy Statement for National Networks (“NPSNN”), subject to the exceptions in section 104(4) to (8) of the 2008 Act. Section 104(2) of the 2008 Act has effect in relation to the development to which the application relates. In determining this application, the Secretary of State must therefore have regard to any relevant NPS and any Local Impact Report (“LIR”) submitted, any matters prescribed in relation to the development, and any other matters which the Secretary of State considers to be both important and relevant to the decision [ER 3.1.2 – 3.1.3].

14. The NPSNN is the relevant national policy statement to be used by the Secretary of State for making decisions on development consent applications for national network NSIPs in England. In a Ministerial Statement issued on 22 July 2021 the Secretary of State for Transport advised that a review of the NPSNN will begin in 2021, to be completed no later than Spring 2023. While the review is undertaken the NPSNN remains relevant government policy and has effect for the purposes of the 2008 Act. The NPSNN will, therefore continue to provide a proper basis on which Examination Authorities can examine, and the Secretary of State can make decisions on, applications for development consent.

15. The Secretary of State has also had regard to: the single combined Local Impact Report submitted by Gloucestershire County Council, Cotswold District Council and Tewkesbury Borough Council (“the Joint Councils”) [ER 3.9]; the Development Plans of Gloucestershire County Council, Tewkesbury Borough Council, Cotswold District Council and the Cotswold Conservation Board [ER 3.10]; environmental information as defined in regulation 3(1) of the 2017 Regulations; and all other matters which are considered to be important and relevant to the Secretary of State’s decision as required by section 104 of the Planning Act 2008. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

### **Need for the Development**

16. The NPSNN sets out the national policy for highways-related development and is the relevant NPS for this application. It sets out the need for and Government’s policies to deliver development of NSIPs on the national road network in England. It states that the Government has concluded that at a strategic level there is a compelling need for the development of the national road network. It makes clear that subject to the detailed policies and protections within it, and the legal constraints set out in the 2008 Act, there is a presumption in favour of granting development consent for national network NSIPs that fall within the need for infrastructure established in the NPSNN.

17. The Secretary of State notes that the Applicant’s primary objectives of the scheme are to: relieve traffic congestion on the A417, the A436 and the local road network

surrounding them; improve reliability of the road network with decreased journey times; reduce the number of deaths and seriously injured casualties resulting from accidents on this stretch of the strategic road network; reduce volumes of through-traffic in villages with greater resilience built into the strategic road network [ER 7.2.7] and support local and regional economic growth [ER 2.2.3]. The ExA notes that the Applicant concluded that no intervention on the existing A417 would result in the exacerbation of existing problems with congestion, capacity, road safety and severance of Public Rights of Way (“PRoW”) [ER 4.5.7].

18. The NPSNN is the Secretary of State’s primary basis for decision-making on national networks infrastructure projects in England. The ExA’s consideration of the Proposed Development and conformity with the NPSNN is summarised in section 4.5 of the Report. The ExA noted that the majority of IPs expressed broad support for the Proposed Development and did not raise any objection in terms of high-level conformity with the NPSNN [ER 4.4.7]. Overall, the ExA was satisfied that the Proposed Development conforms with the strategic objectives in the NPSNN for the delivery of national networks that meet the country’s long-term needs, supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. It would meet the critical need to improve the national networks to address road congestion. These are consistent with the Proposed Development objectives, and we conclude the Proposed Development would meet these objectives [ER 7.2.10]. The ExA considered that the Proposed Development benefits from the presumption in favour of the development set out in the NPSNN and has afforded substantial weight to the contribution it would make towards meeting the need for the development of national networks identified in the NPSNN [ER 7.2.11].

19. The ExA’s consideration of the LIR is found at section 4.3 of the Report, and the ExA noted that in respect of the need for the Proposed Development, the LIR confirms that the A417 is essential for the movement of people and good within Gloucestershire and surrounding regions, and the need for the development has been apparent for many years [ER 4.3.2]. The Secretary of State notes that the Joint Councils strongly support the Proposed Development as it will take pressure off the strategic and local highway network, greatly improve road safety and provide economic benefits wider afield [ER 7.2.9].

20. The ExA also considered the case for the Proposed Development against the adopted development policies plans in the Joint Core Strategy adopted in 2017 which states that the Local Transport Plan is the “key strategy for delivery of essential transport infrastructure to support growth. The ExA noted that the Proposed Development is highlighted as a priority project in Gloucestershire County Council’s Local Transport Plan and as critical infrastructure in Cotswold District Council’s Infrastructure Delivery Plan. The ExA also highlighted that the need for the Proposed Development was identified in the 1990s, and that there has been an ongoing recognition for such improvements to be undertaken, with the project’s inclusion and support from, amongst other strategies, the Road Investment Strategy 2015/16 to 2019/20 and the Road Investment Strategy 2020 to 2025 [ER 7.2.6] and that it would contribute to achieving the Government’s strategic vision for the Strategic Road Network [ER 4.7.1].

#### The Secretary of State’s Conclusion on Need

21. The Secretary of State agrees with the ExA that the Proposed Development benefits from the presumption in favour of the development and that substantial weight should be given to the contribution it would make towards the need for the delivery of national

networks set out in section 2 of the NPSNN. The Secretary of State agrees that the Proposed Development would make an important contribution to the improvement of the existing strategic road network, improvement to journey times, highways safety and result in substantial economic benefits as set out in ER 7.3.3. The Secretary of State is also satisfied that the principle of the Proposed Development is supported by other relevant plans and policies such as the Joint Core Strategy and other relevant local plans and policies identified by the ExA.

### **Assessment of Alternatives**

22. The Secretary of State is aware that a number of IPs raised concerns with regard to the assessment of alternatives and that this matter was considered in detail by the ExA during the Examination [ER 4.5.15]. The ExA records that the concerns included the nature and extent of public engagement and consultation which had been carried out leading to the chosen option, the fairness of the assessment process, the detail of the schemes that were considered and whether this was on a like for like basis, the effect on the landscape and general environmental impacts, the integrity and quality of the safety data, the necessity of the proposed speed limit, amount and size of junctions, and the overall cost [ER 4.5.13]. The Secretary of State notes that a number of IPs maintained their objections throughout the Examination [ER 4.5.14].

23. The ExA concluded that no evidence had been submitted to demonstrate that the Applicant's assessment process, which took into account some 30 schemes, was flawed. Further, the ExA records that the process to reduce the options to six and then to two schemes underwent a systematic and robust assessment that had significant regard to value for money. The ExA also highlights that the NPSNN states that options appraisals are undertaken as part of the investment decision-making process for national road schemes and in achieving its status within the Road Investment Strategy, and that the ExA is not required to reconsider this process if it is satisfied that the assessment has been undertaken [ER 4.5.16]. The Secretary of State agrees with the ExA's conclusion that the Applicant has undertaken a detailed assessment of various criteria and applied a suitable and robust scoring mechanism. It has identified the harms and benefits of the two schemes and come to a balanced view that the Proposed Development would be the most appropriate scheme to take forward as it would have greater benefits in terms of air quality, be a higher quality road, safer for road users, provide shorter journey times, delivering greater benefits and the best overall value for money. The Secretary of State also agreed that the Applicant's approach to alternatives complies with the NPSNN [ER 4.5.20].

### **Air Quality**

24. The ExA's consideration of the impact of the Proposed Development on air quality is set out at ER 5.2.

25. The Secretary of State is aware that a number of IPs raised concerns on the impacts from the Proposed Development on air quality during the examination. The ExA provided a list of the types of issues raised which included: impacts on sensitive students at the Ullenwood Campus; effects on quality of life through pollution and air quality deterioration; and reduction in the road speed to reduce air pollution [ER 5.2.32].

26. In respect of the Applicant's air quality assessment, the Secretary of State notes that the ExA was satisfied with the Applicant's responses to its questions on the Applicant's assessment, methodology and findings in respect of air quality impacts, and that this

resolved a large number of issues to the extent that the ExA concluded that no further examination of these issues was necessary [ER 5.2.33].

27. The ExA recorded that the assessment of PM10 and PM2.5 was scoped out at the ES scoping stage because the total concentrations in the study area are well below the relevant air quality objectives and that there are no new predicted exceedances of the annual mean N2O objective at any location during the operational phase of the proposed development. The ExA also recorded that during the construction phase there would be no new exceedances and air quality would not worsen for the majority of residential and non-residential properties [ER 5.2.34 and ER 5.2.35]. However, the ExA noted that there would be a continuation of the current exceedances within the existing Birdlip AQMA at the cottages adjacent to the existing Air Balloon roundabout and the Applicant's assertion that the moving of the carriageway from these cottages would have some benefit in respect of air quality conditions in the area. The ExA concluded that for the construction phase, measures secured within the Environmental Management Plan ("EMP") would ensure that air quality for these nearest receptors would not worsen [ER 5.2.36].

28. The Secretary of State notes that continuous ambient dust monitoring during the construction phase would be undertaken in the grounds of the National Star College which would ensure a pre-agreed threshold would not be exceeded and that dust mitigation would be effective in preventing health effects upon the students at the Ullenwood Campus. He notes that the ExA considers that such site-specific actions are appropriate and proportionate to maintain a responsive form of mitigation, ensuring protection for individuals that are most sensitive to construction dust effects [ER 5.2.37].

29. On impacts to human health, the Secretary of State notes that the ExA concluded that with the implementation of the proposed mitigation measures which would be secured within the Air Quality Management Plan, the Proposed Development would not cause an adverse effect on human health. The ExA records that this is a view that is supported by Public Health England. The ExA also concluded that the Proposed Development would not prejudice the ability to meet national air quality standards, or the targets set within the relevant Air Quality Management Areas [ER 5.2.38]. The Secretary of State also notes that measures in the EMP would ensure that construction of the Proposed Development would neither worsen air quality for the majority of residential and non-residential properties nor significantly worsen air quality for the nearest receptors, and that the moving of the main carriageway of the A417 at the Air Balloon roundabout would have some benefits to the air quality conditions during operation [ER 5.2.35 – 5.2.36].

30. The Secretary of State notes that the ExA have had particular regard to the policies set out in the NPSNN in their consideration of the effects of the Proposed Development in relation to air quality and emissions [ER 5.2.54]. He further notes that the ExA have received no substantive concerns from relevant pollution authorities about their ability to regulate potential releases and is therefore content that paragraph 4.55 of the NPSNN is satisfied and also that it has no good reason to believe, per paragraph 4.56 of the NPSNN, that any relevant control permits, or licences or other consents would not subsequently be granted [ER 5.2.55].

31. The Secretary of State notes that the ExA is content with the Applicant's approach for air quality assessment and mitigation for NO<sub>2</sub> monitoring during the operational phase. The Secretary of State also notes that the ExA is satisfied that proper consideration has been given to construction scenarios, emissions for construction machinery and that appropriate measures have been secured in the recommended Development Consent Order and the EMP to address uncertainties, unforeseen events, communication and

liaison requirements, vehicle emissions and dust mitigation and monitoring during the construction phase [ER 5.2.58].

32. The Secretary of State concludes that appropriate measures have been secured in the recommended Order and agrees with the ExA that there are no outstanding air quality issues that weigh against the granting of the Proposed Development [ER 5.2.59].

#### The Secretary of State's conclusions on Air Quality

33. The ExA was satisfied that the Applicant had adequately considered vehicle emissions, how tighter emissions standard are expected to reduce PM10 and NO<sub>2</sub> emissions, air quality effects over the wider area, relevant statutory air quality thresholds and AQMAs as required by paragraphs 2.16, 3.6 – 3.8, and 5.10 – 5.12 of the NPSNN. It was content with the Applicant's overall approach for air quality assessment and mitigation and for NO<sub>2</sub> monitoring during the operational phase [ER 5.2.56].

34. The ExA concluded that the Proposed Development would not compromise or prejudice the ability of the Government to meet the Air Quality Standards Regulations 2010 or result in any breaches of national or international targets regarding air quality [ER 7.2.13]. The Secretary of State further notes that the ExA is satisfied that construction-based air pollutants and dust are adequately accounted for and mitigated within the EMP secured under Requirement 3 of the recommended DCO ("rDCO") [ER 7.2.14].

35. Overall, the ExA concluded that there were no outstanding air quality issues that would weigh against the granting of the Order [ER 5.2.59] and that air quality matters weigh neutrally in the planning balance [ER 7.2.16]. The Secretary of State agrees with these conclusions.

#### **Climate Change**

##### *Background*

36. The Secretary of State notes the consideration of the effects of the Proposed Development on climate change and the vulnerability of the Proposed Development to climate change [ER 5.2].

37. Section 104(4) of the 2008 Act states that the Secretary of State must decide an application for a national network NSIP in accordance with the NPSNN except to the extent that one or more of section 104(4) to (8) of the 2008 Act apply. These include not only where the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits, but where the Secretary of State is satisfied that deciding the application in accordance with the NPSNN would: lead to the UK being in breach of any of its international obligations; lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment; or be unlawful by virtue of any enactment. The UK's international obligations include the Paris Agreement, which was ratified by the UK Government in 2016, after the NPSNN was designated in 2014. The Paris Agreement does not set out a specific commitment on carbon emissions for the UK. This is provided for in the UK by way of the carbon budgets set under the Climate Change Act 2008 ('CCA2008').

38. Paragraphs 5.16 to 5.19 of the NPSNN set out the necessary consideration of carbon emissions [ER 5.2.10 – 5.2.13] and climate change adaptation is addressed in paragraphs 4.36 to 4.47 of the NPSNN.



39. In June 2019 the Government announced a new carbon reduction ‘net zero target’ for 2050 which was given effect by the Climate Change Act (Amendment) Order 2019, which amends section 1 of the CCA2008. This is a legally binding target for the Government to cut net carbon emissions to zero by 2050 against the 1990 baseline. This amends the previous legally binding target to cut net carbon emissions by 80% by 2050 against the 1990 baseline.

40. The CCA2008 requires five-yearly carbon budgets to be set 12 years in advance to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the fourth (‘4CB’), fifth (‘5CB’) and sixth (‘6CB’) carbon budgets are 2023 – 2027, 2028 – 2032 and 2033 – 2037 respectively. Only 6CB has been set against the new legally binding target to cut net carbon emission to net zero by 2050. Achieving net zero will require future greenhouse gas emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target. Compliance with the CCA2008 would provide a route towards compliance with the Paris Agreement 2015 [ER 5.2.9].

### *Greenhouse Gas Emissions*

41. The ExA records that the examination in respect of carbon emissions focused on whether the Applicant’s carbon emission estimates are reliable, and whether the carbon emissions be so significant as to have a material impact on the ability of the Government to meet its carbon reduction targets [ER 5.2.2]. The ExA also highlighted a concern raised by the Joint Councils regarding the funding and exploitation of carbon mitigation measures, but that this had been resolved during the examination through amendments in the EMP to take account of this concern [ER 5.2.41].

42. The ExA records that the main opposing view to the Applicant’s case was from Climate Energy Policy and Practice (“CEPP”). As set out in ER 5.2.40, CEPP made detailed submissions challenging various aspects of the Applicant’s ES, methodology, evidence base and conclusions which the ExA summarised as follows:

- No cumulative assessment had been undertaken or presented in the ES, thus making the ES unlawful and the ExA should use regulation 20 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”) to suspend the Examination.
- The transport model used by the Applicant is not inherently cumulative.
- The Proposed Development, even on its own, would have a significant impact on the Government’s ability to meet carbon emissions reductions targets during the course of its operation.
- The Applicant had not taken into account the Net Zero Strategy, Transport Decarbonisation Plan or the Nationally Determined Contribution and had used an out-of-date emission factor toolkit.
- Having then taken the Net Zero Strategy and Transport Decarbonisation Plan into account, the Applicant was wrong to rely upon these strategies which were subject to legal challenge, and it is premature to rely upon it and its objectives, as it is not inevitable that the strategies will deliver UK carbon budgets.
- The project would go against the aims of reducing carbon emissions.
- The decision made by Secretary of State on the M54 to M6 Link Road Development Consent Order (and M25 J10, M25 J28) did not support or justify the Proposed Development.

- The Institute of Environmental Management Assessment (IEMA) is only a starting point of limited value in the Environmental Impact Assessment (EIA) process.

43. The Secretary of State is aware that the ExA invited comments from the Environment Agency (“EA”), Natural England (“NE”), National Trust (“NT”), Gloucestershire Wildlife Trust (“GWT”), Cotswolds Conservation Board on the Applicant’s assessments and forecasts of carbon emissions with direct reference to the NPSNN, and none of these bodies raised any concerns in this respect [ER 5.2.41]. The Secretary also notes the responses provided by the Applicant:

- The ES follows the Design Manual for Roads and Bridges (DMRB) guidelines and fulfils the policy expectations of the NPSNN and complies with the EIA Regulations.
- There is no legal or policy requirement (under the NPSNN) to consider local or regional carbon budgets, nor can it be reasonable for National Highways to produce such a baseline.
- The transport model used in the evidence base takes into accounts all other relevant planned projects and schemes with planning permission within the host local authority areas, accounting for the traffic from those developments on the road, and takes into account regional growth rates, and is thus a robust and inherently cumulative assessment model.
- The carbon budgets are inherently cumulative across all sectors.
- National Highways has its own published strategies for offsetting carbon effects of highway development including tree planting and a greater uptake of electric vehicles, including the 2030/ 2040/ 2050 Net Zero highways plan, which includes a commitment to ensure its maintenance and construction activities become Net Zero by 2040 and road user emissions on the strategic road network become Net Zero by 2050.
- The Secretary of State’s approach on the M54 to M6 Link Road DCO was sound, with the findings of the Secretary of State on the M54 to M6 Link Road DCO regarding cumulative assessment both correct and sound.
- The Net Zero Strategy and the Transport Decarbonisation Plan provide new policy background since the ES was written, as recognised at D2. The Proposed Development is compliant with these and sensitivity tests for operational emissions demonstrate this is the case.
- Using the updated Emissions Factor Toolkit version 11 shows emissions of 604,203 tCO<sub>2</sub>e which is 289,692 tCO<sub>2</sub>e lower than that predicted in the ES, so ES does represent the worse-case scenario.
- There is a downward trajectory of emissions consistent with the NPSNN [ER 5.2.42].

44. The ExA concluded that:

- although not referred to explicitly in Chapter 15 of the ES Chapter, the ExA was satisfied that there has been a degree of cumulative assessment on a localised scale and the emissions projected include consideration of regional growth and demand for the road in general, through the traffic modelling undertaken [ER 5.2.49].
- the Proposed Development is predicted to occupy 0.00717% of the sixth carbon budget in its operation phase which is considered by the Applicant to be conservative given the potential uptake in electric vehicles in interim years. The Emissions Factor Toolkit version 11 demonstrates that the higher uptake in electric vehicles would notably reduce the forecast carbon emissions. The assumptions to be robust on this

basis and, whilst that the emissions from the Proposed Development would impact on the achievement of the statutory carbon budget [ER 5.2.46].

- the Applicant's assessment is proportionate and reasonable in relation to the information the Applicant would have access to in order to enable the impacts of carbon to be understood and accounted for in the decision-making process.
- the information provided in the ES and throughout the course of the Examination was sufficient for the purposes of understanding the environmental effects and consequences of the development, and all IPs had the opportunity to comment on it [ER 5.2.50].
- that every reasonable opportunity to reduce emissions arising during construction and operation phases has been provided for by the Applicant within its Register of Environmental Actions and Commitments ("REAC") integrated into the EMP [ER 5.2.52].
- the increase in emissions does weigh against the Order being made, but given that the Proposed Development, once operational would only lead to a minor increase in emissions towards any of the legislated carbon budgets, it is unlikely that the projects emissions, in isolation would be so significant as to affect the ability of the Government to meet its carbon reduction targets or international obligations. This view is consistent with NPSNN paragraph 5.18 which states that any increase in carbon emissions should not be a reason to refuse development consent unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. [ER 5.2.60 – 5.2.61].
- 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 EIA Regulations and this information has been taken into consideration when assessing whether development consent should be granted [ER 5.2.53].

#### *Carbon Budgets, Net Zero and the Paris Agreement*

45. The Secretary of State notes the main sections of the Applicant's application documents that are relevant to climate change matters are set out in ER 5.2.21. The Applicant's assessment of greenhouse gas emissions (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development is included in Chapter 14 (Climate) of its ES.

46. The Secretary of State notes that the baseline and study area set out in ER 5.2.21 – 5.2.25. The Secretary of State is aware that the baseline in the ES against which the Applicant has considered emissions from the Proposed Development is the continual operation of the existing network without the Proposed Development over a 60 year appraisal period. The Secretary of State is also aware that the assessment takes into account emissions from both the construction and operation of the Proposed Development. The expected impacts from the Proposed Assessments include the expected carbon emissions from construction, carbon emissions from operation associated with maintenance and refurbishment of the scheme, road user vehicle carbon emissions, and carbon emissions associated with ongoing land use change / sequestration over the 60 year operational period.

47. Beyond transport, Government's wider policies around net zero such as The Net Zero Strategy: Build Back Greener ('Net Zero Strategy'), published in October 2021 sets

out policies and proposals to decarbonise all sectors of the UK economy to meet the 2050 target. The Secretary of State acknowledges that since the close of the Examination, there has been a successful challenge to the Net Zero Strategy, as raised by CEPP in correspondence to the Secretary of State following the close of Examination. Whilst the Strategy has not been quashed and remains government policy, a new report is required to be produced in accordance with the order made by the Court as a result of that successful challenge. As things stand, the Secretary of State has no reason to consider that the Proposed Development will hinder delivery of either the Transport Decarbonisation Plan or net zero strategy (whether in its current form or any future updated form). It is against this background that the Secretary of State has considered the Proposed Development.

48. The Secretary of State is aware that the Applicant produced its ES before the publication of the Net Zero Strategy and the Transport Decarbonisation Plan, but that during the examination the Applicant provided a submission which included sensitivity tests, use of an up-to-date Emissions Factor Toolkit and consideration of both of the Net Zero and Transport Decarbonisation strategies [ER 5.2.45]. The Secretary of State notes that the ExA was satisfied that there was a degree of conservatism applied to the calculations and that IPs were given sufficient opportunity to comment.

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

50. The Secretary of State considers that the approach set out in the NPSNN continues to be relevant in light of international obligations and domestic obligations related to reducing carbon emissions that have been introduced since the NPSNN was designated and aligns with the approach to significance set out in the Institute of Environmental Management & Assessment ('IEMA') 2022 guidance Assessing Greenhouse Gas Emissions and Evaluating their Significance ('the IEMA Guidance'). This sets out that the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050 (section 6.2).

51. The IEMA guidance also addresses significance principles and criteria in section 6.3 and Figure 5 and advises (amongst other things) that: a project that follows a 'business-as usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets, results in significant adverse effects; a project that is compatible with the budgeted science based 1.5 degree Celsius trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a minor adverse effect that is not significant – such a project may have residual emissions but it is doing enough

to align with and contribute to the relevant transition scenario to keep the UK on track towards net zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects; and a project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory, and has minimal residual emissions, is considered to have negligible effect that is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.

52. The Secretary of State notes the measures the Applicant will impose to minimise carbon emissions [ER 5.2.30 and ER 5.2.52]. The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible.

53. The Secretary of State notes that the carbon budgets are economy-wide and not just targets in relation to transport. The Secretary of State considers that the Proposed Development's contribution to overall carbon levels is very low and that this contribution will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets. The Secretary of State therefore considers that the Proposed Development would comply with NPSNN paragraph 5.18. The Secretary of State also considers that the Proposed Development's effect on climate change would be minor adverse and not significant and this assessment aligns with section 6.3 and Figure 5 of the IEMA guidance.

54. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the Proposed Development's operation will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions (from construction and operation) resulting from the Proposed Development is predicted to be a maximum of 0.00717% of any carbon budget and therefore very small; the Government has legally binding obligations to comply with its objectives under the Paris Agreement; and there are policies in place to ensure these carbon budgets are met, such as the Transport Decarbonisation Plan and the Applicant's own Net Zero Highways plan. The Secretary of State is satisfied that the Proposed Development is compatible with these policies and that the small increase in emissions that will result from the Proposed Development can be managed within Government's overall strategy for meeting the 2050 target and the relevant carbon budgets. The Secretary of State considers that there are appropriate mitigation measures in place to ensure carbon emissions are kept as low as possible. The Secretary of State is therefore satisfied that the Proposed Development would comply with NPSNN paragraph 5.19. The Secretary of State also considers that the Proposed Development will not materially impact the Government's ability to meet the 2050 target.

### Cumulative Effects

55. The Secretary of State notes that contentions on the assessment of cumulative effects on carbon from the Proposed Development with other existing and/or approved projects were an area of disagreement throughout the Examination and the concerns raised by parties including CEPP, which the Secretary of State has taken into account [ER 5.2.32, ER 5.2.40 and ER 5.2.42].

56. The Secretary of State notes CEPP's concerns include that:

- No cumulative assessment had been undertaken or presented in the ES, thus making the ES unlawful and the ExA should use Regulation 20 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 to suspend the Examination.

- The transport model used by the Applicant is not inherently cumulative [ER 5.2.40].

57. The Applicant set out that the ES follows the DMRB guidelines and fulfils the policy expectations of the NPSNN and complies with the EIA Regulations because:

- The transport model used in the evidence base takes into accounts all other relevant planned projects and schemes with planning permission within the host local authority areas, accounting for the traffic from those developments on the road, and takes into account regional growth rates, and is thus a robust and inherently cumulative assessment model.
- The carbon budgets are inherently cumulative across all sectors [ER 5.2.42].

58. With regards to cumulative assessment, the ExA noted the Applicant's position that other planned projects in the geographical area comprised of the three host local authorities are incorporated into the transport model. These planned projects are developments that contribute vehicles onto the local roads. The ExA therefore recognised that the carbon emissions presented in the ES were representative of all carbon emissions likely to arise from the project and all those other projects planned to take place in the region. They are, in effect, the Proposed Development's emissions plus those emissions generated by the traffic arising from other developments in the study area [ER 5.2.48].

59. Although not referred to explicitly in ES Chapter 15, the ExA was satisfied that there had been a degree of cumulative assessment on a localised scale and the emissions projected included consideration of regional growth and demand for the road in general, through the traffic modelling undertaken. The traffic model could therefore be reasonably said to be inherently cumulative. In response to CEPP's objections to the conduct of the cumulative assessment within the ES, the ExA acknowledged the Secretary of State's view on the M54 to M6 Link Road DCO insofar as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions. Following the methodology in the DMRB as the Applicant has done for the A417 Missing Link project is not, of itself, unacceptable [ER 5.2.49].

60. The ExA was 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 EIA Regulations and this information has been taken into consideration when assessing whether development consent should be granted [ER 5.2.53].

61. The Secretary of State notes the Applicant had provided a comprehensive set of information showing how the Proposed Development would impact national carbon budgets and noted that national budgets are themselves cumulative measures [ER 5.2.27] and agrees that assessing a scheme against the national carbon budgets is an acceptable cumulative benchmark for the assessment for EIA purposes with regard to both construction and operation. This is because carbon budgets account for the cumulative emissions from a number of sectors and it is therefore appropriate to consider how the carbon emissions of the Proposed Development compare against this.

62. Whilst noting the concerns raised and proposals by IP's around alternative approaches to assessing carbon cumulatively, the Secretary of State considers that there is no single or agreed approach to assessing the cumulative impacts of carbon emissions as there are a number of ways such an assessment can acceptably be undertaken. The ExA accepted that the assessment provided by the Applicant can be deemed as inherently cumulative and the Secretary of State agrees with this [ER 5.2.49]. With regard to the Applicant's methodology for assessing emissions from the Proposed Development, the ExA

concluded that it 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 EIA Regulations [ER 5.2.53]. The Secretary of State also agrees with this conclusion.

63. The Secretary of State notes that CEPP have also argued that a cumulative assessment requires consideration of the combined emissions from the Proposed Development alongside other developments that are included within the Do Minimum scenario, as against the Carbon Budgets. Whilst the Secretary of State does not agree that it is necessary to do this in addition to what has been done by the Applicant (for the reasons already stated) the Secretary of State notes that such combined emissions are reported within Table 14-18 of the ES. This identifies that the total emissions in the Do-Something Scenario would be 2,447,356 tCO<sub>2</sub>e over the fourth, fifth and sixth carbon budget periods (i.e. 2025 to 2037) where the relevant carbon budget periods are set out in the same. The combined emissions in the Do-Something Scenario covering 4CB, 5CB and 6CB would equate to approximately 0.0394% of those combined budgets. The Secretary of State considers such combined emissions also to be very small and not significant, and not likely to affect the ability of the Government to meet its carbon reduction plan targets in any event. Accordingly, even if one were to carry out a cumulative assessment of the type that CEPP suggests is necessary, the Secretary of State considers that the reported combined emissions would be very small and not significant and they would not be likely to affect the ability of the Government to meet its carbon reduction targets and they would not alter the Secretary of State's overall assessment set out below. The Secretary of State also notes the Applicant's response to Deadline 7 and 7a submission documents [REP8-029], which indicates that these figures are likely to be an overestimate. as demonstrated by the sensitivity test undertaken by the Applicant using Emission Factor Toolkit (EFT) (version 11).

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

64. Overall, the Secretary of State considers that the information provided by the Applicant on carbon emissions impacts is proportionate and sufficient to assess the effect of the Proposed Development on climate matters. The Secretary of State agrees with the ExA that the carbon assessment in the Applicant's ES is representative of all carbon emissions likely to arise from the Proposed Development and cumulatively with existing and / or approved projects in the region [ER 5.2.48].

65. The Secretary of State agrees that while the Proposed Development will result in an increase in carbon emissions, Government is legally required to meet the carbon budgets which provide a pathway to net zero and the Proposed Development is consistent with existing and emerging policy requirements to achieve the UK's trajectory towards net zero. The Secretary of State therefore considers the Proposed Development's effect on climate change would be minor adverse and not significant and this assessment aligns with section 6.3 and Figure 5 of the IEMA guidance. The Secretary of State notes that the ExA gave careful consideration to the detailed objections from CEPP as well as concerns raised generally by other IPs and concluded that the Proposed Development would not have a material impact on the Government to meet its carbon reduction targets as set out in the Net Zero Strategy [ER 5.2.53].

66. The Secretary of State considers that the Proposed Development would accord with section 104 of the 2008 Act and paragraphs 5.16 to 5.19 of the NPSNN and is satisfied that that the Proposed Development 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.

67. The ExA concluded the increase in emissions from the Proposed Development, once operational, would weigh against the granting of the Order [ER 5.2.61]. However, the ExA concluded that the increase in emissions would be minor and unlikely to affect Government's ability to meet its carbon reduction plans, targets and international obligations. The Secretary of State agrees that the Proposed Development would result in a minor increase in emissions and because of the need to reduce emissions, this weighs against the Order being made. Nevertheless, due to the likelihood of the Government's legally binding targets decreasing carbon emissions over the lifetime of the Proposed Development, along with the mitigation measures which will be adopted to reduce emissions during construction, the Secretary of State agrees with the ExA that limited weight should be attached to this harm.

### **Biodiversity (Other than European Sites)**

68. The Secretary of State is aware that the Applicant considered a range of impacts to ecological receptors including nationally designated sites (Cotswold Commons and Beechwoods SSSI, Crickley Hill and Barrow Wake SSSI, Bushley Muzzard SSSI, Leckhampton Hill and Charlton Kings Common SSSI), and Ullen Wood ancient woodlands, veteran trees, and sites of local importance. The ExA's consideration of these and other receptors is found at ER 5.3. The main issues considered by the ExA are:

- the effects of the Proposed Development upon SSSIs, both from construction and operation phases;
- the extent of effects on ancient woodland and the compensation secured;
- the extent and deliverability of environmental mitigation; and
- the effect upon nature conservation interests in the locality [ER 5.3.21].

69. NPSNN paragraphs 5.20 to 5.38 relate to biodiversity and ecological conservation. Paragraph 5.23 states that the Applicant should "show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests". Paragraph 5.29 states that, where development is likely to have an adverse impact on an SSSI, development consent should not normally be granted; an exception should only be made where the benefits of the development, clearly outweigh the harm to the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs.

70. The Applicant concluded that there will be a moderate adverse effect on Barrow Wake area of the Crickley Hill and Barrow Wake SSSI as a result of the proposed new roundabout at the southern end of the SSSI, with habitat loss in the region of 1,400m<sup>2</sup> (of which 1000m<sup>2</sup> is within the SSSI boundary) comprising calcareous grassland and broadleaved trees. The Secretary of State notes that the Applicant proposes to compensate for this loss with the conversion of approximately 3,600m<sup>2</sup> of hardstanding (of which 1,000m<sup>2</sup> would be within the SSSI boundary) into calcareous grassland [ER 5.3.14]. Additional mitigation measures that would be secured through the Order include pollution management, noise and dust controls, limiting the use of artificial lighting and protection of retained habitat areas [ER 5.3.15]. The Secretary of State also notes that there was concern that during operation, there was potential that increased recreational activity could cause detriment to the habitats within the SSSI [ER 5.3.30]. However, the Secretary of State agrees with the ExA that while the Proposed Development may result in an increase



in such activities, this would not result in substantially or significantly larger numbers of visitors to the area, and not to the volume or scale that would adversely increase the pressure on the existing natural resource [ER 5.3.41].

71. The Secretary of State notes that Chapter 8 Tables 8-21 and 8.22 of the Applicant's ES sets out a full description of the residual significant effects during construction and operation of the proposed development [ER 5.3.17]. The Secretary of State notes that the issues in dispute are set out in ER 5.3.21:

72. The ExA agreed with the Applicant the Proposed Development would result in:

- permanent and irreversible damage to tuffaceous vegetation;
- permanent and irreversible degradation of ancient woodland and veteran trees;
- permanent and irreversible loss of SSSI habitat; and
- potentially higher footfall and recreational pressure within the SSSI [ER 5.3.76].

73. The Secretary of State notes that statutory bodies are satisfied with the compensation that is to be provided for the loss of tuffaceous vegetation [ER 5.3.78]. The Secretary of State also notes that mitigation would be provided for other habitat losses through planting of additional broadleaved woodland, the formation of calcareous grasslands within the Order Limits and a proportion adjacent to the SSSIs. Further, he notes that the creation of green bridges would reduce severance impacts between habitat types and areas. However, the Secretary of State is aware that these measures would not mitigate the loss of these habitats and would take a long time to develop into the quality of the existing habitat but would serve to provide new future habitat [ER 5.3.79].

#### Secretary of State's conclusions on Biodiversity

74. The Secretary of State notes that the ExA considered that no substantive arguments were submitted during the examination to demonstrate that the Applicant's approach to identifying and mitigating for protected species was incorrect or inadequate [ER 5.3.71]. The Secretary of State sees no reason to challenge this conclusion. The Secretary of State also notes that during the examination, NE confirmed that it had no outstanding concerns in relation to impacts on protected species, including bats, barn owls, great crested newts, otters, Roman snails, badgers, birds, invertebrates and fish. The Secretary of State is aware that the Applicant provided copies of letters of no impediment secured from NE with regards to bats, badgers and Roman snails. The Secretary of State has also noted that NE confirmed that it was satisfied that the proposed translocation of reptiles is being approached appropriately and all other mitigation is supported. [ER 5.3.69 – 5.3.71].

75. The Secretary of State agrees with the ExA that the Proposed Development would cause substantial harm to SSSI land within the Order Limits, would cause loss of veteran trees and result in the deterioration of ancient woodland. The Secretary of State notes the ExA's conclusions that both direct and indirect effects are unavoidable with the route chosen. He further notes that the harm to biodiversity and ecology assets weighs against the Order being made and that the ExA has given them substantial weight [ER 7.2.17 – 7.2.19]. The Secretary of State has considered impacts on biodiversity in the Planning Balance section below.

#### Cultural Heritage

76. The Secretary of State notes that concerns in regard to cultural heritage was raised by Cotswold Conservation Board ("CCB"), Historic England ("HE"), the Joint Councils the

National Trust (“NT”) and a number of IPs [ER 5.4.49]. The Secretary of State notes that the Applicant had agreed a Statement of Common Ground (“SoCG”) with the Joint Councils, HE, CCB and NT and that the concerns raised in respect of the historic environment were raised by Interested Parties at Issue Specific Hearing 2 [ER 5.4.50]. The Secretary of State notes that representations including from the Applicant were submitted in response to requests for further information from the ExA. The ExA recorded that, by the end of the examination, while the concerns raised by HE and the CCB about the Applicant’s approach to the assessment and methodology in the Cultural Heritage Chapter and the potential effect on archaeology had been substantially addressed or mitigated following the submission of the final version of the Detailed Archaeological Mitigation Strategy and Overarching Written Schemes of Investigation [ER 4.8.6], the following concerns remained outstanding [ER 5.4.51]:

- the need for a holistic approach to the overall assessment including the approach taken to the Historic Landscape Characterisation (“HLC”) and concerns that this was too broad;
- the adequacy of the approach and assessment of the impact on archaeology with potential for effects on not previously identified remains during the construction phase arising;
- a general concern regarding the loss of heritage and adverse effect on archaeology;
- potential effects on Cowley conservation area and historic features in the village including the old bridge;
- impacts on Emma’s Grove barrows which is on the at-risk register and its future maintenance and protection;
- impacts on Crickley Hill Camp and its setting and views towards and between it and Peak Camp; and
- the loss of Air Balloon public house.

#### *General Approach to Assessment*

77. The ExA was satisfied that the Proposed Development had been assessed in accordance with Design Manual for Roads and Bridges LA106 – Cultural Heritage Assessment (“DMRB LA106”) which sets out the requirements for assessing and reporting the effects on cultural heritage as part of the environmental assessment process for the construction and operation for road infrastructure projects. The ExA was also satisfied that the Applicant’s Landscape and Visual Chapter in the ES has reasonably assessed impacts on the historic landscape [ER 5.4.59], and that the Applicant has conducted an appropriate and proportionate assessment including of heritage assets which has properly identified the significance of heritage assets and the significance of their setting and their relationships with other assets in that setting [ER 5.4.58]. The ExA was satisfied that the Applicant’s HLC which was undertaken at the landscape level was appropriate given the scale and nature of the Proposed Development. The ExA was also satisfied that the Applicant’s assessment meets the requirements of paragraphs 5.126 to 5.127 of the NPSNN [ER 5.4.58].

78. The ExA was content that the significance of heritage assets has been reasonably identified, including the contribution of their settings. The effect of the Proposed Development on those matters that contribute to the significance of the heritage assets and that they have been properly identified and assessed is not the subject of any outstanding matters in respect of such issues from any party in their SoCGs. Consequently, the ExA was satisfied that the approach and information contained in the ES including the figures and appendices, as updated by the Environment Statement – Updates and Errata [REP4-

031], provides sufficient information to arrive at informed decisions in this regard and full account has been taken of relevant matters, including the wider landscape within which the assets sit, and which contributes to their setting and their significance. The Secretary of State has no reason to disagree with that view [ER 5.4.60]. In addition, the ExA records that the SoCG agreed between the Applicant and HE confirms that there is no longer any outstanding issue related to HLC or holistic approach [ER 5.4.58].

### *Archaeology*

79. The Secretary of State notes that concerns were expressed by a number of IP's including HE, the Joint Councils, NT and CCB with regard to the adequacy of the assessment on archaeology and the potential for significant effects on previously unidentified buried remains [ER 5.4.62]. The Secretary of State notes that at the end of the Examination, a Detailed Archaeological Mitigation Strategy and Overarching Written Scheme Investigation ("DAMS/OWSI") had been extracted from the EMP (secured through Requirement 3 of the dDCO) and will be a certified document, as identified in Schedule 9 of the rDCO. Requirement 9 has been amended to refer directly to the implementation of and secures the requirements of the DAMS/OWSI [ER 9.4.28]. The Secretary of State is aware that on the basis of the secured DAMS /OWSI, IPs have concluded that their concerns have been addressed [ER 5.4.62 – 5.4.63] and therefore the ExA concluded that the concerns raised by IPs have been appropriately addressed [ER 5.4.101]. The Secretary of State agrees with the ExA's suggested changes to Schedule 2 R9(5) to ensure agreement with the county archaeologist on the long-term storage of the archaeological archive, and the inclusion of the document reference of the DAMS/OWSI to ensure clarity and avoid confusion [ER 9.4.29 – 9.4.30].

80. The ExA noted that further geophysical results were provided towards the end of the Examination to cover more of those areas where previously access had been restricted. This added to the background knowledge and detailed assessment and found no new significant issues. Given the nature of the works already undertaken and future works further secured through the DAMS/OWSI the ExA was satisfied that the Applicant had undertaken proportionate investigation, including where necessary field evaluation, in accordance with paragraph 5.127 of the NPSNN and that Requirement 9 secures the DAMS/OWSI and makes provision for any undiscovered heritage assets in accordance with NPSNN paragraph 5.142 [ER 5.4.64]. The Secretary of State agrees with these conclusions.

### *Emma's Grove*

81. The Secretary of State notes that the Applicant ascribed a high value to the sensitivity of this Scheduled Monument which includes three bowl barrows, and that the ExA was satisfied with the Applicant's description of this heritage asset and the contribution that its setting makes to that significance [ER 5.4.67 – 5.4.69]. The Secretary of State also notes that no IPs objected to the Applicant's description of the significance of the asset during the examination [ER 5.4.70 – 5.4.71]. The Proposed Development would alter the immediate setting of the barrows and result in a modern alteration to the landscape setting in which they sit. The Proposed Development would also create a physical barrier in the landscape that would adversely affect the significance of the asset and that the Applicant concluded that this would result in a moderate adverse effect [ER 5.4.73].

82. The Secretary of State is aware that the cutting edge of the Proposed Development edge would lie 52 metres from the edge of the scheduled area at its nearest point in order to protect the burrows, and that the scheduled monument will be fenced off during

construction to ensure no damage during the construction phase [ER 5.4.74]. The Secretary of State is also aware that during the examination, amendments were made to the Order to allow improved access to the scheduled monument to improve visitor experience and access in the surrounding area. Further, the Secretary of State notes that the SoCG agreed between the Applicant and HE confirms that HE is satisfied with the approach to be taken in respect of mitigation and enhancement at Emma's Grove. [ER 5.4.76 and ER 5.4.78]. Like the ExA, the Secretary of State is also satisfied that the scheduled monument will be sufficiently protected [ER 5.4.79].

83. The Secretary of State notes that the ExA was satisfied that the Applicant will secure and protect the SM during the construction phase, through the implementation of the EMP and requirements in the REAC, but that there will be residual harm to the significance of the asset due to harm to its setting. He further notes that overall the ExA, conclude that there would be harm to the SM, that this harm would be less than substantial and therefore needs to be weighed against the public benefits of the proposal [ER 5.4.81]. This balancing is considered below.

#### *Crickley Hill/Peak Camp*

84. The Secretary of State is aware that Peak Camp was omitted from the Applicant's ES but that it was included in an update. The update took account of HE's comments and while noting that the asset is not scheduled, it accepted the Peak Camp asset as a resource of high value due to its age and rarity, as the Camp did not develop into an Iron Age settlement so will have better preserved Neolithic remains with no later intrusions [ER 5.4.86 and REP1-139]. The Secretary of State further notes that concern was expressed by various IP's that the Proposed Development would result in [ER 5.4.88]:

- adverse effects to the setting of Crickley Hill and Peak Camp and the interaction between them;
- reduction in the woodland adjacent to the existing A417;
- the potential of a more intrusive form of development increasing views of the modern infrastructure and increasing disturbance from noise and activity; and
- harm to the Crickley Hill scheduled monument.

85. The ExA noted that while there will be an increase in the scale and dimension will increase as a result of the Proposed Development, it will follow the existing alignment of an existing intrusive feature in the setting of these heritage assets. However, the ExA accepted that the additional impact from the increase in scale and dimension will have an adverse effect on these assets resulting in an overall less than substantial harm to the Crickley Hill scheduled monument and minor harm to the significance of Peak Camp [ER 5.4.88 – 5.4.90]. The Secretary of State has considered this harm further in the Planning Balance section below.

#### *Other Designated Heritage Assets*

86. The Secretary of State is aware that the Proposed Development would have the potential to affect some 50 listed buildings within the Applicant's study area [ER 5.4.91]. The ExA concluded that with the exception of Shab Hill Barn, a Grade II listed building the Proposed Development would have neutral effect on the listed buildings identified by the Applicant. The ExA concluded that the Proposed Development would result in less than substantive harm to Shab Hill Barn due to the visual intrusion on the setting of this asset from the Proposed Development [ER 5.4.93 – 5.3.94].

87. The Applicant's assessment also identified two conservation areas within the study area, Cowley and Brimpsfield, but that the from the Proposed Development would be neutral because it would not be visible from the conservation areas and there would therefore be no effects on the settings of the conservation areas would not be altered [ER 5.4.95].

#### *Other Non-designated Heritage Assets*

88. The Secretary of State is aware that a number of IPs raised concerns regarding the proposed demolition of the Air Balloon Public House including the Gloucestershire Ramblers and George Lambrick, who highlighted the importance of the public house for walkers in the area. The building is not a designated heritage asset and the Applicant ascribed a medium value to it and concluded that its loss would result in a slight adverse effect. The Secretary of State is aware that the Applicant proposed mitigation by means of photographic record and measured surveys which the ExA considered reasonable given that its loss is unavoidable due to the route of the Proposed Development [ER 5.4.98].

#### The Secretary of State conclusions on Cultural Heritage

89. The ExA notes that the ExA had regard regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 and the desirability of preserving listed buildings and scheduled monuments, their setting, and any features of special architectural or historic interest that they possess [ER 10.2.13].

90. The Secretary of State agrees with the ExA that the information provided in the Applicant's ES and the updated ES provide sufficient information to identify the potential impacts from the Proposed Development on heritage assets and to inform decision-making in this respect [ER 5.4.60]. The Secretary of State agrees with the ExA that the loss of the non-designated Air Ballon Public House is justified, and its loss is unavoidable due to the route of the Development. The NPSNN states at paragraph 5.1.40 that "*Where the loss of the whole of part of a heritage asset's significance is justified, the Secretary of State should require the applicant to record and advance understanding of the significance of the heritage asset before it is lost (wholly or in part).*" The Secretary of State notes that the prior to demolition, a detailed record would be made by means of photographic and measured survey. The Secretary of State notes that this will be secured by the EMP. The Secretary of State also agrees with the ExA that where there would be harm to the significance of designated assets, this harm would be less than substantial [ER 10.2.14]. The Secretary of State has considered the harm to heritage assets in the planning balance section below. The Secretary of State also agrees with the ExA that the Applicant's general approach to the assessment of non-designated heritage assets and buried archaeological remains is proportionate and appropriate and in line with the requirement of both the NPSNN and the NPPF and that the Proposed Development would accord with regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 relating to the United Nations Environmental Programme Convention on Biological Diversity of 1992. [ER 7.2.20 and ER 10.2.15]

91. The Secretary of State agrees with the ExA's conclusions that the Proposed Development would result in less than substantial harm to Emma's Grove and Crickley Hill scheduled monuments, and Shab Hill barn Grade II listed building, as well as harm to non-designated heritage assets including Peak Camp and the Air Balloon public house [ER 7.2.22] and has considered this harm in the planning balance section below.

#### Geology and Soils

92. The Secretary of State notes the ExA's consideration of geological impacts and impacts on soil receptors at ER 5.5. The ExA lists the following issues as the main areas of dispute:

- whether mineral reserves would be unduly impacted upon or sterilised; and
- whether waste arising from construction would be adequately managed [ER 5.5.21].

93. In respect of impacts on mineral reserves, the Secretary of State notes that the ExA concluded that the quarry is currently dormant and would require planning permission in order to reactivate, and that there are no such pending planning applications. The ExA also concluded that the interface between the Proposed Development and the quarry had been adequately assessed and that suitable mitigation had been identified. The Secretary of State agrees with the ExA that any future applications to reactivate the quarry would be required to take into account the Proposed Development and resolve the necessary geotechnical details [ER 5.5.27]. The ExA was therefore satisfied that the Proposed Development would not unduly sterilise the mineral reserve.

94. In respect of the waste that would arise from construction, the ExA concluded that the Applicant's approach for managing materials is consistent with the waste hierarchy defined in the Waste Framework Directive, and that this would reduce the potential impacts relating to the movement of materials on and off the Proposed Development site [ER 5.5.30]. The ExA also concluded that the measures in the EMP would result in the adequate management of known contamination [ER 5.5.32] and Requirement 8 in the Order would result in the adequate management of any unidentified contamination [ER 5.5.31]. In addition, the ExA considered that Requirement 3, which requires a Soils Management Plan as part of the EMP, would ensure appropriate soil handling and restoration, where required [ER 5.5.32].

#### The Secretary of State's conclusions on Geology and Soils

95. The Secretary of State agrees with the ExA's conclusions on Geology and Soils found at ER 5.5.34 and that the Proposed Development accords with the NPSNN and NPPF in respect of contaminated land, protection of groundwaters, geological stability and the management of material assets. The Secretary of State also agrees that the Applicant's assessment and conclusions are sound, and appropriate mitigation has been secured to handle waste arising from construction and contamination risks and that the Proposed Development would not unduly impact or sterilise mineral reserves. The Secretary of State concurs that the matter of geology and soils do not weight against the granting of the Proposed Development.

#### Landscape and Visual Impacts

96. ER 5.6 considers the Landscape and Visual Impact of the Proposed Development. The Secretary of State is aware that the Proposed Development is wholly located within the Cotswold Area of Outstanding Natural Beauty ("AONB") [ER 5.6.4]. The ExA states that the main concern raised by a number of IPs was that the Proposed Development would result in significant harm to the AONB [ER 5.6.34].

97. The key issues considered by the ExA included:

- The Applicant's landscape-led design approach and whether the proposal represents good design;
- The effect of the Proposed Development on landscape receptors;

- The effect of the Proposed Development on the visual amenity experienced by visual receptors.
- The effect of the Proposed Development on the AONB including whether there are exceptional circumstances and if it can be demonstrated it is in the public interest.

98. The Secretary of State is aware that during the Examination, the Joint Councils and CCB and other IPs suggested greater design details or a Design Code should be submitted in respect of detailed design of the proposed bridges and other crossing structures given the AONB sensitivities. The Secretary of State is aware that the Applicant provided detailed Structures Engineering Drawings and Sections. The ExA concluded that the amendment made to Requirement 11 to make reference to these concept drawings addressed the concerns raised by IPs. The ExA noted that this matter was not identified as outstanding in the SoCGs agreed between the Applicant and IPs [ER 5.6.42].

99. The ExA concluded that the Proposed Development does represent good design as set out in the NPSNN and accords with the NPPF through its landscape-led design approach [ER 5.6.44].

100. The ExA identified that the Proposed Development would result in a range of impacts on the characteristic and qualities of the Cotswolds AONB and the effect on the landscape would be very large adverse effect during construction. The operational effect at the point of opening would remain significant and adverse given that the exposed cutting, embankments and recently completed construction works would still be very evident scarring in the landscape. Tree planting and landscaping would have little beneficial effect at this point and the loss of mature landscaping would remain very evident. Over time as the landscaping proposals matured and landscaping of the banks and the mellowing of the bright colour of the newly exposed rock faces would become more integrated and would assist in reducing the initial harsh appearance of the works [ER 5.6.47].

101. The ExA agreed with the Applicant that by year 15 the effect would have reduced to a moderate adverse significance and that although the sensitivity of the location would remain very high, that with the maturing of the landscaping the overall effect of the Proposed Development would be significantly reduced, but considered the Applicant's balance of conclusions on this appeared to be too positive an assessment. The ExA's view was that whilst the effects would certainly reduce over time and the positive benefits realised increase over time there would still be a significant engineered feature that would traverse presently undisturbed areas of the AONB and this will remain which will manifest as an adverse effect in terms of the scenic quality and natural beauty of the area. It would certainly be reduced from construction and early years, and there will be increasing benefits as time goes by and there will be positive enhancements, but fundamentally there will be an adverse change affecting many of the special qualities. [ER 5.6.47 and 5.6.64].

102. The Applicant concluded that there would be adverse permanent significant effects at year 1 on the following visual receptors:

- Recreational users on the CWNT. Gloucestershire Way long distance footpath, byways, bridleways, and PRoW including at Barrow Wake, Emma's Grove and Crickley Hill, and in relation to Shab Hill and Stockwell.
- Visitors to the Crickley Hill Country Park, Great Witcombe Roman Villa, and Barrow Wake.
- Communities including Shab Hill and Stockwell. [ER 5.6.24]

103. Adverse permanent effects were also identified at year 15 on the following receptors:

- Recreational users on the CWNT.
- Visitors to the Crickley Hill Country Park and Barrow Wake. [ER 5.6.25]

104. The Applicant also identified that there would be non-significant beneficial effects experienced at the following receptors:

- Communities at Birdlip and Nettleton Bottom. [ER 5.6.26]

105. Overall, the Applicant concluded that the Proposed Development will give rise to significant adverse effects on both landscape and visual receptors [ER 5.6.27]. The ExA accepted that these general assessments of the significant effect on visual receptors were representative of the overall visual effects of the Proposed Development [ER 5.6.57].

#### The Secretary of State's conclusions on landscape and visual impact

106. As set out above, the ExA concluded that the Proposed Development accords with the criteria for "good design" as set out in the NPSNN paragraphs 4.28 to 4.35 and is in accordance with the NPPF [ER 5.6.44 and 5.6.65].

107. The Secretary of State agrees with the ExA that the Applicant has sought to minimise harm to the landscape and provided reasonable mitigation where possible [ER 7.2.27].

108. The Secretary of State agrees with the ExA's conclusion that given the overall nature of the landscape and visual effects in the context of the Proposed Development and the general area it would not be possible to avoid harm to either the AONB landscape or to the amenity of visual receptors. It is noted that the overall value of the landscape is very high given its AONB status and that it is reasonable to judge the effects against this baseline and these harms weigh substantially against the Order being made [ER 7.2.26]. This will be considered further in the Planning Balance section below.

109. The Secretary of State agrees that there are exceptional circumstances for the grant of consent for the Proposed Development in the Cotswolds AONB [ER 7.3.12 – 7.3.29]; and will consider whether there are compelling reasons for the Proposed Development in the Planning Balance section below.

#### Noise and Vibration

110. The Secretary of State is aware that a number of IPs raised concerns in relation to noise and vibration from the Proposed Development. The ExA recorded that during the examination, the applicant adequately addressed a number of these concerns but listed the following as outstanding:

- the effects upon residences in proximity to the Proposed Development and along the affected road network;
- effects upon tranquillity within the AONB;
- the noise and disturbance upon the village of Cowley; and
- the effects upon the National Star College and persons with protected characteristics [ER 5.7.21 – 5.7.23].

111. The ExA outlined that there are 17 noise sensitive residential properties where noise levels are predicted to exceed the Significant Observed Adverse Effect Level ("SOAEL") with noise increases (i.e., impact as a result of the Proposed Development), but such exceedance would be limited to just over 1dB in the short term, and noted the Joint Councils' acceptance of the Applicant's assertion that this increase would be indiscernible [ER 5.7.25 – 5.7.26]. The ExA also noted that night-time noise impacts would be managed



through the Noise and Vibration Management Plan which is secured by commitments GP5 and NV3 in the EMP and the agreement in the SoCG with the Joint Councils that options for mitigating adverse effects of noise and vibration have been fully explored and there are no further measures, beyond the mitigation already secured in the EMP, for reducing the impacts [ER 5.7.27 – 5.7.28]. The matters of noise and vibration on non-residential receptors were largely resolved early on by the Applicant and IPs and, in respect of National Star College, the ExA was ultimately content that continuous monitoring by contractors combined with a direct liaison between the construction workers and the college would provide adequate opportunity to mitigate the worst effects, with commitments in the EMP to limit noise to certain thresholds during construction giving reassurance that the time-limited effects of construction would not significantly adversely affect the ambient environment of the college [ER 5.7.30 – 5.7.35].

112. The ExA concluded that: while there would be some short-term significant noise impacts from the construction of the Proposed Development, appropriate measures have been secured in the EMP to minimise adverse effects. The ExA also found that the Proposed Development complies with the Noise Policy Statement for England. Further detailed noise mitigation and adherence to best practice, in consultation with the relevant authorities, would be adequately provided for under Requirement 13 of the Order, the design of the scheme takes into account methods and measures to reduce the spread and experience of noise; and the Proposed Development would not cause significant adverse harm to residential or non-residential properties or the setting of the Cotswolds AONB [ER 5.7.44].

#### Secretary of State's conclusions on Noise and Vibration

113. The Secretary of State agrees with the ExA's conclusion that the Applicant's approach to noise and vibration assessment is generally acceptable and in line with the NPSNN. He further agrees that the proposed embedded and other mitigation secured through Requirements 3 and 13 of the rDCO would reduce and mitigate further some of the significant effects associated with construction but not remove them. The Secretary of State further agrees that given the nature and scale of the Proposed Development the short-term nature of the significant effects during construction and the mitigation overall he agrees with the ExA's conclusion that the effects of noise and vibration are minimised. The Secretary of State agrees with the ExA's conclusion that the Proposed Development complies with the Noise Policy Statement for England, it would not cause significant adverse harm to residential or non-residential properties and would not adversely affect the tranquillity of the AONB. The Secretary of State considers this matter weighs neutrally in the case for the Order to be made [ER 7.2.28 – 7.2.30].

#### Socio-Economics

114. The Secretary of State notes that the ExA's assessment of the policy frameworks relating to Socio-Economics set out in ER 5.8.2 – 5.8.8, the case for the Applicant set out in ER 5.8.9 – 5.8.21 and the case for IPs in ER 5.8.24.

115. The Secretary of State notes the main issues in dispute are set out in ER 5.8.25 as:

- whether the Proposed Development results in unavoidable or unjustified impacts on farming enterprises;
- whether the PRoW network would be enhanced or adversely affected, including nationally important footpath assets;

- the effects on local businesses and recreation; and
- whether environmental mitigation measures are balanced with social and economic factors.

### *Farming Enterprises*

116. The Secretary of State notes that the compensation relating to permanent land associated with the loss of land from affected farm holdings as a result of the Proposed Development is a private matter and were therefore not included in the Applicant's assessment. The ExA noted that there were no mitigation measures for the loss of agricultural land falling outside of private agreements [ER 5.8.26]. The ExA was of the view that the Applicant has undertaken a robust assessment of soils and Agricultural Land Classification and appropriate measures have been secured through the EMP for the restoration of temporary possession of agricultural land and reasonable efforts to avoid effects on best and most versatile agricultural land. The ExA concluded that the Proposed Development accords with the NPSNN and the NPPF, and any unavoidable losses would be necessary in order for the implementation of the Proposed Development [ER 5.8.27]. In addition, measures to overcome severance of farm holdings through crossings, tracks and dedicated access gates would be sufficient to limit wider effects on the operability of the farms post-construction [ER 5.8.28].

### *Effects on local businesses and recreation*

117. The ExA considered potential impacts from the Proposed Development on local businesses and recreation at ER 5.8.29 – 5.8.42.

118. The Secretary of State notes the following:

- In the case of Air Balloon public house, while the ExA recognised that it has some cultural heritage value, no evidence was submitted during the examination to justify its retention [ER 5.8.29].
- The Applicant completed negotiations with Crickley Hill Tractors, which would see all buildings premises demolished and cleared to facilitate the Proposed Development. The ExA states that no objections were received from, or on behalf of, the company during the examination [ER 5.8.30].
- The Applicant sought a material change to the application to address the concerns raised by Flyup Limited in relation to the organisation of works and access at the business site and to allow for the retention of the existing permanent car park to be retained. The ExA concluded that on this basis the business would not be negatively impacted in the long term and that short-term effects can be managed [ER 5.8.34 – 5.8.36].
- With regard to Stockwell Farm lettings, eight residential properties used as holiday lettings would be subject to a slight adverse effect during construction, but no specific objections were received regarding the effects on the viability of the holiday lettings before, during or after construction, causing the ExA to consider that the Proposed Development would not have a significant adverse effect on this element of Stockwell Farm's enterprise and the holiday lets would retain their current attractiveness [ER 5.8.37 – 5.8.38].
- With regard to the Golden Heart Public House, no objections were received from any IP in this regard and the ExA considered the enhancement measures for its accessibility to be a benefit of the Proposed Development, with the Proposed Development unlikely to impact upon its viability [ER 4.8.39 – 4.8.40].

- With regard to Cotswold Alpacas, the ExA concluded that the forecast reduction in traffic as a result of the Proposed Development meant there would not be any increased effects upon the business or the safety concerns for trekkers and so there would not be a significant adverse effect on the business, its attractiveness or viability [ER 5.8.41 – 4.8.42].

119. The Secretary of State agrees with the ExA that there would not be any adverse effects on business or tourism within the area with the implementation of the mitigation measures secured by the Applicant in the Order.

#### *Public Rights of Way Network (“PRoW”)*

120. The ExA noted that in total:

- 1 PRoW would be stopped up without a substitute, although alternative routes exist/ would be provided (Badgeworth bridleway 125);
- 18 PRoW would be stopped up with substitutes/ diversions provided;
- 19 PRoW would be created to help increase or improve connectivity;
- 3 PRoW would be reclassified (2 footpaths to bridleway, and 1 footpath to restricted byway); and
- 5 unclassified roads would be promoted for use of access rights to help increased or improve connectivity across the PRoW network (3 existing and 2 new routes) [ER 5.8.44].

121. The ExA noted that the final SoCG between the Applicant and the Joint Councils confirms that discussions took place regarding the management and communication of diversions and closures, and appropriate measures are incorporated into the PRoW Management Plan. The ExA also noted that the SoCG agreed between the Applicant and the Walking, Cycling and Horse-Riding Technical Working Group (“TWG”) reported numerous areas of disagreement and all matters were unresolved at the end of the Examination. The majority of these were made and sustained by the Gloucestershire Ramblers [ER 5.8.45 – 5.8.46] and related to three topics: the diversion of the CWNT; the climate emergency; and the impacts of the scheme on the Crickley Hill and Barrow Wake SSSI. The Applicant set out its responses to these concerns at the end of the Examination [REP9-026] and the ExA considered that the interference with the PRoW network had been explained and justified by the Applicant over the course of the Examination and that the Applicant had detailed appropriate steps and mitigation measures to ensure a continuity of the network as well as increased connectivity across the landscape [ER 5.8.47 – 5.8.48]. The Secretary of State agrees with the ExA’s overall conclusion that the Proposed Development would have beneficial effects for all PRoWs in the region including CWNT and Gloucestershire Way Long Distance Footpath (“GWLDG”), improving connectivity and representing a marked improvement both in the quality of those routes and across the landscape as a whole [ER 5.8.67].

#### Secretary of State’s conclusions on Socio-Economics

122. The Secretary of State agrees with the ExA that while the Proposed Development would result in direct loss of employment opportunities at both the Air Balloon public house and Crickley Hill Tractors, these effects would be more than off-set by the enhancement of business opportunities from the improved connectivity in the area. The Secretary of State also agrees that there would not be adverse effects on businesses or tourism as a result of the mitigation measures included in the Order. The Secretary of State is satisfied that

significant economic benefits would result from the Proposed Development as a result of the reduction in congestion on the surrounding road network, improved journey times and improved reliability. The Secretary of State accepts that there would be adverse but unavoidable impacts on agricultural land, but considers that the Applicant has adequately explored options to minimise these as far as practicable in accordance with the NPSNN. The Secretary of State has considered this further in the Planning Balance section below. The Secretary of State agrees with the ExA's overall conclusion that the positive social and economic benefits arising would weigh in favour of the Order being made [ER 7.2.31 – 7.2.34].

### **Traffic and Transportation**

123. The Secretary of State notes the ExA's consideration of the policy frameworks relating to Traffic and Transportation set out in ER 5.9.2 – 5.9.7, the case for the Applicant set out in ER 5.9.8 – 5.9.16, and the position of the Interested Parties in ER 5.9.17.

124. The Secretary of State records that a large number of representations were made in relation to traffic and transportation impacts. The Secretary of State is aware that while a number of IPs opposed the chosen route, there was general consensus that the existing highway was unsafe and congested, and that the Proposed Development would result in journey time savings, increased reliability and flow of the network and reduced fatalities and casualties [ER 5.9.19].

125. The ExA lists the main areas of dispute as:

- whether construction effects would be appropriately managed;
- whether there would be harm on the local affected road network;
- the safety of the Proposed Development, its junction and the resulting condition of the local road network; and
- whether the effects on the PRow network are proportionate and justified [ER 5.9.18].

### **Construction**

126. The Secretary of State notes that the Applicant made a number of updates and changes to address concerns raised by IPs. This included an update to the CTMP which the ExA considered would result in the appropriate management of HGVs and construction traffic [ER 5.9.20]. The CTMP was also amended to take into account a representation from Royal Mail to ensure advanced notice for any traffic management measures and alternative routes [ER 5.9.24]. The Applicant also committed to providing a Construction Worker Travel Plan to address concerns regarding the commuting of construction workers to and from the Proposed Development site [ER 5.9.21]. The ExA highlighted the possibility that individuals with local knowledge may use alternative routes to the diversion routes where traffic management measures are in place, and that this could lead to increased traffic on local roads. The ExA considered that reasonable measures to manage construction traffic was in place however, to ensure minimal impacts on the existing flow of traffic on the A417 [ER 5.9.23].

### **Operation**

#### *Cowley Junction*

127. The Secretary of State is aware that the Applicant intends to stop up Cowley Wood Land and turn it into a private gated means of access for the limited number of properties

and agricultural businesses served by the lane following construction of the Proposed Development [ER 5.9.25].

128. The ExA records that while the Joint Councils were content to leave condition surveys of local roads to a post-consent process, a number of IPs raised concerns over:

- the reliability and presentation of traffic data;
- the quality of Cowley Lane, including a lack of passing places;
- the speed of traffic using the lane; and
- increased traffic rat-running through the village and over local bridges [ER 5.9.26].

129. The Secretary of State notes that the Applicant has put in place measures that, with the agreement of the Joint Councils, would ensure a safe and practical means of access for properties on Cowley Wood Lane, and the authorities are clear as to where maintenance responsibility lies in this respect. The Secretary of State agrees with the ExA that the Proposed Development would not result in significant harm to these specific roads once operational [ER 5.9.31 – 5.9.32].

#### *Shab Hill Junction*

130. The Secretary of State notes that a number of issues were raised regarding the size of the junction, the consequences of any crash or blockage causing the junction to close, the microclimate that causes thicker fog and snow on the higher ground and problems with security and trespass as a result of redistributed traffic and pedestrians and that the Applicant provided satisfactory responses to the issues raised. [ER 5.9.33 – 5.9.34]. The Secretary of State agrees with the ExA that the design and location of the proposed junction would be appropriate in this instance and provides a suitable and safe means of access and egress to the A417 Missing Link [ER 5.9.35].

#### *Ullenwood Junction and Leckhampton Hill*

131. The Secretary of State is aware that the Joint Councils raised concerns regarding an increase in traffic at Leckhampton Hill, but that towards the end of Examination the Joint Councils confirmed that their outstanding concerns in this respect would be negotiated outside of this application process, so there was no objection to the propositions. The Secretary of State is also aware that the National Star College requested unimpeded access to its Ullenwood site and highlighted a known accident blackspot at the junction between Ullenwood Road and Leckhampton Hill, and that any increased traffic could result in further problems. The Secretary of State is aware that the CTMP would be produced in consultation with National Star College and that the Applicant considered that while traffic flow would increase, this would not cause impediment to access. The Secretary of State notes that the ExA highlights the benefit of separating out the traffic via the new junction but there is no allegation that the consequences of traffic are severe having regard to paragraph 111 of the NPPF. The ExA welcomed the conclusion of the Joint Councils that the Ullenwood junction would be suitably designed so as not to require lighting. The Secretary of State agrees with the ExA that they have no reason to disagree with the Applicant's findings on this junction [ER 5.9.36 – 5.9.39].

#### *The B4070 and Birdlip*

132. The Secretary of State is aware that Cowley and Birdlip Parish Council raised concerns that the amended route from the B4070 as part of the Proposed Development may increase the speed and frequency of vehicles. The Secretary of State notes that the Applicant confirmed that part of the B4070 is being realigned to have a narrow 6-metre-

wide carriageway, which would have traffic calming effects and the speed limits are set out in the schedules to the Order. The Secretary of State is aware that NE raised concerns with the mini roundabout at the entrance of the Barrow Wake SSSI and that Gloucestershire Ramblers raised concerns regarding parking in the local area, but the Applicant maintained that the roundabout was a necessary feature in the carriageway, would benefit safety and that parking would be available elsewhere within the Proposed Development. The ExA concluded that the proposed measures are in place to ensure the safety of all road users along the B4070 and that the traffic using local roads would reduce as a result of the Proposed Development [ER 5.9.41 – 5.9.42].

#### *Lay-by Design*

133. The Secretary of State notes that the Proposed Development would provide four lay-bys in total, two serving the eastbound direction and two serving the westbound. He further notes the position of the first-encountered eastward lay-by was challenged by Mr and Mrs Field. Whilst the challenge was principally on the grounds of related Compulsory Acquisition, there were some fundamental planning issues as set out in ER 5.9.43. The Secretary of State notes that the ExA reviewed the site and does not believe that the entrance to Cold Slad Lane would serve as efficient equivalent to a designed lay-by and that mitigation planting would be planted and maintained by the Applicant to reduce the effects of noise and visual intrusion [ER 5.9.45 – 5.9.46]. He further notes that the ExA have concluded that there is a need for lay-bys as part of the Proposed Development's design but in terms of planning, they conclude there is nothing substantive to compel the Applicant to move or change the lay-by design, but welcomes continued discussions through detailed design stage [ER 5.9.47].

#### *Other Local Road Network Issues*

134. The Secretary of State is aware that it was suggested that traffic might become backed up at other junctions, and that the Applicant provided evidence and written reassurances that there would not be any significant effects on traffic flows, delays or the overall functioning of the A417 as a result of the current Proposed Development. He further notes there was no substantive evidence provided to the contrary and the ExA is of the view that there is no reason to dispute the Applicant's findings on this matter [ER 5.9.48].

#### *Public Rights of Way (PRoW)*

135. The Secretary of State is aware that the Proposed Development will result in PRoWs being stopped up or diverted, some without substitute, but proposals for overbridges and crossings would remedy overall connectivity in the area [ER 5.9.49].

136. The ExA highlights that at the end of the Examination, there was one matter that remained outstanding between the Applicant and some members of the Walking, Cycling and Horse-Riding Technical Working Group ("WCH TWG"), which was the need for the scheme to provide at least one additional crossing of the A417 between Bentham Lane and Grove Farm underpass in order to restore severed, address obstructed or improve fragmented PRoWs. The Applicant considered that the severance of paths would be mitigated via the crossing for the CWNT, and that any additional crossing in the location requested by the TWG would not be provided due to engineering risk, ecological and environmental impacts, and cost/ poor value for money [ER 5.9.51].

137. The Secretary of State agrees with the ExA's conclusion that interference with the PRoW network is both proportionate and reasonable in order to facilitate the Proposed Development and he has no reason to disagree with that view. The Secretary of State also

notes that, the principal paths of the CWNT and the GWLDF would be carried over the A417 carriageway, representing a marked improvement both in the quality of those routes and for connectivity across the landscape as a whole [ER 5.9.52].

#### *Byway Open to all Traffic (BOAT)*

138. The Secretary of State notes that a new 417m new section of BOAT would be created to link the Shab Hill junction to the unclassified road 50853, and a 227m new section of BOAT to connect unclassified road 50944 to Cowley Footpath 7. The Proposed Development would sever unclassified road 50853 and the new BOAT would mitigate the loss of that access. The Applicant considers that the new BOAT is essential mitigation for the scheme.

139. The Secretary of State is aware that objections were made and sustained through the Examination to the BOAT in terms of land take and on the basis of motorised users being anti-social and causing disturbance. The ExA considers that the potential for motorised users is a concern, but the BOAT would be mitigation for a severed route and would be of an equivalent level of accessibility, which is fair and proportionate [ER 5.9.53 – 5.9.56]

#### The Secretary of State's conclusions on Traffic and Transportation

140. The Secretary of State agrees with the ExA that the Proposed Development will contribute to road user safety and, in accordance with the NPSNN the need has been justified and accessibility will be greatly enhanced. The Secretary of State also agrees that the Proposed Development would deliver significant benefits including for walkers, cyclists, horse-riders and NMUs; relieve congestion and vehicular nuisance on nearby rural villages; improvement to highway safety and a reduction in fatalities and serious accidents [ER 5.9.57 – 5.9.60].

141. The Secretary of State agrees with the ExA's conclusion that any adverse effects remaining from the Proposed Development would not amount to being severe as referenced in the NPPF. Further, he agrees with the ExA that taking all these matters into consideration, traffic and transportation matters weigh substantially in favour of the Order being made [ER 7.2.35 – 7.2.38].

#### Water Environment

142. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Water Environment set out in ER 5.10.1– 5.10.9, the case for the Applicant at ER 5.10.10 – 5.10.18 and the position of Interested Parties at ER 5.10.19 – 5.10.20. The main issues considered by the ExA at examination included:

- whether the Proposed Development would affect public drinking water supply;
- whether there would be an increased risk of flooding;
- whether the drainage strategy is appropriate; and
- whether construction impacts on watercourses and aquatic forms are appropriate [ER 5.10.21].

143. The ExA recorded that at the close of the Examination, the Joint Councils and the EA confirmed that they were in agreement with the Applicant in respect of the water environment and drainage matters [ER 5.10.42]. The ExA concluded that:

- the Applicant has put forward satisfactory proposals to mitigate adverse effects on the water environment and these are appropriately secured through Requirements in the rDCO; and
- taking all these matters into consideration the Applicant has fulfilled the requirements of the NPSNN, and that water environment matters do not weigh against the Order being made [ER 5.10.43].

### *Water Quality*

144. The Secretary of State notes that the EA was also satisfied that the Applicant's proposed measures would address any risks to public drinking water and that monitoring would measure any changes to the water environment during and after construction, and that the Applicant's mitigation measures to address potential contamination or pollution to watercourses is acceptable [ER 5.10.22 – 5.10.23].

145. The Secretary of State also notes that the construction works would largely take place dry so as not to require dewatering and that the means to intercept and manage surface water run-off through the construction phase would be suitable in this regard. The Secretary of State is aware that the SoCG agreed between the EA and Gloucestershire County Council considers all matters with regards to this aspect have been agreed [ER 5.10.24].

146. In respect of the Applicant's findings on the Water Framework Directive ("WFD"), the Secretary of State is aware that the ExA is satisfied the Proposed Development would not lead to or cause adverse effects on water quality in such protected water features [ER 5.10.25], and that the ExA concluded that the Applicant has taken opportunities where feasible to improve upon the quality of existing discharges where these are identified and shown to contribute towards WFD commitments [ER 5.10.43].

### *Norman's Brook*

147. The Secretary of State is aware that a tributary of Norman's Brook on the section of carriageway being widened along Crickley Hill is to be diverted and realigned, and that the Applicant considered that this could result in the springs that currently supply the watercourse being disrupted, affecting the flows. The Secretary of State notes that this would result in the loss of the existing watercourse and would introduce new water levels for the watercourse, coupled with a potential increase in its catchment area of up to 23ha following construction of the Shab Hill junction [ER 5.10.26]. The Secretary of State is aware that the SoCG agreed between the Applicant and the EA sets out a position that the realignment of the tributary can be managed without adverse effect to the flow or function of the watercourse, subject to further detailed surveillance and monitoring [ER 5.10.27 – 5.10.28].

148. The Secretary of State is aware that GWT raised concerns about the stretch of the realigned tributary to Norman's Brook being partially canalised. In response to a question from the ExA on this matter the Secretary of State notes that the Applicant confirmed that this issue had been resolved, and that the detailed design stage of the Proposed Development would, including consultation with the relevant bodies, ensure realignment of the brook would be handled sensitively [ER 5.10.29]. The Secretary of State notes that the ExA was satisfied that overall measures to realign watercourses are adequate and mitigation is in place to monitor and remedy any adverse effects as far as reasonably practicable.



### *Flood Risk and Drainage*

149. The Secretary of State notes that a number of attenuation basins are proposed to accommodate surface water in a rainfall event to minimise the impact on the receiving water environment, and that the locations of the basins have been designed to replicate wherever possible existing natural catchments and surface water flow paths [ER 5.10.31]. The highway drainage design bases for the basins also addresses the risks of extreme weather events including allowances for climate change in accordance with national planning policy [ER 5.10.32].

150. The Secretary of State notes that no objections were raised from either the EA nor from the Joint Councils, with Gloucestershire County Council willing to adopt and maintain the drainage systems within the Proposed Development subject to caveats and clear separation of responsibilities between the drainage systems for GCC adoption and the Applicant's own retained assets [ER 5.10.34]. He further notes that the ExA was reassured that the Proposed Development has been designed to be safe during any flood event and that there should be no risk to life as a result of flood water on the highway [ER 5.10.35].

### *National Star College*

151. The Secretary of State has considered the concerns were raised by National Star College regarding potential flooding as a result of a drainage pipe and easement across National Star's land. He is aware that the Applicant responded to confirm that a permanent easement was no longer required following agreement with the EA that an infiltration-based mechanism would be acceptable. The Secretary of State notes that the Applicant is seeking a temporary easement to manage pollutants and contaminants entering the run-off from construction works, which would flow into the attenuation basins located on the college's land for treatment prior to release into the general watercourses [ER 5.10.36].

152. The Secretary of State is aware that National Star College retained concerns given the sensitivity of their users and the need for measures to be in place in case of emergency. The ExA noted that the Applicant sought to reassure National Star College of the robustness of the construction stage drainage mitigation, and that there should not be any lasting effects once the Proposed Development is operational [ER 5.10.37]. The Secretary of State is aware that the ExA is satisfied that there is a need to manage run-off from construction works within the vicinity of National Star College and that it was satisfied that there would be no increased flood risks to property or life as a result of the drainage works [ER 5.10.38].

### *Repurposed A417*

153. The Secretary of State is aware that the Applicant had intended to remove a proportion of the existing drainage infrastructure in the area of Parsons Pitch to the east of Birdlip. The Secretary of State notes that the Applicant and the Joint Councils agreed to retain the existing outfalls and soakaways for the repurposed A417. The ExA considered that while the proposals to maintain existing drainage infrastructure may potentially be excessive for the repurposed section of the A417, it and the new informal vegetated systems, are suitable in this instance. The ExA also concluded that there would be reduced risk of surface water flooding and would support the natural drainage of the area in a storm event [ER 5.10.41].

### Secretary of State's conclusions on Water Environment

154. The Secretary of State agrees with the ExA that the Proposed Development would meet the appropriate tests in the NSPNN with regard to flood risk. He further agrees that

drainage strategy for handling, managing and disposing of surface water would be sufficient for purpose and the Proposed Development would be safe for its lifetime and would not increase the risk of flooding elsewhere. The Secretary of State agrees with the ExA that the Proposed Development would be Water Framework Directive (WFD) compliant and that it would not result in significant detriment to the overall condition and value of the potentially affected water bodies. He agrees with the conclusions of the ExA that the Applicant has put forward satisfactory proposals to mitigate adverse effects on the water environment and these are appropriately secured through the Requirements in the rDCO. Taking all these matters into consideration, the Secretary of State is satisfied with the ExA's conclusions that matters relating to the water environment are neutral in the case for the Order being made [ER 7.2.39 – 7.2.41].

## **Findings and Conclusions in Relation to the Habitats Regulations Assessment**

155. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (“the Habitats Regulations”), the Secretary of State as the competent authority is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site.

156. Where likely significant effects cannot be ruled out, the Secretary of State must undertake an appropriate assessment (“AA”) under Regulation 63(1) of the Habitats Regulations to assess potential adverse effects on site integrity in view of its conservation objectives. Such an assessment must be made before any decision is made on undertaking a plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the plan or project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest (“IROPI”) apply (Regulation 64).

157. In the case of the Proposed Development, the Secretary of State notes that the Applicant and other parties including NE provided information to assist in the consideration of habitats impacts. The ExA produced a report on the Implications for European Sites (“RIES”) to compile, document and signpost information provided in the application, and on information submitted throughout the Examination by both the Applicant and Interested Parties in relation to potential effects European sites and states that this was published and comments were invited on it [ER 6.1.5]. The ExA took account of representations on this matter in its Report.

158. The ExA records that the Applicant carried out a Habitats Regulations Assessment Screening of European Sites that could potentially be affected by the proposed Development [APP-414]. The Secretary of State agrees with the assessment methodology used to scope protected sites into the assessment as summarised at 6.3.2 of the ExA Report. The Secretary of State notes that both the Wye Valley and Forest of Dean Bat Sites SAC, and Severn Estuary SAC, Ramsar site and SPA (which overlap in extent), are partly located within England and the devolved administration of Wales.

159. The Applicant concluded that there would be no likely significant effect (“LSE”) on Wye Valley and Forest of Dean Bat Sites SAC, North Meadow and Clattinger Farm SAC, The Severn Estuary SAC and SPA and Ramsar site [ER 6.3.4]. With regard to the Cotswold Beechwoods SAC, the Applicant concluded that due to the potential for increased recreational pressure on this European site, LSE could not be ruled out [ER 6.3.5]. These conclusions were agreed with NE with the exception of Severn Estuary Ramsar site, which following responses from NE [REP3-015] was unable to conclude no LSE due to potential impact on habitat affecting the European Eel [ER 6.3.7]. The Severn Estuary Ramsar site was therefore taken forward to an Appropriate Assessment (“AA”). The ExA notes that NE did not identify any other UK European site or European site features that could be affected by the Proposed Development [ER 6.3.8].

160. The Secretary of State notes that detail to inform the Applicant’s AA is set out in two separate documents; HRA Statement to Inform Appropriate Assessment [APP-415] for Cotswolds Beechwoods SAC, and a PINS HRA Matrix for the Severn Estuary Ramsar Site [REP3-015]. The Secretary of State notes that the ExA and NE agree with the Applicant’s AA and that the overall conclusion was that the proposed Development with the inclusion of mitigation secured through the dDCO would not lead to an adverse effect on the integrity of the Cotswolds Beechwoods SAC or Severn Estuary Ramsar [ER 6.5.4].

161. The Secretary of State notes that the Applicant confirmed that agreement of the conclusions of the HRA Screening Report and HRA Statement to Inform Appropriate Assessment had been received from Natural Resources Wales [REP8-029]. Evidence of this agreement was provided at Deadline 9 [REP9-026] [ER 6.4.7].

#### Secretary of State’s Conclusions on the Habitats Regulations Assessment

162. The Secretary of State’s Habitats Regulations Assessment that accompanies this decision letter concludes that a likely significant effect could not be ruled out in respect of the Cotswolds Beechwoods SAC or Severn Estuary Ramsar site due to the effects of recreational pressure and temporary reduction in habitat area during the construction phase respectively [ER 6.3.5 and 6.4.4].

163. The Secretary of State, therefore, then needed to consider whether the Proposed Development would have an adverse effect on the integrity of those sites, either alone or in-combination, with other plans or projects. An AA was undertaken to assess the implications of the Proposed Development in relation to the conservation objectives of those sites to ascertain whether it would adversely affect the integrity of the European site [ER 6.5.1].

164. The Secretary of State agrees with the ExA’s overall conclusion, that there would be no adverse effects on the integrity of either the Cotswolds Beechwoods SAC or Severn Estuary Ramsar site either alone or in combination with other plans or projects subject to the mitigation secured in the Order [ER 6.5.4].

#### Planning Balance

165. The ExA considered that the following matters weigh in favour of the Proposed Development:

- Socio-economic Benefits.
- Traffic and Transportation.

166. The ExA concluded that the following matters weigh neutrally in the planning balance for the Proposed Development:

- Air Quality.
- Noise and Vibration.
- Water Environment.
- Geology and Soils.

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

- *Biodiversity*

As set out in paragraphs 74 – 75 above, the Proposed Development would cause substantial harm to SSSI land within the Order limits, cause the loss of veteran trees and the deterioration of ancient woodland. The ExA noted that there are also impacts on other habitats such as the loss of tuffaceous vegetation in Norman’s Brook that is unavoidable and requires off-site compensation. The ExA concluded that both the direct and indirect impacts from the Proposed Development are unavoidable. The ExA also considered that the net loss of biodiversity is a concern that it considers both regrettable but unavoidable, but that sufficient management, maintenance and monitoring processes are secured in the EMP to guide the delivery of the new and replacement habitats [ER 5.3.63]. Mitigation measures to control and mitigate impacts on biodiversity during construction as well as measures to govern the provision of new areas of habitat are secured through Landscape and Ecological Management Plan (“LEMP”) [ER 5.3.18]. In order to take further account of NE’s representations regarding impacts on SSSI land, the Secretary of State has amended Schedule 2, Part 1, Paragraph 3 and 5 of the Order to include NE as a consultee on both the EMP and the LEMP. The ExA concluded that the EMP would deliver sufficient new and replacement habitat in the future, however, it would take time for these to establish and mature to remedy any harm. The Secretary of State agrees, and has afforded the harm to biodiversity receptors substantial weight against the granting of the Order.

- *Carbon Emissions*

As set out in paragraph 44 of this letter, the ExA considered that the increase of 0.9 million tonnes of carbon dioxide equivalent as a result of the Proposed Development during its modelled 60-year operational period (2026–2085) would not materially impact on the ability of the Government to meet its carbon reduction targets or to prejudice the trajectory towards Net Zero [ER 7.2.15]. The Secretary of State agrees that this carries limited weight against the granting of the Proposed Development.

- *Cultural Heritage*

As mentioned in paragraphs 81 – 83 and 91 above, there will be less than substantial harm to the setting of Emma’s Grove, a scheduled monument. The ExA was satisfied that the Applicant will secure and protect this asset during the construction phase through the implementation of the EMP and the REAC. The Secretary of State notes that GP8 of the EMP secures mitigation in terms of the long-term management of the asset and its immediate surroundings, and that the Applicant is in discussion with the landowner regarding future management arrangement. The Secretary of State notes that the Proposed Development will result in works which will potentially remove the asset from the at-risk register, and that the removal of the existing A417

and the new placement of the scheme will result in a positive enhancement for visitors.

Crickley Hill is a scheduled monument and sits opposite the Peak, a non-designated asset considered to be a resource of high asset value. The Secretary of State notes the connection between these assets and that this relationship contributes substantially to their significance. The ExA considered that the scale, width, and depth of the Proposed Development will have an adverse effect on the setting of these assets. The Proposed Development will be located along the existing alignment, but additional impact will result from the increased scale, width, and depth of the Proposed Development. However, there already exists along this alignment a wide range of modern intrusions including the city of Gloucester, the M5 in the mid distance, and the A417 as it approaches and passes next to the site. As set out in paragraphs 85 and 91 above, the Proposed Development would result in overall less than substantial harm to the Crickley Hill scheduled monument and minor harm to the significance of Peak Camp.

Shabs Hill Farm is a Grade II listed building located in the Cotswolds Hill within the Cotswolds AONB. The proposed Shab Hill junction would affect the historic access to the farm, dislocate the barn from its original landscape and fields and would result in the loss of key characteristics of the setting of the barn which would be detrimental to its significance. The proximity of the barn to moving traffic would increase the traffic noise experience at the barn which would result in harm to the perceptual quality of its setting and the experience of visitors. As mentioned in paragraphs 86 and 91 of this letter the ExA concluded that the Proposed Development would result in less than substantial harm to this asset as a result from intrusion in the setting both visual and through operation.

As set out in paragraph 88 and 91 above, as a result of the Proposed Development, the Air Balloon Public buildings and premises will be demolished and cleared. Although it is not a designated asset, the Applicant ascribed it medium value and concluded that its loss would result in a slight adverse effect.

The ExA considered that impacts on cultural heritage assets do not weigh against the granting of the Order, but the Secretary of State has afforded the harm to these assets minor weight against the granting of the Order due to the demolition of Air Balloon Public House. The Secretary of State notes the planned photographic recording and surveying of this asset, but as set out in the NPSNN, a documentary record of a heritage asset is not as valuable as retaining it.

- *Landscape and Visual Impacts*

As mentioned in paragraphs 105 and 108 above, there are considerable landscape and visual impacts from the Proposed Development on the Cotswolds AONB and several receptors in the area. The ExA considered that impacts have been mitigated as much as possible, but residual impacts remain. Given that AONBs have the highest status of protection in relation to landscape and scenic beauty, the Secretary of State has given substantial weight to this issue.

### The Secretary of State's Conclusions on Planning Balance

168. The Secretary of State is satisfied that there is a need for the Proposed Development, and agrees with the ExA that the Proposed Development would make an important contribution to the improvement and enhancement to the existing road network

at both a national and local level. The Proposed Development would improve journey times and, more importantly, safety for road users. The Secretary of State has attached substantial weight to these transport benefits. The Secretary of State also places weight on the socio-economic benefits identified by the ExA in ER 5.8.65. Having carefully weighed these benefits of the Proposed Development against the adverse effects of the Proposed Development, the Secretary of State is of the view that the potential negative impacts do not outweigh the need for the Proposed Development.

The Secretary of State is also satisfied that the following tests have been met in respect of proposed development in an Area of Outstanding Natural Beauty

- *Exceptional circumstances*  
The Secretary of State is satisfied that the need for the Proposed Development has been established and notes the expected benefits from the Proposed Development to the local area. As mentioned above, the Secretary of State notes that the impact of the Proposed Development on the Cotswolds AONB have been mitigated as much as possible. The Secretary of State therefore agrees with the ExA that the exceptional circumstances test has been met.
- *Compelling reasons*  
The Secretary of State also notes the ExA's consideration of the compelling reasons test at ER 7.3.30 – 7.3.37. Without the Proposed Development there would be a worsening road safety record, no improvements in improving design standards of the road network, increasing congestion, and deteriorating journey times and journey time reliability and continuing or potentially increasing rat-running through local villages. Having noted the adverse effects from construction and operational effects, which would decrease over time, and balanced this against the improved road safety, reduced noise and light pollution and access, monetised and economic benefits, the Secretary of State agrees with the ExA that the test has been met and that benefits of the Proposed Development outweigh the costs very significantly.
- *High environmental standards*  
The Secretary of State notes the ExA's consideration of the high environmental standards test at ER 7.3.38 – 7.3.41. Notwithstanding the lack of biodiversity net gain provided by the Proposed Development, the Secretary of State notes the landscape-led approach adopted by the Applicant, its regard to the landscape and location in terms of addressing issues and evolving the design, its attempts to focus on priority and important habitats that contribute to the landscape and special qualities of the AONB and the mitigation and enhancement secured through the EMP, Landscape and Ecological Management Plan (LEMP), Landscape Masterplan and requirements in the rDCO. The Secretary of State agrees with the ExA that the Proposed Development would be carried out to high environmental standards and that such matters are appropriately secured through the rDCO.

## **Compulsory Acquisition and Related Matters**

169. The Secretary of State has considered the Compulsory Acquisition (“CA”) and Temporary Possession (TP) of land and rights over land including Statutory Undertakers (“SU”) land and Special Category Land. The ExA sets out its consideration of matters in chapter 8 of the Report.

## **Proposed Design Changes and Additional Land**

170. During the examination, the Applicant sought a material change to the application in relation to CA powers. As set out in paragraphs 10 - 12 above, the change sought the inclusion of additional land at Flyup Limited to allow for changes to its access arrangements. The land subject to the change is located within the Order Limits and involves swapping areas of land between TP and CA. [ER 8.2.5 – 8.2.7]. The ExA accepted the change into the Examination and was satisfied that the changes addressed the concerns raised by Flyup Limited, Flyup Limited was afforded sufficient opportunity to maintain or raise any concerns during the examination, which it did not do, that the land is required for the Proposed Development and that there is a compelling case in the public interest for the CA, TP and rights acquisition sought by the Applicant [ER 8.7.30 –8.7.32].

## **Legislative Requirements**

### *Section 122*

171. Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising the compulsory acquisition of land only if the land is required for the development to which the development consent relates, or is required to facilitate or is incidental to that development, or is replacement land to be given in exchange and there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA was satisfied that the statutory tests in section 122 are met [ER 8.12.1]. The Secretary of State has considered the CA powers sought by the Applicant and agrees with the ExA's conclusions for the reasons given by the ExA.

172. The Secretary of State notes that the application includes proposals for the CA and TP of land, interest in and rights over land, including SU land and Special Category Land [ER 8.3]. Other CA powers are sought in the Order and these similarly relate to land and will, or may, interfere with property rights and interests. In addition, powers are sought in the rDCO to enable the TP and use of land to carry out and thereafter maintaining the Proposed Development and Table 3 of Appendix A of the Statement of Reasons provides a description of such land [ER 8.3.5].

173. The ExA concluded that on the basis of the information provided, the Applicant has demonstrated a need for the CA and rights acquisition it seeks [ER 8.7.84]. The ExA was also satisfied that the land is required for the Proposed Development or that it is required to facilitate it or is incidental to it, and that there is a compelling case in the public interest for the CA, TP and rights acquisition [ER 8.7.85]. The Secretary of State agrees with the ExA's conclusions.

### *Section 123*

174. Section 123 of the 2008 Act requires that there must be a compelling case in the public interest to acquire the land compulsorily and that one of the conditions set out in section 123(2) to (4) is met. These conditions are: 1) the application includes a request for CA to be authorised; 2) all persons with an interest in the land consent to the inclusion of the provision; and 3) the prescribed procedure is followed. The ExA was satisfied that the condition in section 123(2) is met because the application includes a request for CA, and that in all cases relating to individual objections and issues, that CA, TP with permanent rights and TP is justified to enable implementation of the Proposed Development and a

compelling case in the public interest has been made [ER 8.4.4 – 8.4.5 and 8.12.1]. The Secretary of State agrees with the ExA's conclusions.

#### *Section 131 and 132*

Section 131 of the 2008 Act makes provision for a Special Parliamentary Procedure (“SPP”) in respect of the acquisition of common, open space or fuel or field garden allotments, subject to the exceptions in subsections (3) to (5), where SPP does not apply. These exceptions include: where the land is required temporarily and is Open Space and not any other description of land in section 131(1); and where replacement land which is subject to the same rights, trusts and incidents as attach to the order land and is no less advantageous than it was before to the persons in whom it is vested, other persons entitled to rights of common (there are none) and the public [ER 8.4.10] has been or will be given in exchange for the order land. Section 132, which has similar provisions to section 131, applies in respect of the CA of rights over land rather than CA of the land itself [ER 8.4.11]. The Secretary of State's consideration of the CA powers for land and rights and the TP of open space land sought by the Applicant is considered further in paragraphs 179 – 188 below.

#### *Section 127 and 138*

174. Section 127 of the 2008 Act has provisions in relation to CA of land or rights over SUs land. If a SU had made a representation that has not been withdrawn before the end of the Examination, then CA may only be authorised if there is no serious detriment to the carrying on of the undertaking (section 127(2) and (3) concern the acquisition of land; section 127(5) and (6) concerns the acquisition of a right). Section 138 of the 2008 Act provides for the extinguishment of a right or the removal of a SU's apparatus if the Secretary of State is satisfied that it is necessary for the carrying out of the Proposed Development [ER 8.4.8 and 8.4.12]. The Secretary of State has considered SUs that may be affected by the Proposed Development in paragraphs 189– 193 below.

### **Consideration of Alternatives**

175. As set out in paragraph 22 – 23 above, the Secretary of State considers that the Applicant has undertaken a detailed assessment and has come to a balanced view that the Proposed Development is the most appropriate option in term of benefits and overall value for money. The Secretary of State is satisfied that through consideration of alternative routes and design development for the Proposed Development, the Applicant has sought to minimise the land take and the necessity for CA [ER 8.6.9].

176. The Secretary of State agrees with the ExA that the Applicant has explored all reasonable alternatives to CA and ensuring that there are no outstanding interests that have not been previously identified in land that the Applicant already owns [ER 8.6.13]. The Secretary of State is content that CA, TP with permanent rights or TP is appropriate and is necessary to ensure deliver of the Proposed Development is not delayed by negotiations.

### **Funding**

177. The Secretary of State is aware that the Funding Statement includes funding for compensation relating to the CA of land interests in, rights over, land and the TP and use of land will be fully funded by Government and is not dependent on any contributions from



other parties. The ExA was satisfied that there would be adequate funding in place for the delivery of the Proposed Development, and that there are adequate funds for CA and TP compensation and no additional or special steps are required to secure or guarantee those funds [ER 8.10.5 – 8.10.7]. The Secretary of State has no reason to disagree.

### **Objections and Issues**

178. The Secretary of State notes that a number of individual objections and issues were raised by landowners and those with an interest in the Order, and that the ExA considered these objections in ER 8.7.3 – 8.7.85 and throughout Chapter 5 the Report. The Secretary of State agrees with the ExA that in all cases relating to individual objections and issues that CA, TP and TP with permanent rights is justified, necessary for the implementation of the Proposed Development, and a compelling case in the public interest has been made [ER 8.12.1]. The Secretary of State also agrees that the Proposed Development would be compatible with the Human Rights Act 1988 in terms of being a proportionate interference with property and family life [8.11.8 and ER 8.12.1].

### **Special Category Land (Commons, open spaces etc)**

179. The Secretary of State is aware that the Proposed Development includes land which is Open Space, Common Land and that which is owned and held inalienably by the National Trust (“NT”) [ER 8.8.3].

180. The Secretary of State notes the ExA set out the Open Space land which is to be permanently acquired in ER 8.8.6 for the purpose of widening the highway and improving drainage. The Applicant is satisfied that the interests of the public would not be adversely affected and in some cases would be improved so would meet the tests under section 131(5) and section 132(3) section 132(3) meaning neither replacement land nor the special parliamentary procedure SPP-is required [ER 8.8.7].

181. The Secretary of State is aware that in terms of TP with rights to be acquired permanently, the ability for the public to access the land following construction would be no different to the current situation. It would therefore be no less advantageous to the persons in whom it is vested, or the public as required by the test set out in section 132(3). These works are also considered to fall under s131(5) given the land required is for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and the giving in exchange of other land is unnecessary [ER 8.8.8]. The Secretary of State further notes that in respect of TP the three limbs in section 131(4B) are satisfied [ER 8.8.9].

182. The Secretary of State notes that the ExA received no significant objections and agrees with their conclusion that that the Open Space land is required and that the tests are met, and the Order should not be subject to SPP [ER 8.8.10 – 8.8.11].

183. The Secretary of State notes that the Applicant is seeking to compulsorily acquire 3,970 square metres (sqm) of Common Land to enable delivery of the Proposed Development in the area surrounding Barrow Wake. The Secretary of State is aware that the land is required to facilitate the construction of the A417 mainline and works associated

with the B4070 and Birdlip Road. The Secretary of State is aware that the land is primarily in the ownership of GWT, with the Applicant and Mr Medlock being owners of small plots [ER 8.8.12].

184. The Secretary of State notes that the Applicant has confirmed that the replacement land provided will be vested in the respective seller subject to the same rights, trusts and incidents so that the test in section 131(4) would be met and that there are no registered rights of common or other rights therefore the replacement land would be no less advantageous to anyone with a right of common or other rights as there are none, nor would it be less advantageous to the public; indeed the replacement land would be greater in area with 10,540 sqm replacing 3,970 sqm lost (6,570 sqm more). The replacement land is in the possession of the Applicant and therefore does not require acquisition [ER 8.8.14 – 8.8.15].

185. The Secretary of State also notes that the de-trunking and landscaping process offers opportunities to create habitats that are appropriate to the current use of the existing Common Land and surrounding SSSI, potentially improving the SSSI in future. The ExA notes that the land could potentially become part of the SSSI habitat in future and have removed the disapplication proposed so that NE would retain control over this area. The ExA concluded that this demonstrates that there is a strong public benefit as this would improve the quality of the land [ER 8.8.16].

186. The Secretary of State is aware that the Proposed Development also proposes the TP of Common Land to be used solely as a working width to facilitate the construction of boundary features on adjacent land which is not Common Land. No works are proposed on this area of Common Land and there will be no CA of this part of the Common Land [ER 8.8.17].

187. The Secretary of State notes that while no significant objections were raised by any of the landowners to the acquisition of Common Land [ER 8.8.19], the ExA considered the timing of the provision of the replacement land which will follow the construction of the Proposed Development [ER 8.8.19 - 8.8.20]. The Secretary of State agrees with the ExA that the replacement land complies with the test in section 131(12) and that the Order should not be subject to SPP [ER 8.8.21]. The Secretary of State is also satisfied with the Applicant's proposed timing of the provision of replacement land.

### **Special Category Land (National Trust Land)**

188. The Secretary of State notes that the Applicant is seeking to acquire land that is held inalienably by the NT and a signed SoCG was submitted.

### **Statutory Undertakers**

189. The Secretary of State notes that the Applicant identified four statutory undertakers that may be affected by the Proposed Development:

- British Telecommunications Plc (“Openreach”).
- Gigaclear Ltd.
- Severn Trent Water Limited (“STW”)

- Western Power Distribution (“WPD”).

190. The Secretary of State notes that during the examination, only STW submitted representations. In the [correspondence dated 7 October 2022](#) to the Secretary of State sent on behalf of STW by DWF Law LLP, confirmed that STW and the Applicant had agreed all relevant substantive provisions and steps were being taken to secure the agreed arrangements. In light of this, STW that its objection to the Proposed Development is withdrawn.

191. The ExA recorded that Openreach and Gigaclear Ltd did not actively engage with the Examination, and that it requested the Applicant made additional efforts to make contact and seek responses from these undertakers. The ExA also records there was nothing forthcoming by the end of the Examination. The Secretary of State agrees with the ExA that on this basis, it is reasonable to conclude that these statutory undertakers do not object in relation to the effect on their land, interest or apparatus [ER 8.8.38].

192. The Secretary of State notes that in the case of Western Power Distribution, the Applicant and WPD had reached agreement on the terms of the Order including the application of the protective provisions in Part 1 of Schedule 8 of the Order. The ExA records that this agreement was completed in February 2022 and although it had not received a copy of the agreement from WPD, there was nothing to suggest that that the agreement had not been finalised. The Secretary of State agrees with the ExA’s conclusion that WPD has no objections [ER 8.8.39].

193. The Secretary of State also agrees with the ExA that the Order meets the requirements of section 127(3), 127(6) and 138 of the PA2008 in respect of all other statutory undertakers and that the protective provisions in the Order are acceptable [ER 8.8.40].

OBJ:

### **Land to Which No Objection Has Been Received**

194. With respect to the acquisition of unknown third-party rights the ExA concluded that the land is required for the Proposed Development to which the consent would relate, or is required to facilitate or is incidental to it [ER 8.9.6]. The ExA also concluded that there is a compelling case in the public interest for the land to be acquired compulsorily. The Secretary of State has no reason to disagree.

### **Human Rights and the Public Sector Equality Duty**

195. The Secretary of State notes the ExA’s consideration of the Human Rights Act and agrees that the Order engages a number of articles which are considered at ER 8.11.1 – 8.11.8. The Secretary of State agrees with the ExA that while rights would be interfered with, the interference would be proportionate and justified in the public interest and therefore is compatible with the Human Rights Act and the ECHR [ER 8.11.8].

196. The Secretary of State is also satisfied that due to the characteristics of the Proposed Development and the mitigation that has been proposed by the Applicant, there would be no harm to the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and any persons who do not have a protected characteristic. The Secretary of State is satisfied that the Public Sector

Equality Duty (PSED) on the Applicant has been discharged and notes that the ExA has conducted the examination with full regard to this duty [ER 8.11.9].

### The Secretary of State's Conclusion on Compulsory Acquisition

197. The Secretary of State notes that the ExA has applied the relevant sections of the 2008 Act, notably sections 122 and 123, the DCLG CA Guidance and the Human Rights Act in its consideration of whether to recommend CA and TP powers should be granted. In the light of the representations received and the evidence submitted, the ExA has considered whether a compelling case has been made by the Applicant in the public interest, balancing the public interest against private loss. Overall, the Secretary of State agrees with the ExA that there is a compelling case in the public interest for CA and TP and that the Proposed Development would comply with the 2008 Act [ER 10.2.8 – 10.2.9]. With respect to the provisions of the Human Rights Act, the Secretary of State agrees with the ExA that any interference with human rights arising from the implementation of the Proposed Development would be proportionate and would strike a fair balance between the rights of the individual and the public interest [ER 10.2.10]. The Secretary of State also agrees that the weight of national policy in favour of the Proposed Development and the wider public interest justifies the interference [ER 10.2.11]. The Secretary of State notes that the ExA has considered the relevant section of the 2008 Act, notably section 122 and 123, the DCLG CA Guidance and the Human Rights Act in its consideration of whether to recommend CA and TP powers should be granted. The ExA has also considered whether a compelling case has been made in the public interest, balance the public interest against private loss. The Secretary of State agrees with the ExA's overall conclusions at paragraph 8.12.1 of the Report. In particular the Secretary of state agrees that the Proposed Development would be compatible with the Human Rights Act 1988 in terms of being a proportionate interference with property and family life and that there is a compelling case in the public interest for the CA powers sought by the Applicant.

## **General Considerations**

### Natural Environment and Rural Communities Act 2006

198. The Secretary of State, in accordance with the duty under section 40(1) of the Natural Environment and Rural Community Act 2006 ("the 2006 Act"), must have regard to the purpose of conserving biodiversity and, in particular, to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when deciding on whether to grant development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and the biodiversity duty in the relevant sections of the Report [ER 3.4.7]. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

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

199. The ExA's consideration of the draft Order is set out in Chapter 9 of its Report. The Applicant submitted the dDCO and Explanatory Memorandum ("EM") describing the purpose and effect of the provisions in the dDCO as part of the application for development consent [ER 9.1.1]. The Secretary of State notes that a number of revisions to the dDCO and EM were made during the Examination including in response to material changes [ER 9.1.4, 9.2.1 and 9.5.1].

200. Where not previously stated, the Secretary of State is satisfied with the recommended changes set out in section 9 of the Report.

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

- In article 2(1) (interpretation):
  - the "2004 Act" has been inserted as a defined term due to the number of times that the Traffic Management Act 2004 is referred to throughout the Order;
  - the definitions of "book of reference", "classification of road plans", "clearways and prohibition plans", "Cotswold Way national trail diversion report" "de-trunking plans", "engineering drawings and sections", "environmental management plan (design stage)", "environmental masterplan", "environmental statement", "general arrangement plans", "land plans", "rights of way and access plans", "special category land plans", "speed limit plans", "traffic regulation measures plans" and "works plans" as well as "DAMS and OWSI", "Design Summary Report" and "structures engineering drawings and sections" in Schedule 2 have been modified to ensure that documents to be certified by the Secretary of State are referred to in a consistent way;
  - "cycle track" has been removed as it is not used in the Order.
  - the definition of "electronic transmission" has been amended so as to define what is meant by "electronic communications network";
  - the definition of "maintain" has been amended to improve clarity regarding the scope of such works where they differ from those reported in the environmental statement;
  - "traffic regulation measures plans" has been amended to clarify which documents it refers to;
- in article 12 (application of the 1991 Act), paragraph (7)(c) has been updated to align with more established precedents;
- in articles:
  - 15 (temporary stopping up and restriction of use of streets),
  - 19 (traffic regulation),
  - 21 (discharge of water), and
  - 23 (authority to survey and investigate land),paragraphs have been inserted requiring the Applicant to include in an application to the relevant authority to which a deeming provision applies, notification that the application will be deemed as being consented to if the authority does not notify the Applicant of its decision before the end of the relevant specified period;
- in articles:
  - 15 (temporary stopping up and restriction of use of streets),

- 16 (permanent stopping up and restriction of the use of streets and private means of access),
  - 21 (discharge of water)
  - 22 (protective works to buildings)
  - 23 (authority to survey and investigate the land),
  - 29 (private rights over land),
  - 33 (rights under or over streets),
  - 34 (temporary use of land for carrying out the authorised development),
  - 35 (temporary use of land for maintaining the authorised development), and
  - 40 (felling or lopping of trees and removal of hedgerows),
- “as if it were a dispute” is inserted to improve clarity.
- In article 21(3) the words "or the person or body otherwise having authority to give such consent" have been removed as no reason has been given in the EM as to why it is required;
  - In article 32(3)(a) (acquisition of subsoil or airspace only) precedent text is added to make it clear that Part 1 of the Compulsory Purchase Act 1965 should be read as being modified by article 30 (modification of Part 1 of the 1965 Act);
  - in article 39 (special category land) “must” and “shall” is substituted for “is to” to follow standard drafting practice;
  - Schedule numbering has been recommenced at “1” to follow standard drafting practice;
  - Schedule 1 (authorised development) has been amended so that the additional works permitted where they are connected to the specific works identified in the Schedule, are limited to which does not give rise to any materially new or materially different environmental effects compared to those reported in the environmental statement, which maintains consistency with highways DCOs;
  - in Part 1 of Schedule 2 (requirements):
    - paragraph 1, “contaminated land” has been removed as it is not used;
    - paragraphs 3 and 5 NE has been added as a consultee as discussed in paragraph 167 of this letter.
  - in Schedule 4 (permanent stopping up of highways.), paragraph b is re-formatted to follow precedent;
  - in Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), paragraphs 6-8 are amended so that references to “the authority” are substituted for those to “the acquiring authority”, to maintain consistency with highways DCOs.
  - in Schedule 9 (documents to be certified) the HRA: Statement to Inform Appropriate Assessment and the Statement of Statutory Nuisance have been added to the list of documents to be certified.

## **Late Representations**

202. In addition to the responses to the Secretary of State’s consultation during the decision-making stage, the Secretary of State also received a number of items of correspondence from Interested Parties. This correspondence raised concerns such as:

the need for the Proposed Development; landscape impacts; impacts on ancient woodlands, tree planting initiatives and other biodiversity impacts; impacts on the Air Balloon public house and surrounding area; and impacts on traffic. The Secretary of State has treated this correspondence as late representations and has published them as such alongside this letter.

203. 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 Development. 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 Interested Parties under Rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

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

204. 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 with the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

### **Challenges to decision**

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

### **Publicity for decision**

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

**Yours faithfully**

**Natasha Kopala**

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

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

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

<https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/m54-to-m6-link-road/>

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