



# Department for Transport

Head of the Transport and Works Act Orders Unit  
Department for Transport  
c/o Great Minster House  
33 Horseferry Road  
London SW1P 4DR

Enquiries: 07977 437020

E-mail: [TRANSPORTINFRASTRUCTURE@dft.gov.uk](mailto:TRANSPORTINFRASTRUCTURE@dft.gov.uk)

Website: [www.gov.uk/dft](http://www.gov.uk/dft)

19 April 2022

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED PORTISHEAD BRANCH LINE – METROWEST PHASE 1B DEVELOPMENT CONSENT ORDER**

### **MINDED TO AGREE**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
  - the Report dated 19 July 2021 of the Examining Authority (“ExA”), Jo Dowling BA (Hons) MPhil MRTPI and Susan Hunt BA (Hons) MA MRTPI who conducted an Examination into the application made by North Somerset District Council (“the Applicant”) for the Portishead Branch Line – MetroWest Phase 1B Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
  - post examination correspondence received by the Secretary of State following the close of the Examination; and
  - the responses to the further consultation undertaken by the Secretary of State in respect of the application.
2. The application was accepted for Examination on 12 December 2019. Due to the COVID-19 pandemic the start of the Examination was delayed and began on 19 October 2020 and was completed on 19 April 2021. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings held virtually due to the ongoing pandemic. The ExA also undertook a number of unaccompanied site inspections. The ExA would normally have also held an accompanied site inspection but due to Covid travel

restrictions decided not to hold such an inspection having considered responses from the Applicant, Interested and Affected Parties [ER 1.4.10 and 1.4.11].

3. The DCO as applied for would grant development consent for the construction of a new railway on the trackbed of the former branch line from Bristol to Portishead (“the Proposed Development”). This would follow the existing railway corridor, comprising the disused railway section between Portishead and Pill, and then with associated works along the operational railway line from Pill to the existing Ashton Junction before joining the Bristol to Exeter main line at Parson Street Junction [ER 2.1.4].
4. The Proposed Development would extend over a 13.7 km section of railway, between Portishead and Ashton Junction in Bristol [ER 2.1.5].
5. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings, Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The main features of the proposal and the site are set out in Chapter 2, the ExA’s findings and conclusions are set out in Chapters 5 to 9, and the ExA’s summary of its findings, conclusions and recommendation are in section 10. All “ER” references are to the specified paragraph in the Report and references to “Requirements” are to those in Schedule 2 to the DCO as recommended by the ExA at Appendix C to the ExA’s Report.

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

6. The main issues considered during the Examination on which the ExA reached conclusions on the case for development consent were:
  - a. Legal and policy context,
  - b. Principle need for the Proposed Development including alternatives;
  - c. Biodiversity, ecology and the natural environment;
  - d. Flood risk, water quality and resources;
  - e. Traffic and transport;
  - f. Air quality, carbon emissions and climate change adaptation;
  - g. Construction impacts;
  - h. Design and landscape and visual;
  - i. Land use, including PRow;
  - j. Socio-economic;
  - k. Historic environment; and
  - l. Other policy and factual issues.

For the reasons set out in the ExA’s Report, the ExA recommended that the Secretary of State should make the DCO in the form recommended at Appendix C of the ExA’s Report (ER 10.2).

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

7. For the reasons explained at paragraphs 139 to 141 in this letter, the Secretary of State considers that he is not yet in a position to decide whether to accept the ExA’s recommendation. He is, nevertheless, minded to agree with the ExA that he

should make an Order granting development consent for the scheme, subject to receiving satisfactory evidence of the following:

- an updated Funding Statement with information confirming the amount of the increased costs of the scheme;
  - Information setting out the way in which the amount of the increased costs has been assessed so that he can be assured of the amount of these costs and their assessment;
  - information confirming how these costs will be met so that he can be satisfied that adequate funding will be available to meet these costs;
  - further information to enable him to confirm the updated costs of the scheme and to be satisfied that adequate funding will be available to meet these costs.
8. The process by which the Applicant is invited to respond, and by which the response will be made available to interested parties for comment, is set out in paragraphs 151 to 153 below.
9. The Secretary of State's consideration of the ExA's Report, post examination correspondence, responses to his consultation letters of 26 July 2021, 13 August 2021, 21 September 2021, 9 November 2021, 24 November 2021, 30 November 2021 and 28 January 2022 and all other material considerations are set out in the following paragraphs. The Secretary of State's initial considerations of these matters is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the ExA's report. Where not stated, the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

### **Legal and Policy Context**

10. The ExA noted that the Proposed Development qualifies as a National Significant Infrastructure Project ("NSIP") because it falls to be designated under section 25(1) of the 2008 Act as railway related development. The elements of the Proposed Development which are not encompassed within the NSIP are characterised as Associated Development as provided for by section 115(2) of the 2008 Act [ER 3.2.2].
11. The Secretary of State agrees with the ExA that a decision on the application is to be determined under section 104 of the 2008 Act [ER 7.2.1]. The ExA noted that the NPSNN forms the primary policy context for the Examination and sets out the need for, and the Government's policies to deliver, development of NSIPs on the national road and rail networks in England. No other National Policy Statements are directly applicable to the Proposed Development [ER 3.2.3].
12. In a Ministerial Statement issued on 22 July 2021 the Secretary of State for Transport advised that a review of the National Policy Statement for National

Networks (“NPSNN”) would begin in 2021, to be completed no later than Spring 2023. While the review is undertaken, the existing NPS remains relevant government policy and has effect for the purposes of the 2008 Act. The existing NPS will, therefore, continue to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.

13. The ExA note that section 104(2) of the 2008 Act sets out the matters to which the Secretary of State must have regard in deciding an application. In summary these are any relevant NPS, Local Impact Reports, matters prescribed in relation to development of the description to which the application relates and any other matters which the Secretary of State thinks are both important and relevant to the decision [ER 3.2.5].
14. The Secretary of State notes that the Proposed Development is development under Schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”) and that the Applicant has provided an environmental statement (“ES”) as part of the submitted application. As set out in paragraph 1.5.6 of the ExA Report, parts of the ES have been updated during the Examination [ER 3.4.4] and further updates have been made and submitted to the Secretary of State during the determination period.
15. The Secretary of State notes that the ExA has considered all the environmental information, as defined in the 2017 Regulations and which the Secretary of State must consider in deciding whether or not to grant development consent as set out in regulation 4 of the 2017 Regulations [ER 3.4.5].
16. It is the view of the Secretary of State that the ES has fully met the requirements of the 2017 Regulations. The Secretary of State is satisfied that the Proposed Development complies with all legislation and policy relevant to the Proposed Development that is noted in Chapter 3 of the ExA Report.

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

17. The ExA has noted that Chapter 4 of the Applicant’s Planning Statement [REP6-134] and Appendix 1 of the Statement of Reasons [REP7-011] set out the need for the Proposed Development. The Secretary of State notes that the Planning Statement has highlighted that rail travel across the West of England has doubled in the last ten years and while this area benefits from good long-distance rail routes, the local network is relatively underdeveloped [ER 5.2.7]. The ExA notes that the Proposed Development forms part of a wider MetroWest programme. The objectives are to support economic growth, improve transport network resilience, improve accessibility to the rail network, and to make a positive contribution to social well-being. Further supporting objectives are noted as to contribute to reducing traffic congestion, enhancing the capacity of the local rail network and to contribute to reducing the overall environmental impact of the transport network [ER 5.2.8].

18. The ExA notes that to encourage a modal shift away from road travel there is a national need to provide new rail infrastructure. The Secretary of State agrees with the ExA that providing a rail link between Portishead and Bristol would help deliver this modal shift, and therefore agrees that the broad principles and strategic aims set out within the NPSNN would be satisfied [ER 5.2.19]. The Secretary of State notes the ExA are satisfied that there is no viable alternative route for the Proposed Development and that the alternative of a busway, at this time is not feasible due to the significant technical and safety impediments that would prevent the authorisation of the operation of buses on an operational railway [ER 5.2.20]. The ExA are satisfied that the Proposed Development would contribute to the established need for alternative modes of travel and would help provide a viable alternative to travelling by car to the residents of Portishead and Pill [ER 5.2.21].
19. In view of the above, the Secretary of State agrees with the ExA that the transport-related benefits of the Proposed Development and its resultant conformity with the NPSNN weighs heavily in favour of the Proposed Development. Therefore, the Secretary of State also agrees that the principle of and need for the Proposed Development weighs positively in the planning balance [ER 5.2.21].

### **Air Quality**

20. The Secretary of State notes that the analysis undertaken by the Applicant indicates that in the opening year, there would be an adverse impact on regional CO<sub>2</sub>, NO<sub>x</sub> and PM<sub>10</sub> emissions as a result of the Proposed Development. Further refinement of the regional emissions calculations showed that adverse impacts on emissions would be lessened when focused on changes in rail and road emissions from just the Proposed Development. The Applicant set out that the modernisation of the railway fleet would result in further reductions of adverse impacts on NO<sub>x</sub> and CO<sub>2</sub> emissions and a net benefit in terms of PM<sub>10</sub> emissions. North Somerset District Council (“NSDC”) noted that in the operational phase the diesel trains would emit NO<sub>x</sub> and PM<sub>10</sub> and the combustion of diesel would also generate CO<sub>2</sub>. However, it considered that due to its scale rail travel is expected to give rise to less pollution per passenger kilometre travelled than road transport and at the close of the Examination the signed SoCG with NSDC showed no outstanding issues in relation to air quality, climate change or greenhouse gases. The Secretary of State notes the overall conclusion of the Environmental Statement is that the Proposed Development's effects on the local air quality would not be significant in terms of the EIA regulations [ER 5.6.23].
21. In regard to air quality during construction, the Secretary of State notes that the ExA recognise that the Proposed Development would have detrimental effects on air quality and present a temporary and short term impact that would reduce to an acceptable level through embedded design and good practice measures secured through the recommended DCO [ER 5.6.43]. The ExA noted that it did not receive any substantive concerns from relevant pollution control authorities about the ability to regulate potential releases under the pollution control framework and were therefore satisfied that paragraph 4.55 of the NPSNN would be met [ER 5.6.45]. The Secretary of State agrees with this conclusion.

22. The impacts on air quality during operation are considered further below but in considering the Proposed Development's effects on air quality, the Secretary of State notes that the ExA has had regard to policies set out in the NPSNN, relevant sections of the Air Quality Directive, the Air Quality Strategy, the Clean Air Strategy and the relevant development plan [ER 5.6.44]. The Secretary of State agrees with the ExA that the Proposed Development would attract neutral weight in respect of air quality in the planning balance [ER 7.2.21].

### **Carbon emissions and climate change adaptation**

23. Section 104(3) of the 2008 Act requires the Secretary of State to decide an application for a national network NSIP in accordance with the NPSNN except to the extent that one or more of subsections 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 him being in breach of any duty imposed on him by or under any enactment; 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 [ER 5.6.13]. This has been implemented in the UK by way of amendments to the Climate Change Act 2008.

24. In June 2019 the Government announced a new carbon reduction 'net zero target' for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline, by 2050. The Climate Change Act requires five yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Carbon budgets restrict the total amount of greenhouse gases that the UK can emit over five-year periods to ensure continued progress towards the climate target. Six carbon budgets have been adopted. The fourth, fifth and sixth cover 2023-2027, 2028–2032 and 2033 to 2037 respectively. Achieving net zero will require future greenhouse gas ("GHG") emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the target of net zero carbon by 2050.

25. The sixth carbon budget was confirmed by the Carbon Budget Order 2021 made on 23 June 2021 and came into force the following day. As this came into force after the close of Examination, the Secretary of State invited the Applicant in his letter of 13 August 2021 to provide additional information on the Proposed Development's compliance with the sixth carbon budget including an assessment of whether the Proposed Development would adversely impact the Government meeting the targets set.

26. The Secretary of State notes that the Applicant provided an addendum to Chapter 7 of their ES which includes an assessment against the sixth carbon budget. The

Secretary of State notes that the addendum reports the worst-case assumption of the Proposed Development making <0.001% contribution to the sixth carbon budget.

27. The Secretary of State in his letter dated 9 November 2021 requested that the Applicant also provide an assessment against the third, fourth and fifth carbon budgets. In their response of 23 November 2021, the Applicant stated that due to delays to the programme, the third Carbon Budget is no longer relevant and the fourth Carbon Budget is assessed for the combined two year construction period. The Secretary of State notes the Applicant's assessment of the impact of the Proposed Development against the fourth and fifth Carbon Budgets and that the carbon impact will be slightly higher during the fourth Carbon Budget period, which includes when the Proposed Development will be constructed, but that it will contribute <0.01% to that carbon budget.
28. The Secretary of State notes that the addendum to the Environmental Statement included in the applicant's response of 26 August 2021 sets out that this calculation accounts for projected reductions in road transport emissions that are predicted to arise as a result of the Proposed Development being in place, but not the plan published by the Department for Transport after the close of Examination on 14 July 2021 titled "Decarbonising Transport: A Better, Greener Britain" ("the Transport Decarbonisation Plan"). The Applicant set out that the Transport Decarbonisation Plan provides a path to achieving a net-zero emissions rail network by 2050. The Applicant notes that included in this is the aim to remove all diesel-only trains (passenger and freight) from the network by 2040.
29. It is noted that a number of Interested Parties raised concerns during the Examination about the use of diesel trains in relation to GHG emissions and questioned the use of Diesel Multiple Units (diesel trains) ("DMUs") and advocated that a busway, amongst other things, would be less polluting [ER 5.6.35]. These concerns were reflected in the comments received from Interested Parties on the Applicant's reply to the Secretary of State's consultation letters where matters raised included views that the increase in carbon would be a breach of the Paris Agreement as well as local and national policy and would outweigh savings from reduced car use and that the impact of Covid and home working had not been assessed.
30. The Secretary of State notes that due to the initial use of DMUs, carbon emissions in the opening year of the Proposed Development would increase despite the predicted modal shift from car to rail [ER 5.6.46]. The Secretary of State notes that there is no set significance threshold for carbon. The IEMA guidance "Assessing Greenhouse Gas Emissions and Evaluating their Significance" ("the IEMA Guidance") sets out in section 6.1 that: GHG emissions from all projects will contribute to climate change; the consequences of changing climate have the potential to lead to significant environmental effects on all EIA topics; and that GHG emissions have a combined environmental effect that is approaching a scientifically

defined environmental limit and as such any GHG emission or reductions from a project might be considered significant. The IEMA guidance (section 6.3) also states that a project that is compatible with the budgeted 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. It further elaborates that such a project would be doing enough to keep the UK on track towards net zero by 2050 with at least a 78% reduction by 2035.

31. The Secretary of State notes the ExA agrees with the Applicant that significant weight should be given to Network Rail's ("NR") 'Transport Decarbonisation Network Strategy' and particularly, as highlighted above, the Government's Transport Decarbonisation Plan, which stipulates the ambition that all DMUs are to be removed from the network by 2040, with the rail network achieving net zero by 2050. Furthermore, the ExA were satisfied that it was more than likely that in the medium to long term, NR would introduce bi-modal trains and/or electrify the line as part of the wider NR strategy which would not only reduce CO2 emissions but NOx and PM<sub>10</sub> emissions too [ER 5.6.47, 7.2.20].
32. The Secretary of State does not consider that net zero means consent cannot be granted for development that will increase carbon emissions. Instead the Secretary of State continues to consider that, as set out in paragraph 5.18 of the NPSNN, it is necessary to evaluate whether (amongst other things) the increase in carbon emissions resulting from the Proposed Development would have a material impact on the ability of the Government to meet its carbon reduction targets. The Secretary of State considers this aligns with the approach in the most recent IEMA Guidance which sets out that '*The crux of significance therefore 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) . 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 come into force since the NPSNN was designated.
33. The Secretary of State acknowledges the importance of climate change at the local, national and international level and the contribution GHGs make to this. Section 6.2 of the IEMA guidance sets out (amongst other things) that "*The 2050 target (and interim budgets set to date) are, according to the CCC [the Climate Change Committee], compatible with the required magnitude and rate of GHG emissions reductions required in the UK to meet the goals of the Paris Agreement, thereby limiting severe adverse effects*". This guidance also sets out that, "*Carbon budgets allow for continuing economic activity, including projects in the built environment, in a controlled manner*". The Secretary of State considers that the carbon budgets set the pathways for Government to meet net zero meaning a proposal which is compatible with the 2050 target and interim carbon budgets is consistent with the approach to addressing the severe adverse effects of climate change.

34. The Secretary of State is satisfied that the scheme is compatible with the Transport Decarbonisation Plan which sets out a policy for the rail network to meet net zero by 2050 and that this is one of a number of policies that will ensure that government meets its carbon targets which are legally binding.
35. At a local level, the Secretary of State notes that NSDC has declared a climate emergency and that the Applicant highlighted that there is an action plan to accompany this declaration which aims to encourage a shift from the private car use, develop policies that deliver connections to public transport and to encourage the use of public transport [ER 5.6.41]. The Secretary of State is content that the Proposed Development is aligned with these local policies and notes that at the close of the Examination, the signed SoCG with NSDC showed that there were no outstanding issues with NSDC in relation to climate change [ER 5.6.28].
36. With regard to a busway potentially being less polluting, for the reasons set out above at paragraph 18 it has been concluded that this is not a viable alternative to the scheme due to technical and safety impediments that would prevent the authorisation of the operation of buses on an operational railway [ER 5.6.42]. In relation to the impact of Covid, the Secretary of State notes that restrictions in England have only recently been relaxed. The Secretary of State therefore does not consider that any meaningful update from the Applicant on the impacts of Covid (if any) is necessary in this case, or is required in order to decide this application in all the circumstances. Taking this into consideration, the Secretary of State is content that the assessment undertaken by the Applicant is reasonable and considers that it contains sufficient information to make a decision about the Proposed Development.
37. The Secretary of State acknowledges that due to the initial use of DMUs (initial because as set out in the Transport Decarbonisation Plan these should be removed from the Network by 2040) this will result in an initial increase in carbon emissions but that the Proposed Development supports a shift away from the use of the private car.
38. The ExA considered that the magnitude of the increase in carbon emissions when compared to the carbon budgets (which are economy wide and not just in relation to transport) is negligible [ER 5.6.39]. However, the Secretary of State considers that taking account of the IEMA guidance, the Proposed Development's effect on climate change would be minor adverse and not significant. This is because whilst the Proposed Development will result in an increase in carbon emissions, given the measures in place at a national level to reduce climate change, such as the Transport Decarbonisation Plan, the Secretary of State agrees with the ExA that increases in GHG resulting from the Proposed Development will not be so significant as to have a material impact on the ability of the Government to meet the carbon reduction targets in the Climate Change Act 2008 and the Carbon Budget Orders. The Secretary of State is content that the Proposed Development

is consistent with existing and emerging policy requirements to achieve the UK's trajectory towards net zero and that it aligns with the NPSNN (paragraph 5.18).

39. With regard to the Paris Agreement, the UK announced its Nationally Determined Contribution ("NDC") in December 2020. NDCs are commitments made by the Parties (including the UK) under the Paris Agreement. Each Party's NDC shows how it intends to reduce its greenhouse gas emissions to meet the temperature goal of the Paris Agreement. The UK's NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the fifth carbon budget, which covers the period 2028-2032. The Net Zero Strategy: Build Back Greener, published by Government in October 2021, sets out how the UK will therefore need to overachieve on the fifth carbon budget to meet its international climate targets and stay on track for the sixth carbon budget. This strategy sets out the action Government will take to keep the UK on track for meeting the UK's carbon budgets and 2030 NDC and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State is content that consenting the Proposed Development will not impact on the delivery of this strategy and will not lead to a breach of the UK's international obligations in relation to the Paris Agreement or any domestic enactments or duties.
40. With regard to compliance with the EIA Regulations, as part of his consultation of 13 August 2021 the Secretary of State asked the Applicant to provide more information on the direct, indirect and cumulative likely significant effects of the Proposed Development with other existing and/or approved projects on climate, including greenhouse gas emissions and climate change adaptation. The Secretary of State notes the Applicant's response of 26 August 2021 and whilst he does not consider that reference to R (Transport Action Network) v Secretary of State for Transport and Highways England (2021) EWHC 2095 is relevant to this application (given this judgment was in relation to the Road Investment Strategy 2 and was not in relation to an assessment undertaken for planning purposes), the Secretary of State is otherwise satisfied with the explanation and considers that an adequate assessment of the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate as required by the 2017 Regulations has been undertaken and that this has been taken into consideration by the Secretary of State when assessing whether development consent should be granted. The Secretary of State also notes that no concerns were raised by Interested Parties with regard to the Applicant's response on this matter or the assessment that was undertaken by the Applicant.
41. The Secretary of State is content that the Proposed Development aligns with the NPSNN which identifies that rail transport has a crucial role in delivering significant reductions in pollution and congestion (paragraph 2.35 of the NPSNN). Paragraph 2.41 of the NPSNN sets out that the environmental performance of the railway will be improved by continuing to roll out a programme of rail electrification. Paragraph 3.6 of the NPSNN further notes that transport will play an important part in meeting the Government's legally binding carbon targets and other environmental targets

through, amongst other things, promoting lower carbon transport choices [ER 5.6.2]. Furthermore, the Secretary of State notes that the ExA was satisfied that mitigation is adequately provided for and secured in the DCO [ER 5.6.48] and has no reason to disagree with this.

42. Due to the initial use of DMU's, the Secretary of State agrees with the ExA that the Proposed Development attracts a negative weight in the planning balance in respect of carbon emissions but that significant weight can be given to the likelihood that DMUs would be, in the long term, removed from the network. Even if DMUs were not removed from the network in the way anticipated in the long term, the Secretary of State considers that the negative weight attributed to them in the planning balance in respect of carbon emissions is balanced out by the benefits of shifting travel from road to rail. The Secretary of State agrees with the ExA that the Proposed Development would enable a shift from road to rail advocated by the NPSNN (paragraph 2.40 of the NPSNN) and that in relation to climate change adaptation it therefore attracts positive weight in the planning balance [ER 7.2.21].

### **Flood risk, water quality and resources**

43. The projected increase of flood risk due to climate change and sea-level rise is acknowledged in the ES. The Secretary of State notes that the ES highlights that the biggest risk to the Proposed Development would be tidal flood risk resulting from increased sea levels which would also increase the risk of tide locking of inland watercourses [ER 5.4.20].
44. The Secretary of State notes that a Water Framework Directive ("WFD") compliance screening assessment was undertaken regarding three surface water bodies: Portbury Ditch, the Bristol Avon and the downstream Severn Lower transitional waterbody, and there are three groundwater bodies within the study area [ER 5.4.33]. The Secretary of State notes that the assessment concluded that no deterioration to the identified waterbodies would occur as a result of the Proposed Development, which would comply with the WFD, and no further assessment would be required [ER 5.4.33].
45. The ExA noted that at the end of Examination, the Environment Agency ("EA") had outstanding concerns regarding the ground level of the permanent compound at Clanage Road (Work No.26) and its belief that a Flood Risk Assessment ("FRA") would be required for Work No.3 [ER 5.4.88].

#### Work number 26

46. The Secretary of State notes the EA has concerns regarding various aspects of the flood risk management that were compounded by the FRA, which it viewed as deficient [ER 5.4.68]. At deadline 7 the Secretary of State notes that the signed Statement of Common Ground ("SoCG") between the EA and the Applicant showed that the issue of whether the Clanage Road compound would be situated within or outside of the functional flood plain remained outstanding, but due to the mitigation proposed by requirement 31 this only remained an issue in respect to the ground level of the compound [ER 5.4.80].

47. The Secretary of State notes that the Applicant proposed that the ground level of the compound be 7.4m Above Ordnance Datum (“AOD”) [ER 5.4.81] but agrees with the ExA that a precautionary approach should be adopted, and that the compound should have a ground level of 7.3m AOD as advised by the EA. The Secretary of State notes the ExA considers that this would ensure that the site would be able to accommodate both the flooding predicted by the FRA and any excess water [5.4.90]. Moreover, requirement 31 would require the submission and approval of a flood plan to the works at Clanage Road, including the emergency and evacuation procedures for both the temporary and permanent compound. The Secretary of State is satisfied that requirement 31(3) has been amended to ensure these measures are secured in the DCO, and therefore agrees with the ExA that the Proposed Development would comply with paragraphs 5.99 and 5.109 of the NPSNN [ER 5.4.90].
48. The Secretary of State notes the agreement in the SoCG between the EA and the Applicant that the Sequential Test has been satisfied. With regard to the Exception Test, the Secretary of State notes that although the Applicant considers the test to be satisfied for the Clanage Road compound, this remained an outstanding matter with the EA [ER 5.4.82]. The Secretary of State notes that a precautionary approach would be adopted on the ground level of the Clanage Road compound and the measures that would be secured in the DCO and therefore agrees with the ExA that the Sequential and Exception Tests are satisfied as required in NPSNN [ER 5.4.95].

#### Work No. 3

49. The Secretary of State notes from the SoCG between the Applicant and the EA that the matter of whether a FRA is required for Work No. 3 (Portbury Ditch) remained outstanding [ER 5.4.84]. The works would consist of a footpath and cycle path of 63 metres in length together with associated works [ER 5.4.93]. The Secretary of State notes that the EA advise that as the site falls within fluvial FZ3a a FRA would be required to assess the potential impact on the floodplain and how the works would remain safe [ER 5.4.84]. The Secretary of State notes that the ExA agrees with the Applicant that it would be unlikely that the new foot and cycle path would flood due to the topography and Work No. 3 being elevated above Portbury Ditch, so that the flood levels in the ditch would be unlikely to reach the level of the works [ER 5.4.84]. Furthermore, if flooding did occur, the Secretary of State notes that the ExA considers it unlikely to result in floodwater displacement and pose a flood risk to neighbouring third parties and therefore concluded that a full FRA for this element of the Proposed Development would not be needed [ER 5.4.93].
50. Whilst the Secretary of State notes this conclusion, to ensure that the Secretary of State is aware of the risks posed by this element of the Proposed Development and can be satisfied of the matters set out in paragraphs 5.98 and 5.109 of the NPSNN, the Applicant was asked to liaise with the EA and provide a FRA for Work No. 3 in the Secretary of State's letter dated 13 August 2021. The Secretary of State notes from the Applicant's response dated 26 August that it has not been possible to complete an agreed FRA, and it is agreed with the EA that the appropriate remedy is a variation to requirement 27 of the DCO, stipulating that before the commencement of Work No. 3, a full FRA must be submitted and

approved by the relevant planning authority in consultation with the EA. As such, the Secretary of State accepts this and is satisfied that the flooding risk posed by this element of the Proposed Development would be appropriately mitigated.

51. The Secretary of State is content that in terms of water quality and resources, the ExA was satisfied that the Proposed Development would be compliant with the WFD and would have no unmanaged adverse effects [ER 7.2.8]. Overall, the Secretary of State agrees with the ExA that the Proposed Development would have no significant effects on water and flooding and that these would be of neutral weight in the planning balance [ER 5.4.97, 7.2.11].

## **Traffic and Transport**

52. Paragraphs 2.28 and 2.29 of the NPSNN refer to the importance of railway to the country's transport infrastructure and in offering a safe and reliable route to work, connecting communities and transporting freight to and from ports [ER 5.5.6].
53. The ExA stated that several representations were received from Interested Parties relating to traffic and transport issues and that these could be broken down into concerns related to traffic and the local highway network, the strategic rail network, parking around the rail stations at Portishead and Pill, the effect on Ashton Road industrial estate with regard to the existing level crossing, access for rail freight and access to permanent compounds at Portbury Hundred, Ham Green and Clanage Road [ER 5.5.19].
54. The Secretary of State notes that the ExA considers that significant benefits would arise from the operation of the Proposed Development in terms of a faster and viable alternative to travelling by car between Portishead, Pill and Bristol and for providing connections into the national rail network, enabling a modal shift to rail. The Secretary of State also notes that the ExA considers that the Proposed Development would assist in reducing road traffic congestion between the settlements and associated emissions [ER 5.5.110]. The Secretary of State, like the ExA, is assured by the SoCG with Highways England (now National Highways) which states that there would be no impact on the strategic road network from the operational development [ER 5.5.111].
55. With regards to the level of parking proposed for the Portishead and Pill stations, the ExA was satisfied with this and that any issues relating to on-street parking in the vicinity could be dealt with by NSDC, as the local highway authority, if the need arose in the future [ER 5.5.112]. The Secretary of State notes the concerns about the use of the freight line for passenger services but notes the ExA is satisfied that both freight trains and passenger trains would be able to run on the single track with appropriate controls laid down in other existing legislation [ER 5.5.113]. The Secretary of State has no reason to disagree with this.
56. The Secretary of State notes the discussion around new or improved access at the Portbury Hundred, Ham Green and Clanage Road compounds [IR 5.5.97-109] but that operational traffic movement to these permanent compounds would be negligible and that the consequent impact on non motorised users would be low. The Secretary of State agrees with this and is content that agreement on the full

details of the permanent access are to be agreed with the relevant planning authorities which is secured through requirements 9 and 36 in the DCO [ER 7.2.15].

57. The Secretary of State notes that Manheim Auctions Ltd and ETM Contractors Ltd (“Manheim and ETM”) raised concerns about a range of traffic and transport matters affecting the industrial area in a number of submissions [ER 5.5.45] summarised in the ExA Report at paragraph 5.5.46. The Secretary of State notes that the Applicant responded to the concerns from Manheim and ETM throughout the Examination [ER 5.5.49].
58. The concerns from Manheim and ETM regarding the modelling and effects on Ashton Vale Road from increased down-time of the level crossing remained outstanding at the close of the Examination. The Secretary of State notes that the ExA has considered the evidence provided by the Applicant and is satisfied that the modelling and data set out in the Transport Assessment is fit for purpose [ER 5.5.116]. The Secretary of State notes the concerns raised by Manheim and ETM on the age of the traffic survey data, the robustness of the surveys in terms of the closure in May 2017 of the northbound left turn lane from Winterstoke Road into Ashton Vale Road together with others questions relating to the enumerators [ER 5.5.53-54]. However, the Secretary of State notes the ExA’s consideration on the matter and is satisfied the May 2017 traffic count used in the modelling is representative of traffic volumes around Ashton Vale industrial area and does not consider it necessary for the Applicant to collect new data and re-run the model. The Secretary of State notes that the ExA agrees with the Applicant that the criticisms raised have not been backed up with counter-evidence and like the ExA has given the matter very limited weight as a result [ER 5.5.117].
59. The Secretary of State notes that the ExA is satisfied that the Proposed Development would have no more material impact on the Ashton Vale Road industrial area than what could be expected by permitted use of the existing level crossing, which has been in place for a significant period of time. The Secretary of State is satisfied that the proposed mitigation provided by Work No. 28 and secured by requirement 18 would provide a general betterment to the Winterstoke Road and Ashton Vale Road junction. Bristol City Council (“BCC”) as the local highway authority did not raise concerns either with the modelling or the proposed mitigation at Winterstoke Road and Ashton Vale Road. The Secretary of State agrees with the ExA and gives significant weight to BCC’s view on this matter. The Secretary of State notes that a draft section 278 agreement was in progress but no further update has been provided to the Secretary of State on this [ER 5.5.118]. The Secretary of State is however content that this does not impact his consideration of this mater.
60. The Secretary of State notes that the relevant local authorities are satisfied with all operational traffic and transport aspects of the Proposed Development, subject to the submission of acceptable design and technical details in accordance with the DCO requirements 4, 9, 18, 30 and 36 [ER 7.2.17]. Overall, the Secretary of State agrees with the ExA that traffic and transport impacts have been robustly dealt with and would accord with paragraphs 5.201 to 5.217 of the NPSNN [ER 7.2.17]. The Secretary of State agrees with the ExA that the overall effects relating to vehicle

traffic and parking issues attract neutral weight in the planning balance but that the long term benefits of the provision of train services as a viable alternative to the car weighs heavily in favour of the Proposed Development in accordance with paragraphs 2.2, 2.28 and 2.29 of the NPSNN [ER 7.2.17].

## **Construction Impacts**

61. The ExA note that there will be a range of adverse effects arising during the construction of the Proposed Development that would be mostly felt in and around the village of Pill [ER 5.7.93]. The Secretary of State notes the impact of construction traffic associated with the movements to and from the Lodway Compound as well as at the railway station and car park were raised in a number of representations [ER 5.7.23]. The Secretary of State notes that in response the Applicant clarified that the main HGV access route would avoid Pill by coming from junction 19 of the M5 onto Royal Portbury Dock Road and Marsh Lane, via the existing cycle and pedestrian route (NCN 26) which runs along the southern edge of Royal Portbury Dock (“RPD”) from Marsh Lane perimeter track [ER 5.7.25].
62. The Secretary of State notes the ExA were satisfied that the use of a haul road on the Marsh Lane perimeter track at RPD would significantly reduce the necessity for construction vehicles to use the street network in this area and that such effects would be temporary and issues of noise, disturbance and dust and any potential effects on living conditions could be adequately controlled through the CEMP to be secured by requirement 5 [ER 7.2.22 to 7.2.23].
63. The Secretary of State notes that parts of the NCN 26 and 41 cycle routes, including several Public Rights of Way (“PRoW”) and permissive paths would be temporarily closed and diverted to enable the construction of the Proposed Development [ER 5.7.47]. Whilst there is no specific mention of PRoW and NCN diversions in NSDC’s statement of common ground, the Secretary of State notes that the local highway authority were satisfied that it could install safety measures, such as warning signage and markings if deemed necessary and consequently this would not require specific inclusion in the DCO [ER 5.7.56]. The Secretary of State notes that the ExA were satisfied with the proposed diversions of PRoWs and permissive paths to be reasonable alternative routes during construction [ER 7.2.26].
64. The Secretary of State notes that the Woodland Trust raised concerns regarding the impact of dust on the woodland around the Avon Gorge [ER 5.7.69]. The Secretary of State notes that Natural England (“NE”) were satisfied that there would be no significant effects on designated sites from dust [ER 5.7.100]. The Secretary of State like the ExA is satisfied that the measures in the Code of Construction Practice and schedule of mitigation would ensure that any dust generated which might affect trees would be minimised and managed and that this is secured through requirement 5 [ER 7.2.27].
65. The Secretary of State notes the ExA considers that the impact of construction attracts a negative weight in the planning balance but that the effects would be for a temporary period and in most locations would be short-term in length. Therefore, the Secretary of State agrees with the ExA that limited weight should be attributed

to such effects and is satisfied that the Proposed Development accords with the NPSNN with respect to construction management and mitigation [ER 5.7.29].

### **Biodiversity, ecology and the natural environment**

66. The ExA noted that NE highlighted in their relevant representations the potential effects on the North Somerset and Mendip Bats SAC which could arise from vegetation clearance and increased lighting along the new section of line between Pill and Portishead, including at Pill Station. The Secretary of State notes that NE stated that without mitigation, this could cause habitat fragmentation and severance affecting foraging and commuting habitats as well as direct disturbance to lesser horseshoe bat roosts [ER 5.3.21].
67. The Secretary of State notes the mitigation measures proposed at Pill Station would include a permanent screen along the length of the disused northern platform to shield bats from lighting and louvres to lights, including the retention of and additional planting around RPD to maintain a dark corridor at this location and limits to lighting levels at Pill Station, secured as part of the landscape plans [ER 5.3.31]. The Secretary of State notes the ExA were satisfied from the updated bat surveys and proposed mitigation measures that there would be no likely significant effects on the integrity of the North Somerset and Mendip Bats SAC populations [ER 7.2.4]. The Secretary of State further notes that NE confirmed that a letter of no impediment for bats had been issued [ER 5.3.33].
68. The Secretary of State notes that one measure amongst others noted at paragraph 5.3.51 to minimise risks to Great Crested Newts ('GCN') during construction is a District Level Licence ('DLL') [ER 5.3.51]. The Secretary of State notes that NE confirmed that the DLL gives the same level of certainty as the previous proposal for an EPS licence, if not more, at the DCO stage [ER 5.3.52]. The Secretary of State further notes that ExA were satisfied that the effects on GCN would be appropriately managed by the use of DLL and mitigation measures set out in the Master CEMP [ER 7.2.4.] The Secretary of State notes that the ExA considers that tree losses (outside the Avon Gorge Woodlands SAC) would be appropriately offset by new tree planting in a number of locations, together with a financial contribution via a mechanism which has been agreed by BCC [ER 7.2.5].
69. The Secretary of State notes the Applicant's quantification of habitat loss effects including semi-natural ancient woodland associated with the Proposed Development during construction at paragraph 6.11.24 of the ExA Report. Paragraph 5.32 of the NPSNN notes that development consent should not be granted for any development that would result in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss. The Secretary of State is satisfied that the loss associated with habitats, including ancient woodland, is outweighed by the need and benefits of the Proposed Development.
70. The likely effects on European Sites are considered below at paragraph 99, for all other aspects, the Secretary of State notes that the ExA is satisfied that in terms of biodiversity and the natural environment the Proposed Development would not

give rise to any unacceptable effects and all relevant matters have been addressed during the Examination. The Secretary of State also notes that the SoCGs with NE and the EA as well as NSDC and BCC confirmed that the parties were in agreement on these matters [ER 7.2.6]. The Secretary of State is satisfied that the Proposed Development would accord with the NPSNN with respect to biodiversity and the natural environment and agrees that the overall effect attributes a neutral weight in the planning balance [ER 5.3.87].

## **Design and landscape and visual**

71. The Secretary of State notes that the ExA were satisfied that the Applicant had applied adequate good design principles to Portishead and Pill railway stations, which would form the most publicly visible parts of the Proposed Development. The Secretary of State notes that the visual impacts would be localised to a small area of each settlement with limited harm to the wider landscape [ER 7.2.30]. The ExA noted that the context of both stations' surroundings, together with operational and other relevant constraints, has been satisfactorily considered and applied to the proposals. The Secretary of State notes that full regard has been had to the Equality Act 2010 in the station design, and they would both meet the Public Sector Equality Duty. The Secretary of State agrees with the ExA that the proposed stations' visual effects would attract neutral weight in the planning balance [ER 5.8.65]
72. The Secretary of State notes the various issues raised during the examination regarding fencing for the Proposed Development in paragraphs 5.8.55 to 5.8.64 of the ExA's Report. Although the ExA considered that the appearance of the proposed fencing would be functional in terms of security and safety in some locations, the Secretary of State notes the ExA were satisfied that the visual effects would diminish over time with vegetation growth [ER 7.2.31]. The Secretary of State notes that the impact would also be minimised by requirements 14 and 25 in the DCO which requires fencing details to be agreed in advance by the relevant planning authority, including the colour [ER 5.8.66]. The Secretary of State agrees with the ExA that the visual effects of the fencing attract neutral weight in the planning balance [ER 5.8.66].

### Trinity footbridge

73. Trinity Footbridge would be located between the proposed Portishead railway station and Trinity Anglican Methodist Primary School. The Secretary of State notes that it would replace an existing permissive path which crosses over the disused railway which links the housing estates and open spaces at Tansy Lane to the north and Galingale Way to the south [ER 5.8.26]. The Secretary of State notes that residents that would be directly affected by the proposed Trinity Footbridge raised concerns that are summarised at paragraph 5.8.27 of the ExA's Report [ER 5.8.27]
74. The Secretary of State notes that alternatives of an underpass, a footbridge with circular ramps, an alternative location for the footbridge or do nothing were considered by the Applicant during the early stages of the scheme design but were all later discounted [ER 5.8.31]. The Secretary of State notes that the inconvenience of the alternative route around Portishead Station via the new

footpaths and the risk of trespass by people who may become frustrated with having to walk around were put forward as further justification for the footbridge by the Applicant [ER 5.8.35].

75. The Secretary of State notes that NSDC concluded that the public benefits including safety, direct routeing and prevention of severance arising from provision of a bridge were clear, but that the intrusion to public and private views of the bridge made its benefits more marginal. NSDC therefore considered that the disadvantages of omitting the bridge from the DCO appeared to be relatively minor and capable of being addressed [ER 5.8.42].
76. The Secretary of State agrees with the ExA that Trinity Footbridge does not meet the criteria for good design as set out in the NPSNN, and they are not satisfied that it could be effectively mitigated by the proposed green coloured finish, application of perforated screens and planting/re-location of trees. The Secretary of State notes that the ExA consider that visual effects on sensitive receptors, most significantly to adjoining occupiers of dwellings and their living conditions, would not be outweighed by the benefits of the footbridge in avoiding severance and connecting the housing areas.
77. The Secretary of State therefore agrees with the ExA that the proposed Trinity Footbridge, which forms part of work number 7, should be deleted from the Proposed Development [5.8.73]. The Secretary of State notes that the alternative route would be marginally longer but is satisfied that being at surface level would meet the needs of all Non Motorised Users including persons with protected characteristics [ER 7.3.5]. The Secretary of State has therefore removed these works from the DCO and following his letter dated 13 August 2021, the Applicant provided updated plans to reflect the removal of work number 7 from the Proposed Development.
78. Overall, the Secretary of State agrees with the ExA that the design, landscape, and visual impact of the Proposed Development would attract a neutral weight in the planning balance.

## **Land Use**

79. The Secretary of State notes that the Proposed Development would affect several agricultural holdings due to temporary possession for construction compounds and haulage roads and permanent acquisition for access and maintenance compounds resulting in the loss of informal crossings and subsequent effects from construction activities such as dust, noise and lighting and operational noise [ER 5.9.7]. The Secretary of State notes that the ExA is content that the effects on agriculture would be short-term and temporary and there would be no long-term damage [ER 7.2.37]
80. The Secretary of State notes that the ExA accepted that the main effects on land use to residential and commercial property as well as safeguarded land or land set aside for development would be mainly limited and restricted to temporary or short term construction activities [ER5.9.84]. The ExA concluded that the Proposed Development would not cause significant harm to residential, commercial and community land. The Secretary of State agrees with the ExA that the Master

CEMP, secured by Requirement 5, would ensure that the adequate management and mitigation measures are in place to minimise harm [ER 7.2.37].

81. The Secretary of State notes that much of the countryside between Portishead, Pill and Bristol lies in the Green Belt (“GB”) [ER 5.9.28]. The use of land for temporary compounds and haul roads would be for a temporary period and the Secretary of State notes that compound areas would be returned to their former state on completion of the Proposed Development, except where part of the site would become a permanent maintenance and emergency access compound [ER 5.9.29]. The Secretary of State notes the ExA considers that the Proposed Development would amount to local transport infrastructure which can demonstrate a requirement for a Green Belt location and that, with the exception of the temporary and permanent compounds and works, the Proposed Development would not adversely affect the openness of the GB or conflict with the purposes of including land within it [ER 7.2.38].
82. The Secretary of State notes that the effect of the compounds on the Green Belt was the subject of numerous written questions that were examined by the ExA. The Secretary of State also notes that the ExA visited the sites of the proposed compounds at Ham Green and Clanage Road [ER 5.9.68]. The Applicant advised that the bulk of the structures within the Order limits and within the GB already exist and that the additional construction works in the GB would be the new embankment to support the permanent compound at Ham Green and the permanent ramp at Clanage Road. The Applicant considers that these works are a necessary part of a local transport scheme and would be suitably landscaped and therefore not impact on the openness of the GB and would not be inappropriate development [ER 5.9.69].
83. The Secretary of State notes that the ExA considered that the temporary construction and compounds and other temporary works would not fall within the exceptions for new buildings as prescribed by paragraph 145 of the NPPF and that due to their nature and size, openness would be harmed and as such, they would be deemed to be inappropriate development [ER 5.9.87]. However, the Secretary of State agrees with the ExA that given their modest scale and the temporary nature of the works, together with the measures secured in the recommended DCO there would be no permanent damage or harm. Therefore, the Secretary of State agrees with the ExA that Very Special Circumstances would exist that would outweigh the harm that would result from these elements of the Proposed Development [ER 7.2.39].
84. The Secretary of State notes that concerning the permanent works (Work Nos 24, 26 and 26B), the ExA considers that the openness of the GB would not be preserved. However, the Secretary of State notes that the ExA is satisfied that it has been demonstrated that the works have been designed to minimise their impact on openness and would be necessary to support the Proposed Development and could not be located elsewhere. Therefore in relation to the GB, the Secretary of State agrees with the ExA that Very Special Circumstances would exist that would outweigh the harm that would result from these permanent works [ER 7.2.40].

85. With regard to works requiring the permanent diversion of PRoW, the Secretary of State notes that the ExA were satisfied that works would be relatively minor and necessary for reasons of safety. The Secretary of State agrees with the ExA that the proposed bridleway extension in relation to Work number 18 would provide an alternative route under the M5 so that horse riders and other non-motorised users do not need to travel in close proximity to trains under the existing road bridge forming part of National Cycle Network 26 [ER 5.9.88].
86. The Secretary of State agrees with the ExA that the Proposed Development would accord with the NPSNN in relation to land use, including GB [ER 5.9.89]. The ExA conclude that due to the opportunities and benefits that the Proposed Development would deliver the weight in the planning balance would be positive [ER 7.2.42]. This conclusion was drawn despite the harm to the openness of the GB from construction and maintenance compounds given that the ExA were satisfied that the Applicant had demonstrated that Very Special Circumstances would exist that would outweigh any harm to the GB. The Secretary of State finds no reason to disagree.

### **Socio-Economic**

87. In regard to socio-economic benefits, the Secretary of State notes that the Proposed Development has a large amount of support from all local authorities. The Secretary of State notes that NSDC highlighted the economic value and positive benefits of the Proposed Development through increased capacity, improved connectivity and journey resilience for Bristol, North Somerset and the wider South West [ER 5.10.17]. The Secretary of State also notes that BCC in its Local Impact Report supported the principle of the development, and its role in enhancing rail capacity for the local rail network, providing a reliable and frequent public transport service linking Bristol to Portishead and Pill [ER 5.10.18]. The Secretary of State notes that Somerset County Council stated that positive socio-economic and environmental effects are expected to arise both for Somerset and the wider Peninsula area, and Portishead Town Council also noted their support for the reopening of the railway to improve the connectivity of the town [ER 5.10.17 to 5.10.21].
88. The Secretary of State notes the ExA considers that the benefits arising from the operational use of the railway, particularly in reducing journey times into and out of Bristol to Portishead and Pill and providing a choice of transport modes, should be attributed significant weight. The Secretary of State notes and agrees with the ExA that the resultant effects in improving air quality and reducing traffic congestion from the predicted reduction in car journeys would also prove a positive weight in the planning balance [ER 5.10.34].
89. The Secretary of State notes that the Proposed Development would deliver 1,441 temporary jobs during construction and 514 permanent jobs (47 directly employed) post the scheme opening. The Secretary of State agrees with the ExA and considers the economic benefits in terms of employment provision both during construction and operation would also have positive benefits, and therefore weigh in favour of the Proposed Development [ER 5.10.35].

90. The Secretary of State notes that there was concern about negative impacts on existing businesses from increased down time of the level crossing at Ashton Vale Road [ER 5.10.22]. The Secretary of State's consideration of this is set out above and the Secretary of State agrees with the ExA that this matter is neutral in the planning balance [ER 7.2.44].
91. The Secretary of State notes that the ExA were satisfied that any effects during the construction period on local events such as the balloon festival would be minimised by measures in the CEMP to be secured by Requirement 5. The Secretary of State notes that matters relating to loss of some areas of open space and recreation have some negative weight but due to the largely temporary effects the ExA considers them to be neutral in the planning balance [7.2.46].
92. The Secretary of State agrees with the ExA and is satisfied that the Proposed Development would have no likely significant effects on socio-economic matters and would accord with the NPSNN. The Secretary of State notes the ExA considers that necessary mitigation is adequately provided for and secured in the recommended DCO and agrees with the ExA that in socio-economic terms there would be positive weight in the planning balance [7.2.48].

### **Historic Environment**

93. The Secretary of State notes that BCC confirmed in its local impact report that a number of designated heritage assets are within proximity of the project [ER 5.11.21]. The Secretary of State notes that NSDC advised that overall, despite the scale of the project, there would be relatively little impact either directly or on the setting of the registered and unregistered heritage assets within 500m of the Proposed Development [5.11.23].
94. The Secretary of State notes the ES concluded that no likely significant effects are predicted during construction, subject to the potential discovery of archaeological finds during earthworks in relation to the proposed compounds. However, the Secretary of State is satisfied that should archaeological finds be discovered they would be protected, recorded or preserved as secured by Requirement 10 of the DCO [ER 5.11.32].
95. The Secretary of State notes that the ExA consider that all impacts have been addressed in a manner that complies with the historic environment elements of the NPSNN [ER 5.11.36]. The ExA concluded that there would be no substantial harm from the construction or operation of the Proposed Development, either physically or on the setting of any archaeological remains, historic buildings or structures, Conservation Area or the Historic Landscape Character in the surrounding area or any total loss of any heritage assets as a result of the Proposed Development [ER 5.11.36]. The Secretary of State therefore agrees with the ExA that the Proposed Development would have no likely significant effects on the historic environment and that mitigation is adequately secured through the DCO. Overall, the Secretary of State agrees with the ExA and attributes a neutral weight to this matter in the planning balance [ER 5.11.37].

## **Other policy and factual issues**

96. The Secretary of State notes that regarding land stability and contaminated land, the ExA is satisfied that the Applicant's assessment was robust and that the Master CEMP would appropriately secure the Applicant's approach to construction and investigations. The Secretary of State also notes that the relevant planning authorities are satisfied with these matters [ER 5.12.24].
97. The Secretary of State notes the EA considered that the proposed wording in Requirement 17 concerning unidentified contamination was insufficient and requested that current operational railway land be removed as this could have the capacity to mobilise any contaminants present and pollute the water environment [ER 9.3.8]. The Secretary of State notes that the Applicant advised that NR routinely carry out maintenance and other works to their operational railway land under permitted development rights and that existing processes and safeguards apply, including pre-work trials to identify any contaminants, and the results are used to determine how matters are managed. The Secretary of State notes that these processes and safeguards would apply to all works on operational land carried out in connection with the Proposed Development. As such, the Applicant advocates that it would not be appropriate or necessary to apply different requirements merely because works are being carried out in connection with the Proposed Development [ER 9.3.9]. The Secretary of State notes that whilst the EA have not confirmed satisfaction with the amendment to Requirement 17 the ExA is satisfied with the Applicant's explanation as to why operational land should be excluded. The Secretary of State notes that the ExA concludes that the risks posed by the Proposed Development with respect to land instability and contaminated land would be minor at worst and attract neutral weight in the planning balance.
98. The Secretary of State notes that the ExA are satisfied that an assessment of decommissioning is unnecessary given the nature of the Proposed Development and its expected lifespan. The Secretary of State finds no reason to disagree [ER 5.12.27].

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

99. The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") apply as far as the 12 nautical mile limit of territorial waters. These regulations originally transposed the Habitats and Birds Directives into national law. Following the UK's departure from the European Union, the regulations continue to apply, subject to the amendments in the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
100. The regulations deal with 'European sites'. This term covers Special Areas of Conservation ("SACs") and Special Protection Areas ("SPAs"). These sites form the national site network which includes all SACs and SPAs currently designated and new SACs and SPAs designated under the Habitats Regulations (as defined in regulation 8).
101. Regulation 63 of the Habitats Regulations provides that: "*....before deciding to undertake, or give any consent, permission or other authorisation for, a plan or*

*project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications...for that site in view of that site's conservation objectives." And that: "In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."*

102. Where adverse effects on the integrity of a European site cannot be excluded, under regulations 64 and 68, consent can only be given if:
- There are no feasible alternative solutions to the plan or project which would be less damaging.
  - There are imperative reasons of overriding public interest (IROPI) for the plan or project to proceed.
  - Compensatory measures are secured to ensure that the overall coherence of the national site network is maintained.
103. Where the qualifying features of a European site include priority habitats or species (as defined in Article 1 of Council Directive 92/43/EEC), the IROPI reasons must be either:
- reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
  - any other reasons which the competent authority, having due regard to the opinion of the appropriate authority, considers to be imperative reasons of overriding public interest.
104. In giving its opinion as to whether the reasons for proceeding with the plan or project constitute IROPI, the appropriate authority must provide its opinion to the competent authority, having regard to the national interest. In this instance the appropriate authority is the Department of Environment, Food and Rural Affairs ("Defra"). Before giving its opinion the appropriate authority must consult, and have regard to the opinions of, the Joint Nature Conservation Committee (JNCC), the devolved administrations and any other person the appropriate authority considers appropriate.

#### Secretary of State's conclusions on the effects of the Proposed Development on European sites

105. The process of assessing the effects from a plan or project on European sites is commonly referred to as Habitats Regulations Assessment ("HRA"). The Secretary of State has completed an HRA for the Portishead Branch Line which sets out their appropriate assessment for the purposes of the Habitats Regulations and is summarised in the following paragraphs. These should be read in conjunction with the HRA which is published alongside this decision.

106. In undertaking the HRA, the Secretary of State has carefully considered all of the information presented before, during and after the examination, including the Report on the Implications for European Sites, the Report to Inform Habitats Regulations Assessment (Version 3), the Environmental Statement and the ExA's recommendation report. The ExA's consideration of HRA is set out in Chapter 6 of the recommendation report. The Secretary of State agrees with the conclusions of the ExA except to the extent set out below.

107. The Secretary of State considers that the Proposed Development has the potential to have a Likely Significant Effect on two European sites when considered alone or in combination with other plans or projects:-

- Avon Gorge Woodlands SAC; and
- North Somerset and Mendip Bats SAC.

The Secretary of State has assessed effects on these sites using all the information available to him, including the advice from the Appropriate Nature Conservation Body Natural England, the recommendations of the ExA and the views of Interested Parties including the Applicant. Having considered the information and the mitigation measures secured through the DCO, the Secretary of State has concluded that the Proposed Development will not have an adverse effect on the integrity of the North Somerset and Mendip Bats SAC either alone or in combination with other plans or projects.

108. In respect of the Avon Gorge Woodlands SAC, the Secretary of State considers that adverse effects on the integrity of the site cannot be excluded. The habitats which are the qualifying features of the SAC are *Tilio-Acerion* forests of slopes, screes and ravines and semi-natural dry grasslands and scrubland facies on calcareous substrate (*Festuco-Brometalia*). The *Tilio-Acerion* qualifying feature is a priority habitat. One of its characteristics is the presence of whitebeam species, several of which are endemic to the SAC. There are also a number of rare plant species associated with the *Festuco-Brometalia* grassland feature, including the Bristol rock-cress (*Arabis scabra*). Small areas of both qualifying features would be directly lost. A number of the whitebeam trees would be felled or coppiced. There would be a small loss of individuals of one of these species, Bristol rock-cress (*Arabis scabra*). Even when the mitigation secured through the DCO is taken into account, the extent and distribution of the qualifying natural features would not therefore be maintained. The Proposed Development would undermine the relevant conservation objectives for the SAC.

109. The Secretary of State concludes that the Proposed Development could adversely affect the integrity of the SAC and that the further tests set out in the Habitats Regulations must be applied. The Secretary of State has therefore reviewed the Proposed Development in the context of regulations 64 and 68 of the Habitats Regulations.

### Consideration of further tests under the Habitats Regulations

110. In accordance with the Habitats Regulations and the guidance on the application of HRA (“the 2021 HRA guidance”) published by Defra, the Welsh Government, Natural England and Natural Resources Wales, the Secretary of State reviewed the Proposed Development following a sequential process, giving consideration to:

- alternative solutions to the Proposed Development;
- whether there are any IROPI for the Proposed Development to proceed; and
- the adequacy of compensation measures proposed by the Applicant for ensuring that the overall coherence of the national site network is protected.

### *Alternative solutions*

111. The 2021 HRA guidance explains that alternatives need to meet the original objectives of the proposal under consideration. An alternative solution will be acceptable if it achieves the same overall objective as the original proposal; is financially, legally and technically feasible; and is less damaging to the European site and does not have an adverse effect on the integrity of this or any other European site.

112. The objectives which the Proposed Development are intended to achieve are as follows:

#### Main objectives:

- To support economic growth, through enhancing the transport links to the Temple Quarter Enterprise Zone and into and across Bristol City Centre, from the Portishead, Bath and Avonmouth/Severn Beach arterial corridors.
- To deliver a more resilient transport offer, providing more attractive and guaranteed (future proofed) journey times for commuters, business and residents into and across Bristol, through better utilisation of strategic heavy rail corridors from Portishead, Bath and Avonmouth/Severn Beach.
- To improve accessibility to the rail network with new and re-opened rail stations and reduce the cost of travel for commuters, business and residents.
- To make a positive contribution to social well-being, life opportunities and improving quality of life, across the three arterial corridors – Portishead, Bath and Avonmouth/Severn Beach.

#### Supporting objectives:

- To contribute to reducing road based traffic congestion on the Portishead, Bath and Avonmouth/Severn Beach arterial corridors.
- To contribute to enhancing the capacity of the local rail network, in terms of seats per hour in the morning and afternoon peaks.
- To contribute to reducing the overall environmental impact of the transport network.

113. The Applicant provided evidence on alternative transport modes, railway alignments, frequency of services and a ‘do nothing scenario’ which are reviewed in the HRA. For the reasons given in the HRA, the Secretary of State is satisfied

that no alternative solutions are available which would achieve the objectives of the Proposed Development.

*Imperative Reasons of Overriding Public Interest (“IROPI”)*

114. In line with the 2021 HRA guidance the Secretary of State has considered whether the Proposed Development is imperative, in the public interest and if the public interest outweighs the harm or risk of harm to the integrity of the Avon Gorge SAC. The Secretary of State is satisfied that, for the reasons given in the HRA, there is an imperative need to provide an alternative mode of travel between Portishead and Bristol. This is required to ameliorate the problems arising from the existing severe levels of traffic congestion along the A369, to accommodate future growth in the West of England sub-region and to deliver modal shift which is a key objective of national and local transport policy. The National Networks National Policy Statement identifies the need to provide transport networks which support national and local economic growth, support and improve journey quality, reliability and safety, increase connectivity between communities and which support the delivery of environmental goals including decarbonisation. The Secretary of State considers that the Proposed Development will contribute to achieving these objectives.

115. The Proposed Development will provide public benefits by providing reliable journey times between Portishead and Bristol, reducing congestion in the West of England and Bristol areas and increasing access to health, education and leisure facilities and the wider rail network. It would make direct rail services available to 50,000 people living within the catchment of the new stations at Portishead and Pill. The Secretary of State is satisfied that the Proposed Development is in the public interest.

116. The Secretary of State has considered the adverse effects on the integrity of the Avon Gorge SAC resulting from the direct loss of small areas of the qualifying features and associated species and whether the public interest outweighs the harm to the SAC. The Applicant provided information on the benefits for public safety, human health, the environment and social and economic benefits. The Secretary of State has concluded that, for the reasons given in the HRA, only the social and economic benefits of the Proposed Development can be described as being of overriding importance. In relation to the effects on the *Festuco-Brometalia* grassland SAC feature, the Secretary of State is satisfied that the ‘IROPI’ test has been met, subject to the provision of appropriate compensatory measures.

117. As noted above the *Tilio-Acerion* woodland is a priority natural habitat which restricts the range of reasons which qualify as IROPI. The Secretary of State does not consider that the Proposed Development can demonstrate IROPI for these reasons. He therefore requested an opinion from Defra as to whether the social and economic benefits of the Proposed Development can be considered as of overriding importance compared with the harm to the *Tilio-Acerion* woodland feature of the SAC. Following the provision of further information, Defra has

advised that these benefits do constitute IROPI for the Proposed Development, subject to certain conditions being complied with. These measures are secured through the DCO and the Avon Gorge Vegetation Management Plan Version 3 (AGVMP V3). The delivery of this plan is secured through the requirement 14 in Schedule 2 of the DCO. The Secretary of State has had regard to the request from Defra that the Applicant should provide Defra with a copy of the prepared monitoring reports and requirement 14(7) has been amended accordingly. On the basis of Defra's advice, the Secretary of State is satisfied that the IROPI test has been met for the *Tilio-Acerion* woodland feature of the SAC, subject to the provision of appropriate compensatory measures.

#### *Compensatory measures*

118. The Applicant has proposed a set of compensatory measures which are detailed in the Avon Gorge Vegetation Management Plan Version 3 (AGVMP V3) submitted to the examination. Delivery of the AGVMP V3 is secured through requirement 14 of the DCO. It is also listed in Schedule 17 of the DCO as one of the documents to be certified. The compensatory measures can be summarised as:

- Management measures to improve the condition of 1.45ha of the existing *Tilio-Acerion* woodland including coppicing, felling of non-native trees and vegetation around whitebeam trees.
- Growing and re-planting up to 54 endemic whitebeams.
- Management measures to improve the condition of 0.15ha existing areas of *Festuco-Brometalia* grassland by controlling scrub.
- Measures to translocate Bristol rock-cress plants.

119. The whitebeam re-planting proposals would balance the losses as listed below:

- Avon whitebeam – 12 trees lost, 5 re-planted;
- Bristol whitebeam – 2 trees lost, 7 re-planted;
- Round-leaved whitebeam – 5 trees lost, 27 re-planted;
- Grey-leaved whitebeam – 1 tree lost, 1 re-planted;
- Leigh Woods whitebeam – 6 trees lost, 12 re-planted; and
- Wilmott's whitebeam – 1 lost, 2 re-planted.

120. The re-planting would replace the overall losses at a ratio of 2:1 (27 trees lost versus 54 re-planted). In response to a request for further information from the Secretary of State, the Applicant stated that the number of round-leaved whitebeam to be lost had now been reduced to four. The Applicant has already cultivated a number of whitebeam saplings from seed collected within the SAC and has undertaken further seed collection to ensure that any failed plantings could be replaced during the ten year post-construction monitoring period. However, the Applicant has been unable to cultivate sufficient Avon whitebeam and grey-leaved whitebeam to replace losses of these species on a 2:1 basis overall. The advice from NE provided to the examination was that the Applicant had made every effort to maximise the number of these species that could be re-planted and the compensation package has been optimised as far as possible [ER 6.14.33]. The

Secretary of State has considered the views of NE and the ExA's recommendation and concludes that the measures proposed by the Applicant are adequate to meet the requirements of the Habitats Regulations.

121. The AVGMP V3 contains two alternative sets of management measures for the *Tilio-Acerion* woodland feature (including the re-planting of the whitebeams); the principal difference is the location of the management measures within the SAC and woodland around it. This was to address the concerns raised by NE about the difficulty of distinguishing between the management required as compensation for the SAC and the management required to achieve favourable conservation status for the SAC. As described in the HRA, the Secretary of State agrees with the ExA's recommendation that the measures identified in Annex H Package 2 and Annex M of the AGVMP V3 are appropriate to compensate for the effects on the *Tilio-Acerion* woodland feature.

122. The Secretary of State is confident that the compensatory measures are adequate to maintain the coherence of the national site network. The delivery of the measures has been secured by requirements in the DCO. The Secretary of State is satisfied that the extent of adverse effects on the integrity of the Avon Gorge SAC has been correctly identified, there are no alternative solutions which could achieve the objectives of the Proposed Development, there are IROPI for carrying out the Proposed Development and adequate compensatory measures have been secured. These conclusions are supported by the HRA which accompanies this letter.

### **Conclusion on the case for Development Consent**

123. The Secretary of State notes that in examining this application, the ExA has had regard to the NPSNN as the applicable NPS, the NPPF, the LIRs and all other relevant matters [ER 7.3.1].

124. In regard to the balance of benefits and adverse impacts required to be considered by s104(7) of the 2008 Act, the Secretary of State agrees with the ExA that the Proposed Development meets the need as established in the NPSNN. The Secretary of State notes that there would be significant benefits arising from the operational use of the railway, particularly in reducing journey times into and out of Bristol to Portishead and Pill and providing a credible alternative transport mode [ER 7.3.3].

125. With regard to adverse impacts, the Secretary of State notes that the ExA identified that harm would occur from the construction of the Proposed Development as a result of potential flooding from Work No 26, an increase in CO<sub>2</sub> emissions from the use of DMUs, and loss of a number of rare whitebeam trees [ER 7.3.4]. The Secretary of State notes that in applying the overall planning balance, the ExA consider that the adverse impacts of the Proposed Development would not outweigh the numerous benefits which the Proposed Development would deliver, including the substantial need for the Proposed Development in accordance with the NPSNN. Accordingly, the Secretary of State agrees with the

ExA that s104(7) does not apply [ER 7.3.8]. The Secretary of State therefore agrees with the ExA that development consent should be granted [ER 7.3.9].

## **Compulsory Acquisition and Related Matters**

126. The Secretary of State has considered the compulsory acquisition (“CA”) powers sought by the Applicant in accordance with s122 and 123 of the 2008 Act, the 2013 Guidance and the Human Rights Act 1998 and other relevant guidance [ER 8.6.1]. The Secretary of State notes that there remained outstanding objections from Statutory Undertakers (“SU”) at the close of the Examination and as a consequence s127 and s138 of the 2008 Act are engaged [ER 8.6.2].

127. The Secretary of State notes the ExA’s consideration of CA and temporary (“TP”) related matters at chapter 8 of the ExA’s Report, and at the close of the Examination discussions were ongoing with numerous affected parties. The Secretary of State notes the update provided in the Applicant’s letter dated 20 September 2021 that the CA Schedule has been amended as a result of the removal of the footbridge from the DCO and the final agreements with landowners which have been settled.

128. The Secretary of State notes that there were no objections to the CA of Crown land and by the end of the Examination all the relevant Crown Authorities had provided their written consent for the use of their land [ER 8.6.23.]

### Special Category Land

129. The Secretary of State also notes that in each case where the Applicant is seeking to CA open space land it would be less than 200sqm and that once the Proposed Development is constructed, the land would be available again to use as before. The ExA were satisfied that the exemptions at sections 131(5) and 132(3) of the 2008 Act would apply and that the Special Parliamentary Procedure should not apply to this land [ER 8.9.166-167]. The Secretary of State agrees with this.

130. The Secretary of State notes that the National Trust have an interest in 14 plots of land for which the Applicant is seeking TP. The Secretary of State notes that there was an outstanding objection from the National Trust at the end of the Examination [ER 8.9.168-172] but that the Applicant’s letter of 20 September 2021 set out that an agreement had been reached with the National Trust on 17 September and all matters set out in the SoCG are settled. The Secretary of State notes confirmation of the agreement from the National Trust’s letter dated 1 October 2021 and that their objection is now withdrawn. The Secretary of State agrees with the ExA that section 130(3) does not apply and that Special Parliamentary Procedure is not required [ER 8.13.10].

### Section 127 and 138 - Statutory Undertakers

#### Bristol Port Company (“BPC”)

131. It is noted that the BPC objected to the CA and TP of all but 20 of the 57 plots where a combination of these powers were being sought [ER 8.9.97-98]. The Secretary of State notes from the Applicant’s letter dated 20 September 2021 that

an agreement has been reached with the BPC and that the protective provisions submitted with the draft DCO represent the agreed protective provisions between the Applicant and BPC. The Secretary of State further notes that the Applicant expects the BPC to withdraw its remaining objection except for one element between the parties in relation to Court House Farm, summarised in enclosure 6 to the Applicant's letter dated 21 July 2021. The Secretary of State notes confirmation from BPC's letter dated 20 September 2021 of the agreement reached between the Applicant and BPC on the condition of the inclusion in the Order of the revised version of Part 5 of Schedule 16 in the form attached to the letter dated 20 September 2021. The Secretary of State notes from the Applicant's schedule of changes dated 20 September 2021 that the parties are agreed on the form of the protective provisions and which have been included in Part 5 of Schedule 16. The Secretary of State notes the ExA were satisfied that the Protective Provisions would provide an appropriate form of protection for BPC and that the land and the rights sought could be acquired without serious detriment to the carrying out of the undertaking [ER 8.9.136]

#### National Grid Electricity Transmission

132. The Secretary of State notes from Applicant's letter dated 20 September 2021 that the Applicant and NR have continued discussions with National Grid Electricity ("NGET") and Western Power Distribution ("WPD") regarding the inter-relationship between the Hinkley Point C Connection DCO and the Proposed Development. The Secretary of State notes from the Applicant's letter and NGET letter both dated 11 April 2022 that Version 12 of the revised Order includes the protective provisions as agreed between NGET and the Applicant and that NGET's objection is now withdrawn.

#### Western Power Distribution

133. The Secretary of State notes the update in the Applicant's letter of 20 September that in addition to discussions regarding Hinckley Point C Connection DCO a separate agreement on WPD's protective provisions has been engrossed but that is not yet complete. The Secretary of State notes from the Applicant's letter and WPD's letter both dated 11 April 2022 that Version 12 of the revised Order includes the protective provisions as agreed between NGET and the Applicant and that WPD's objection has now withdrawn.

#### Exolum Pipeline System Limited

134. The Secretary of State notes from the Applicant's letter of 20 September 2021 that the Applicant confirmed a final agreement between North Somerset District Council, Network Rail and Exolum Pipeline System Limited ("Exolum") had been completed and that Exolum set out that position in a letter dated 1 October 2021 and that their objection is now withdrawn.

#### Freightliner Limited

135. The Secretary of State notes from the Applicant's letter of 20 September 2021 that the Applicant and Freightliner Limited have reached an agreement. The Secretary of State notes confirmation from Freightliner Limited in their email dated 24 September 2021 that an agreement has been reached and their objection to the Order is withdrawn.

136. Overall, the Secretary of State agrees with the ExA and is satisfied that the provisions contained within Schedule 16 of the Recommended DCO would ensure that an appropriate degree of protection would be given to the affected undertakers, such that there would be no serious detriment to the carrying out of those organisations' undertakings. The Secretary of State also agrees with the ExA that the interference with apparatus and extinguishment of rights would be necessary for the purposes of carrying out the development [ER 8.9.164]. Therefore, the Secretary of State like the ExA is satisfied that the tests in section 127(5) and section 138(4) of the 2008 Act would be met [ER 8.13.9].

### Conclusion

137. Compulsory acquisition powers over land can be granted only if the Secretary of State is satisfied that certain conditions set out in the Act are met:

- the condition in section 122(2) is that the land is required for the development for which the development consent relates or is required to facilitate or is incidental to the development; and
- the condition in section 122(3) is that there must be a compelling case in the public interest for the land to be acquired compulsorily.

138. The Secretary of State notes that the ExA is satisfied that the land for which CA powers are being sought is no more than would be reasonably required to enable the construction, operation and maintenance of the Proposed Development, so where required accept there would be no alternative to the use of CA powers [ER 8.6.9]. The Secretary of State notes that at the time of writing the report, the ExA was satisfied that the Applicant is of sound financial standing and that the necessary funds would be available to finance the Proposed Development, including CA and potential liabilities arising from acquisition of land and rights and compensation claims [ER 8.6.11].

139. Following a letter from North Somerset Council and West of England Combined Authority of 12 November 2021, published alongside this letter, the Secretary of State is aware that the cost of this scheme has increased from that set out in the Funding Statement submitted by the Applicant as part of their Application and considered by the ExA. In early 2022 the Applicant submitted a draft of the Full Business Case to the Department which showed that the Anticipated Final Cost for the scheme had significantly increased from £116m at Outline Business Case, and that a substantial funding gap existed. A request to increase the DfT's funding contribution above the already committed £31.9m to help close the funding gap was made by the Applicant. Following careful consideration of this request, the DfT confirmed that any additional funding would need to be secured from alternative sources. The decision on funding arrangements is quite separate to the decision on the DCO and such matters on funding arrangements are considered under a separate process. The DCO decision making is only concerned that there is adequate funding for the Proposed Development.

140. The Secretary of State notes that the Department for Communities and Local Government's (now the Department for Levelling up, Housing and Communities)

“Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land” (“the CLG Guidance”) states that for the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

141. The CLG Guidance also states that the Secretary of State must ultimately be persuaded that the purposes for which the DCO authorises compulsory acquisition are legitimate and sufficient to justify interfering with the human rights of those with an interest in the land affected. On the basis of the examination, the ExA recommended that both CA and TP powers relating to land and rights should be granted [ER 8.14.1]. However, in light of the post-examination events concerning funding, the Secretary of State considers that the compulsory acquisition powers cannot be granted. This is because of the requirement in the CLG Guidance to demonstrate that there is a reasonable prospect of the funds is not currently met. The Secretary of State considers that whilst the current funding profile may be sufficient to cover the liabilities relating to the grant of CA and TP powers, the gap in funding presents an impediment to the delivery of the Proposed Development which means it may not be delivered and that there would be no compelling case in the public interest for the land to be acquired compulsorily. The Test at section 122(3) of the 2008 Act would therefore not be met. The Secretary of State considers that the grant, in such circumstances, of powers of CA may be unlawful under the Human Rights Act 1998. Consequently, the Secretary of State has therefore decided that consent cannot yet be granted unless and until he has been provided with the further information set out above at paragraph 7 to enable him to confirm the updated costs of the scheme and to be satisfied that adequate funding will be available to meet these costs.

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

142. Since the close of the Examination the Secretary of State has received a number of late representations, all of which are published on the Planning Inspectorate’s website.

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

### **General Considerations**

#### Equality Act 2010

144. The Secretary of State has had regard to the public sector equality duty set out in section 149(1) of the Equality Act 2010 and the need to eliminate discrimination,

advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not share it.

145. The Secretary of State has concluded in light of the ExA's findings and conclusions that the Proposed Development is not likely to result in any significant differential impacts on any of the protected characteristics referred to in section 149(7). On that basis there is no breach of the public sector equality duty.

#### Natural Environment and Rural Communities Act 2006

146. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

147. The Secretary of State is of the view that the ExA's Report, together with the environmental impact assessment, contains sufficient information regarding the impacts of the Proposed Development on biodiversity to inform him in this respect. In reaching the views set out in this letter, the Secretary of State has had due regard to conserving biodiversity.

#### **Secretary of State's overall views on the Panel's conclusions**

148. For the reasons given in this letter, the Secretary of State is minded to agree with the ExA that the Order granting development consent for the project should be made. In particular, he considers that the Proposed Development will support a shift from road to rail helping to reduce pollution and congestion and that the Proposed Development is in conformity to the NPSNN and the transport related benefits that will result from it will be of public benefit. He nevertheless recognises that the project does not yet have full funding confirmed and that there is a potential impediment to its delivery.

149. The Secretary of State considers that he needs the information set out in paragraph 7 above.

#### Draft Order

150. The Secretary of State agrees with the ExA's conclusions on the text of the Order, subject to the proposed qualifications and further changes detailed below which would be necessary if the Secretary of State decides to make the Order.

- article 2 (interpretation) – the definition of the '2009 Regulations' has been removed as it is not a term used in the Order;
- article 2 (interpretation) – the definition of 'compulsory acquisition notice' has been removed as the term is not used in the Order;
- article 2 (interpretation) – the term 'electronic transmission' has been amended to reflect the position of the Secretary of State;
- article 2 (interpretation) – the definition of 'limits of land to be acquired or used' is not required due to the way the definition of 'Order land' has been drafted, which is the only place in which this term is used;

- article 14 (permanent stopping up of streets) – new paragraph (5) has been added to reflect a provision that is usually included. There was no explanation in the explanatory memorandum for its omission
- article 27 (compulsory acquisition of rights or imposition of covenants) the Secretary of State notes that paragraphs (6) to (8) would appear to have the effect of duplicating the transfer of benefit provisions that are contained in article 10 but has the effect of circumventing the requirement for Secretary of State consent to the transfer. The Secretary of State has amended paragraph (6) so that it includes the need to obtain consent;
- article 33 (temporary use of land for carrying out the authorised development) the Secretary of State notes that paragraph (8) would have the effect of allowing the Applicant to create undefined new rights over land that has been identified for temporary possession in Schedule 12. The Secretary of State cannot be certain that affected landowners will have been made aware of this position so paragraph (8) has been amended to remove the provision contained in sub-paragraph (a).

### **Next Steps**

151. The applicant is invited to respond to the Secretary of State by 30 November 2022 to inform him whether or not it has been possible to address the issues referred to at paragraph 7 above. If it is not possible for the applicant to address those issues within that time, the applicant should explain the reasons for this.

152. The applicant's response will then be published on the Planning Inspectorate's website and comments will be invited from interested parties within a further 14 - days on those matters only. The Secretary of State will consider the applicant's response and any related comments in reaching his decision.

153. In order to allow time for these steps to be taken, the Secretary of State is setting a new deadline for his decision on this application of 19 February 2023 and will make a statement to the House of Commons in accordance with section 107(7) of the 2008 Act.

### **Distribution**

154. This letter is being published on the Planning Inspectorate's website and all interested parties are being notified of this so that they are aware of the information that is being requested and the extended timescale for reaching a decision on the Application.

Yours faithfully

**Natasha Kopala**