East Midlands Gateway
Phase 2 (EMG2)

Document DCO 7.15 / MCO 7.15

Applicants' Response to Hearing Action Points

JUNE 2026

The East Midlands Gateway Phase 2
and Highway Order 202X and The East Midlands Gateway
Rail Freight and Highway (Amendment) Order 202X

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The East Midlands Gateway Phase 2 and Highway Order 202X and The East Midlands Gateway Rail Freight and Highway (Amendment) Order 202X

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(DOCUMENT DCO 7.15 / MCO 7.15)

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1 INTRODUCTION

1.1 This document relates to the applications for a second phase at East Midlands Gateway Logistics Park (EMG1), being an application for a Development Consent Order (DCO) made by SEGRO Properties Limited (DCO Applicant) and an application for a Material Change Order (MC) made by SEGRO (EMG) Limited (MCO Applicant). The DCO Applicant and the MCO Applicant are together the "Applicants".

1.2 This document has been prepared by the Applicants to set out their responses to the action points identified at the hearings that took place on 12, 13 and 14 May 2026.

1.3 The Applicants' response to the action points arising from the Compulsory Acquisition Hearing 2 (CAH2) on 12 May 2026 are set out in section 2 of this document.

1.4 The Applicants' response to the action points arising from the Issue Specific Hearing 3 (ISH3) on 13 and 14 May 2026 are set out in section 3 of this document.

1.5 The action point numbering is sequential and follows on from the previous hearings. A copy of the Applicants responses to Action Points 1 to 26 inclusive can be found in DCO 7.4 Applicants' Response to Hearing Action Points Deadline 1 April 2026 [REP1-053].

1.6 Any terms used but not defined in this document shall have the same meaning as in the Glossary accompanying the DCO Application and the MCO Application [APP-067].

2 CAH2 - APPLICANTS' RESPONSE TO ACTION POINTS

2.1 The Applicants' response to the action points arising from the CAH2 are set out in the table below.

2.2 Table of responses:

AP No.	Action	Action By	Response Due By	Applicants' Response
27.	To give further consideration to the issue of compulsory acquisition in relation to further rights added at Procedural Deadline A or to provide written confirmation from all persons with affected interests that they are content for their rights to be extinguished, such that the requirements relating to notification, advertisement, representations and hearings under the CA Regulations would not be necessary.	The applicants	Deadline 4 (D4) Tuesday 16 June 2026	The Applicants have provided a response to CAH2 Item 2.3 of **DCO 7.13** Applicants' Post Hearing Submissions Deadline 4.
28.	The applicant and any relevant IPs are requested to identify the legal authorities relied upon in support of the proposition, referred to in written submissions, that it is settled law that the use of compulsory acquisition powers may be properly justified in order to facilitate a scheme of development in the public interest which is preferable to an alternative scheme advanced by an objector that	The applicants Interested Parties (IPs)	D4	The Applicants' refer to the established case of *London Borough of Bexley v Secretary of State for the Environment, Transport and the Regions and Sainsburys Supermarkets Limited [2001] EWHC Admin 323*. At paragraph 44 of the judgement, Harrison J expressly confirmed: *"In my view, De Rothschild is authority for the proposition that the use of compulsory purchase powers can be justified in order to achieve a better scheme of development in the public interest than an*

AP No.	Action	Action By	Response Due By	Applicants' Response
	would not require compulsory acquisition. Please provide references to relevant case law, including full citations, Where any such authorities are not readily accessible via publicly available sources (for example, BAILII), copies of those decisions should be provided.			*alternative scheme put forward by an objector which does not require compulsory acquisition."* A full copy of the judgement, together with the earlier cited judgement of *De Rothschild (1989) 1 All ER 933*, are provided at **Appendix 1**.
29.	To provide a written note to explain "PARKlife" term.	Prologis (Prologis UK Limited and/ or Prologis UK 121 Limited as appropriate)	D4	N/A
30.	Further explanation of "substantial" in relation to the carbon neutral campus/headquarters including co-located head office which was part of the SoS's s35 direction for the business and commercial NSIP. In particular, when properly understood, whether the s35 direction requires a head office under Class E rather than merely ancillary office space and whether the environmental statement assesses this and the dDCO is	The applicants Prologis EMIA (East Midlands International Airport Limited and/ or East Midlands Airport Property Investments (Industrial) Limited as appropriate)	D4	The Applicants previous response to Action Point 15 [REP1-053] considered the carbon neutral campus and confirmed that the Applicants were content to include Requirement 32 to secure delivery within the dDCO. Following the discussion on the wording of Requirement 32 during item 10 of ISH3, the Applicants have refined the wording to be included in the dDCO to be submitted at Deadline 5. In response to the ExP's request for further explanation of "substantial" in relation to the carbon neutral campus/headquarters, the Secretary of State's

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	drafted in such a way that enables this to be delivered. (Post Hearing Note: See also Action Point 65 from ISH3)			s35 direction dated 21 February 2024 [APP-068] (the "Direction") is as follows: **THE SECRETARY OF STATE HEREBY DIRECTS** that the Proposed Project is to be treated as development for which development consent is required. Any application for development consent for the Proposed Project may also include any matters that may properly be included in a development consent order (in accordance with section 120 of the Planning Act) including ancillary matters (section 120(3)) and associated development (within the meaning of section 115(2) of the Planning Act). The introductory text to the Direction provides context and the Secretary of State's reasons for issuing the Direction. The "Proposed Project" is identified as the East Midlands Gateway Phase 2, as set out in the applicant's formal qualifying request. The Secretary of State summarises that request as *"a logistics and manufacturing hub, including a substantial carbon neutral campus/headquarters including co-located head office functions"*. The Applicants have previously explained in Action Point 15 [REP1-053], that the supporting statement referred to in the Direction identifies Maersk's ambitions to create a carbon neutral inland port across both EMG1 and EMG2. The supporting statement records Maersk's aspiration to deliver a campus at a scale commensurate to what it has delivered on EMG1, which represents approximately 10% of the total floorspace at EMG1. The Applicants have previously explained that Maersk remain supportive but it is understandably premature for them to commit before the DCO has been granted. The Applicants' position remains that the Secretary of State did not mandate the provision of a substantial

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				carbon neutral campus/headquarters because that feature is not included in their reasons for issuing the Direction. However, the Applicants' intend to provide a facility as part of the development and have therefore refined the wording in Requirement 32 to require not less than 10% of the total floorspace to be provided as a carbon neutral campus. The Applicants would emphasise that the Secretary of State's reasons for issuing the Direction and identifying the Proposed Project as nationally significant included "*the substantial physical size and scale of the project*". That reason is a clear link back to the 2013 Policy Statement issued by the then Department for Communities and Local Government which indicated a relevant consideration when judging whether a project was nationally significant would be "*whether the project is of a substantial physical size*". A minimum gross internal floorspace is identified of 40,000m^3, which the EMG2 proposals comfortably exceed. The reference to the *substantial* physical size of the entire project should not however, be conflated with the reference to a substantial carbon neutral campus which, for the reasons given, is entirely separate. The reference to "co-located head office functions" is only identified in the supporting statement in relation to Maersk's future ambitions to occupy space on both EMG1 and EMG2. Maersk already occupies logistics and office functions on EMG1 and those facilities would therefore be 'co-located' with any facilities they

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				may occupy on EMG2. The Secretary of State's reasons for issuing the Direction did not cite nor rely on the presence of headquarters or a co-located head office on the EMG2 site. The Applicants position is therefore that a distinct use under class E is not necessary and can confirm that this use has not been included in the assessment reported in the Environmental Statement.
31.	To clarify the definition of "likely" under the EIA Regulations and to explain whether the asserted displacement of socio-economic benefits associated with the joint application, arising from delivery of the DCO Scheme "the delivery scenario", should be assessed as a likely significant effect in the Environmental Statement. To provide case references and copies of those decisions where relevant.	The applicants Prologis EMIA	D4	The Applicants have provided a composite socio-economic assessment note at Appendix 1 of **DCO 7.13** Applicants' Post Hearing Submissions Deadline 4.
32.	To provide a short explanatory note, preferably in table format, identifying DCOs that have been granted but not subsequently delivered and to explain whether and how this evidence informs the assessment of whether the "non-delivery scenario" is likely. The note should also clarify whether this matter should be addressed	The applicants Prologis EMIA	D4	The Applicants have provided a composite socio-economic assessment note at Appendix 1 of **DCO 7.13** Applicants' Post Hearing Submissions Deadline 4.

AP No.	Action	Action By	Response Due By	Applicants' Response
	within the Environmental Statement as a likely significant effect or by other means, if considered outside the scope of the EIA Regulations, but nonetheless deemed important and relevant to the Secretary of State's decision.			
33.	To submit representations covering the two outstanding bullet points from agenda item 3.2: • whether in light of the discussions, and if it is determined that further socio-economic assessment is required for the delivery and non-delivery scenarios, the applicants must then re-visit and update their approach to the compelling case test in their Statement of Reasons in the context of justifying compulsory acquisition powers? • whether the counterfactual position advanced by Prologis that development on the southern land would come forward under a planning application, and therefore provides the correct baseline with which to assess the DCO scheme's socio-economic effects, is too speculative and contingent	The applicants Prologis EMIA	D4	The Applicants have provided a composite socio-economic assessment note at Appendix 1 of **DCO 7.13** Applicants' Post Hearing Submissions Deadline 4.

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	to be given any more than limited weight? For example, whilst the land is part of a draft allocation in the emerging local plan, the ExP notes Planning Inspectorate's guidance on cumulative effects, which categorises development identified in emerging development plans as tier 3 development and the least certain to come forward.			
34.	To clarify the assumption that the southern land is land-locked and whether, in theoretical terms, access could be achieved through a reconfiguration of the motorway service area, noting that such access has not been modelled, and set out what the implications of this would be in relation to the respective viability analyses.	The applicants Prologis EMIA	D4	The ExP is correct that hypothetically the southern land is capable of being accessed, subject to agreement and reconfiguration, through the motorway service area. Should an alternative point of access be available it would clearly remove any perceived ransom value, noting that matters of valuation would be for the Upper Tribunal of the Lands Chamber to adjudicate on in the event of a dispute. The Applicants recognise that such alternative access proposals would require additional assessment and traffic modelling to confirm their feasibility and that those proposals are not before the ExP.
35.	To prepare a single joint Excel spreadsheet setting out their respective valuations side by side, using consistent cost headings, clearly identifying areas of agreement and disagreement. All formulas should be retained (not replaced with values).	The applicants Prologis EMIA	D4	The Applicants viability expert, Mr Cottage has liaised with Mr Roberts, the viability expert representing Prologis, and the spreadsheet requested with accompanying text is included at **Appendix 2**.

AP No.	Action	Action By	Response Due By	Applicants' Response
	Where different methodologies are used, these should be shown alongside the other valuer's figures and commentary.			
36.	To clarify whether Plot 1/2 (Hyam's Lane) on Land Plan Sheet 1 [APP-027D] would need to be acquired to enable development of the northern and/or southern land, including any north–south access, and to explain how this would be addressed given the Book of Reference identifies the primary ownership as unknown, including whether compulsory acquisition powers would be relied upon.	The applicants Prologis	D4	Plot 1/2 (Hyams Lane) is currently an unclassified public highway maintainable at public expense. As part of the comprehensive EMG2 development, Hyams Lane is to be stopped up. The route is to be replaced with a new public highway in the form of a cycle track and public footpath along Hyams Lane. Only a landowner is able to dedicate its land and secure the proposed new (replacement) highway comprising a cycle track and footpath along Hyams Lane. In the circumstances where the northern and southern land are developed separately, if compulsory purchase powers were not available, then the proposed EMG2 cycle track dedication, following the stopping up of Hyams Lane, could not be pursued without the consent of the owner of the subsoil. An alternative would be to retain Hyams Lane as an all-purpose highway but to utilise traffic regulation orders to prohibit all traffic except for pedestrians and cyclists. However, the road between the north and southern land would need to cross Hyams Lane and this would need to be achieved via a highway agreement under section 278 of the Highways Act 1980. There are

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				practical issues with this approach because if the crossing was achieved 'at grade', then it would be an unusual situation with a private road (with relatively high traffic flows including HGVs) crossing a public highway (that has pedestrians and cyclists only), and may present challenges to achieve safely. If the crossing utilised a bridge (with an agreement / licence under section 176 of the Highways Act 1980) then this would be visually intrusive, especially on the land to the south which falls away from Hyams Lane.
37.	To provide the letter from the Trent Barton bus operator.	Prologis EMIA	D4 To LCC as soon as possible	N/A
38.	To comment as local transport authority as to the content of the Trent Barton letter	LCC	D4	N/A

3 ISH3 - APPLICANTS' RESPONSE TO ACTION POINTS

3.1 The Applicants' response to the action points arising from the ISH3 are set out in the table below.

3.2 Table of responses:

AP No.	Action	Action By	Response Due By	Applicants' Response
39.	Provide case law, examining authority recommendation report and Secretary of State decision references as part of post hearing submissions relating to agenda item 3.1 on the lawful determination of the DCO application.	The applicants Prologis (Prologis UK Limited and/ or Prologis UK 121 Limited as appropriate) EMIA (East Midlands International Airport Limited and/ or East Midlands Airport Property Investments (Industrial) Limited as appropriate) Protect Diseworth	Deadline 4 (D4) Tuesday 16 June 2026	The Applicants have provided copies of the following which are all referred to in **DCO 7.13** Applicants' Post Hearing Submissions Deadline 4. (ITKC) <u>The Net Zero Teesside Project:</u> **Appendix 3A** - Environmental Statement Non-Technical Summary; **Appendix 3B** – ES Chapter 4; **Appendix 3C** – ES Chapter 25 **Appendix 3D** - Examining Authority Report **Appendix 3E** - Decision Letter <u>Wheelabrator Kemsley Generating Station:</u> **Appendix 4A** - Examining Authority Report **Appendix 4B** - Decision Letter <u>Gatwick Airport Northern Runway:</u> **Appendix 5A** - ES Chapter 21

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				Appendix 5B - Examining Authority Report **Appendix 5C** - Decision Letter **Appendix 6** - EFW Group Ltd v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 2697 (Admin) **Appendix 7** - R (Gate) v SST [2013] EWHC 2937 (Admin) **Appendix 8** - Raeshaw Farms Ltd v Scotttish Ministers [2026] CSIH 10 **Appendix 9** - Boswell v Secretary of State for Energy and Net Zero [2025] EWCA Civ 669 **Appendix 10** - R (Wingfield) v Canterbury City Council [2019] EWHC 1975 (Admin)
40.	Review and comment on the M1 J24 link volume-to-capacity ratios (Appendix 5, Table 3 of [REP1-058]), noting that the 'With Development + Mitigation' scenario shows links operating at or near capacity. To confirm whether any additional mitigation is considered necessary, or explain why no further mitigation is required, having regard to the	The applicants National Highways	D4	Table 3 in Appendix 5 of the Forecast Sensitivity Note [REP1-058] presents an extract of the Volume of Capacity (VoC) results for the M1 northbound movement and the adjacent circulatory flow. The results indicate that the M1 NB movement operates at approximately 0.45 VoC, whilst the adjacent circulatory operates above 0.9 VoC. It should be noted that the strategic model utilises fixed-time signal control and therefore does not optimise green time in response to varying traffic demand. In contrast, all assessed scenarios have been modelled in VISSIM, which models microprocessor

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	limitations and uncertainty inherent in the modelling assumptions.			optimised vehicle actuation (MOVA) control (which will be used at the junction) to dynamically adjust green times based on vehicle demand. In addition, queue detectors are located on the southern circulatory of M1 Junction 24, prioritising circulatory movements to ensure sufficient green time is allocated to clear queued traffic. Based on the VISSIM results, neither the M1 northbound movement nor the southern circulatory shows any operational impact in the 'with mitigation' scenarios.
41.	Following the PRTM2023 update the latest positions in respect of Personal Injury Collision analysis.	The applicants Leicestershire County Council (LCC)	D4	The PIC data for Kegworth was ordered from LCC and the information has been received; but not in sufficient time to allow the latest position to be analysed at Deadline 4. The Applicants will complete its analysis and submit the updated data at Deadline 5.
42.	To clarify the interaction between the proposed bridge solution for the link road and the works shown under Package 4 (red package) including: (i) whether the proposed bridge and associated vertical alignment would preclude or constrain the future delivery of a bridge across the motorway (ii) the implications for available headroom and vertical clearance,	The applicants EMIA	D4	The Applicant has provided, at **Appendix 11** of this document, the updated version of the plan titled "M1 J23A & J24 Improvements Packages 1 to 4", the updated version (revision P19, dated November 2025) superseding the revision P17 plan (dated November 2024) that was submitted in response to the first written questions (Annexure 19A of Document DCO 7.5 [REP1-054]). As can be seen the updated plan shows that the 'green package' is to consist of a bridge over the A453 rather than the underpass previously indicated. This was updated following the detailed work done for the EMG2

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	noting the difference between an underpass and bridge scenario (iii) the implications for abnormal high loads coming from/ to East Midlands Airport			highway works which considered the underpass and overbridge options which is documented in full in TA Appendix 27 [REP1-035]. At the same time the location of the potential future M1 overbridge within the 'red package' was moved slightly south. TA Appendix 27 considered three options, two overbridge options and one underpass option. These are shown in detail on the three sketches that are found at the end of TA Appendix 27 [REP1-037]. All three options show the potential future 'red package' M1 overbridge and as can be seen from the sketch for Option 2B/2D, which is the option that was taken into the scheme design, sufficient clearance (i.e. more than 5.3m) can be provided and moving the overbridge south in the order of 20 to 30m would increase clearance. The A453 overbridge clearance is shown on the A453 Bridge Plan [APP-053D] and the rationale for the clearance is clearly set out within TA Appendix 27 [REP1-035]. We will respond to any submissions made by EMA at Deadline 5.
43.	To provide a drawing showing swept paths demonstrating how the potential for overrunning and side-swipe conflicts at the site access (Ref 2.2, [REP1-056]) has been addressed, as referred to in the [REP1-057].	The applicants	D4	TA Appendix 26 [REP1-035] was updated following the Stage 1 RSA and the design of the works to the local road network was amended to address the comments raised in the Audit. The "A453 geometric plans" and "A453 Vehicle Swept Path and Visibility plans" show the updated design and confirm that the required

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				HGV design vehicles are accommodated by the revised highway design.
44.	To clarify its statement in the RSA Ref 5.4, [REP1-056], that the proposed solution is "optimal", including whether this reflects that the design is the best practicable option or that risks have been reduced to as low as reasonably practicable (ALARP).	National Highways	D4	N/A
45.	Without prejudice to its position, the applicants to provide a mechanism/ wording to require a longer period for free-bus tickets for employees at the site	The applicants with input from LCC and North West Leicestershire District Council (NWLDC)	D4	Following discussions with Leicestershire County Council (LCC) on 29th May, the Applicants are reviewing the duration of the bus passes to be offered to employees through the EMG2 Travel Plan. The Applicants are currently in consultation with relevant stakeholders, including LCC, however at this stage no final position has been agreed. The Applicants expect to be able to provide a further update on the outcome of that consultation process at Deadline 5. Without prejudice to the Applicants' current position, this may include the potential to promote to site occupiers an application process through which employees could access a time-limited bus pass (for example, a six month pass). If progressed, the scheme would be open to all employees to apply, with eligibility criteria applied to ensure that bus passes are issued only to those for

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				whom bus travel represents a viable commuting option. Indicative criteria could include: • The employee must hold a permanent contract of employment at EMG2, to be verified by their employer; • The employee must reside on a bus route that serves EMG2, to be verified using their home postcode; • The employee must not have previously received a six-month bus pass through this scheme, thereby preventing repeat applications; and • The available bus services must align with the employee's start and finish times or established working patterns. Noting the success of EMG1, the need, scale and structure of any amendments to the current approach (including any cap on the number of passes made available), remains under discussion. Notwithstanding, subject to agreement, responsibility for implementation would rest with the Site-Wide Travel Plan Co-ordinator. This would include promoting the scheme to occupiers, assessing eligibility, procuring and distributing passes, and monitoring effectiveness in encouraging and supporting bus use at EMG2.

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46.	To further consider the requests by National Highways, LCC and NWLDC for contributions towards their attendance at the Sustainable Transport Working Group meetings.	The applicants	D4	The Applicants have agreed with Leicestershire County Council, National Highways and North West Leicestershire District Council, that the existing EMG1 Travel Plan fund will be used to pay for officer attendance. The Applicants have agreed to pay an uplift to that existing fund to allow officers to attend for a 1 hour meeting every 6 months for 10 years.
47.	Amend the Sustainable Transport Strategy to ensure that it would free for use for all, including residents of Diseworth, rather than being restricted to site employees as at present	The applicants	D4	The Framework Travel Plan [APP-085] has now been amended to reference that the public, as well as EMG2 employees are permitted to use the EMG2 Gateway Shuttle service for free. This has been submitted into the examination at Deadline 4.
48.	To consider alternative delivery mechanisms for the proposed way on the eastern side of the application site.	The applicants	D4	As set out in the Applicants' response to the issue raised by LCC at Deadline 2 [REP2-032], the Applicants consider that the proposed way of the eastern side of the EMG2 Main Site should be a public footpath. However, the Applicants are aware that LCC are concerned about an increased maintenance burden and propose that whilst the status as a public footpath is retained, the route can be maintained by the Applicants in perpetuity. We consider this to be a suitable compromise that retains the status that was consulted on but does not impose an increased maintenance burden on LCC. A revised Access and Rights of Way plan and accompanying amendment to the draft DCO will be submitted at Deadline 5.

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49.	To provide an update as to the current situation in relation to highways for the joint application, particularly where outstanding matters remain.	Prologis	D4	The Applicants note that National Highways issued a further 3 month holding objection the joint application on 10 June 2026. A copy of that holding objection detailing the outstanding work that needs to be completed is provided at **Appendix 12**. The Applicants await Prologis update at Deadline 4 and will respond, if appropriate, at Deadline 5.
50.	To provide a full list of Appendix 10B viewpoints with types, that were not topographically surveyed, including the night-time viewpoints, preferability in a table format.	The applicants	D4	A full list of viewpoints is provided as requested at **Appendix 13**.
51.	To provide comments on the updated Landscape and Ecological Management Plan [REP3-044], confirming whether it is content with the revisions or identifying any outstanding matters or areas of disagreement.	NWLDC	D4	N/A
52.	To explain the scope and application of the replacement planting commitment in paragraph 4.6 of the updated LEMP [REP3-044], including: (i) which areas and types of planting this applies to	The applicants	D4	Paragraphs 4.1 - 4.6 of the updated LEMP [REP3-044] establishes a tiered approach to replacement planting that reflects the different phases of habitat establishment across the Scheme. During the short term and medium term establishment period, any failed tree or shrub planting will be replaced

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	(ii) how this commitment aligns with and is secured by the relevant dDCO requirements for delivery of the LEMP.			as part of the ongoing establishment of new ecological habitats and landscape screening. Beyond the short term and medium term period, the need for replacement planting will be assessed based on site conditions and establishment of the relevant habitats. In many areas, surrounding vegetation will have established sufficiently that individual replacements are not required to maintain the ecological or screening function of the planting. Where larger areas have failed and the original objectives are not being met, replacement planting will be undertaken to maintain the original specification. This assessment will be made jointly by the project ecologist and the landscape contractor, ensuring that decisions are grounded in both ecological and horticultural professional judgement. For individual specimen trees, which are slower to establish and carry greater landscape and ecological value, specific provision is made for replacement up to at least 15 years from planting. These commitments are secured by Requirement 10 of the dDCO. Requirement 10(5) requires that if within a period of 15 years from the date of provision of any landscaping that landscaping is removed, uprooted, destroyed or dies, replacement planting of the same type must be provided at the same place unless the local planning authority gives written consent to any variation. Requirement 10(1) requires the authorised development to be carried out in accordance with the

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				LEMP, and Requirement 10(2) and (3) secure ongoing management in accordance with the LEMP principles for the life of the authorised development.
53.	Submit latest archaeological assessment, archaeological mitigation strategy into examination	The applicants LCC (status update)	D4	An amended archaeological assessment was submitted at Deadline 3 [REP3-051]. No further amendments are anticipated. It is proposed to append the version of the Archaeological Mitigation Strategy agreed with LCC to the revised DCO 8.4C Archaeology Draft SoCG with LCC submitted at Deadline 4 [previous reference REP1-071].
54.	To set out how Appendix 12A Built Heritage Statement assesses setting where intervisibility is absent, including whether the approach accounts for approach (kinetic) experience and group value and to provide any further consideration, for example through a targeted addendum or update to Appendix 12A, demonstrating how approach experience has been assessed and whether this results in any change to the conclusions.	The applicants	D4	This has also been raised by HE in their response to the ExP's Rule 17 request dated 26 May 2026 [AS-081]. Particularly in regard to the approach along Hyams Lane. HE suggested a sequential route-based assessment. The Applicants have actioned this request. The existing assessment within Appendix 12A [AS-053] has been updated and will be submitted at Deadline 4.
55.	To explain the basis on which historical or cultural associations are considered to contribute to setting (including how 'legibility' is assessed) and to clarify whether the assessment for Langley Priory considers such	The applicants	D4	Historical and cultural associations are considered to contribute to setting where they can be experienced and appreciated as part of the way in which a heritage asset is understood in its surroundings. In this context, legibility is assessed by considering whether the physical relationship, spatial arrangement, and wider

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	associations beyond intervisibility, with signposting to the relevant ES sections. Information on the relevant historic documentation about Langley Priory used in Built Heritage Statement, responding to the matters raised by Protect Diseworth in the hearing			landscape context allow those associations to be readily understood. This includes whether the association remains perceptible in the present landscape, and whether intervening changes have diminished or severed that relationship to the extent that it is no longer appreciable. In the case of Langley Priory, the assessment is not based solely on intervisibility. As part of The Built Heritage Statement assessment the asset's historic development was considered, its immediate and wider setting, and the extent to which the application site contributes to the appreciation of its significance, through historic association and any shared experience. The conclusion is that the site makes no contribution. Additional information regarding assessment of this asset will be included as part of the update to Appendix 12A Built Heritage Statement [AS-053] which is being prepared to respond to the request for an assessment of the kinetic experience along Hyams Lane (Action Point 54 above) and will be submitted at Deadline 4 [previous reference REP3-018]. In response to matters raised by Protect Diseworth, the Applicant has included reference to the latest Pevsner and updated the Bibliography to Chapter 12 submitted at Deadline 4 [previous reference REP3-018].

AP No.	Action	Action By	Response Due By	Applicants' Response
56.	Review statutory tests regarding determination of this application in heritage terms in ES Chapter 12 – Cultural Heritage	The applicants	D4	The statutory duty under Sections 66 and 72 apply strictly to the exercise of planning functions under the Town and Country Planning Act 1990. Because a DCO is granted under the Planning Act 2008 for Nationally Significant Infrastructure Projects (NSIPs), this specific legislative test is not formally triggered. It has therefore been removed from ES Chapter 12 – Cultural Heritage. The relevant provision in relation to NSIPs is contained in regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 which provides that "when deciding an application relating to a conservation area, the Secretary of State must have regard to the desirability of preserving or enhancing the character or appearance of that area" The effects of the scheme on the historic environment (including effects on the setting of conservation areas) are appropriately dealt with in the environmental statement at Chapter 12 which has been resubmitted at Deadline 4 [previous reference REP3-018].
57.	To review and update the assumptions used in ES Chapter 12 regarding overlap with Isley Woodhouse (construction and operation) and to explain the robustness of the cumulative assessment, including whether any sensitivity testing for non-overlapping scenarios has been undertaken or, if not, why it is not considered necessary.	The applicants NWLDC (For second paragraph only)	D4	The cumulative assessment for ES Chapter 12 has been updated to clarify the assumptions utilised and sensitivity testing for non-overlapping scenarios. The updated chapter has been resubmitted at Deadline 4 [previous reference REP3-018].

AP No.	Action	Action By	Response Due By	Applicants' Response
	To provide an update on the current timetable and status of the Isley Woodhouse proposal, including whether any changes affect the likelihood of temporal overlap with EMG2 (construction and/or operation).			
58.	To undertake an assessment to St Andrew's Church, Kegworth including construction and operational effects, effects from vehicles on the motorway network and the proposed link between the M1 and A50, the increased height of the gantry cranes for the Material Change Order (MCO) proposal and the in-combination and cumulative assessments	The applicants	D4	The Applicants have included the assessment in the revisions to ES Chapter 12 submitted at Deadline 4 [previous reference REP3-018].
59.	National Highways and the applicants to update the Statement of Common Ground (SoCG) with information relating to their respective positions on Biodiversity Net Gain and the relationship with the mitigation hierarchy. This should include how the hierarchy has been complied with in accordance with paragraph 4.23 of the NNNPS and whether there are instances where the loss of habitat on National Highways land could	The applicants National Highways	D4	The Applicants' agreed position on BNG in relation to National Highways (NH) land is set out at row 4.21 of the Statement of Common Ground with NH which has been updated and submitted at Deadline 4 [previous reference REP1-076].

AP No.	Action	Action By	Response Due By	Applicants' Response
	otherwise be avoided or mitigated in situ. The applicants to provide an updated biodiversity net gain report showing the net change in habitat on land controlled by National Highways.			
60.	To consider the Secretary of State's decision letter for the Cory Decarbonisation Project (November 2025), in particular paragraphs 4.53 to 4.64 and to provide a brief response setting out whether this has any implications for their position on design review in the current application, amending documentation if appropriate.	The applicants	D4	The ExA recommendation and SoS decision in the case of the Cory Decarbonisation project, states at para 4.58 that "*Although the ExA acknowledged that neither the Applicant nor LBBC considered such a review necessary, it considered that given the relatively immature stage of design and the generous parameters, independent design review should be included as part of the package of design measures in order to ensure good quality design of the implemented scheme [ER 3.9.27].*" For the EMG2 highway works the design is mature in terms of its layout and alignment (including the bridge) and the parameters are closely defined. Furthermore, DCO requirement 5 mandates compliance with the protective provisions. The protective provisions mandate the use of the design manual for roads and bridges (DMRB), of which standard GG 103 "*Introduction and general requirements for sustainable development and design" requires that "The principles of good road design shall inform the design of motorway and all-purpose trunk roads*." Compliance with this has been demonstrated within the Highways design approach document [REP2-022] and this has

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				been agreed with National Highways (NH) as set in the statement of common ground with NH [REP2-037]. In relation to the design of the bridge, DMRB standard CD 351 "*The design and appearance of highway structures" ensures that good design is considered within the detailed bridge design*. Based on this the Applicant does not consider that an independent design review panel is required or would provide a material benefit. The Applicants propose to adopt the approach adopted for EMG1, where there has not been a 'design review' element to the approval of building details outside of the process the local planning authority have employed to review, comment and control the quality of detailed design through the approval of details pursuant to the requirements. The proposed Design Code is intended to help frame and control the details, and approval is required from the local planning authority before implementation. The detailed design and approval process has worked well throughout the EMG1 process. It is also important that the process is as efficient as possible and any delays minimised, especially in the context of securing delivery within the Freeport window.
61.	To provide clear signposting within ES Chapter 17 Population and Human Health identifying where the key Health Impact Assessment (HIA) components are addressed and to	The applicants	D4	Section 17.2 of Chapter 17 Population and Human Health [AS-065] has been updated at Deadline 4 to signpost to how and where the following key components of a Health Impact Assessment have

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	confirm how the embedded approach can be verified on the face of the Environmental Statement, including whether any changes arose following removal of the standalone HIA.			been addressed and are embedded within the ES chapter: • Determinants and pathways • Baseline vulnerability and existing health burdens • Assessment of health effects • Proposed mitigation It can be confirmed that no changes arose following the removal of the standalone HIA.
62.	To review the Environmental Statement to determine whether updates are needed to individual chapters (including population and human health, air quality, noise and vibration and ecology, amongst others) in light of the PRTM 2023 sensitivity modelling conducted as part of the transport assessment.	The applicants	D4	The Applicant has reviewed the Environmental Statement (ES) in light of the PRTM 2023 sensitivity modelling to determine whether the use of data produced by PRTM 2023 would have any implications on the potential environmental effects identified in the ES. The results of the PRTM2023 sensitivity modelling were provided in a Technical Note submitted at Deadline 1 [REP1-058]. As set out within this Technical Note, the data shows that, for the majority, traffic flows in PRTM 2023 are lower than EMFM 2019. Using the outputs from EMFM 2019 therefore provides a robust basis for the assessment of environmental impacts in the ES. LCC agree with the methodology and results of the PRTM 2023 sensitivity modelling as recorded in the latest Statement of Common Ground (SoCGs)

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				between the parties. The conclusions on the residual environmental impacts in terms of traffic remain unchanged. As noted in the LCC Highways SoCG (**DCO 8.4B** submitted at Deadline 4 [previous reference REP1-070]), there remain two outstanding matters on the PRTM 2023 modelling, which are to agree the impacts and potential mitigation on Derby Road, Kegworth and signage to encourage traffic to use the Castle Donington bypass rather than the High Street. The results of the PRTM2023 have also informed a review of the air quality, noise and vibration, ecology and population & human health assessments in the ES. The review did not highlight any changes to the assessment conclusion in the ES. Technical Notes have been prepared by the Applicant on each of these environmental aspects and have been shared with LCC (on Population & Human Health and Ecology) and NWLDC (on air quality and noise matters). The Applicant will seek agreement with the relevant consultees that the PRTM2023 outputs do not alter the ES assessment and conclusions of residual impacts. To this end, the Technical Notes have been appended to the relevant SoCGs (**DCO 8.3C** Air Quality, **DCO 8.3E** Noise and Vibration, **DCO 8.4D** Ecology and **DCO 8.4E** Population & Human Health) and where agreement has already been reached on this matter this is recorded in the latest SoCG submitted at Deadline 4.

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63.	To update Appendix 17C Equality Statement Table 6 [APP-183] and associated chapter of the environmental statement to include in-combination effects, including for reference number LCC1-LCC3	The applicants	D4	Table 6 of Appendix 17C Equality Statement [APP-183] has been updated to clarify whether the changes reported at each receptor would result in in-combination effects. This is inclusive of receptors LCC1-LCC3. The updated Appendix 17C Equality Statement has been submitted at Deadline 4.
64.	To set out their respective cases in relation to the proposed disapplication of section 141 of the Highways Act 1980 and section 55(1) and (1A) of the New Roads and Street Works Act 1991, including: (i) the applicant's justification as to why these provisions are necessary in this case, with reference to precedent where relied upon (ii) the Council's justification as to why the proposed disapplication would be inappropriate. (iii) to work to see if an agreed position can be secured.	The applicants LCC	D4	i. The Applicants note that Action Point 64 refers to the proposed disapplication of section 55(1) and (1A) of the New Roads and Street Works Act 1991 ("**1991 Act**"). For completeness, the draft DCO does not disapply this section of the 1991 Act entirely. The relevant provision is paragraph 3 of Schedule 14 to the draft DCO, which provides that the powers conferred by section 56(1) and (1A) of the 1991 Act (powers to give directions at to the timing of proposed and subsisting street works) do not apply in relation to the authorised development only. The disapplication of section 141 of the Highways Act 1980 ("**1980 Act**") (restriction on planting trees etc. in or near a carriageway) is sought and is limited to trees and shrubs planted in the course of the authorised development before completion of construction (see Schedule 14, paragraph 2(1) of the draft DCO). The disapplication is necessary because the authorised development includes a comprehensive landscaping scheme that has been the subject of detailed assessment within the Environmental Statement and is secured

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				through Requirements 9 and 10, the LEMP and the certified landscape plans. Given that some planting may be located in proximity to existing or new carriageways, retaining section 141 could create uncertainty as to whether planting authorised and secured by the DCO could nevertheless be constrained by a separate statutory restriction applying to planting near carriageways. The proposed disapplication avoids that uncertainty while preserving appropriate safeguards. The planting is controlled through the DCO requirements and certified plans, and highway safety considerations are addressed through the detailed design process for the highway works and the protective provisions for National Highways (Schedule 13, Part 1) and LCC as the local highway authority (Schedule 13, Part 2), which require approval of detailed design information for highway works, including landscaping where relevant. The disapplication of section 56(1) and (1A) of the 1991 Act is similarly sought in respect of the authorised development. This is justified because the timing and occupation of the highway for the authorised development are already controlled through the bespoke DCO regime and protective provisions, such that a parallel statutory timing direction process would be duplicative. Section 56 allows a street authority to direct when proposed or subsisting

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				street works may or may not be carried out where they are likely to cause serious disruption to traffic. This function is instead secured through Schedule 13, Part 2 of the draft DCO provides that no phase of the county highway works may commence until the detailed design information and programme of works for that phase have been approved by the local highway authority, and until a scheme of traffic management provisions has been agreed. It also requires compliance with the local highway authority's usual road space booking procedures, and prevents any county highway works requiring a road space booking from commencing unless that booking has first been secured. The Applicants consider these disapplications to be reasonable, necessary and proportionate. They are also consistent with the approach taken in the submitted draft DCO for the Hinckley National Rail Freight Interchange, where equivalent disapplications of the above provisions were included in Schedule 14. The Hinckley Explanatory Memorandum justified that approach on the basis that the relevant details and provisions were dealt with in the DCO, including the protective provisions, and its associated plans. The Applicants are not aware of any specific objection by LCC to the

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				inclusion of that disapplication in Hinckley and the Applicants rely on the same rationale here. ii. N/A iii. The Applicants have provided updated protective provisions to LCC, which support the Applicants position at (i) above, and have been advised that comments will be provided before Deadline 5.
65.	To reconsider the article 5 and requirement 32 in relation to "a campus / headquarters including co-located head office functions". (Post Hearing Note: see also action point 30 from CAH2)	The applicants in conjunction with NWLDC, LCC and National Highways	D4	The Applicants have provided a full response at Action Point 30 above. In addition the Applicants can confirm that they have updated Requirement 32 which will be included in the dDCO to be submitted at Deadline 5.
66.	Due to the number and nature of the points discussed during agenda item 10 (dDCO) and 11 (dMCO), all parties including the applicants, local planning authority, LCC and National Highways are requested to refer to their notes and/ or the recording of the hearing on and provide written submissions addressing the matters raised in relation to the articles and schedules of the draft Development Consent Order and/ or draft MCO.	The applicants LCC NWLDC All IPs	D4	The Applicants have reviewed and completed all action points that although raised during items 10 and 11, were also specifically identified above for Deadline 4. Any remaining action points which were identified during items 10 and 11 were directed at reconsideration and redrafting of certain Articles and Requirements within the dDCO. The Applicants are progressing those matters in liaison with the relevant authorities, where appropriate, and the updated dDCO will be submitted at Deadline 5. The Applicants will provide a supporting change log and any resulting updates to the Explanatory Memorandum at Deadline 5.

APPENDIX 1

London Borough of Bexley v The Secretary of State for the Environments Transport and the Regions, Sainsburys' Supermarkets Limited
Sainsburys' Supermarkets Limited v The Secretary of State for the Environment, Transport and the Regions, London Borough of Bexley

No Substantial Judicial Treatment

Court
Queen's Bench Division (Administrative Court)

Judgment Date
11 April 2001

No. CO/3528/2000

CO/3708/2000, Neutral Citation Number: [2001] EWHC Admin 323

High Court of Justice Queen's Bench Division (Administrative Court)

2001 WL 483001

Before: The Honourable Mr Justice Harrison

Wednesday 11th April, 2001

JUDGMENT

1.. This hearing has involved consideration of two separate but inter-related applications. First, an application by Sainsburys Supermarkets Limited ("Sainsburys") under section 23 of the Acquisition of Land Act 1981 ("the 1981 Act") to quash a decision by the Secretary of State for the Environment, Transport and the Regions ("the Secretary of State") dated 17th August 2000 confirming the London Borough of Bexley (Grassington Road, Sidcup) compulsory purchase order 1998 ("the CPO") which had been made by the London Borough of Bexley ("the Council") on 18 January 1998 under section 226(1) of the Town and Country Planning Act 1990 ("the 1990 Act"). I will refer to that decision as the CPO decision.

2.. Second, an application by the Council under section 288 of the 1990 Act to quash a decision of the Secretary of State dated 17 August 2000 allowing Sainsburys' appeal against the Council's failure to determine within the requisite period their planning application for construction of a retail store, retail units and servicing on land adjoining High Street, Elm Road and Grassington Road, Sidcup ("the Grassington Road site") and granting planning permission for that development. I will refer to that decision as the planning appeal decision

Background information

3.. This case involves another episode in what was rather engagingly described as the long running store wars saga. On 3 December 1997, the Council granted detailed planning permission to Safeways Stores plc ("Safeways") for the development of a retail store on the Grassington Road site. The Council had entered into a development agreement with Safeways for the development of the retail store by an agreement dated 13 May 1997 and a supplemental agreement dated 10 January 1998. Safeways therefore had an interest in the CPO which related to the land required for their scheme. With the consent of all the parties, they were added as third defendants to Sainsburys' application relating to the CPO, the first defendant being the

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Secretary of State and the second defendant being the Council. Safeways were also served as an interested party in the Council's application relating to the planning appeal.

4.. Sainsburys' planning appeal was recovered for determination by the Secretary of State on the grounds that it would most efficiently and effectively be decided together with the CPO over which Inspectors had no jurisdiction. As a result, a public inquiry was held by an Inspector, Mr Watson, to consider both the confirmation of the CPO and the determination of the planning appeal. The inquiry, which lasted a total of seven days, was held in April 1998 and the Inspector submitted an undated report to the Secretary of State dealing with both the CPO and the planning appeal in the same report, albeit that he dealt with each of those matters in separate sections of the report.

5.. The Secretary of State issued separate decision letters for the CPO decision and the planning appeal decision on 17 August 2000. The Inspector recommended that the Council's CPO should be confirmed and that Sainsburys' planning appeal should be dismissed. The Secretary of State accepted the Inspector's recommendation relating to the CPO, which he confirmed subject to some uncontroversial modifications which had been recommended by the Inspector. The Secretary of State did not, however, accept the Inspector's recommendation relating to the planning appeal. He decided that the planning appeal should be allowed and that Sainsburys should be granted planning permission for their proposed retail store. The position therefore was that planning permission existed for the retail stores proposed on the Grassington Road site by both Safeways and Sainsburys and the CPO, which reflected the Safeways proposal, was confirmed.

6.. The land ownership position was that the Council owned the majority of the site in both schemes. In the Safeways scheme, Safeways owned three parcels of land, one of which was to provide a retail link between the site and the High Street. Sainsburys also owned some parcels of land involved in the Safeways scheme which it had acquired with a view to furthering its commercial objectives. That land was therefore included in the CPO land. The Sainsburys scheme avoided the parcels of land owned by Safeways and it provided a different retail link to the High Street on land owned by Sainsburys. The land involved in the Sainsburys scheme was therefore owned by the Council and by Sainsburys. In both schemes, however, the site included Grassington Road (referred to as Plot 7), the ownership of which was unknown and over which an adjoining Scouts Club had private rights of way. The proposed development in both schemes affected Grassington Road. The eastern boundary of the site adjoined the back gardens of some houses fronting the west side of Black Horse Road. The effect of the schemes on those properties was also an issue at the inquiry.

7.. Five days before the inquiry commenced, Sainsburys submitted two revised scheme to try to overcome some objections made to their appeal scheme. Those two schemes became known as Revised Schemes A and B. Those revisions affected the siting of buildings and the means of access to the site, both of which formed part of the application and were not reserved for later determination. There had not been an opportunity for consultation with third parties who might be affected by those revised proposals. It was therefore recommended by Inspector that Sainsburys' planning appeals should be determined on the basis of the plans accompanying the application. The Inspector nevertheless informed the Secretary of State about Sainsburys' revised proposals in case he disagreed with him on that point. In fact, the Secretary of State accepted that the planning appeal should be determined on the application plans as no adequate opportunity for consideration and comment on the revised schemes had been provided to third parties whose interests may be prejudiced.

8.. The relevant development plan is the London Borough of Bexley Unitary Development Plan (“the UDP”), which was adopted on 24th July 1996. Policy SHO2 of the UDP promotes the enhancement of the quality of shopping provision and the environment of all town centres and encourages appropriate shopping developments within the boundaries of the town centres. Policy SHO3 specifies two sites shown on the proposals map as suitable for a range of uses, including a food superstore or large supermarket. The Grassington Road site is one of those two sites. Paragraph 9.42 of the text states that the purpose of that allocation is to maintain and enhance the future role of Sidcup town centre, which is identified as a Major District Centre.

9.. Policy SHO (SID) 1, which is dealing with Sidcup town centre and which is the most relevant policy for the purposes of these proceedings, provides as follows:

> “The Council will promote the development of a large supermarket, unit retail shops and associated vehicle parking facilities linking to the high street on the site to the rear of the High Street on the Proposals Map.”

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10.. Paragraph 9.81 of the text under the policy states:

> "The Council is committed to achieving a major injection of new retailing, including a high quality modern foodstore. This will help attract a wide range of shopping trips and expenditure back to Sidcup, provide a focus for shopping activity in the town centre and to ensure the centre maintains its role as a town centre. Accordingly, the Council is seeking to enhance the town centre by linking the High Street with the Grassington Road Car Park/Nelson Place site, which represents the only site offering a significant opportunity to provide major additional retail floor space in Sidcup. Any successful development proposal will incorporate a major foodstore, together with a strong retail linkage between the car park site and the High Street."

11.. The identification of the site in policy SHO (SID) 1 had its origins in an outline planning permission granted in July 1991 to Naturepost Properties Ltd for a large foodstore on that site. The intended operator was Waitrose. However, about that time Sainsburys were proposing an out-of-centre foodstore at Crittall's Corner. Following a planning appeal and subsequent litigation, that proposal was eventually refused in November 1993. In the interim, Waitrose withdrew from the Naturepost proposal in January 1993 due to the continuing uncertainty about the Crittall's Corner scheme. The Naturepost proposal had, however, resulted in the acceptance by the Council of the principle of a large foodstore on the Grassington Road site and the subsequent inclusion of policy SHO (SID) 1 in the UDP. By reference to paragraph 1.3 of the plan, that policy applies until May 2002. There was agreement between the parties at the inquiry that the provision of the foodstore under the policy should be made at the earliest opportunity.

12.. Prior to the adoption of the UDP in July 1996, the Council, which was under a duty under section 123 of the Local Government Act 1972 to obtain the best consideration that it could for its substantial landholding in the site, carried out a competitive tendering exercise between Safeways and Sainsburys. In fact, the process was carried out twice. On both occasions, Sainsburys was the unsuccessful bidder. In June 1996, the Council selected Safeways as the proposed operator. However, in March 1996, during the bidding process, Sainsburys started what one of their own witnesses described as the process of surreptitious land acquisition through a nominee company. In March 1997, Sainsburys informed the Council that they had acquired sufficient land to proceed jointly with the Council. On 13 May 1997, the Council entered into a development agreement with Safeways together with the developer who was then involved, Centros Properties Ltd. Centros subsequently dropped out of the picture and, by a supplemental agreement of 10 January 1998, Sainsburys took over their obligations. Sainsburys were statutory objectors to the CPO by virtue of the land which they had acquired.

13.. In order to try to overcome the disadvantage of not being party to a development agreement with the Council, Sainsburys executed a unilateral planning obligation under section 106 of the 1990 Act ("the section 106 obligation"). The purpose of the section 106 obligation was to reflect, so far as possible, the development agreement between the Council and Safeways. It sought to provide inter alia certainty as to the Council's ability to secure retail development of the site by a procedure contained primarily in clause 4 and schedule 1 of the obligation, whereby, upon the grant of planning permission for Sainsburys' scheme, the Council could within a given timescale serve what was described as a Purchase Notice on Sainsburys, who would then have to purchase the Council's land within six months and commence construction of the store within three months of the transfer of the land

14.. A draft section 106 obligation had been submitted by Sainsburys at the public inquiry. After the close of the inquiry, a signed copy of the obligation dated 20 May 1999 was submitted to the Inspector and it was taken into account by him in his report. The extent to which it was taken into account by the Secretary of State is one of the issues on the CPO application to this court.

15.. Sainsburys' CPO application under section 23 of the 1981 Act and the Council's application under section 288 of the 1990 Act were dealt with sequentially at the hearing of these applications as two discrete proceedings. I therefore propose to deal

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with them in that way in this judgment. Before I do so, however, I should first mention the layout of the Inspector's report. In sections 4 to 7 of the report, he summarised the cases of the parties on the planning appeal. In sections 8 to 10 of the report, he summarised the cases of the parties on the CPO. Section 11 contained his conclusions on the planning appeal, section 12 contained his conclusions on the CPO, section 13 dealt with the relationship of his conclusions on the planning appeal and on the CPO and section 14 contained his recommendations. As I have already mentioned, the Secretary of State issued separate decision letters for the planning appeal decision and for the CPO decision.

16.. I turn then to deal first with Sainsburys' application relating to the CPO.

16.. Application under section 23 of the 1981 Act relating to the CPO

(i) Introduction

17.. 16. Sainsburys apply under section 23 of the 1981 Act to quash the Secretary of State's decision to confirm the CPO made by the Council under section 226(1) of the 1990 Act. Section 226 of the 1990 Act provides, so far as relevant, as follows:

> "(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area which (a) is suitable for and required in order to secure the carrying out of development, redevelopment or improvement …
>
> (2) A local authority and the Secretary of State in considering for the purposes of subsection (1)(a) whether land is suitable for development, redevelopment or improvement shall have regard
>
> (a) to the provisions of the development plan, so far as material;
>
> (b) to whether planning permissions for any development on the land is in force; and
>
> (c) to any other considerations which would be material for the purpose of determining an application for planning permission for development on the land."

18.. It was accepted by all parties that the CPO land was suitable for the proposed development. The issue was whether the land was required to secure the development. It was held in *Sharkey v Secretary of State for the Environment and South Buckinghamshire District Council (1991) 63 P & CR 332* that the word "required" in section 226(1)(a) means "necessary in all the circumstances of the case."

19.. The main thrust of Sainsburys' case was that compulsory purchase was not necessary because an acceptable scheme involving their land could be brought forward without the need for compulsory acquisition.

(ii) The correct legal approach

20.. Sainsburys submitted, firstly, that the Secretary of State had failed to adopt the correct legal approach relating to the use of compulsory purchase powers. Both sides relied on the *Court of Appeal decision in R v Secretary of State for Transport, ex parte De Rothschild (1989) 1 All ER 933* . In that case, the highway authority sought to acquire land compulsorily from the appellants for a bypass. The appellants put forward some alternative routes on other land which they owned and which they were prepared to sell to the highway authority. The court upheld the Secretary of State's confirmation of the compulsory purchase order on the ground that he was satisfied that the authority had shown unequivocally that the order route was better in the public interest than any of the alternatives proposed by the appellants.

21.. It was submitted on behalf of the Secretary of State that that was exactly what had happened in the present case. The Secretary of State was satisfied that Safeways' scheme was better than Sainsburys' alternative. It was submitted, however,

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on behalf of Sainsburys that the De Rothschild case does not provide a short answer to the present case firstly because the landowner in De Rothschild was necessarily going to be deprived of some of his land and, secondly, because there have been two significant legal developments since that case

22.. Before dealing with the legal developments relied on by Sainsburys, I must first refer to a number of passages in the judgment of Slade LJ in De Rothschild, to which reference was made. At p938e Slade LJ stated:

> "Having considered the judgments of this court in *Prest v Secretary of State for Wales* and of Forbes J in *Brown v Secretary of State for the Environment* , I conclude that both of them were merely examples of challenges to the Secretary of State's decision on conventional Wednesbury/Ashbridge grounds. Though all the judgments in Prest's case contained observations regarding onus, I for my part read them as doing no more than giving a warning that in cases where a compulsory purchase order is under challenge, the draconian nature of the order will itself render it more vulnerable to successful challenge on Wednesbury/Ashbridge grounds unless sufficient reasons are adduced affirmatively to justify it on its merits."

23.. At p938j Slade LJ went on to summarise his conclusions as to the applicable law in the following way:

> "First, I do not accept that any special rules beyond the ordinary Wednesbury/ Ashbridge rules fall to be applied when the court is considering a challenge to the Secretary of State's confirmation of a compulsory purchase order. Second, however, the Secretary of State must be satisfied that the compulsory purchase order is justified on its merits before he can properly confirm it. Given the obvious importance and value to landowners of their property rights, the abrogation of those rights in the exercise of his discretionary power to confirm a compulsory purchase order would, in the absence of what he perceived to be a sufficient justification on the merits, be a course which surely no reasonable Secretary of State would take."

24.. At p942c, having referred to the fact that the appellants had accepted that part of the bypass inevitably had to pass over some part of their land, Slade LJ stated:

> "If, therefore, the Secretary of State had explicitly said that he considered that the route proposed by the Council was better than those proposed by the appellants, I do not believe this appeal could have got off the ground, or indeed that it would have been brought."

25.. He then went on to say, at p924e, in a passage that is relied upon by both sides in the present case:

> "… it seems to me that no reasonable Secretary of State would confirm a compulsory purchase order, imposing a purchase on an unwilling landowner, if that same landowner was willing to sell to the acquiring authority land which would be seen to serve equally well for the same purpose after all relevant considerations, including of course cost and delay, have been taken into account."

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26.. Finally, at p943e, Slade LJ said:

> "The bypass was needed. Some land of the appellants had to be acquired for the purpose they [the Inspector and the Secretary of State] both took the view that the Council had shown unequivocally that the order route was better in the public interest than any of the alternative routes over the land of the appellants which they had proposed."

27.. I will have to come back to the Court of Appeal decision in De Rothschild when dealing with the facts of the present case, but I turn next to the two significant legal developments which are said by Sainsburys to have taken place since De Rothschild. The first is the emergence of a more stringent Wednesbury standard where fundamental rights, such as the right to property, are at stake. The second is the Human Rights Act 1998 .

28.. Dealing first with the more stringent Wednesbury standard, reliance was placed by Sainsburys on two cases. Firstly in *R v Ministry of Defence ex parte Smith (1996) 1 All ER 257* , Sir Thomas Bingham MR (as he then was) accepted the submission of Mr Pannick QC that:

> "The court may not interfere with the exercise of an administrative discretion save where the court is satisfied that the decision is unreasonable in the sense that it is satisfied that it is beyond the range of responses open to a reasonable decision-maker. But in judging whether the decision-maker has exceeded this margin of appreciation, the human rights context is important. The more substantial the interference with human rights, the more the court will require by way of justification before it is satisfied that the decision is reasonable in the sense outlined above."

29.. Secondly, reliance was placed on the judgment of Laws J (as he then was) in *Chesterfield Properties Plc v Secretary of State for the Environment (1997) 76 P & CR 117* . At p129, Laws J said:

> "De Rothschild clearly establishes that the ordinary public law principles enunciated in Wednesbury apply to compulsory purchase decisions as they do to other statutory discretions. Wednesbury, however, is not, at least not any longer, a monolithic standard of review. Where an administrative decision abrogates or diminishes a constitutional or fundamental right, Wednesbury requires that the decision-maker provide a substantial justification in the public interest for doing so."

30.. Laws J then quoted the passage in ex parte Smith to which I have already referred. Having referred to the ownership of land as a constitutional right, he went on to say at p130:

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> "… where a constitutional right is involved, the law presumes it to carry substantial force. Only another interest, a public interest, of greater force may override it. The decision-maker is, of course, the first judge of the question of whether in the particular case there exists such an interest which should prevail. All this I believe to be consistent with recent authority, but in particular for present purposes it is consistent with De Rothschild … I think a person's ownership of his land is indeed a constitutional right; and in that case, the court's approach to the state's compulsory taking of it will be in accordance with the refinement of the Wednesbury principles which I have just explained."

31.. Laws J stated that that conclusion was in conformity with the judgment of Slade LJ in De Rothschild, and continued at p131:

> "In summary, the position is that while the Wednesbury principle is the avenue for this court's approach to a judicial review of the Secretary of State's confirmation of a Compulsory Purchase Order, it must in accordance with that principle be demonstrated that in confirming it he has concluded that there exists a substantial public interest or interests outweighing the landowner's rights. The Secretary of State is the first judge whether the public interest 'decisively demands' acquisition. If he has concluded that it does, he is only to be reviewed if in the circumstances that is an irrational conclusion."

32.. It was accepted on behalf of the Secretary of State that the Chesterfield Properties case indicated a refinement of the Wednesbury test where the constitutional right of ownership of land is concerned, but it was submitted that De Rothschild was consistent with that refined approach to the Wednesbury principle.

33.. The second legal development relied on by Sainsburys is the Human Rights Act 1998 , incorporating into English law inter alia Article 1 of the First Protocol of the European Convention on Human Rights , which provides that:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> "The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

34.. It was submitted on behalf of Sainsburys that the application of Article 1 of the First Protocol, pursuant to the Human Rights Act 1998 , required a fair balance to be struck between the interests of the state and the right of the individual (*Sporrong and Lonnroth v Sweden [1982] 5 EHHR 35* at paragraph 69) and that, in order to satisfy the fair balance test, there must be a reasonable relationship of proportionality between the means employed and the aim pursued (*Mellacher v Austria [1989] EHHR 291* at paragraph 48).

35.. The other parties to the case accepted those submissions, but they contended that those principles did not add any new dimension to the jurisprudence affecting consideration of compulsory purchase orders. They relied on the view expressed by

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Sullivan J in *Tesco Stores Ltd v Secretary of State for the Environment, Transport and the Regions and Wycombe District Council (2000) P & CR 427* , a case involving the acquisition of Tesco's store to enable redevelopment of the Western Sector of High Wycombe town centre. After referring to Article 1 of the First Protocol, Sullivan J stated at p429:

> "I am not persuaded that either the Convention or the principle of proportionality add any new dimension to the pre-Convention jurisprudence that is applicable to the present case.
>
> In very broad terms, the Convention requires that a fair balance must be struck between the public interest, in the present case in securing much needed redevelopment of the Western Sector of the town, and an individual's right to the peaceful enjoyment of his possessions. Any interference with that right must be necessary and proportionate.
>
> Although the Human Rights Act 1998 does not come into force until October 2, I am satisfied that for present purposes the Secretary of State's policy as set out in Circular 14 of 94 that a Compulsory Purchase Order should not be made unless there is 'a compelling case in the public interest' fairly reflects that necessary element of balance."

36.. Sainsburys accepted that if a CPO dependent scheme is better in planning terms than the development which could be achieved without resort to compulsory purchase powers, it is potentially capable of justifying interference with property rights. They submitted, however, that in order to evaluate whether a fair balance has been struck between the public interest and the rights of the individual, it is necessary to determine the degree of the improvement of the CPO dependent scheme over the scheme which can be achieved without compulsory purchase powers, as well as the true extent of the interference with property rights and, by weighing them both, to determine whether the means deployed to achieve the legitimate aim are proportionate.

37.. It was submitted on behalf of Sainsburys that the Secretary of State had failed properly to adopt that approach when making the CPO decision in this case. In order to understand that submission, it is necessary to refer to the relevant paragraphs of the Secretary of State's CPO decision letter.

38.. Having accepted the Inspector's conclusion that the CPO land was suitable for development, the Secretary of State went on to consider whether the land was required to secure the carrying out of the development of the land.

39.. In paragraph 13 the Secretary of State noted that Sainsburys were the own statutory objector and he summarised their case, namely that the CPO should not be confirmed because an acceptable scheme could be brought forward without compulsory acquisition of land.

40.. In paragraph 14, having referred to his conclusion that planning permission should be granted for the Sainsburys scheme and having noted that Sainsburys did not own all the land needed for their scheme, he stated:

> "The Council's land constitutes the majority of the site for which Sainsburys are seeking planning permission and is committed to Safeways Stores plc through a legal agreement. The Secretary of State agrees with the Inspector that it is unclear how the Council would proceed if the Compulsory Purchase Order were not confirmed (IR 12.21)."

41.. In paragraph 15 of the decision letter, the Secretary of State said:

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> "The Secretary of State concludes that, although an alternative scheme now has planning permission, the approved (Safeway's) scheme has advantages over the appeal (Sainsbury's) scheme in that it offers more certain prospects that the redevelopment of the land will proceed and more certain prospects that there will not be delay in implementing the scheme. In addition, the Secretary of State agrees with the Inspector that the appeal scheme is inferior to the approved development in respect of its effect on the Black Horse Road properties, (IR 12.26). The Secretary of State agrees with the Council that the appeal scheme is inferior to the approved scheme in terms of the retail link on the western pedestrian access to the High Street (IR 4.9 and 4.10). He notes that the decision of the Court of Appeal in the De Rothschild case supports the proposition that the use of compulsory purchase powers to achieve a better scheme is justified in the public interest (IR 13.2) and that PPG6 (Paragraph 1.6) acknowledges that local planning authorities may need to accelerate the process of site assembly through the use of compulsory purchase powers."

42.. The Secretary of State therefore concluded in paragraph 16 that the CPO land was required for the purposes stated in the Order. In paragraphs 17 and 19 of the decision letter, he stated as follows:

> "17. For the reasons given above, he is satisfied that the Order land is suitable and required for the purposes stated in the Order and that there is a compelling case in the public interest for the Order. He has accordingly decided to confirm the Order."

> "19. The Secretary of State has carefully considered in relation to the facts of this case whether the purposes for which the compulsory purchase order is required sufficiently justify interfering with the human rights of the objectors, owners, lessees and occupiers, and he is satisfied that they do so. In particular, he has considered the provisions of Article 1 of the First Protocol to the European Convention on Human Rights . In this respect, the Secretary of State is satisfied that in the use of compulsory purchase powers in this case, a fair balance has been struck between the fundamental rights of the individual and the public interest."

43.. Sainsburys submitted that the Secretary of State treated De Rothschild as providing a short affirmative answer to justify the CPO without carrying out the balancing approach required by Article 1 of the First Protocol. Although the Secretary of State acknowledged the fair balance test in paragraph 19 of the decision letter, he failed to apply it, as was evidenced by the absence of any explanation how it was carried out. It was submitted that a fair balance could not conceivably be struck if an equivalent scheme in an equivalent timescale could be achieved without recourse to a CPO.

44.. In my view, De Rothschild is authority for the proposition that the use of compulsory purchase powers can be justified in order to achieve a better scheme of development in the public interest than an alternative scheme put forward by an objector which does not require compulsory acquisition. I accept that, in De Rothschild, some land of the objectors had to be acquired for the bypass in any event, but they were willing to sell the land to the acquiring authority for an alternative route in much the same way as Sainsburys are willing to make their land available for the alternative scheme proposed by them. I accept, therefore, the distinction which Sainsburys seek to make between De Rothschild and the present case, but I do not accept that it is a distinction which should prevent the general proposition to be derived from De Rothschild from applying to this case. It is clear from paragraph 15 of the Secretary of State's CPO decision letter that he considered the Safeways scheme to be better than the Sainsburys scheme for the reasons given in that paragraph. It will be necessary to come back to those reasons when considering more specific points of objection taken on behalf of the Sainsburys. But, as a matter of general approach, I consider that the Secretary of State was entitled to rely on De Rothschild in support of his approach that the use of compulsory purchase

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powers was justified in order to facilitate implementation of a scheme which he considered to be better in the public interest than the scheme proposed by Sainsburys.

45.. In my judgment, the refinement of the Wednesbury principle referred to by Laws J in Chesterfield Properties does not affect the Court of Appeal's decision in De Rothschild. Laws J expressly stated that his decision was consistent with De Rothschild. By the same token, I accept that, when considering the Wednesbury grounds of challenge in this case, I must bear in mind that there must be shown to be a substantial public interest outweighing Sainsburys' right as a landowner.

46.. It was accepted on behalf of the Secretary of State that, by virtue of section 22(4) of the Human Rights Act 1998 , he was required to act in accordance with the European Convention on Human Rights when making his decision on 17 August 2000. It was therefore accepted that Article 1 of the First Protocol to the Convention applied in the same way as it applied to the Secretary of State's decision in the Tesco Stores case. The right of an individual to peaceful enjoyment of his possessions under that Article is a qualified, rather than an absolute, right and it involves a balancing exercise between the public interest and the individual's right whereby any interference with the individual's right must be necessary and proportionate. Like Sullivan J in the Tesco Stores case, I am not persuaded that there is anything materially different between those principles and the principles applied by the Secretary of State under Circular 14/94 whereby a compulsory purchase order is not to be made unless there is "a compelling case in the public interest". Such an approach necessarily involves weighing the individual's rights against the public interest.

47.. In this case, it is clear from paragraph 17 of the CPO decision letter that the Secretary of State applied his policy under Circular 14/94 and concluded that there was a compelling case in the public interest. It is also clear from paragraph 19 of the decision letter that he considered the human rights of the objectors under Article 1 of the First Protocol and concluded that a fair balance had been struck in the use of compulsory purchase powers between the fundamental rights of the individual and the public interest.

48.. I do not accept that it is necessary for the Secretary of State to set out in some formulaic way the degree to which the Safeways scheme is better than Sainsburys' scheme, the extent of interference with property rights and a conclusion on proportionality following the weighing of those factors. It is sufficient if the relevant conclusions can be determined from reading the decision letter as a whole. In this case, the Secretary of State carried out a comparative exercise between the two schemes and gave his reasons why the Safeways scheme was better than the Sainsburys scheme. He thereby indicated the extent to which one scheme was better than the other, whilst the degree of interference with Sainsburys' rights was self-apparent. In those circumstances, he was entitled to express the conclusions in the way that he did, namely that as a matter of judgment there was a compelling case in the public interest and that a fair balance had been struck between the rights of the individual and the public interest. I do not therefore accept the submission made on behalf of the Sainsburys that the Secretary of State failed to adopt a legally correct approach to his CPO decision. I should also add that, although it was not a matter relied upon by the Secretary of State, he would in my view have been entitled to take into consideration the manner and timing of Sainsburys' acquisition of land on the Grassington Road site when weighing Sainsburys' individual rights against the public interest.

(iii) The section 106 undertaking.

49.. The second ground of challenge to the CPO decision by Sainsburys was that the Secretary of State failed to take into account the existence and effectiveness of the section 106 obligation. It was accepted on behalf of the Secretary of State that there was no mention of the section 106 obligation in the CPO decision. Nor was there any mention of it by the Inspector in section 12 of his report containing his conclusions relating to the CPO. The section 106 obligation was, in fact, dealt with by the Inspector in section 11 of his report containing his conclusions on the planning appeal and by the Secretary of State in paragraph 7 of his planning appeal decision letter.

50.. Paragraphs 11.5 to 11.9 of the Inspector's report contained a section headed "The section 106 planning obligation". For present purposes, paragraph 11.8 is the relevant paragraph. It states as follows:

> "In respect of the undertakings which seek to provide certainty as to the ability of the Council to secure retail development on the appeal site, it appears that, although not providing for the transfer of land, it does oblige the Council to transfer its land to the appellant in order to secure development of the site. Paragraph B26 of Circular 1/97 advises that planning obligations should not include the transfer of interests in land or positively worded requirements for the transfer of such interests. It appears to me

> that, because the intention of the undertaking is to overcome uncertainty, the requirement for transfer of land is positively worded. Without the Council's agreement to the proposed arrangements, and having regard to the advice set out in Circular 1/97, I consider that in this respect the undertaking can be given little weight. Even if it were to be considered to carry weight, it does not to my mind overcome the problems of delay and uncertainty that would be created if planning permission were granted for the appeal proposals."

51.. The Inspector gave further consideration to the issue of uncertainty in paragraphs 11.38 and 11.39, where he stated:

> "11.38. The approved development has the benefit of a detailed planning permission and is the subject of a development agreement between the developer and operator, Safeways Stores plc and the Council (3.20, 3.21). There is a degree of uncertainty in its implementation, except that it requires confirmation of the compulsory purchase order by the Secretary of State. The appeal scheme, if granted outline planning permission, appears less certain of implementation. There is no agreement between the appellant and the Council. The appellant has provided a section 106 unilateral undertaking which it is claimed ensures an equivalent level of certainty to that pertaining under the development agreement. However, I have concluded that the undertaking can be given little weight. Even if it were to be considered to carry weight, it does not to my mind overcome the problems of delay and uncertainty that would be created if planning permission were granted for the appeal proposals."
>
> "11.39. It appears likely that if the CPO were not confirmed and outline planning permission were to be granted for the appeal scheme, the further steps necessary to implement the permission would be likely to mean a substantial delay in achieving retail development on the site. These steps include a review of the options open to the Council as a major landowner, the existence of Safeways' landholdings in the area and the possible need for a CPO to enable Grassington Road to be acquired for implementation of the scheme. That delay may well mean that the development would not be completed until after the end of the plan period. That would not be in accord with the objectives of the UDP; and, if as a result there were to be harm to the vitality and viability of Sidcup town centre, it would be contrary to the thrust of Government guidance set out in PPG1, PPG6 and RPG9."

52.. In paragraph 7 of his planning appeal decision letter, the Secretary of State referred to the section 106 obligation. He stated that he had had regard to it but that, for the reasons given by the Inspector, he agreed that little weight could be given to it. In his planning appeal decision letter, he disagreed with the Inspector's conclusion that the grant of planning permission would result in delay in the implementation of retail development of the site and he did not accept that the concept of uncertainty was relevant in the planning context.

53.. The Inspector, however, also referred to the issues of delay and uncertainty in paragraphs 12.18 and 12.21 of his report when dealing with his conclusions on the CPO. In paragraph 12.18 he stated:

> "If the Secretary of State were to conclude that planning permission should be granted for the Sainsburys proposals, either as originally submitted or in the form of one of the revised schemes, the question arises as to how soon such permission could be implemented and whether, if there were to be delay, that would weigh in the consideration of the CPO."

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54.. In paragraph 12.21 he stated:

> "Sainsburys do not own all the land needed to carry out their proposal. The Council's land constitutes the majority of the site for which Sainsburys are seeking planning permission. The Council's land is committed to Safeways through a legal agreement (9.8). If the CPO were not confirmed, the process by which the Council would then proceed is not clear. There is no guarantee that the Council would enter into agreement with Sainsburys. The effect of the requirements of section 123 of the Local Government Act 1972 are also not clear at this stage."

55.. In paragraphs 13.1 and 13.2, when dealing with the relationship between his conclusions on the planning appeal and on the CPO, he stated:

> "13.1. … If the Secretary of State were minded to allow the Sainsburys appeal and grant planning permission, I consider that this would not be a reason to prevent confirmation of the CPO. The Council has been engaged on promoting development of this site for some 12 years. It has succeeded in attracting a developer who has, with the support of the Council, including the making of the CPO, succeeded in assembling a substantial part of the site that lies outside the ownership of the Council. The developer has entered into a legal agreement with the Council. In essence, it is only the comparatively recently acquired landholding of Sainsburys that now appears to frustrate the successful realisation of the Council's plans for revitalising Sidcup town centre.
>
> 13.2. If the Sainsburys proposal were to be permitted, the evidence points to a substantial delay in achieving development of the site. Even if implementation could be expedited, I have concluded that the approved development has certain advantages over Sainsburys' proposals. The decision of the Court of Appeal in the De Rothschild case supports the proposition that the use of CPO powers to achieve a better scheme is justified in the public interest (8.12)."

56.. I have already quoted earlier paragraphs 14 and 15 of the Secretary of State's CPO decision letter in which he accepted the relevance in the CPO context of uncertainty and delay. He accepted that it was unclear how the Council would proceed if a CPO were not confirmed and he accepted that the Safeways scheme had more certain prospects of implementation without delay. He also found the Sainsburys scheme to be inferior in planning terms.

57.. It can be seen from those extracts from the Inspector's report and from the Secretary of State's decision letters that the conclusion was reached when dealing with the planning appeal that little weight could be given to the section 106 obligation. Having reached that conclusion, there was no further reference to the section 106 obligation in the Inspector's report when dealing with the CPO or in the Secretary of State's CPO decision letter. Both the Inspector and the Secretary of State did, however, refer to the issues of delay and uncertainty when dealing with the CPO. They were plainly aware of the section 106 obligation and I find it difficult to accept that they simply forgot about it when dealing with the CPO. Having concluded that little weight could be attached to it, they plainly did not attach any significance to it when considering the issues of delay and uncertainty. That is not entirely surprising when one bears in mind the self-evident reasons for uncertainty which are not affected by the section 106 obligation.

58.. As was pointed out on behalf of the Secretary of State, the Safeways scheme was much further down the road towards implementation. In effect, the only remaining impediment was the confirmation of the CPO. The Sainsburys scheme, on the other hand, had a number of hurdles to jump, none of which would be affected by the section 106 undertaking. Whilst it should

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be assumed that the Council would act reasonably as local planning authority and as landowner, it could not necessarily be assumed that they would transfer their allegiance to the Sainsburys scheme if the CPO were not confirmed.

59.. The Council and Sainsburys would have to agree the terms for the transfer of land. The Council would be under a duty under section 123 of the Local Government Act 1972 , or under section 233 of the 1990 Act, to secure the best consideration that could reasonably be obtained. Sainsburys had twice been unsuccessful in tendering previously. It could not necessarily be assumed that a further tendering exercise would not be required. Nor could it necessarily be assumed that Safeways would drop out of the picture, or that another operator, such as Waitrose who only dropped out previously due to the uncertainty created by Sainsburys' out-of-centre proposal at Crittall's Corner, would not come forward. Whatever the position was under the section 106 obligation, there was potential for disagreement between Sainsburys and the Council over price with a potential need for reference to the Lands Tribunal. All of those are matters which the Council would want to take into account before deciding whether they wished to enter into an agreement with Sainsburys. Furthermore, although Sainsburys' scheme had been granted planning permission, the Secretary of State and his Inspector had identified a number of shortcomings in that scheme. The Council, both as local planning authority as and landowner, may wish to see revisions to that scheme before deciding whether they wish to proceed with it.

60.. It is therefore not surprising that the Secretary of State, in paragraph 14 of his CPO decision letter, agreed with his Inspector's conclusion in paragraph 12.21 of his report that it was unclear how the Council would proceed if the CPO were not confirmed. That was also one of the matters referred to in paragraph 11.39 of the Inspector's report. It is also not surprising, in the light of all those matters, that the Secretary of State reached the conclusion in paragraph 15 of his CPO decision letter that the Safeways scheme had more certain prospects of implementation without delay, quite apart from the Sainsburys scheme being inferior in planning terms.

61.. Those conclusions were open to the Secretary of State on the evidence and were not affected by the section 106 obligation. It is not necessary to refer in detail to the mechanics of that obligation. It is sufficient to say that it does not, and could not, bind the Council to transfer its land. Its provisions only kick in if the Council were to serve a Purchase Notice, which it was not bound to do. In those circumstances, the section 106 agreement did not have a significant bearing on the uncertainties involved which had to be clarified before the Council could decide whether they wished to be involved in an agreement with Sainsburys. Furthermore, it is relevant to bear in mind, as was reported by the Inspector, that all parties were agreed that the redevelopment of the site should be carried out at the earliest opportunity.

62.. Whilst therefore I would accept that it would have been better if the Secretary of State had expressly referred to the section 106 obligation in his CPO decision letter, I am not persuaded that he failed to take it into account. When the Inspector's report and the decision letter are read as a whole, the Secretary of State's conclusions on uncertainty and delay were not dependent on, or significantly affected by, the section 106 obligation. They were therefore conclusions that he was entitled to reach without reference to it. Even if I were wrong in saying that the Secretary of State did not fail to take the section 106 obligation into account, I would not have exercised my discretion to grant relief on that ground because I am satisfied that he would have reached the same conclusion even if he had taken it into account

(iv) Plot 7 — Grassington Road

63.. The third area of challenge by Sainsburys related to Plot 7, Grassington Road, the ownership of which was unknown but over which the Scouts Club had private rights of way. The main points made on behalf of Sainsburys were, firstly, that the Secretary of State wrongly concluded that the compulsory acquisition of Plot 7 was required, when the exercise of those private rights of way could have been prevented by a Road Traffic Regulation Order under the Road Traffic Regulation Act 1984 . Secondly, that the Secretary of State failed to consider his Inspector's suggestion of simply confirming the compulsory purchase of Plot 7 alone. Thirdly, that Revised Scheme B did not affect Grassington Road and so constituted a reasonably equivalent scheme which could be brought forward in a reasonably equivalent timescale.

64.. At the end of paragraph 12.19 of his report, the Inspector referred to the fact that the Council contended that a compulsory purchase order would be needed to eliminate the private rights of way, whereas Sainsburys contended that it could be dealt with by a Traffic Regulation Order. He then stated in paragraph 12.20:

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> "Whether this is so is a matter of law. My view is that a Traffic Regulation Order would be sufficient to eliminate the private right of way. However, the Council's view is that, as development partner, they would certainly require the interests in Grassington Road to be acquired before they would contemplate proceeding with the scheme (8.11). This is not an unreasonable approach, and I consider that in these circumstances a CPO would be required to implement any of the Sainsburys proposals."

65.. I mention in parenthesis here that it would appear that the Inspector was wrong in saying that a CPO would be required for any of the Sainsburys proposals, in so far as it would not have been required for Revised Scheme B.

66.. Finally, so far as the Inspector's report is concerned on this point, he stated at paragraph 13.3:

> "If the Secretary of State were minded to confirm the compulsory purchase order in the modified form recommended, then whether or not the appeal is allowed and planning permission granted for the Sainsburys proposals, he may wish to consider alternatively confirming the order solely in respect of Plot 7, Grassington Road, in order to facilitate any revised scheme for development of the site that may come forward."

67.. The Secretary of State dealt with Plot 7 in paragraph 12 of his CPO decision letter, when he said:

> "On the issue of whether the land is required in order to secure the carrying out of the land, the Secretary of State agrees with the Inspector that it is not unreasonable for the Council, as development partner, to require the interests in Grassington Road (Plot 7) to be acquired before they would contemplate proceeding with any alternative scheme to that already approved by the Council (IR 12.20)."

68.. The Inspector was right in saying, in paragraph 12.20 of his report, that it was a matter of law whether the private rights of way could be dealt with by a Traffic Regulation Order. Although it is not necessary to decide that point of law, I accept the submission made on behalf of the Secretary of State that it is at least arguable that it would be improper to use powers under the Road Traffic Regulation Act 1984 , which do not give rise to entitlement to compensation, when section 236 of the 1990 Act expressly provides for extinguishment of such rights with an entitlement to compensation for any loss suffered. The important point, however, is that, faced with the uncertain legal position, it was not unreasonable for the Council to require the interests in Plot 7 to be acquired before they would contemplate proceeding with any alternative scheme to the approved scheme. That was the conclusion of both the Inspector and the Secretary of State and, in my judgment, it was a conclusion which they were entitled to reach.

69.. Whilst it is right to say that the Secretary of State did not deal expressly with his Inspector's suggestion of a CPO of Plot 7 alone, that suggestion was only made by the Inspector in the event of the Secretary of State deciding not the confirm the CPO. The CPO reflected Safeways' scheme, not Sainsburys' scheme. The Secretary of State's decision letter makes it quite clear why he found Safeways' scheme to be the better scheme and why he therefore concluded that the land was required for the purposes stated in the CPO. In those circumstances, as he was confirming the CPO, it was not necessary for him to consider the alternative of a CPO of Plot 7 alone for some other scheme.

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70.. Finally, whilst it is right to say that Revised Scheme B did not affect Grassington Road, that scheme cannot be said to be a reasonably equivalent scheme because the Inspector found that it was seriously deficient in car parking provision which would have significant adverse consequences for the town centre.

71.. For those reasons, I do not consider that there is any substance in Sainsburys' ground of challenge relating to Plot 7.

(v) Revised Schemes.

72.. The fourth ground of challenge by Sainsburys was that the Secretary of State failed to have regard to Revised Schemes A and B or to whether there was a realistic probability that Sainsburys could bring forward an acceptable scheme.

73.. It is certainly right to say that, when the Secretary of State specified in paragraph 15 of his decision letter the two respects in which Sainsburys' scheme was inferior to Safeways' scheme in planning terms, he was referring to the appeal scheme, rather than to Revised Schemes A and B. However, both of those revised schemes required a new planning application and the Secretary of State had declined to determine the planning appeal on the basis of those revisions because an inadequate opportunity had been given for consultation with the parties who may be affected by them. It follows that the Secretary of State was not in a position to express a concluded view on those revisions until he had considered any representations which may be made to him by parties affected by them. Nevertheless, the Inspector made some findings about the revised schemes in case the Secretary of State did not accept his view that the planning appeal should be determined on the basis of the plans accompanying the submitted application.

74.. The revisions were submitted in order to try and overcome objections raised to the Sainsburys planning application relating to car parking, the retail linkage to the High Street and the effect on adjacent properties fronting Black Horse Road.

75.. So far as car parking is concerned, both Safeways' scheme and Sainsburys' appeal scheme proposed 507 car parking spaces. Revised Scheme A proposed 458 spaces and Revised Scheme B proposed 365 spaces. The Inspector thought that the appeal scheme may involve an over-provision of car parking spaces, but that it would not adversely affect Sidcup town centre. The Secretary of State said in paragraph 10 of his CPO decision letter that any over-provision in that scheme was not substantial and any harm caused by it would be outweighed by the benefits of the development. Similarly, the Inspector thought that the reduced over-provision in Revised Scheme A would be off-set by other benefits of the development. However, in respect of Revised Scheme B, the Inspector had this to say in paragraph 11.28:

> "… it a ppears to me that a 365 space car park would be an under-provision, with adverse consequences for the town centre and surrounding area. It would fail to provide adequate parking as required by UDP policy T14, would fail to maintain an adequate level of public car parking contrary to policy T18 and would not make any provision for displaced on-street parking. This would be a clear failure to comply with the development plan. There are no material considerations sufficient to outweigh that conclusion."

76.. He summarised that view in paragraph 11.29 in this way:

> "I conclude that the reduction of some 142 spaces proposed in Revised Scheme B would result in serious under-provision that would be a clear failure to comply with the development plan. It would also have a significant adverse effect on the traffic and parking in the town centre and surrounding area and adverse consequences for the vitality and viability of the town centre."

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77.. In paragraph 10 of his CPO decision letter, the Secretary of State noted that a 365 space car park would be an under-provision with adverse consequences for the town centre and surrounding area, and he cross-referred to paragraph 11.28 of the Inspector's report.

78.. So far as the retail linkage to the High Street is concerned, the Inspector concluded in paragraph 11.34 of his report that Revised Schemes A and B would provide the strong link required by the UDP.

79.. So far as the effect on residential properties in Black Horse Road is concerned, the Inspector concluded in paragraph 11.48 as follows:

> "The appellant has proposed in Revised Schemes A and B that the two storey elements of the building on this boundary be set back [5.22]. That would provide some relief but not, in my opinion, sufficient to overcome the visual intrusiveness resulting from the building being sited so close to the boundary.
>
> I conclude that, although not of such significance to warrant dismissal of the appeal on its own, significant harm would be caused to the outlook from residential properties in Black Horse Road adjacent to the site."

80.. In paragraph 15 of his CPO decision letter which I have quoted previously, the Secretary of State, when referring to Sainsburys' appeal scheme being inferior in respect of its effect on the Black Horse Road properties, made reference to paragraph 12.26 of the Inspector's report, which stated as follows:

> "Either of the revised Sainsburys' schemes would overcome the failure to provide a strong retail linkage, but Revised Scheme B would not accord with the development plan due to the inadequate parking arrangements. Revised Scheme A would be broadly in accordance with the provisions of the UDP but remains inferior to the approved development in respect of its effect on the Black Horse Road properties."

81.. The Inspector continued at paragraph 12.27:

> "However, I have also concluded that the grant of outline planning permission for one of the Sainsburys' schemes would lead to delay and uncertainty. This would give rise to harm to the objectives and policies of the UDP. Disregarding other matters, in this respect alone I conclude that the Sainsburys' proposal is inferior and it does not therefore represent an acceptable alternative that could equally well meet the purpose for which the Council is seeking to acquire the Order lands."

82.. It follows from those references in the Inspector's report and in the Secretary of State's decision letter that there were still significant shortcomings in Revised Schemes A and B as well as in the appeal scheme. Scheme A was visually intrusive to the outlook from the properties in Black Horse Road (as was Scheme B), and the under-provision of car parking in Scheme B would have adverse consequences for the town centre and surrounding area. Those revised schemes were plainly, therefore, still inferior to the Safeways scheme in those respects. As was remarked on behalf of Safeways during the hearing, Sainsburys still have not produced a scheme to show how those shortcomings could be overcome.

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83.. Whilst this is another situation where it would have been better if the Secretary of State had dealt more fully with the revised schemes in his CPO decision letter, it is clear that the conclusion of inferiority would still have remained. Furthermore, and equally importantly, it would not have affected his conclusions relating to delay and uncertainty. I have therefore come to the conclusion that this last ground of challenge by Sainsburys should also fail.

(vi) Overall conclusion.

84.. It follows from the conclusions that I have reached on the four points of challenge that the application by Sainsburys to quash the decision of the Secretary of State confirming the CPO must be dismissed.

84.. The Council's application under section 288 of the 1990 Act relating to the planning appeal.

(i) Introduction.

85.. I turn next to deal with the Council's application under section 288 of the 1990 Act relating to the planning appeal. The Council made it clear through the witness statement of Mr Posner that they had to lodge their section 288 application to comply with the statutory time limit and that they only pursued it because Sainsburys challenged the CPO decision.

86.. The Council had two main areas of challenge. The first ground of challenge was that the Secretary of State did not properly apply section 54A of the 1990 Act in reaching his decision or, alternatively, that he failed to explain his approach properly. The second ground of challenge was that the Secretary of State did not deal properly with the arguments of delay and uncertainty that would be caused to Safeways' scheme by the granting of planning permission to Sainsburys.

(ii) Failure to apply section 54A of the 1990 Act properly.

87.. I turn to deal with Safeways' first ground of challenge that the Secretary of State failed to apply section 54A of the 1990 Act properly. Section 54A provides:

> "Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan, unless material considerations indicate otherwise."

88.. The development plan in this case is the UDP. I have already referred earlier in this judgment to policies SHO2, SHO3 and SHO (SID) 1 and paragraphs 9.42 and 9.81 of the text. Put shortly, the UDP seeks to maintain and enhance the vitality and viability of Sidcup town centre by inter alia promoting the redevelopment of the Grassington Road site for a large supermarket with a strong retail linkage between the site and the High Street. As I have already mentioned, the Inspector recommended that Sainsburys' planning appeal for their scheme should be dismissed and that planning permission should be refused. The Secretary of State did not accept his Inspector's recommendation and decided that the appeal should be allowed and that planning permission should be granted for Sainsburys' scheme.

89.. In paragraph 11.33 of his report, the Inspector referred to the fact that the western pedestrian link on the Sainsburys appeal scheme only included unit shops for less than half of its western side and that the other two pedestrian links did not have any shopping frontage. He then continued in paragraph 11.34:

> "Due to its lack of retail frontage, the western pedestrian link does not provide a strong retail linkage between the foodstore, car park and High Street. In this respect, the appeal scheme fails to accord with the spirit and intention of the UDP to link retail development on the car park site with the High Street."

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90.. The Secretary of State dealt with this aspect of the matter in paragraph 12 of his planning appeal decision letter, when he said:

> "The Secretary of State has considered whether the appeal scheme could achieve the objectives of policy SHO (SID) 1. He accepts the Inspector's conclusion that the appeal scheme fails to accord with the spirit and intention of the policy in so far as it does not provide a strong retail linkage between the foodstore, car park and High Street (IR11.34).
>
> However, the Secretary of State notes that the proposed western pedestrian link will include unit shops along part of its length and the scheme will also have two other pedestrian links (IR11.33). In addition, the Secretary of State agrees with your client that the appeal scheme would deliver the objectives listed in paragraph 5.11 (IR 5.11), including those of maintaining and enhancing the future role of Sidcup as a Major District Centre and helping safeguard the vitality and viability of the shopping centre, which are consistent with the objectives of policy SHO (SID) 1.
>
> Accordingly, the Secretary of State does not consider the conflict of policy with SHO (SID) 1 to be so significant as to warrant dismissal of the appeal."

91.. In paragraph 13 the Secretary of State agreed with his Inspector's conclusion that, although not of such a significance as to warrant dismissal of the appeal on its own, significant harm would be caused to the outlook from the adjacent residential properties in Black Horse Road. In paragraph 14 of his decision letter, the Secretary of State stated as follows:

> "The Secretary of State has had regard to all relevant material considerations. He concludes that, apart from policy H2 and policy SHO (SID) 1, the appeal proposals would accord with the relevant policies of the UDP. In particular the appeal proposal is consistent with general policy G11 in that it will help to achieve the growth and enhancement of Sidcup as a Major District Center.
>
> The conflict with policy H2 is counterbalanced by the benefit of avoiding a loss of trees and reduced impact on the green conservation area in accordance with policy ENV44.
>
> The Secretary of State considers that the conflict with policy SHO (SID) 1 and the impact of the development on the outlook for residential properties in Black Horse Road are not of sufficient weight to outweigh the benefits the appeal proposal offers to the growth and enhancement of Sidcup town centre as a Major District Centre."

92.. It was submitted on behalf of the Council that, in concluding that Sainsburys' appeal scheme failed to accord with the spirit and intention of policy SHO (SID) 1, the Secretary of State had accepted that there was substantial conflict with the development plan so that he needed to go on and consider whether there were material considerations pulling in the opposite direction. It was said, however, that he had failed to do that and that he had contented himself with partial compliance with the development plan by applying broad objectives of the plan and not applying policy SHO (SID) 1. It was also said that there was no reason why the Secretary of State should permit an inferior scheme in conflict with the development plan when there was planning permission for a better scheme which would meet the plan's objectives within the plan period.

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93.. Both sides referred to the opinion of Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland (1997) 1 WLR 1447* . In *R v Leominster District Council ex parte Pothecary (1997) 3 PLR 91* , Schiemann LJ, in a judgment with which other members of the court agreed, said that what Lord Clyde had said about the Scottish equivalent of section 54A in the City of Edinburgh case represented the law of England as well as the law of Scotland. Schiemann LJ then set out some extracts from the opinion of Lord Clyde which I do not intend to repeat. It was submitted on behalf of the Secretary of State that those extracts gave rise to three propositions. Firstly, that in determining a planning application on appeal, the Secretary of State is required to recognise that priority is to be given to the development plan. Secondly, that the assessment of facts and weighing of relevant considerations is entirely a matter for him, provided that in doing so he recognises the priority to be given to the plan. Thirdly, that there is no prescribed procedure by which he must fulfil that decision-making process. It was submitted that the Secretary of State had complied with that approach.

94.. In considering those submissions, I note firstly that in paragraph 4 of his decision letter the Secretary of State expressly referred to section 54A and stated that it required that the appeal should be determined in accordance with the development plan unless material considerations indicate otherwise. That seems to me to be an express awareness of the priority to be given to the development plan.

95.. In paragraph 12 of the decision letter the Secretary of State accepted that there was a conflict with policy SHO (SID) 1 in so far as Sainsburys' scheme did not provide a strong retail linkage with the High Street, but he went on to assess the degree of the conflict by remarking that the link did include some unit shops along part of its length and that there were two other pedestrian links. Having assessed the degree of conflict, he then went on to consider the counterbalancing positive points of the scheme, namely that it would deliver a number of objectives, including the enhancement of the future role of Sidcup as a Major District Centre and the safeguarding of the vitality and viability of the shopping centre, those matters being consistent with the objectives of policy SHO (SID) 1.

96.. In my judgment, the Secretary of State was thereby referring to other material considerations to see if they outweighed the conflict with the development plan. If there were any doubt about that, it is dispelled by the last sentence of paragraph 14 of the decision letter, in which the Secretary of State makes it clear that the benefits of the appeal scheme to the growth and enhancement of Sidcup town centre outweigh the conflict with policy SHO (SID) 1 and the impact on the residential properties in Black Horse Road

97.. In my view, that was a value judgment which the Secretary of State was entitled to make, and I see nothing wrong with the way in which he reached that decision. He had proper regard to section 54A and he reached a decision in accordance with it. Furthermore, the fact that planning permission existed for the Safeways' scheme would not in itself be a proper reason for refusing permission for the Sainsburys' scheme. The Secretary of State had to consider the Sainsburys' appeal on its own merits, having regard to the development plan and any other material considerations, and that is what he did. I do not, therefore, accept Safeways' first ground of challenge.

(iii) Delay and uncertainty.

98.. I turn then, finally, to the Council's submission that the Secretary of State did not deal properly with the arguments that delay and uncertainty would be caused to Safeways' scheme by the grant of planning permission to Sainsburys.

99.. In order to understand this ground of challenge, it is necessary first to refer to some relevant paragraphs of the Inspector's report before coming to paragraph 11 of the Secretary of State's planning appeal decision letter.

100.. I have already quoted earlier in this judgment paragraph 11.39 of the Inspector's report in which he deals with the issue of delay if the CPO were not confirmed but planning permission were granted. In paragraph 11.40, the Inspector referred to a previous appeal decision of the Secretary of State in the Chapel-en-le-Frith case, which had been relied upon by the Council. He said:

> "The Council submit that the Secretary of State's decision in the Chapel-en-le-Frith case was based on similar considerations. In that instance, the Secretary of State accepted the views of the Inspector

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> that permitting more than one store would introduce uncertainty and sit uncomfortably with the plan led approach to decision making (4.7).
>
> Although the appellants submitted that the approach adopted in their case was inappropriate and probably unlawful, the decision has not been challenged in the courts."

101.. In paragraph 11.41, the Inspector said:

> "On the face of it, there would not appear to be any difficulty in having two extant planning permissions for retail development on overlapping sites. However, if the grant of planning permission for the second scheme, whose implementation was likely to be delayed beyond the end of the planned period, itself caused uncertainty for the implementation of the approved scheme, then this would frustrate the objectives of the development plan. The second permission could thereby be deemed to harm an interest of acknowledged importance and undermine the plan led system of development control."

102.. Finally, so far as the Inspector's report is concerned, in paragraph 11.42, when giving his conclusions on the issue relating to the development plan, the Inspector said:

> "I also conclude that the grant of outline planning permission for the development would result in delay to the implementation of retail development on the site and cause uncertainty to the implementation of an already approved scheme which is capable of early implementation."

103.. The Secretary of State's conclusions on this aspect of the matter are contained in paragraph 11 of his planning appeal decision letter where he stated:

> "The Secretary of State disagrees with the Inspector's conclusion that the grant of outline planning permission for the development would result in delay to the implementation of retail development on the site. He agrees with your client's argument that every planning application should be determined having regard to the development plan and other material considerations and that the approach adopted by the Council of asking whether there is a need, advantage or legitimate purpose for the grant of a further planning permission is wrong (IR5.3).
>
> The Secretary of State accepts too your client's argument that the concept of uncertainty is misconceived and completely contrary to established principles. He agrees with your clients that the grant of any planning permission creates uncertainty (IR 5.4).
>
> Because of these conclusions on this matter, the Secretary of State does not agree that in reaching a conclusion on the appeal he should place the great weight on this factor as the Inspector does in reaching his view (IR 11.42). He therefore concludes that other material considerations described by the Inspector at paragraph 11.10 of his report are of greater weight in deciding the application."

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104.. It was submitted on behalf of the Council that Safeways' planning permission was a material consideration and that any delay or uncertainty caused to the implementation of that permission was also a material consideration. It was contended, firstly, that in the first sentence of paragraph 11 of the decision letter, the Secretary of State had not given any reason for disagreeing with his Inspector's conclusion relating to delay. Secondly, it was argued that the need for the development was material where it was contrary to the development plan. Thirdly, it was contended that, in concluding that the concept of uncertainty was misconceived because the grant of any planning permission created uncertainty, the Secretary of State missed the point because the issue was specifically about whether the grant of planning permission for the appeal proposal would cause uncertainty to the Safeways scheme, not about the general uncertainty caused by any grant of planning permission. It was therefore submitted that the conclusions given by the Secretary of State for placing less weight on that factor were either inadequately reasoned or contained errors of approach.

105.. Finally, it was submitted on behalf of the Council that the Secretary of State had failed to deal with the Chapel-en-le-Frith case, which was based on similar considerations. It was pointed out that that decision was a controversial issue at the inquiry. It was argued by the Council that the Secretary of State needed to be consistent in his decisions, but that it had been ignored by him in his decision letter.

106.. That was a case involving three separate planning applications for retail stores, all of which were just outside the town centre and two of which were overlapping sites. The Secretary of State accepted his Inspector's recommendation that only one of the sites should be permitted because to permit more than one store would introduce uncertainty and sit uncomfortably with the Government's aim to promote a plan led approach towards decision making.

107.. I was referred in this connection to the case of *North Wiltshire District Council v The Secretary of State for the Environment (1992) 3 PLR 113* . At p122, Mann LJ dealt with the question of previous appeal decisions. He accepted that they are capable of being a material consideration because like cases should be decided in a like manner so that there is consistency in the appellate process. He said:

> "If it is distinguishable, then it usually will lack materiality by reference to consistency, although it may be material in some other way. Where it is indistinguishable, then ordinarily it must be a material consideration. A practical test for the Inspector is to ask himself whether: if I decide this application in a particular way, am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case?"

108.. It was submitted on behalf of the Secretary of State that the Chapel-en-le-Frith case was distinguishable and therefore not material because it did not involve a plan led decision, as in this case, but instead involved a potential conflict with Government policy to create a plan led approach and therefore would involve the sequential approach under paragraph 1.10 of PPG6.

109.. So far as paragraph 11 of the Secretary of State's decision letter is concerned, it was submitted on behalf of the Secretary of State, firstly, that the first sentence of that paragraph dealt adequately with the issue of delay and that to go further would involve giving reasons for reasons. Secondly, it was argued that there was no requirement to show need for the development when the site had been identified in the development plan for retail purposes. Thirdly, it was accepted on behalf of the Secretary of State that if planning permission for the Sainsburys scheme did create uncertainty for the Safeways scheme, that would be a relevant consideration, but it was submitted that there was no evidence to that effect. It was said that, in his report, the Inspector was not only dealing with uncertainty from the grant of planning permission but also with uncertainty from non-confirmation of the CPO.

110.. I am not persuaded by the Council's criticism of the Secretary of State's conclusion relating to need. But, in my judgment, there is substance in their criticism of his conclusions relating to delay and uncertainty. On both issues, he disagreed with his

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Inspector's conclusions, and it therefore behoved him to give reasons for doing so. Those reasons should be proper, intelligible and adequate see (In *Re Poyser and Mills' Arbitration (1964) 2 QB 467*).

111.. In the first sentence of paragraph 11 of his decision letter, the Secretary of State simply stated that he disagreed with his Inspector's conclusion that the grant of planning permission would result in delay to the implementation of retail development of the site. He did not give any reason for his disagreement with the Inspector on that issue. In my view, he should have done so. The Council is entitled to know why he disagreed with the Inspector on that issue.

112.. So far as the issue of uncertainty is concerned, the Secretary of State said that the concept of uncertainty was misconceived and completely contrary to established principles. He did not say what those established principles are but, as I have mentioned, it was accepted on behalf of the Secretary of State during the hearing that it would be a relevant consideration if the grant of planning permission did create uncertainty for the Safeways scheme. The concept of uncertainty cannot, therefore, be completely misconceived or contrary to established principles.

113.. If the potential relevance of uncertainty from the grant of planning permission, now accepted by the Secretary of State, was not applicable in this case, then reasons should have been given by the Secretary of State for disagreeing with his Inspector's conclusion on that issue. The only reason given was that any grant of planning permission creates uncertainty. That involves a failure to address the specific issue in this case, accepted as being relevant, namely whether the grant of permission to Sainsburys would create uncertainty to the Safeways scheme. I have therefore concluded that, on the uncertainty issue as well, there was a failure to give adequate reasons for disagreeing with the Inspector's conclusion.

114.. That failure was compounded by the failure of the Secretary of State to deal with the submission that had been made about his decision in the Chapel-en-le-Frith case. The Council and Safeways had relied on the Secretary of State's acceptance of his Inspector's recommendation in that case that planning permission should only be given for one of the schemes because permitting more than one store would introduce uncertainty. Sainsburys had argued that the Secretary of State's approach in that case was inappropriate and probably unlawful. The Inspector specifically dealt with it in paragraph 11.40 of his report, which I have already quoted, where he makes the point that the decision in that case was not challenged in the courts.

115.. Whilst there may be an argument that the facts of that case were distinguishable from this case, that was not, apparently, an argument pursued at the inquiry, nor was it relied upon by the Secretary of State in his decision letter. He simply failed to deal with the matter at all. Whilst he does not have to deal with every point raised at the inquiry, this was a material issue at the inquiry which was dealt with by the Inspector, and in my view it should have been dealt with by the Secretary of State in his decision letter.

116.. I have therefore decided that the Secretary of State failed to give adequate or proper reasons for his conclusions relating to delay and uncertainty and that he failed to deal with a material consideration, namely the Chapel-en-le-Frith case. I am satisfied that the Council has been prejudiced by those failures and that the planning appeal decision should therefore be quashed so that the matters are dealt with properly by the Secretary of State. The Council's application under section 288 of the 1990 Act will therefore be allowed and the Secretary of State's planning appeal decision will be quashed

MR MOULD: My Lord, I expect your Lordship would wish to deal with questions of costs and so forth discretely in relation to each of the cases.

MR JUSTICE HARRISON:

I would have thought, subject to anything else anybody else wanted to say, that that would probably be the appropriate way of dealing with it, yes.

MR MOULD: In those circumstances, may I deal, then, just with the question of Sainsburys' application to the court and invite your Lordship to dismiss that application with the first defendant's costs which should be subject to detailed assessment if not agreed.

MR JUSTICE HARRISON: Yes, thank you very much.

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MR STONE: My Lord, in relation to Bexley's application, would my Lord's order be to allow Bexley's application and quash the Secretary of State's decision and to grant costs, Bexley's costs, against the first and second defendants.

MR JUSTICE HARRISON: Yes, thank you. Now, let us deal first of all, shall we, with Sainsburys' application?

MR HUMPHREYS: My Lord, I thought we were going to deal with the Compulsory Purchase Order first.

MR JUSTICE HARRISON: I think that is the way we should deal with it.

MR HUMPHREYS: I am grateful. I would ask on behalf of Safeways — I appreciate that we are a third defendant and generally costs are not paid to second, let alone third, defendants. My Lord, I have the House of Lords judgment in the Bolton case, if I may remind your Lordship of that. If I can hand it up. (Handed).

My Lord, I would ask for Safeways' costs in this case. My Lord, the principles which are set out at the last page, on page 52, the last page of the bundle, we see just below F the principles:

> "The following propositions may be supported —"

MR JUSTICE HARRISON: Sorry, this is page what?

MR HUMPHREYS: Page 52. I say this with some hesitation, but I am sure your Lordship is familiar with the principles set out.

MR JUSTICE HARRISON: Yes.

MR HUMPHREYS: My Lord, may I just take your Lordship once more — obviously this was a planning appeal, a section 288 matter before the House of Lords. The Secretary of State's decision had been upheld by the House of Lords, so the question arose as to the position of the second and third defendants, or respondents in that case.

My Lord, Lord Lloyd, beginning at page 51, then at page 52, just before G, says:

> "The following propositions may be supported …"

Having said that there are no rules as such:

> "1. The Secretary of State will normally be entitled to the whole of his costs when successfully defending his position.
>
> 2. The developer [by which he is there envisaging a second or third defendant] will not normally be entitled to his costs unless he can show that there was likely to be a separate issue on which he was entitled to be heard, that is to say an issue not covered by counsel for the Secretary of State, or unless he has an interest which requires separate representation. The mere fact that he is a developer will not in itself justify a second set of costs in every case."

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Proposition 3:

> "A second set is more likely to be ordered in the first instance than higher up.
>
> 4. An award of the first set of costs will rarely be justified, even if there are in theory three or more separate interests."

My Lord, in this case, I say that we are within that rare position, because we were the — and I expressly made these points at the outset of my submissions — we were present expressly to defend our separate interests. We were the only landowner present in relation to the development agreement. Obviously the Secretary of State was there to defend his position, Bexley were there as local planning authority, not as landowner. We were there as landowner.

Particularly in relation to the all important development agreement which featured significantly during the hearing, it was necessary for us to be present, first, to draw attention to the provisions of the development agreement, to counter the assertions concerning the ability of Bexley as landowner to walk away from the development agreement in the event that the CPO was not upheld. You may recall my learned friend's submissions, and I countered that by saying no, there were obligations on both parties right up until May of next year; and, secondly, related to that, to draw attention to the date of expiry of the contract.

Those points obviously were not covered, understandably, by the Secretary of State; he was here to defend his position, Bexley as the local planning authority. We had that important development agreement and we wished those matters which we hope assisted the court — it was important that we make those points, given that a rival operator, Sainsburys, who were pushing very hard, understandably, for their own interest were making forcible points and in the claim form and then in the skeleton argument had made specific submissions about that development agreement.

So, my Lord, I say that in this case, I would ask that Safeways' separate interests be recognised and that we receive and recover our costs in relation to the CPO matter.

MR JUSTICE HARRISON: Thank you very much. Let us deal with this. So on the CPO case, we have an application for costs from the Secretary of State and from Safeways.

MR KOLINSKY: My Lord, I certainly do not resist the application on behalf of the Secretary of State and, as my learned friend Mr Mould indicated, in view of the length of the hearing, a detailed order for assessment would be the appropriate order.

MR JUSTICE HARRISON: Yes.

MR KOLINSKY: My Lord, I do resist the application by Safeways. In my submission —

MR JUSTICE HARRISON: It is said that they have a separate interest as landowners and a particular interest in the development agreement and its terms and its relevance to this hearing.

MR KOLINSKY: My Lord, in relation to that, I make the following points.

The first point is the presumption effectively in Bolton, the starting point is that it is appropriate to order one set of costs. Secondly, the emphasis on the penultimate page at H, the mere fact that he is the developer will not of itself justify a second set of costs in every case. Thirdly, the emphasis in Bolton on the fact that a third set of costs will rarely be justified, even if there are in theory three or more separate interests. My Lord, in relation to that, I comment that my learned friend Mr Humphreys is, in my respectful submission, third in the pecking order and I rely on the fact that my learned friend Mr Stone is not making any application for costs.

My Lord, in my respectful submission, the Council appear wearing various hats in the present case, both as acquiring authority but also as a party to the development agreement. They are more than capable of speaking to the contents of that development

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agreement, and, my Lord, that has not formed the basis of any application for costs from the Council, and I say appropriately so and rely on that fact.

My Lord, unless I can unless further, those are my submissions.

MR JUSTICE HARRISON: Thank you very much.

MR HUMPHREYS: May I just say that first of all the fact that Bexley have not made an application means that I move up the pecking order. The second point is it is not as though Sainsburys will have to pay three sets, it will simply be two sets.

The second point is that we are not just a mere developer. Our development agreement was very much a focal point of the inquiry and indeed this application to the High Court. So in those circumstances, again, the Council, which is studious and it is very important that it keeps its roles separate, it was here as the local planning authority, and that is very much the separate point which I raised right at the outset of my submissions.

MR JUSTICE HARRISON: Thank you very much. First of all, there will be an order that the claimants, Sainsburys, pay the first defendant's costs, which is to be subject to a detailed assessment if not agreed.

So far as the claim by Safeways for their costs is concerned, I have had regard to the Bolton case and to the general presumption that normally they would not be entitled to what would be a second set of costs in this case. Whilst, of course, I understand that they are a landowner with their own interest, and whilst it is always delightful and helpful to have Mr Humphreys before this court, I do not consider that the matters relied upon by him in request for costs are matters which would justify a second set of costs. Those matters were, in the main, matters which could have been covered by the Council and, in the exercise of my discretion, I do not award costs in favour of Safeways. So that is my decision on costs relating to Sainsburys' application.

We now turn to Bexley's application, where already you, Mr Stone, have applied for costs against the first and second defendants. Now, first of all, Mr Mould.

MR MOULD: My Lord, I cannot resist that application. Although the hearing of that case itself took less than a day, it has clearly formed part of a set of proceedings which the court considered over a number of days, and in those circumstances I would submit that detailed assessment, if the figures are not agreed, is the appropriate order in this case.

MR JUSTICE HARRISON: You do not dissent from that?

MR HUMPHREYS: No, I do not.

MR JUSTICE HARRISON: Now, there is also a claim against the second defendants.

MR KOLINSKY: My Lord, I do resist that. I do not resist the proposition that my learned friend Mr Stone is entitled to his costs, though in my submission the appropriate party to seek those from is the first defendant, who, rightly, is in the best position to defend the decision made by the Secretary of State.

My Lord, I observe that, similarly to the argument that my Lord has just been hearing, my client, Sainsburys, as second defendant would have been in a very difficult position arguing for its costs against the claimant had the position been reversed. In my submission, the appropriate order for costs would be made simply against the first defendant rather than against the second defendant as well.

MR JUSTICE HARRISON: Thank you. Mr Stone?

MR STONE: My Lord, I do not think that symmetry is the guiding principle here. In my submission, if Sainsburys come along and seek to resist our application, then they must run the risk of an award of costs if they do not succeed.

MR JUSTICE HARRISON: Yes, thank you very much. Anything further you want to say, Mr Kolinsky?

MR KOLINSKY: My Lord, on the question of costs, no. My Lord has my submissions.

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MR JUSTICE HARRISON: Very well, thank you. In my view, Bexley should have their costs against the first and second defendants. Are there any further matters?

MR KOLINSKY: My Lord, may I deal with an application for permission to appeal in relation first of all to the compulsory purchase decision. If I may take that as a free standing application but note at the outset that my learned friend Mr Mould has indicated his intention in relation to the planning appeal. In my submission, it is appropriate for him to go first on that, but if I may reserve my position to come back on the application that he will make.

MR JUSTICE HARRISON: You make your application relating to the compulsory purchase application?

MR KOLINSKY: My Lord, I do. As my Lord will know, and if my Lord would like the reference it is part 52, rule 3.6, the test is effectively, either a real prospect of success or that there is some other compelling reason. My Lord, in my respectful submission, this important appeal raises and passes both limbs of that test. It is, as was said in argument, a novel application of established principles in relation to the compulsory purchase situation, but also bringing in the question of the relevance — if any, my Lord — of the Human Rights Act dimension to that.

It raises questions of what, if anything, the fair balance test adds to the existing case law as to whether or not the decision of De Rothschild is the guiding principle in relation to these particular facts or whether the distinguishing features noted by my Lord in his judgment call for an application of new principles, either because of or independently of the human rights dimension.

My Lord, in my submission, it also raises important points in relation to the standard of reasoning required by the Secretary of State in dealing with the application of a fair balance test and also the important point of principle as to the degree of consideration that needs to be given to alternatives to the specific planning permission scheme under consideration.

My Lord, finally I say, although perhaps not a matter of general public importance, in my submission a clearly arguable point in relation to the consideration given to the effectiveness of a section 106 agreement, which is perhaps a matter specific to this case but in my respectful submission a matter that in view of the lack of specific reference to that in the compulsory purchase decision is a decision which has a real prospect of success, interpreting those in the generous fashion indicated by Lord Woolf as not a "fanciful prospect of success" but one which is capable of serious argument.

So, my Lord, I would seek permission to appeal on all points, and particularly emphasising the important points of principle arising from this case, both before and after the implementation of the Human Rights Act .

MR JUSTICE HARRISON: Thank you very much. Mr Mould, is there anything you want to say on that?

MR MOULD: All I would say is I would invite your Lordship not to grant permission for appeal and leave the matter to the Court of Appeal themselves. The most significant issue raised by my learned friend is that which was raised as to the correctness of the approach set out in the De Rothschild case during the course of argument. Of course I acknowledge that that is an issue of significance and of course I acknowledge that it was necessary for your Lordship to consider the issue of the refined Wednesbury test, and indeed the Human Rights Act in domestic law in connection with what was said by the Court of Appeal in that case.

In my submission, on analysis, as your Lordship's judgment readily, if I may say so with respect, indicates and substantiates, when one considers the matter, the answer to the question is it necessary to read the correct approach as stated by De Rothschild significantly differently in the light of those developments, the answer is relatively straightforward, and your Lordship has come to it. In my submission, there is very little reason to suppose that the Court of Appeal would find it necessary to differ from your Lordship in relation to that point.

That being the case, I invite your Lordship to say on what is really the significant interest in this case, there is no justification for permission to be granted by this court.

The other matters are germane only to this case, the questions of detailed criticism. As your Lordship has indicated, the Secretary of State had ample reason for basing his decision in the way that he did.

MR JUSTICE HARRISON: Thank you very much. Anything you want to say on this?

MR STONE: No, my Lord, save to agree with my learned friend.

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MR JUSTICE HARRISON: Thank you. Mr Humphreys?

MR HUMPHREYS: No.

MR JUSTICE HARRISON: Thank you very much. Mr Kolinsky, whilst I appreciate the points which you made, I am not prepared to grant permission to appeal. So, if you wish to pursue the matter further, you will have to go to the Court of Appeal for it.

MR KOLINSKY: My Lord, I am grateful for the indication. May I raise a matter of housekeeping and a possible direction I would invite your Lordship to make. My Lord, part 52 rule 4 provides that:

> "Where the appellant seeks permission from the Court of Appeal, it must be requested in the appellant's notice."

And sub-paragraph 2 states that:

> "The appellant's notice must be filed at the appeal court within either (a) such period as may be directed by the lower court, or (b), when the court makes no such direction, 14 days after the date of the decision of the lower court that the appellant wishes to appeal."

My Lord, therefore in practice, unless my Lord directed to the contrary, a Notice of Appeal will need to be filed within 14 days. My Lord, in the light of the lengthy and considered judgment that my Lord has given, whilst all concerned no doubt did their best to take down all matters, it would be of great assistance to be able to reflect on the approved transcript and to target the points of appeal, if so advised, having given full and reflected consideration to that.

I would ask my Lord to direct effectively a period other than 14 days for two reasons. Firstly, to ensure that the transcript will be available so that that can be considered and, secondly, in the light of the fact that it is the last day of term and there are some logistical difficulties in doing that in the short period of time, given the important points raised, in my submission, in this case.

MR JUSTICE HARRISON: Thank you. Does any other party have any points to raise on that aspect?

MR HUMPHREYS: My Lord, just this point. I understand my learned friend's points, although I do not, with respect, support them, but of course from my client's point, and no doubt the planning authority, we wish to be getting on as soon as possible with our development, and so we would ask that the usual 14 days be adhered to.

MR JUSTICE HARRISON: Thank you. I will extend the time to 21 days.

MR KOLINSKY: Thank you, my Lord.

MR MOULD: My Lord, if I may very, very briefly apply for permission to appeal against your Lordship's decision to allow the Council's application.

My Lord, I do not say that the case raises any issues of great public interest which have not been dealt with in other decisions of this court and the Court of Appeal. My Lord, what I say is that your Lordship has dealt with the second ground of challenge essentially on the basis that the Secretary of State has failed to give adequate reasons for his decision in relation to delay and uncertainty and that he has failed effectively to observe the requirement of consistency which is vouchsafed by the Court of Appeal —

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MR JUSTICE HARRISON: I would not put the last point quite like that. He failed to deal with it at all.

MR MOULD: Exactly, failure to take account of the relevant matter.

Your Lordship will recall that in argument I attempted a detailed analysis of the relevant paragraphs of the Inspector's decision in order to show, as I submitted, that there were perfectly good reasons for understanding why the Secretary of State reached conclusions that he did. In other words, I said that the Inspector himself failed to ask the correct question and the Secretary of State could be taken to have recognised that. In relation to the Chapel case, I made submissions on the basis effectively that, on analysis, that decision was plainly distinguishable from the current case.

My Lord, whilst I accept your Lordship has found against me on those points, I say that those points are plainly arguable, and arguable with a realistic prospect of success in persuading the Court of Appeal to take a different line from your Lordship. The underlying rationale being that, in the light of the Bolton case and North Whiltshire, it is clear that it is open to the decision-maker to seek to show that, whilst he has not mentioned it in the decision letter, nevertheless on the analysis of the relevant background and material that was in front of him, on a fair reading of the decision letter it is adequately why he came to the conclusion that he did. My Lord, that was my case, and I would submit that I have a reasonable prospect of persuading the Court of Appeal, if I am allowed to put that case before them, to accept that it would follow in this case that the decision was one which was legally valid.

My Lord, that is the basis on which I put the application.

MR JUSTICE HARRISON: Thank you very much. Mr Stone?

MR STONE: I do resist that. My Lord, as to the first point, the Inspector's decision letter, that is plain to read. The reasons found by my Lord, in my submission, are inevitably to be found. I oppose the suggestion that there is a reasonable prospect of persuading the Court of Appeal otherwise.

But there is another hurdle here: the Secretary of State's complete silence about Chapel inevitably means that this has to be reconsidered by the Secretary of State. For that reason, in my submission, permission should not be granted.

MR JUSTICE HARRISON: Thank you very much. Any other parties?

MR KOLINSKY: My Lord, may I support my learned friend Mr Mould's application and also make an application on behalf of my clients on an identical basis but in addition on the additional point that it is a point of importance as to whether or not my learned friend's concession is correct that the question of uncertainty is capable of being a material consideration in the present case. My Lord, that was the way we put our case in our skeleton argument, and, my Lord, it is different from the way my learned friend Mr Mould argued it, but in my submission it is a point of importance which can properly be considered by the Court of Appeal alongside the way my learned friend Mr Mould puts his opinion.

MR JUSTICE HARRISON: Thank you very much. I am afraid, once again, I am not prepared to grant permission to appeal, so again you would have to go to the Court of Appeal for permission, if you so wish.

MR MOULD: My Lord, I know symmetry is not necessarily a powerful argument, but may I respectfully ask your Lordship to consider extending time in the same way to 21 days in relation to that.

MR JUSTICE HARRISON: I think it would be reasonable to do so.

MR KOLINSKY: My Lord, may that extension of time —

MR JUSTICE HARRISON: Yes, to both. That completes matters.

(Hearing adjourned)

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Evelyn De Rothschild, Eranda Herds Limited v Secretary of State for Transport v Bedfordshire County Council

Positive/Neutral Judicial Consideration

Court
Court of Appeal (Civil Division)

Judgment Date
12 July 1988

In the Supreme Court of Judicature

Court of Appeal (Civil Division)

On Appeal from the High Court of Justice

Queen's Bench Division

1988 WL 622533

Lord Justice Slade Lord Justice Croom-Johnson Lord Justice Ralph Gibson

Tuesday 12th July 1988

Representation

MR. JEREMY SULLIVAN Q.C. and MR. BRIAN ASH (instructed by Messrs. Horwood & James, Aylesbury, Buckinghamshire) appeared for the Appellants (Plaintiffs).
MR. JOHN LAWS (instructed by The Treasury Solicitor) appeared for the First Respondent (First Defendant).
MR. CHARLES GEORGE (instructed by The County Secretary and Solicitor to the Bedfordshire County Council) appeared for the Second Respondent (Second Defendant).

JUDGMENT (Revised)
LORD JUSTICE SLADE:

This is an appeal by Mr. Evelyn de Rothschild and Eranda Herds Limited from a judgment of Mr. Justice Mann given on 12th November 1987 whereby he dismissed an application by the appellants, who were seeking to quash a compulsory purchase order.

The appellants are the owners and occupiers of certain land in Bedfordshire which the Bedfordshire County Council, who are the second respondents to this appeal, have sought to acquire compulsorily for the construction of a southern by pass to the town of Leighton Linslade. For this purpose the County Council made a compulsory purchase order relating to part of the appellants' land, namely the Bedfordshire County Council(Leighton Linslade Southern By-pass) Compulsory Order (No. 2) 1985 . The order was made by the Council in its capacity as highway authority and in exercise of the powers conferred on it by sections 239, 240, 246 and 250 of the Highways Act 1980 and section 2 of the Acquisition of Land Act 1981 . The confirming authority in regard to the order was the Secretary of State for Transport, who is the first respondent to this appeal.

While it was not disputed that the order fell within the letter of the Council's statutory powers, the appellants objected to it on its merits. Accordingly, pursuant to section 13(2) of the 1981 Act the Secretary of State, before confirming the order, caused a public local enquiry to be held before an inspector appointed for the purpose. Section 13(2) reads as follows:

> "If any objection duly made as aforesaid is not with-drawn, the confirming authority shall, before confirming the order, either cause a public local inquiry to be held or afford to any person by whom any

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> objection has been duly made as aforesaid and not withdrawn an opportunity of appearing before and being heard by a person appointed by the confirming authority for the purpose, and, after considering the objection and the report of the person who held the inquiry or the person appointed as aforesaid, may confirm the order either with or without modifications."

The sub-section by its terms appears to confer on the Secretary of State a very wide discretion as to whether or not to confirm a compulsory purchase order, and we have heard a good deal of argument on this appeal concerning the proper principles to be applied by him in exercising this function. It is convenient to deal with this aspect of the case at this point.

It has been common ground that the exercise of this power of the Secretary of State may be challenged, at least on any of the grounds set out by Lord Denning M.R. in his judgment in *Ashbridge Investments Ltd. v. Minister of Housing and Local Government (1965) 1 W.L.R. 1320* where he said (at page 1326):

> "The court can only interfere on the ground that the Minister has gone outside the powers of the Act or that any requirement of the Act has not been complied with. Under this section it seems to me that the court can interfere with the Minister's decision if he has acted on no evidence; or if he has come to a conclusion to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account, or vice versa; or has otherwise gone wrong in law. It is identical with the position when the court has power to interfere with the decision of a lower tribunal which has erred in point of law."

These, as Mr. Justice Mann said in his judgment in the present case, are the conventional grounds of challenge and, in particular, the grounds which derive from the decision of this court in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948) 1 K.B. 223* . I will for brevity refer to these grounds as "the Wednesbury/Ashbridge grounds". However, it has to be recognised that the compulsory purchase of land involves a serious invasion of the private proprietary rights of citizens. As Lord Justice Purchas described them in *Chilton v. Telford Development Corporation (1987) 3 All E.R. 992 at 997* , the powers of compulsory purchase of an acquiring authority are of a draconian nature. The power to dispossess a citizen of his land against his will is clearly not one to be exercised lightly and without good and sufficient cause.

On behalf of the appellants Mr.

Sullivan and Mr. Ash have submitted that there are to be derived from the authorities what they call "special rules", beyond the Wednesbury/Ashbridge grounds which are applicable whenever the court is considering a challenge to a compulsory purchase order. They summarise these so-called special rules in five propositions as follows (I am quoting from their skeleton argument):

> "(i) The onus is upon the acquiring authority to justify a compulsory purchase order and upon the Secretary of State to justify his decision to confirm such an order.
>
> (ii) A compulsory purchase order should only be confirmed if it is decisively in the public interest to do so, or if there is a 'compelling case' in the public interest.
>
> (iii) Any reasonable doubt as to the justification for a compulsory purchase order is to be resolved in favour of the owner of the affected land.

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> (iv) If alternative land is available that is equally suitable for the purposes of the acquiring authority but which can be acquired without the use of compulsory purchase powers, the use of such powers cannot be justified.
>
> (v) At the very least it is for the acquiring authority to demonstrate that compulsory acquisition is necessary, and not for the landowner to demonstrate the converse."

By way of support for these five propositions, the appellants' counsel referred to general principles of our constitutional law, including the Magna Carta and Article 1 of the First Protocol to the European Convention of Human Rights . More specifically, they relied on three reported cases.

The first was the decision of Mr. Justice Forbes in *Brown v. Secretary of State for the Environment (1980) 40 P. & C.R. 285* . In that case a local authority, with a view to providing a site for gypsies in pursuance of their duty under section 6 of the Caravan Sites Act 1968 , made a compulsory purchase order in respect of land owned by the applicants. The applicants objected to the order and an inquiry was held. The inspector found that there were other sites available to the local authority, including one owned by them. He went so far as to say that the applicants' site was probably the worst. Neverthe-less, the Secretary of State confirmed the order. In his decision letter he expressly stated that he was solely concerned with the merits or otherwise of the order land and did not think it material to his decision whether or not the local authority would have chosen the applicants' land if they had considered all the possible locations at the same time. As Mr. Justice Forbes pointed out (at page 291), the Secretary of State disagreed with the inspector's conclusion:

> "not because he disagrees with the inspector on a value judgment about the suitability of these sites but because he has directed himself that the suitability of these sites is an immaterial matter for consideration in forming his decision."

On an application for judicial review, Mr. Justice Forbes considered that the Secretary of State had misdirected himself. He said the letter set out no adequate reasons for the disagreement with the inspector's conclusions. In a passage relied on by Mr. Sullivan he went on to say (at page 291):

> "It must also, it seems to me, be a matter of supreme importance, in considering whether or not to confirm a compulsory purchase order, that not only is there another suitable site available but that that very site happens to be in the ownership of the authority that is seeking to exercise compulsory purchase powers. It seems to me that there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary, in order to exercise the powers for the purposes of the Act under which the compulsory purchase order is made, that the acquiring authority should have authorisation to acquire the land in question. If, in fact, the acquiring authority is itself in possession of other suitable land – other land that is wholly suitable for that purpose – then it seems to me that no reasonable Secretary of State faced with that fact could come to the conclusion that it was necessary for the authority to acquire other land compulsorily for precisely the same purpose."

Though in this passage Mr. Justice Forbes used words which could be read as indicating that an onus of proof fell on the authority to show that acquisition was "necessary", I do not read his judgment as indicating that he regarded any special principle other

than ordinary Wednesbury/Ashbridge principles as applicable, or that he founded his ratio decidendi on any question of onus of proof. At page 292 one finds what seems to me to be the ratio of his judgment. He summarised the grounds for quashing the decision as being:

> "… first, that the Secretary of State has wrongly directed himself that the suitability of alternative sites is a matter that is immaterial to his decision, and, secondly, that he has not anywhere considered, so far as I can see, the fact that this acquiring authority seeking compulsory purchase powers had already in its hand land of its own found by the inspector to be more suitable for the purpose of the Act than the applicants' land. In those circumstances, it seems to me that the Secretary of State ignored that factor, which was a material consideration …"

The Brown decision, therefore, seems to me to illustrate conventional application of Wednesbury/Ashbridge principles, namely, on the grounds that the Secretary of State had failed to take into consideration a matter which he ought to have taken into account.

The second of the authorities upon which Mr. Sullivan relied in support of his contention that special rules apply where the court is considering a challenge to a compulsory purchase order was the decision of this court in Prest v. Secretary of State for Wales (1983) 81 Local Govt. Rep. 193 . In that case a water authority needed to make a new sewage works on the land owned by the applicants. A compulsory purchase order was made in respect of a site forming part of that land. At a public inquiry the applicants offered to convey to the authority either of two alternative sites at "existing use value" as agricultural land. The inspector recommended that the order be confirmed and the Secretary of State in due course confirmed it. However, the Secretary of State, in writing his decision letter, failed to take into account the cost of acquiring the compulsory purchase order site as against the cost of acquiring the alternative sites offered by the applicants. When the case reached this court, fresh evidence was available showing that it was highly probable that the owners of the land would obtain planning permission for development of the site proposed by the water authority for industrial purposes. This court held that the compulsory purchase order should be set aside. In the course of their judgments, the members of the court made some broad observations which have been strongly relied on by the appellant counsel in the course of their argument. Lord Denning (at page 198) said this:

> "To what extent is the Secretary of State entitled to use compulsory powers to acquire the land of a private individual? It is clear that no Minister or public authority can acquire any land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when it is necessary in the public interest. In any case, therefore, where the scales are evenly balanced – for or against compulsory acquisition – the decision – by whomsoever it is made – should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands: and then only on the condition that proper compensation is paid: see *Attorney-General v. De Keyser's Royal Hotel Ltd. (1920) A.C. 508* . If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen."

Then Lord Denning cited with approval the first of the two passages from the judgment of Mr. Justice Forbes in the Brown case I have already quoted. However, later in his judgment, Lord Denning, in referring to the power of the court to intervene in cases of this nature, specifically referred to the passage from his own judgment in Ashbridge which I have already quoted. Furthermore, he ultimately expressed the two grounds of his decision thus (at page 202) in terms which seem to me to echo the conventional Wednesbury/Ashbridge grounds. He said this:

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> "In view of the fresh evidence it would be quite unreasonable for the acquiring authority to proceed with the compulsory purchase order. Yet on 18th May 1981 they gave notice to treat and have only held their hand pending these proceedings.
>
> In the second place, even if the fresh evidence be disregarded, when the Secretary of State wrote the decision letter confirming the compulsory purchase order, he failed to take into account the cost of acquiring the CPO site as against the cost of acquiring the alternative site offered by Sir Brandon. This was a most relevant consideration."

In other words, as I read it, Lord Denning's judgment was ultimately founded on the grounds of unreasonableness and of failure to take into account a material consideration.

Lord Justice Watkins, in the course of his judgment in the same case (at page 211), made some general observations, again strongly relied on by Mr. Sullivan. He said:

> "In the sphere of compulsory land acquisition, the onus of showing that a compulsory purchase order has been properly confirmed rests squarely on the acquiring authority and, if he seeks to support his own decision, on the Secretary of State. The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought."

As I read his judgment, however, its ratio is to be found in the immediately succeeding paragraph (at page 212) where he said this:

> "I have come to the conclusion that his decision should not be upheld. A vital consideration was not inquired into, in my view. It was, therefore, left out of account in the exercise of the Secretary of State's discretion. The hope value of parts of the Miskin lands should not have been disregarded as it was, especially seeing that there was evidence of its possible existence. An inquiry into it would not, it seems to me, have delayed the decision by much time, if any. To fail to make that inquiry was a glaring omission going to a fundamental consideration."

In other words, the Secretary of State had failed to take into account a material consideration.

Lord Justice Fox's judgment contains a passage, also relied on by the appellants in this case, which seems to me to be to the same effect. He said this (at page 216):

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> "I can only conclude that, in a case where the Secretary of State decided to confirm the compulsory purchase order primarily on considerations of cost, and where shortly before his decision he was asked to take account of land acquisition costs, he confirmed the order with-out material as to what the latter costs were. Accordingly, I do not think that he can have given the proper degree of consideration to the overall question of cost. The onus of establishing that a compulsory purchase order has been properly made must be on the acquiring authority. The question of cost was a material issue."

Having considered the judgments of this court in Prest and of Mr. Justice Forbes in Brown , I conclude that both of them were merely examples of challenges to the Secretary of State's decision on conventional Wednesbury/Ashbridge grounds. Though all the judgments in Prest contained observations regarding onus, I, for my part, read them as doing no more than giving a warning that in cases where a compulsory purchase order is under challenge, the draconian nature of the order will itself render it more vulnerable to successful challenge on Wednesbury/Ashbridge grounds unless sufficient reasons are adduced affirmatively to justify it on its merits.

In *R. v. Secretary of State for the Environment, ex parte Melton Borough Council (1985) 52 P. & C.R. 318* Mr. Justice Forbes summarised what he understood to be the effect of the Prest decision in a passage upon which Mr. Sullivan also relied. He said (at page 326):

> "Throughout that case it is quite plain that the Court of Appeal was deciding that the duty of the Secretary of State to look, if necessary, for other sources of information before coming to his conclusion, arose when he was minded to confirm a compulsory purchase order. The reason for that was, quite simply, that he must satisfy himself that the compulsory purchase order is necessary before he can confirm the order so that a private citizen's land is compulsorily acquired."

I have already stated my own understanding of the Prest decision. I think that the word "necessary" itself carries with it an element of ambiguity and uncertainty and I would prefer to avoid it in this context. It does not appear in section 13(2) of the 1981 Act and Mr. Sullivan expressly disclaimed any submission that it should be read into the sub-section by a process of implication.

In answer to his and Mr. Ash's submissions as to "special rules", I summarise my conclusions thus. First, I do not accept that any special rules beyond the ordinary Wednesbury/Ashbridge rules fall to be applied when the court is considering a challenge to the Secretary of State's confirmation of a compulsory purchase order. Secondly, however, the Secretary of State, as Mr. Laws on his behalf accepted and submitted, must be satisfied that the compulsory purchase order is justified on its merits before he can properly confirm it. He must not exercise his powers capriciously. Given the obvious importance and value to land owners of their property rights, the abrogation of those rights in the exercise of his discretionary power to confirm a compulsory purchase order would, in the absence of what he perceived to be a sufficient justification on the merits, be a course which surely no reasonable Secretary of State would take.

I think that this approach to the matter reconciles the judgments in Prest with the ordinary principles of our law applicable to claims for judicial review. Furthermore, it has the merit of avoiding any reference to onus of proof, which is an expression more appropriate, as Mr. Laws pointed out, to a lis inter partes. As Lord Denning observed in Prest itself (at page 200), the Secretary of State's decision certainly is not a lis inter partes. As he said:

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> "It is a public inquiry – at which the acquiring authority and the objectors are present and put forward their cases – but there is an unseen party who is vitally interested and is not represented. It is the public at large. It is the duty of the Secretary of State to have regard to the public interest."

In making his decision, there are a multitude of different factors which the Secretary of State has to take into account. To mention only a few: questions of landscape and other amenity, feasibility, cost and delay. To talk of questions of onus of proof when so many competing factors have to be taken into the balance seems to me not only inappropriate but a somewhat difficult concept.

While, in response to the invitation of all counsel, I have thought it right to state fully my understanding of the principles which fall to be applied by the court in this class of case, I believe that ultimately, on the particular facts of this appeal, the question which we will have to decide will be quite a short one, depending on the construction of one sentence in the Inspector's letter of decision. I will explain why later in this judgment. Meantime, I revert to the facts.

The inquiry was held in April and June 1986 before an Inspector. At the inquiry, as the Inspector recorded in paragraph 177 of his report, there was no objection in principle to the need for the southern by-pass of Leighton Linslade and all the evidence supported the need both to relieve traffic in Leighton Linslade and neighbouring villages and to improve access to the industrial area of the town. The appellants, however, objected to the proposed route for the by-pass and the order affecting their own land. They put forward four alternative schemes which they said were better on engineering, agricultural and environmental grounds. All four were on land which they owned and offered to sell to the Council at a valuation. By inference they accepted that some of their land would be needed for the making of a new by-pass. The question was what land and what scheme were the appropriate ones.

The four schemes are to be found summarised in paragraph 70 of the Inspector's report where he referred to them as options 2B, 3B, 4B and 5B. In paragraph 69 of his report he had referred to a submission made on behalf of the appellants that the onus of proof was on the acquiring authority to show there were compelling reasons for compulsory purchase of land which belonged to them other than that which they had offered to sell. In paragraph 90 the Inspector recorded the acceptance by the Council that it was their responsibility to show that the order route was superior to other proposals on the balance of factors involved.

The Inspector gave a very full and very careful report. Having summarised the parties' respective submissions, in paragraphs 120 to 175 he set out his findings of fact. Then in the remaining paragraphs he set out his conclusions. In paragraphs 185 to 197 he dealt very fully with the appellants' four alternative schemes. In paragraph 185 he said that the route across the land owned by the appellants had been considered in considerable depth,since the objectors' alternative proposals were presented in some detail with the evidence of a number of expert witnesses. He recorded that option 2B was stated to be the preferred option, but in presentation and evidence option 3B was given more prominence. Then, after further observations on these alternative schemes, he stated his ultimate conclusions as to options 2B and 4B in paragraph 191, where he stated his firm conclusion that they should be rejected on grounds of extra cost, on the unsuitability of a proposed grade separated junction as a permanent junction and on doubts about its design suitability and because of landscape disadvantages. Similarly, in paragraph 193 he rejected option 5B on the grounds of cost; and in paragraphs 194 and 195 he rejected option 3B on the grounds both of extra cost and on the grounds of substantial delay, pointing out that the Council's scheme was one which virtually had universal approval and support. He clearly regarded delay as being a very significant factor. In paragraph 196 he summarised his conclusions in regard to alternative proposals thus:

> "I am of the opinion that there are no factors, including the offer to sell alternative land at Ascott Farm, which individually or together outweigh the disadvantages of extra cost and exceptional delay which would result from the adoption of the objectors' alternative routes and I believe that the Bedfordshire County Council has shown unequivocally that the Order route is the best in the public interest under the circumstances."

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Mr. Sullivan, as I understood him, submitted inter alia that this paragraph 196, when properly read, did not amount to a finding by the Inspector that the disadvantages of extra cost and delay positively outweighed the advantages of the appellants' alternatives. Reading paragraph 196 in conjunction with the earlier paragraphs to which I have referred, I have no hesitation in rejecting this particular submission. I do not think it indicates any misdirection on his part. However, as Mr. Sullivan correctly pointed out, it is the Secretary of State's decision as recorded in his letter and not that of the Inspector which is under challenge on this appeal.

The Inspector in due course submitted his report to the Secretary of State, recommending that the compulsory purchase order, together with certain other orders of the same nature, should be confirmed. By a letter of 26th November 1986 the Secretary of State gave his decision to confirm the order. In paragraph 14 he summarised the effect of the Inspector's report as follows:

> "Having considered the four alternative options of Mr. de Rothschild and Eranda Herds Limited the Inspector believes that the Council's route and the alternatives are comparable in environmental terms and marginally in the objectors' favour if there were a railway under-bridge. Considering the alignment between the A418 and the railway line on its own, the Inspector says the agricultural advantage probably lies with the objectors' route since it uses pasture rather than arable land, but in engineering terms, there is a little more certainty that the Council's alignment is more soundly based. The Inspector does not believe there is much to choose between the locations for the bypass junction on the A418 but says that a grade separated junction would take more land, cost extra, does not appear to be justified in traffic terms and the proposed design is open to question. For these reasons he does not believe a grade separated junction should be pursued, and says the junction with the A418 should be a roundabout. The Inspector considers, given that the access to the northern part of Mentmore Road is not required, the only advantage of an underbridge for the railway crossing is from a landscaping point of view and while he accepts the proposed embankment and bridge would be more visible he does not consider that, with the proposed landscaping, they would detract unacceptably from the existing landscape. The Inspector believes the costs and potential delay outweigh the environ-mental advantages of an underbridge compared with the proposed overbridge and believes it would be preferable to maintain the published vertical alignment of the bypass between the canal and the A4146. On the assumption that the bypass junction with the A418 is a roundabout, and allowing for differences in estimates, the Inspector notes that the railway underbridge and overbridge on the objectors' alignment could cost extra, in terms of money and delay. The Inspector is of the opinion that there are no factors which individually or together outweigh the disadvantages of extra cost and delay which would result from the adoption of the objectors' alternative route. He believes the County Council has shown unequivocally that the Order route is the best in the public interest under the circumstances."

Mr. Sullivan accepted that this was a full and fair summary of the reasons given by the Inspector for his recommendation in regard to the route of the proposed by pass. It is, I think, quite clear that the Secretary of State had fully understood and digested the effect of what the Inspector had found and recommended in this context.

In paragraph 16 the Secretary of State said this:

> "The Inspector notes that there was no objection in principle to the need for a bypass and all the evidence supports that need. He says the Council's scheme has been carefully worked out and in paying due regard to environmental and agricultural circumstances it achieves a reasonable balance between all the factors involved. The Inspector concludes that the objections to the Orders cannot be supported and recommends that the Orders and bridge scheme should be confirmed, with minor amendments to the Side Roads Order."

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There then followed in the Secretary of State's letter a section headed "Secretary of State's decision", of which the first paragraph, paragraph 17, read as follows:

> "The Secretary of State has carefully considered the report and recommendations of the Inspector together with all matters raised by the objectors both at the Public Inquiries and in writing. He notes that the need for the bypass to relieve traffic in Leighton Linslade and neighbouring villages and to improve access to the industrial area of the town is not in dispute, and that there is a large measure of support from the public both for the bypass and for work to start on it as soon as possible. From the evidence the Secretary of State does not believe that any of the suggested alternatives has sufficient advantages or benefits which would justify its adoption in place of the scheme as proposed by the County Council."

It is the effect of the last sentence of this paragraph, which I will call "the crucial sentence", upon which ultimately the whole of this appeal turns.

The only other paragraph of the Secretary of State's letter to which I need refer is paragraph 20, which began with the words:

> "Accordingly, the Secretary of State agrees with the Inspector's conclusions and recommendations"

He went on to express his decision to confirm the three compulsory purchase orders under consideration.

A notice of motion was issued by the appellants on 29th December 1986 challenging the Secretary of State's decision. In its original form the notice was, or may have been, defective for reasons explained at the end of the learned judge's judgment. However, the judge permitted an amendment of it and, by its amended form, the notice of motion sought an order that the relevant orders and scheme made by the Council be quashed on the grounds that the decision of the Secretary of State contained in the letter of 26th November confirming the compulsory purchase order was not "within the powers of the said Acts" in that:

> "In concluding in paragraph 17 of his said letter that:
>
> > 'from the evidence the Secretary of State does not believe that any of the suggested alternatives has sufficient advantages or benefits which would justify its adoption in place of the scheme as proposed by the County Council',
>
> the First Respondent applied a test which is wrong in law. The question was not whether the Applicants' alternative alignment for the proposed road had advantages or benefits when compared with the scheme

> proposed by the Second Respondent but whether the advantages or benefits of the latter so outweighed those of the former that there was a ‘compelling’ or ‘decisive’ case for compulsory acquisition of land in the public interest, any reasonable doubt on the matter being resolved in favour of the Applicants.”

In a variety of attractive guises this is substantially the point which the appellants' counsel have urged on us in support of this appeal. For reasons which I have already explained, I do not think that any special rules fall to be applied by us beyond the Wednesbury/Ashbridge rules when the court is considering a challenge to the confirmation by the Secretary of State of a compulsory purchase order. However, I have also already accepted that, given the draconian nature of such an order, no reasonable Secretary of State would be likely to confirm such an order in the absence of what he perceived to be a sufficient justification of his decision on its merits.

Now, on the facts of the present case, Mr. Sullivan has accepted, as was accepted on behalf of the appellants at the inquiry, that a southern by-pass to the town of Leighton Linslade is required in the public interest. He has further accepted that, if such a by-pass is to be constructed at all, part of it must inevitably pass over some part of the appellants' land. If, therefore, the Secretary of State had explicitly said that he considered that the route proposed by the Council was better than those proposed by the appellants under options 2B, 3B, 4B or 5B, I do not believe that this appeal could have got off the ground, or indeed that it would have been brought. However, in the crucial sentence in paragraph 17 of his decision letter quoted above, the Secretary of State did not say this in terms. He merely said that he did not believe that any of the suggested alternatives had sufficient advantages or benefits which would justify its adoption in place of the schemes proposed by the Council.

I would accept that, if the ultimate conclusion of the Secretary of State as expressed in his letter, when properly read as a whole, was merely that, after taking all the circumstances into account, the appellants have not shown that any of their schemes were better than the Council's scheme, his decision would be impeachable on Wednesbury grounds. For it seems to me that no reasonable Secretary of State would confirm a compulsory purchase order imposing a purchase on an unwilling land owner if that same land owner was willing to sell to the acquiring authority land which would be seen to serve equally well for the same purpose after all relevant considerations, including of course cost and delay, have been taken into account. This is essentially the way in which Mr. Sullivan has invited us to read the crucial sentence in the Secretary of State's letter. This is why earlier in this judgment I have described the issue on this appeal as ultimately depending on a short question of construction.

However, I, for my part, cannot accept Mr. Sullivan's construction of this sentence. If the crucial sentence in paragraph 17 were wrenched out of its context and read in isolation, I suppose it might be understood as indicating the Secretary of State's view that the onus was on the appellants to show that their alternative schemes, or any of them, had positive advantages over the routes proposed in the order and that the appellants had failed to discharge this onus. However, in my judgment, the crucial sentence cannot properly be read in isolation and out of its context; and, when read in its context, it does not bear this meaning.

In paragraph 17 of his letter the Secretary of State was clearly echoing and endorsing in abbreviated form the report and recommendations of the Inspector which he had already fully and fairly summarised in paragraph 14. In particular there can be no doubt that in the crucial sentence the Secretary of State was echoing and endorsing, at the very least, the Inspector's conclusion that “there are no factors which individually or together outweigh the disadvantages of extra cost and exceptional delay which would result from the adoption of the objectors' alternative routes”. At the very least, therefore, the Secretary of State was saying that the suggested alternatives were no better than the County Council's route. He quite clearly had in mind the factors of delay and expense which had weighed so heavily with the Inspector. However, the submission is that the Secretary of State by his letter was not going so far as to endorse or accept the Inspector's conclusion that the Council had affirmatively shown that the order route was the best route, simply because, in the crucial sentence in paragraph 17, he did not expressly echo the words of paragraph 196 of the Inspector's report stating what the Council had “unequivocally” shown.

In my judgment, it could not be right to analyse and pick to pieces each sentence of the Secretary of State's letter as if each sentence were a sub-section in a taxing statute. To accept the appellants' submission would, in my judgment, involve an altogether too analytical – indeed I would say perverse – construction of the language by which the Secretary of State expressed himself, when his letter is read as a whole. In paragraph 14 of his letter he had fully and fairly summarised the Inspector's conclusions, including his crucial final conclusion that the Council had shown “unequivocally” that the order route was the best in the public interest. In the last sentence of paragraph 16, which led in to paragraph 17, he had referred to the Inspector's conclusion that the objection to the order could not be supported. On a fair reading of the letter as a whole, it is in my opinion

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clear that the Secretary of State was intending to endorse the whole of the Inspector's conclusions. And, indeed, in paragraph 20 he stated without qualification that he agreed with the Inspector's conclusions.

Mr. Sullivan submitted that paragraph 20 of the decision letter was of no assistance to the Secretary of State's argument, essentially on the grounds that the Inspector himself had proceeded under an error of law as regards the burden of proof, similar to that which he had attributed to the Secretary of State. I have already stated in my view that the Inspector did not misdirect himself in any respect.

Some reliance was placed on the phrase used by Lord Denning in Prest (at page 198 of the report) that no citizen is to be deprived of his land by any public authority against his will unless the public interest "decisively so demands". As I read the Inspector's report and the Secretary of State's decision, both of them considered that the public interest did decisively so demand. The by-pass was needed. Some land of the appellants had to be acquired for the purpose. They both took the view that the Council had shown unequivocally that the order route was better in the public interest than any of the alternative routes over other land of the appellants which the appellants had proposed.

For the reasons which I have stated, the alleged error of law on the part of the Secretary of State has not, in my judgment, been substantiated and I agree with the learned judge that there are no grounds for challenging his decision. I would accordingly dismiss this appeal.

LORD JUSTICE CROOM-JOHNSON:

I agree. I have prepared a judgment which I was intending to give, but the matters in it have so comprehensively been covered by Lord Justice Slade in his judgment that there is no purpose in my going over the same ground again.

I would like to add only one very short matter and it is this. In the suggestion that in what is a special rule in compulsory purchase order cases there has to be some form of discharge of an onus of proof, I entirely agree that the form of the enquiry and the form of the decision which has to be taken by the Secretary of State is hardly appropriate for the discharge of a burden of proof in such a form. At the end what the Minister has to do is to investigate all the facts, the arguments and so forth and ultimately perform a balancing exercise. At the end he has to balance things against each other which are not at all compatible; they are not like each other and cannot be the subject of direct comparison.

In various cases, though not necessarily in this one, he may have to balance, for example, the effect on traffic flow, the requirement of the road in particular form and in a particular place, the question whether it is arable or pasture land which is being taken in the course of the compulsory purchase order, the effect on amenity and the environment and, of course, very importantly, the question of cost and the question of the time factor which has to be regarded in the carrying out of the work. In the end he comes out with what must be a value judgment that to confirm the order is justified in the public interest, and in my view it is not right to turn this value judgment into a legal formula.

The law was very succinctly stated by Lord Justice Watkins in the Prest case at page 211:

> "The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought."

It is true that that passage follows immediately upon another passage in which Lord Justice Watkins dealt with the seriousness of taking a man's land against his will; but that was the context in which the later passage came, and in my view there is no such special rule as has been urged upon us by Mr. Sullivan and Mr. Ash in compulsory purchase order cases.

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I would like to add I entirely agree also with the construction which has been put upon the Secretary of State's letter by Lord Justice Slade and I would agree that the appeal should be dismissed.

LORD JUSTICE RALPH GIBSON:

I agree that this appeal should be dismissed for the reasons given by my Lord, Lord Justice Slade, in his judgment.

Order: Appeal dismissed. First respondent's costs to be paid by the appellants. No order for costs in favour of the second respondent. Leave to appeal to the House of Lords refused.

MR. LAWS: My Lords, in those circumstances, I respectfully ask your Lordships to dismiss the appeal with an order for the Secretary of State's costs.

MR. GEORGE: My Lords, I also seek that the appellants pay the second respondent's costs. I accept that that is entirely discretionary to your Lordships whether, where one has a second respondent, there be an order for one set of costs or two sets of costs. At first instance the courts sometimes award one, sometimes two. My Lords, I would simply say that in a case such as this where the authority has actually promoted the order (the order is in Bedfordshire and so it was our order) it is inconceivable that we would not attend in order to resist the appeal. In the circumstances, we ought in fairness to get our costs.

LORD JUSTICE SLADE: Did you get your costs in the court below?

MR. GEORGE: No, my Lord, I did not get my costs in the court below because Mr. Justice Mann there said he thought one order for costs was sufficient.

My Lords, I am bound to say there is at present a divergence below. Sometimes when one has a second respondent one gets one's costs, sometimes one does not. It is purely a matter in the discretion of the judge, as I understand it. I think the former rule was at one stage that, if the second respondent was a public authority, it did not usually get its costs. My Lords, as I understand it now, the practice has been in certain instances it has been allowed its costs, and there is no very firm practice any longer. But I feel bound to draw your Lordships' attention to the fact that that is sometimes said to be the general rule and that appears to be what Mr. Justice Mann applied.

LORD JUSTICE SLADE: You and Mr. Laws were in exactly the same interest in this matter for practical purposes, were you not?

MR. GEORGE: My Lord, yes, save of course that I was always going to take the discretionary point as well, if you had been against me on that point. But, realistically, it seems to me inevitable in circumstances such as this that those I represent would wish to attend to make sure that the order was fully and forcefully resisted. Therefore, we are bound to be here and at the end of the day really the position is whether your Lordships feel it right that the ratepayers of Bedford-shire should pay for my attendance or whether the appellants should pay. The latter is the course which I would say is really the just course.

MR. ASH: My Lords, I clearly cannot resist the application of my learned friend, Mr. Laws. So far as Mr. George is concerned, I am delighted to see him here, but our challenge is to the decision of the Secretary of State, not to the decision of the County Council who made the order in the first place. There-fore, really it is, as it were, a voluntary attendance on the part of my learned friend. He did not get his costs below upon the basis that the learned judge there felt that the argument that was being run by my learned friend was exactly the same as that of Mr. Laws and therefore in those special circumstances it did not justify two orders for costs. My Lords, in those circumstances, Mr. George not having urged upon your Lordships some special reason why this court should adopt a different approach, it is my submission there should be no justification for a second order in this case.

LORD JUSTICE SLADE: We propose to direct that the appellants pay the costs of this appeal of the first respondent, the Secretary of State, but on the facts of the present case we do not think a sufficient case has been made out for making any order for costs in favour of the second respondent, the Bedfordshire County Council. Thank you all very much for your help.

MR. ASH: My Lords, I have a further application to make. I invite your Lordships to grant me leave to take this matter to the House of Lords. My learned friend Mr. George indicated the importance of this case to his clients and by implication to similar

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authorities generally, and to practitioners in this field generally. It is my submission that the main issue before your Lordships as to the question of whether special rules apply is clearly a point of law of general public importance, as is such continuing differences of approach as arguably exist between your Lordships in this court and in the Prest case. In those circumstances I would invite your Lordships to grant me leave to take this matter further.

MR. LAWS: My Lords, I take respectfully a neutral stance, save to say this. Your Lordships may desire to have in mind that something that has fuelled the Secretary of State's decision on the merits here is the delay factor in relation to the building of the road. Since your Lordships would be exercising a pure discretion in relation to leave, that might be a matter which should swing in the balance. My Lords, apart from that and subject to anything I can assist your Lordships over, there are no submissions that I desire to make.

MR. GEORGE: My Lords, I would resist the application. As I understand your Lordships' judgment, it has not in fact been because your Lordships are disapproving anything in the actual decision in Prest that has determined your Lordships' final judgment. It has simply been a construction of a particular paragraph of the Secretary of State's decision, albeit your Lordships have helpfully given some general guidance. But, so far as the matter of construction is concerned, that matter has now been determined in favour of the Secretary of State at first instance and by your Lordships in unequivocal terms. In those circumstances, I would say that really the time has come for the road to go ahead.

LORD JUSTICE SLADE: No, Mr. Ash, we think we must leave it to your clients to apply to their Lordships for leave if so advised.

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APPENDIX 2

Mr Roberts has been provided with the Argus Model that was relied upon by Mr Cottage in producing Appendix F of his Report (Document DCO 4.5).

As requested by the ExA, this spreadsheet replicates, as far as is technically possible, that model but in Excel form. However, it should be pointed out that Argus is a highly sophisticated industry model which is only available on payment of a significant subscription fee. As such, this Excel model does not have the full functionality of Argus.

In addition, the rounding of numbers within the calculations can impact on the end results although they are within reasonable tolerance.

It should be noted that the phasing/timing of development can have an impact on viability and Argus has a facility where such phasing/timing and spreading of costs and revenues can be easily altered. Whilst it is, in theory, possible to make similar amendments in this Excel spreadsheet it would be a time-consuming task as each input would have to be entered manually. However, this is the only significant drawback and there is no dispute over phasing or timing. Nonetheless, it should also be noted that, because the spreadsheet is not exactly aligned with Mr Cottage's Argus Appraisal, finance costs are slightly overstated so that a lower amount of profit is produced.

With the exception of the phasing, all other inputs can be easily amended as follows:

The Tab denoted "Individual Inputs" allows the ExA to change any entries that are coloured [ORANGE]. The original numbers adopted by Mr Cottage in his Report (Document 4.5) are coloured [GOLD] for reference and comparison.

Having changed the Individual Inputs, the ExA can click on the Tab denoted "Profit and Land Value" to test the impact of those amendments on the target land value and profit. In this regard, if the ExA enters a land value, the model will calculate the resultant developer's profit. Alternatively, if the ExA wishes to assess what the minimum land value would need to be to generate a certain level of profit, the ExA can enter a land value on a per acre basis, and the model will generate that value.

The ExA can view formulas by selecting "Formulas" from the ribbon at the top of the page, and clicking on "Show Formulas" within the "Formula Auditing" section.

MR COTTAGE'S INTRODUCTION	MR ROBERTS' INTRODUCTION
The purpose of Document DCO 4.5 was to provide, in simple terms, a high-level demonstration of why the DCO Scheme is viable and why the DCO Scheme without compulsory purchase powers over the Prologis Land is not. DCO 4.5 contained just one, high-level and conservative, illustration of how the DCO Scheme can be shown to be viable. However, as with all development appraisals, it is possible (and indeed likely) that the various income and cost inputs that are adopted may vary, and given the nature of such appraisals, relatively small adjustments can sometimes have a significant impact on value or viability. Therefore, the viability of a development can only properly be considered having regard to the potential for a number of input variations (both upwards and downwards) through the use of risk analysis, including sensitivity analysis. Assuming all inputs are rigidly fixed and simply considering the potential of one or two costs to potentially increase in isolation, in the way Mr Roberts does, can be misleading and is not a balanced way to undertake a viability analysis. It is also important to place potential income and cost variations in context. With a large development, such as the DCO Scheme, where the GDV is over £500 million and development costs are estimated at in excess of £400 million, a cost variation of, say £10 - £20 million, while on the face of it a large sum, may not be materially significant in terms of scheme viability, amounting to only 2.5 – 5% of overall costs. Particularly where there is clear potential to either improve income or reduce other costs.	As set out in my Report dated 28 April 2026, which comprises Appendix A to Doc Ref: REP3-061, a scheme is considered to be viable in planning terms if it generates sufficient incentive by way of land value for the landowner to release their land for development and a sufficient incentive by way of profit for the developer to implement their development. The broad approach is the same in assessing the viability and hence commercial derivability of the SEGRO scheme which is intended to be delivered pursuant to the dDCO. Mr Cottage's Ref DCO 4.5 concluded that the SEGRO scheme is viable because, on his numbers, it generates a profit of 15.91% which is above his required profit level. However, his appraisal assumes that Prologis/MAG land would be prepared to accept a price of £225,000 per acre. As I set out in my Report and during the CAH, I agree with Mr Cottage that a minimum profit of 15% on cost would be required in order for SEGRO to implement their scheme. However, I disagree with Mr Cottage that the value of the Prologis/MAG land would only be £225,000 per acre. My Report and evidence relied solely on the revenue and cost estimates set out in Mr Cottage's appraisal, as far as I was able to ascertain in the absence of being provided with the Argus software files by Mr Cottage and made the point that, even on his numbers, SEGRO could not generate a minimum of 15% profit on cost once proper regard is had to the price that SEGRO would have to pay in reality to acquire the Prologis/MAG land reflecting the development potential of that land. This is a simple arithmetical exercise. It was not therefore considered helpful, at that point, to challenge the inputs put forward by Mr Cottage, as the overall conclusion was that, even on this basis, Mr Cottage could not demonstrate viability. Because this is simply a function of mathematics, Mr Cottage will now need to change a number of his inputs and amend his evidence to seek to improve the viability of the SEGRO scheme so that they can both generate a minimum of 15% and pay Prologis/MAG the true value of their land. For this reason, I am not currently challenging any of the inputs adopted by Mr Cottage but will await receipt of his updated evidence whereupon I will respond to these anticipated amendments accordingly. As such, my position in respect of all inputs save for profit and land value is, by necessity, reserved at this point. I have not, therefore, commented in respect of the individual inputs at this stage except where I consider it helpful to do so.

DWD Property and Planning Limited

EMG2 WHOLE SCHEME - Testing Scheme Profitability Against Value of Prologis/MAG Land

Appraisal Summary After Adjustments

REVENUE	
Capital Unit Values	£502,621,944
Purchaser's Costs	£34,178,292
Net Revenue	£468,443,652
COSTS	
SEGRO (Highway Land)	£193,650
Aldridge Land	£33,150,000
Agent and Legal Fees	£843,690
DCO Application	£10,532,951
Discharges	£1,700,000
Construction and Contingency	£181,751,660
Additional Costs and Contingency	£111,465,358
Project Manager	£1,781,879
Marketing	£1,000,000
Leasing Agent fees	£4,517,441
Leasing Legal fees	£1,505,814
Sales Agent and Legal	£7,026,655
Finance	£25,995,734
Amount for Profit and Land	£86,978,819

CALCULATE PROFIT AT ASSUMED LAND VALUE (per acre) FOR PROLOGIS/MAG LAND

Test Price per acre	£224,533
Calculated Profit	**15.8461%**
Land Value	**£22,902,366**

SEGRO COMMENTS RE LAND VALUE AND PROFIT

Mr Cottage's comments are:

The two increased cost risks which Mr Roberts argues makes the DCO Scheme unviable, producing a profit of less than 15%, are the cost of acquiring the Prologis/MAG Land and the cost associated with undertaking the DCO Scheme Highways Works. He doesn't refer to any other possible cost risks that might make the DCO Scheme unviable in his report. The ExP will see through use of this spreadsheet that a only a very modest increase in income (in the form of increased rents and reduced yields), something both Mr Roberts and I agree is likely to be achievable, easily outweighs Mr Roberts' two cost risks and produce a viable level of profit.

To put Mr Roberts' cost risks further in context, I noted in Document DCO 4.5 that while my residual appraisal assumed a sale of the DCO Scheme within 12 months of practical completion for illustrative purposes, in reality the circa £7 million of "notional" disposal fees included in the appraisal will not be incurred by the Applicant. On its own, this saving largely counters Mr Roberts allegation that the DCO Scheme would be unviable if the Applicant had to pay his "theoretical residual value" of £31.25 million for the Prologis/MAG Land (see para 3.10 2) of Mr Roberts' report). The ExP will see this if it reduces "Sales Agent" and "Sales Legal" values to nil in the "Individual Inputs" tab and changes the "Test Price per acre" in the box above to £306,373 pa (producing a total value for the Prologis/MAG Land of circa £31.25 million).

While Mr Roberts suggests that he actually values the Prologis/MAG Land at more than £31.25 million, he provides no other valuation, nor does he provide any independent assessment of the DCO Scheme's viability. This is likely to be because the only way he could justify a higher value for the Prologis/MAG Land would be to assume more favourable rents and yields. However, this would also increase the viability of the DCO Scheme, rather than decrease it, as the assumption of higher rents and sales values would equally have to apply to both the DCO Scheme and the Prologis Scheme. The increased value this would generate for the DCO Scheme would outweigh any increased price that would have to be paid for the Prologis/MAG Land. The EXP will be able to test this using this spreadsheet.

The fact that Mr Roberts' position on the DCO Scheme's viability is misconceived isn't only evidenced by a proper consideration of the DCO's viability through sensitivity analysis. His assertion that the Applicant cannot afford to offer more than £225,000 per acre (circa £22.9 million) for the Prologis/MAG Land ignores real world events. The Applicant has already offered more than £31.25 million for the Prologis /MAG Land in total (prior to Prologis' involvement/acquisition), and so is clearly not limited to paying a price of circa £22.9 million.

CALCULATE PROLOGIS/MAG LAND VALUE AT ASSUMED PROFIT (% Cost)

Test Profit	15.8461%
Prologis/MAG	**£224,999**
Land Value	**£22,949,858**

PROLOGIS COMMENTS RE LAND VALUE AND PROFIT

Mr Roberts' comments are:

Mr Cottage made the following statements within his evidence dated 2 April 2026 (Document DCO 4.5)

Paragraph 28: *"On the basis of the option agreement SEGRO has reached with landowners to the south of Hyams Lane (and reflecting the RPI increases that agreement provides for), I have adopted a land purchase cost of circa £225,000 per acre for all of the land required to develop the EMG2 Main Site; both the 147.64 acres of land controlled by SEGRO to the south of Hyams Lane and the 102 acres comprising the Prologis Land. This level of value assumes that planning permission exists for logistics/warehouse development and that a negotiated settlement is reached with Prologis/MAG ."* Mr Cottage therefore adopted £225,000 per acre for the Prologis/MAG Land.

Mr Cottage stated at paragraph 40 of his Report *-" In my experience, and having regard to prevailing market practice, a profit on cost in the order of circa 15% would be regarded as the minimum level of return (hurdle rate) acceptable for a development of the nature and scale of the EMG2 DCO Scheme."*

His appraisal adopted £225,000 per acre and calculated a profit of 15.91%. It is therefore clear that, if SEGRO have to pay significantly in excess of £225,000 per acre to acquire the Prologis/MAG land, as they must, they will be unable to generate 15% and, by his own measure, SEGRO will not consider their scheme to be commercial viable.

Both Prologis and MAG are of the view that development of the land north of Hyams Lane is viable and the land value is significantly in excess of £225,000 and at a level such that SEGRO will not be able, based on their numbers, to generate in excess of 15%.

The Prologis/MAG land is capable of development in its own right and has a value in the market irrespective of the SEGRO scheme. That value is significantly in excess of the figure assumed by Mr Cottage of £225,000 per acre. There is therefore no evidence that SEGRO can pay market value for the SEGRO/MAG land AND generate the minimum requirement of 15% profit.

It is noted that Mr Cottage implies that I consider the theoretical residual value to be £31.25 million for the Prologis/MAG land and he describes this as my "*theoretical residual value* ". I have been plain to Mr Cottage and during these proceedings that this figure was derived entirely from using his adopted inputs to fill a gap in his evidence. For clarity, I do not consider that this is a credible assessment of value and, as mr Cottage himself now appears to believe, contrary to the position set out in his previous report, the true value is considerable in excess of this. This is set out at paragraphs 7.10 to 7.25 of my Report dated 28 April 2026 as attached to REP3-063. There is no practical purpose to Mr Cottage amending his inputs to generate a theoretical value of £31.25 million as it has no relevance to the market. His comments therefore address a "straw man" argument designed to distract from the significant viability issues that his client has yet to address. In this regard, his argument that certain costs would not be incurred still does not enable his client to meet the costs that would be incurred in overcoming the serious deficit in viability irrespective as to my position that his approach is entirely misconceived.

I note his reference to offers having been made at "*more than £31.25 million*". I understand that such offer that have been made are subject to Non Disclosure Agreements and/or without prejudice privilege hence I will restrict my comments at this stage as follows. Firstly, those offers are not currently on the table for acceptance hence are irrelevant and, secondly, the fact that they were not accepted by either MAG or Prologis tells its own story as to the extent to which they represented full value. Whilst I welcome Mr Cottage's comment SEGRO are "clearly not limited to paying a price of circa £22.9 million" there is currently no evidence in front of the ExA that they are willing or able to do so let alone pay full value by reference to what the market would pay.

= **Entries that can be changed to test outcomes**

= **Figures from Mr Cottage's Evidence DCO 4.5**

REVENUE

Mr Cottage says: As I have previously noted, only a very minor improvement in income from the DCO Scheme would materially outweigh the cost risks Mr Roberts draws attention to in his report. I agree with Mr Roberts that rents could increase and yields improve (reduce). I would encourage the ExP to increase the base rents from my appraisal by a small amount (say 25 p per sq.ft) and reduce the yields slightly (by say up to 0.25%) to see what impact that has on viability.

The net zero campus/HQ will have the same base specification as other buildings developed for the DCO Scheme, with adjustments made to reflect the occupier's specific design and specification requirements. Construction costs will be adjusted as the details become known and a rent that takes account of the design and specification upgrade will also be agreed. As increased construction costs will be funded through increased rent, no adjustments are currently required to my appraisal.

Units	Size	Rent	Yield	Years Deferred	SEGRO	Test Rent psf	Test Yield	Test Years Deferred	Test Capital Value
Unit 5A	371,300	10.00	5.500%	1.50	£62,299,358	10.00	5.50%	1.50	£62,299,358
Unit 5B	330,100	10.25	5.500%	1.25	£57,536,193	10.25	5.50%	1.25	£57,536,193
Unit 6	333,900	10.25	5.500%	1.25	£58,198,531	10.25	5.50%	1.25	£58,198,531
Unit 1	802,000	10.50	5.750%	2.00	£130,958,916	10.50	5.75%	2.00	£130,958,916
Unit 2	205,800	10.25	5.250%	1.00	£38,175,772	10.25	5.25%	1.00	£38,175,772
Unit 4	310,700	10.25	5.500%	1.25	£54,154,787	10.25	5.50%	1.25	£54,154,787
Unit 3A	390,800	10.00	5.500%	1.50	£65,571,207	10.00	5.50%	1.50	£65,571,207
Unit 3B	192,600	10.25	5.250%	1.00	£35,727,180	10.25	5.25%	1.00	£35,727,180
Purchaser's Costs		6.80%		6.80%					£502,621,944

Mr Roberts says: It is potentially the case that rents could increase and yields improve. However, the same would apply to the Prologis scheme hence, as the viability of this scheme improves so the viability of the Prologis/MAG scheme also improve further. This means that the Prologis/MAG would further increase thereby increasing the cost to the SEGRO scheme of acquiring the Prologis/MAG land.

The same points also apply to the development of the land south of Hyams Lane which Mr Cottage claims is unviable. In effect, the more he increases values relative to cost in resepct of the main scheme, the more he will have to accept that the value of the Prologis/MAG land will increase thereby negating his apparant increase in profitability, and the more viable the development of the land south of Hyams Lane in isolation becomes even before the cost of acquiring that land is taken into account.

Overall, any increase in viability by adjusting the inputs is countered by the parallel increase in the viability of both the Prologis/MAG scheme and the independent development of the land south of Hyams Lane. Mr Cottage's argument is therefore misleading.

Unit 1 has been designated by SEGRO as comprising the Net Zero Campus/HQ as referred to in the S35 Direction. However, it has been valued and costed by SEGRO on the basis of a large industrial shed with no particularly distinguishing features. This element warrants further consideration as it would impact on value and therefore viability.

I will address these issues further in my response to Mr Cottage's latest evidence.

Non PROLOGIS/MAG LAND VALUES

Mr Cottage says: I agree that the value of £225,000 per acre for the Aldridge Land should be adopted as a constant as this is the price the Applicant has agreed to pay for that land.

Description	SEGRO	TEST
Fixed Land Value for Aldridge Land	£33,150,000	£33,150,000
Fixed Land Value for Non Aldridge Land	£193,650	£193,650

Mr Roberts says:The Aldridge Land Value has been fixed by the Option Agreement entered into by SEGRO and Mr Aldridge which is reported to be at £225,000 per acre plus RPI. I understand that this Option Agreement is conditional upon the DCO being confirmed. This means that, if the DCO is confirmed, SEGRO will be committed to paying £225,000 per acre unless they can renegotiate. This is therefore considered to be a constant.

COSTS

Mr Cottage Says: I note that Mr Roberts is reserving his position in respect of the other inputs in my DCO 4.5 appraisal and may amend these in due course. However, if he does make any amendments, for his viability analysis to be credible and impartial, he will need to consider the impact of both increases and decreases in input values.

Description	SEGRO	TEST
Acquisition Agent Costs	1.000%	1.000%
Acquisition Legal Costs	0.500%	0.500%
DCO Application	£10,532,951	£10,532,951
Planning Discharges	£1,700,000	£1,700,000
Unit 5A	£59.32	£59.32
Unit 5B	£62.36	£62.36
Unit 6	£58.83	£58.83
Unit 1	£57.62	£57.62
Unit 2	£68.27	£68.27
Unit 4	£61.28	£61.28
Unit 3A	£60.32	£60.32
Unit 3B	£67.82	£67.82
Infra and Utility Contingenc	5.00%	5.00%
Contingency	2.00%	2.00%
Discharge of conditions	£1,445,000	£1,445,000
S106	£2,500,000	£2,500,000
s278	£5,232,000	£5,232,000
Earthworks and Highways	£52,800,000	£52,800,000
New Utilities	£28,491,249	£28,491,249
Utility Diversion	£4,985,000	£4,985,000
Other Infra enabling works	£5,260,000	£5,260,000
Construction Phase Consult	£4,661,000	£4,661,000
Other Land Costs	£783,235	£783,235
Project manager	1.00%	1.00%
Marketing Unit 5A	£150,000	£150,000
Marketing Unit 5B	£150,000	£150,000
Marketing Unit 6	£150,000	£150,000
Marketing Unit 1	£150,000	£150,000
Marketing Unit 2	£100,000	£100,000
Marketing Unit 4	£100,000	£100,000
Marketing Unit 3A	£100,000	£100,000
Marketing Unit 3B	£100,000	£100,000
Leasing Agent	15.00%	15.00%
Leasing Legal	5.00%	5.00%
Sales Agent	1.00%	1.00%
Sales Legal	0.50%	0.50%
Finance	6.00%	6.00%

Mr Roberts says: I have reserved my position in respect of these matters pending receipt of Mr Cottage's Response to my Report dated 28 April 2026.

I have no issue in considering increase and decreases in input values. This includes the increased cost to SEGRO of acquiring the Prologis/MAG land which would arise if Mr Cottage was correct with his assertion that values will increase disproportionately to costs.

Detailed Cash Flow	29 Feb 2026	30 Mar 2026	31 Apr 2026	32 May 2026	33 Jun 2026	34 Jul 2026	35 Aug 2026	36 Sep 2026	37 Oct 2026	38 Nov 2026	39 Dec 2026	40 Jan 2027	41 Feb 2027	42 Mar 2027	43 Apr 2027	44 May 2027	45 Jun 2027	46 Jul 2027	47 Aug 2027	48 Sep 2027	49 Oct 2027	50
Unit 5A Revenue	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 5 Revenue									1,000,000.0												6,539,958	
Unit 6 Revenue									8,627,925.87												19,558,883.57	
Unit 7 Revenue																					18,538,083.7	
Unit 8A Revenue																					16,617,283.83	
Unit 8B Revenue																					8,317,283.83	
Total Revenue	0	0	0	0	0	0	0	0	9,627,925.87	0	0	0	0	0	0	0	0	0	0	0	69,571,494.94	0
Unit 5A Purchase Co	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 5 Purchase Co	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 6 Purchase Co	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 7 Purchase Co	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 8A Purchase Co	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 8B Purchase Co	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Purchase Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 5 Construction	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 6 Construction	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 7 Construction	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 8A Construction	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 8B Construction	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Construction Cost	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Development Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Equity	-12,982,186																					
Debt	-42,617,814																					
Debt Fee	-425,400																					
Interest	-284,100																					
1.1.1 Self-Reposition	-12,615,661																					
Investor Flow	-12,615,661																					
Phase 1 - Acquisition Costs																						
1.1 Acquisition Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 1A Brokerage at P	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 1B Brokerage at P	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 2 Brokerage at Pu	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 3 Brokerage at Pu	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 4 Brokerage at Pu	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 5 Brokerage at P	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Acquisition Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Phase 2 - Construction Costs																						
2.1 Demolition	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2.2 Site Preparation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2.3 Construction	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2.4 Contingency	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Construction Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Commissions Unit 5A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Commissions Unit 5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Commissions Unit 6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Commissions Unit 7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Commissions Unit 8A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Commissions Unit 8B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sales	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Sales	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Project Manager																						
Unit 1A Project Manag	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 1 Project Manag	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 1B Project Manag	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 2 Project Manag	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 3 Project Manag	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 4 Project Manag	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 5 Project Manag	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Project Manager	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 1A - Marketing/Leasing																						
Unit 1A Marketing/Leasing	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Unit 1A Tenant Improv

	Calcs for Land Value	Calcs for Profit	
Prologis/MAG Lanc	102.00		
Prologis/MAG Lanc	£22,902,366		
Fixed SEGRO	£193,650		
Fixed Aldridge	£33,150,000		
	£56,246,016		
Revenue	£502,621,944	£502,621,944	
Purchaser's costs	-£34,178,292	-£34,178,292	
	£468,443,652	£468,443,652	
Land Value	-£22,902,366	£0	
Fixed Land Value M	-£193,650	-£193,650	
Fixed Land Value S	-£33,150,000	-£33,150,000	
Agent and Legal	-£843,690	-£500,155	
Sales Fees	-£7,026,655	-£7,026,655	
DCO Fee	-£10,532,951	-£10,532,951	
Planning Discharge	-£1,700,000	-£1,700,000	
Infrastucture Costs	-£111,465,358	-£111,465,358	
Construction Costs	-£181,751,660	-£181,751,660	
Project Manager	-£1,781,879	-£1,781,879	
Marketing	-£1,000,000	-£1,000,000	
Agent Fee	-£4,517,441	-£4,517,441	
Legal Fee	-£1,505,814	-£1,505,814	
Finance	-£25,995,734	-20,233,022.19	Finance on everything except land and acquisition fees
Total Costs	-£404,367,199	-£375,358,585	Total costs net of land, land price, acquistion costs, profit on additional costs and finance
Profit	-£64,076,453	-£59,479,697	Profit Net Land
		-£33,605,370	Surplus
	0.158461055	-£4,481,313	Profit on Surplus
		-£29,124,057	Amount left over
	-0.136785829	3.833	Period Hold Land (yrs) allowing for timing of receipts and payments
		1.2503	Finance allowance
		-£23,294,106.06	
		-£5,829,950	
		-£23,294,106	Land and Acquisition costs
		-£22,949,858	Land Value

APPENDIX 3

Net Zero Teesside Project documents comprising:	
Appendix 3A	Environmental Statement Non-Technical Summary
Appendix 3B	Environmental Statement Chapter 4
Appendix 3C	Environmental Statement Chapter 25
Appendix 3D	Examining Authority Report
Appendix 3E	Decision Letter

APPENDIX 3A

ENVIRONMENTAL STATEMENT NON-TECHNICAL SUMMARY

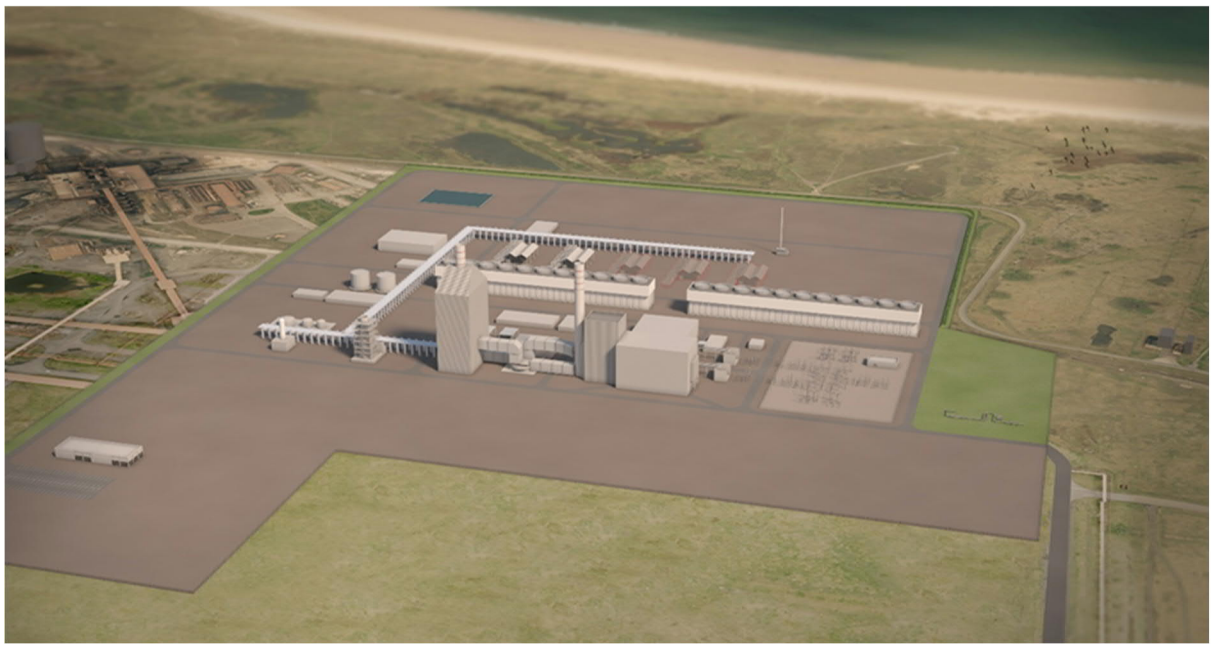
Net Zero Teesside – Environmental Statement

Planning Inspectorate Reference: EN010103

Document Ref. 6.1 ES Non-Technical Summary

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)

The Infrastructure Planning (Applications: Prescribed Forms and Procedure Regulations 2009 - Regulation 5(2)(a)



Prepared by: AECOM

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1. Non-Technical Summary

1.1 Introduction

1.1.1 This document presents a Non-Technical Summary (NTS) (Document Ref. 6.1) of the Environmental Statement (ES) that has been prepared to accompany the Development Consent Order (DCO) Application for the construction, operation and maintenance of the on-shore part of the wider Net Zero Teesside project (NZT) in Teesside. This part is called the Proposed Development.

1.1.2 NZT will be the UK's first commercial scale, full chain Carbon Capture, Usage and Storage (CCUS) project, and will initially capture up to 4 million tonnes of carbon dioxide (CO_2) emissions per annum, the equivalent to the annual energy use of over 1 million homes in the UK. The NZT project will therefore make a significant contribution toward the UK reaching its net zero greenhouse gas emissions target by 2050.

1.1.3 The Proposed Development (see Diagram NTS 1) comprises:

- a new gas-fired electricity generating station (power station) with post-combustion carbon capture plant with a gross electrical output of up to 860 megawatts (MWe);
- gas, water and electricity connections (for the generating station);
- a CO_2 pipeline network (a 'gathering network') for collecting CO_2 from a cluster of local industries on Teesside;
- a CO_2 compressor station (for the compression of the CO_2); and
- first part of a CO_2 export pipeline to transport the captured CO_2 off shore for permanent storage beneath the North Sea.

1.1.4 The Proposed Development to which this DCO application and supporting ES relates covers all works associated with the Project down to Mean Low Water Springs (MLWS), and (if required) the refurbishment or replacement of an existing effluent outfall below MLWS into the Tees Bay. The parts of the development below Mean High Water Springs also require consenting by a Marine Licence. This includes the initial section of CO_2 export pipeline as well as the effluent outfall.

1.1.5 The offshore elements of the NZT project (Diagram NTS 2), including the off-shore portion of the CO_2 Export Pipeline, the CO_2 store itself and CO_2 injection wells into the underground Endurance store (located approximately 145 km to the south-east of Teesside) and the associated off-shore infrastructure do not form part of the Proposed Development and will be consented separately.

Diagram NTS 1: The Proposed NZT Project

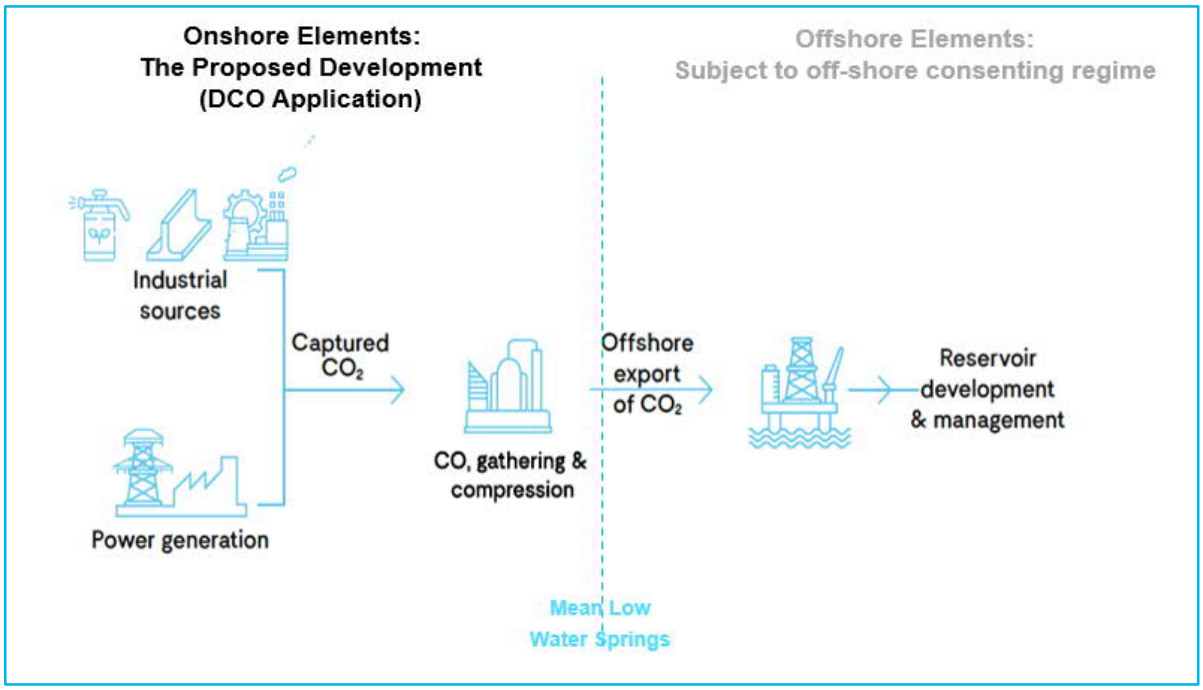


Diagram NTS 2: Offshore Elements of the NZT Project

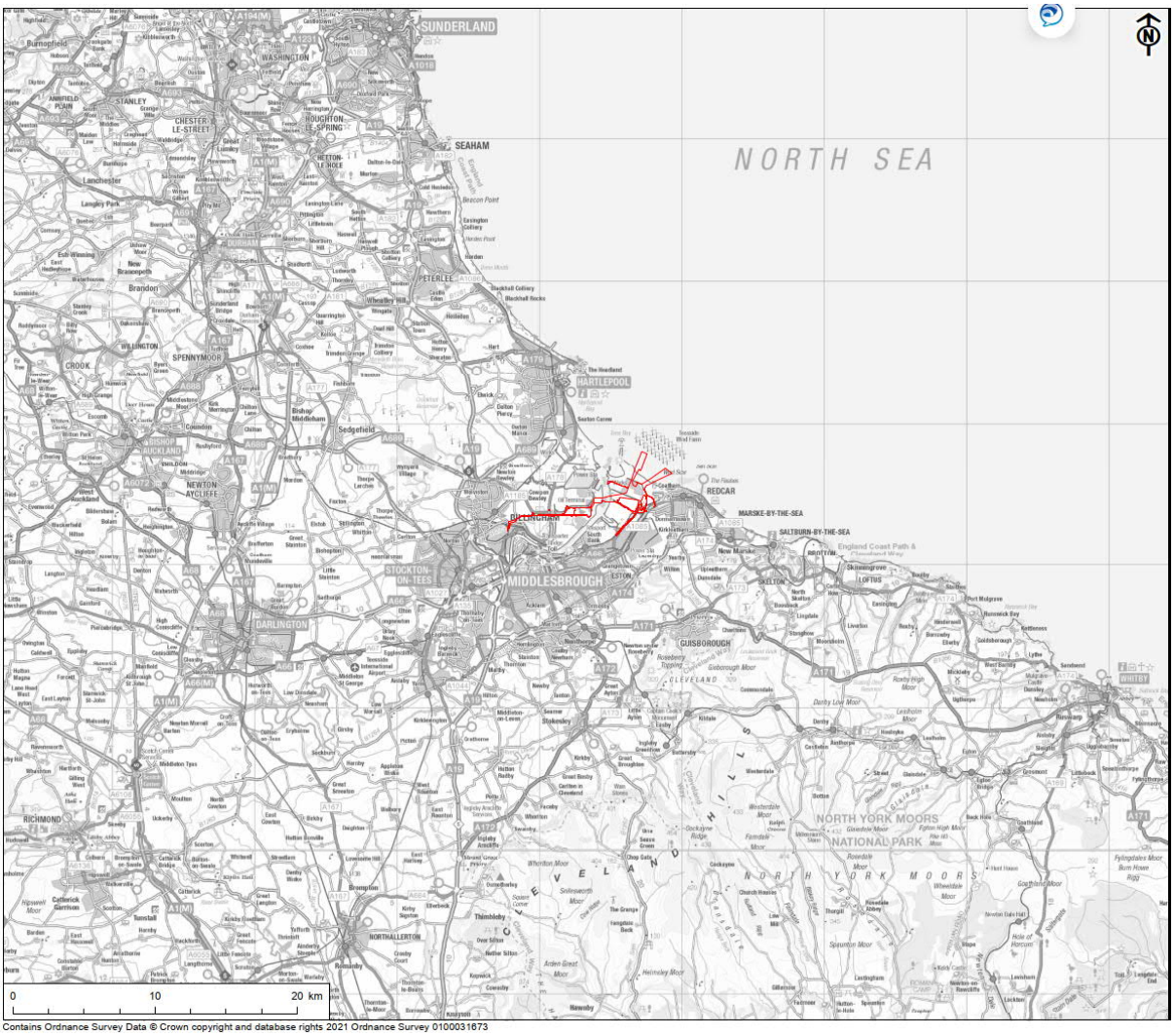
1.1.6 Whilst the Proposed Development is designed for the future capture and storage of CO_2 from third-party industrial emitters on Teesside (including from hydrogen production), the capture of these emissions does not form part of the DCO application and is not considered in this ES. Third-party connections to the wider carbon capture network installed as part of this development will be the subject of separate consent applications.

1.1.7 The Proposed Development Site ('the Site') covers a wide area located within the administrative boundaries of Redcar and Cleveland Borough Council (RCBC) to the south of the River Tees (South Bank and Dormanstown Wards) and in Stockton-on-Tees Borough Council (STBC) to the north of the River Tees (Billingham South Ward). A large portion of the Site to the South of the Tees lies within the South Tees Development Corporation (STDC) masterplan site, known as Teesworks.

1.1.8 The Site boundary for the purposes of the DCO application, including land for the connection corridors and temporary land required during construction of the Proposed Development, has been refined through on-going studies and taking into account responses received through statutory and non-statutory consultation.

1.1.9 The Site Location is shown on Diagram NTS 3: Site Location Plan.

Diagram NTS 3: Site Location Plan



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1.1.10 The purpose of this NTS is to describe the Proposed Development and provide a summary in non-technical language of the key findings of the ES.

1.1.11 The ES has been prepared to comply with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) ('the EIA

Regulations'). Environmental Impact Assessment (EIA) is a systematic process used to predict the adverse and beneficial effects of a proposed development. An Environmental Statement (ES) has been prepared and submitted with the DCO Application for the Proposed Development (Document References 6.2 to 6.4).

1.1.12 The ES presents:

- a description of the Proposed Development including information on the Site and the development design, size and other relevant features;
- baseline data gathered during the impact assessment process;
- information on the reasonable alternative sites, technologies and layouts that have been considered and the main reasons for the options chosen;
- an assessment of the likely significant environmental effects of the construction, operation (including maintenance) and eventual decommissioning of the Proposed Development; and
- measures that are proposed to avoid, prevent or reduce, or if possible, offset, such likely significant adverse effects.

1.1.13 Section 2 of this NTS summarises the assessment methodology. Technical details of the EIA process are provided within Chapter 2: Assessment Methodology (ES Volume I, Document Ref. 6.2).

1.1.14 Further information on the Proposed Development can be found in Chapter 4: Proposed Development (ES Volume I, Document Ref. 6.2) and on the project website: https://www.netzeroteesside.co.uk/.

1.2 The Applicants

1.2.1 Net Zero Teesside Power Limited ('NZT Power') and Net Zero Teesside North Sea Storage ('NZNS Storage') are together 'the Applicants" for the DCO Application.

1.2.2 NZT Power is a partnership between bp, Eni, Equinor and Total, with bp leading as operator. NZT Power will be responsible for NZT in so far as it relates to the construction, operation and eventual decommissioning of the power station together with its carbon capture plant.

1.2.3 NZNS Storage is a partnership between bp, Eni, Equinor, National Grid, Shell and Total with bp leading as operator, and will be responsible for the construction, operation and decommissioning of the equipment required for the high-pressure compression of CO_2 from the power station and local businesses/industries, as well as the CO_2 gathering network and the onshore section of the CO_2 export pipeline – these are all within the scope of the DCO Application.

1.2.4 NZNS Storage will also be responsible for the offshore elements of NZT, comprising the offshore section of the CO_2 transport/export pipeline to a suitable offshore geological CO_2 storage site under the North Sea, CO_2 injection wells and associated infrastructure. The offshore elements of NZT (with the exception of the gas and CO_2 pipeline crossings of the River Tees

and the water outfall from the power station) are not included in the DCO Application and will be subject to separate consent applications.

1.3 The Development Consent Order

1.3.1 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (an 'NSIP'). The Applicant has therefore submitted an application to the Secretary of State (for Business, Energy and Industrial Strategy) under Section 37 of the Planning Act 2008 (the Planning Act), seeking a DCO for the Proposed Development.

1.3.2 Subject to it being granted by the SoS the DCO provides the necessary authorisations and consents for the construction, operation and maintenance of the Proposed Development.

2. Assessment Methodology

2.1 EIA Methodology

2.1.1 The assessment presented in the ES follows a standard Environmental Impact Assessment (EIA) methodology, which is summarised below.

2.1.2 The objective of the EIA process is to anticipate the changes (or 'impacts') that may occur to the environment as a result of the Proposed Development, such as increases in traffic and changes to air quality or noise. The changes are compared to the environmental conditions that would have occurred without the Proposed Development (defined as 'the baseline'). The EIA process identifies potentially sensitive 'receptors' that may be affected by these changes (e.g. people living near the development, local flora and fauna) and defines the extent to which these receptors may be affected by the predicted changes (i.e. whether or not the receptors are likely to experience a 'significant effect').

2.1.3 Where possible, the EIA uses standard methodologies, based on legislation, defined standards and accepted industry criteria. This is set out in detail in each technical chapter of the ES (Volume I, Document Ref. 6.2).

2.1.4 Effects on the receptors can be adverse (negative), neutral (neither negative nor positive) or beneficial (positive). They can also be temporary (e.g. noise during construction) or permanent (e.g. the views of the finished buildings).

2.1.5 For the purpose of the ES, adverse and beneficial effects are described as 'significant' or 'not significant'. Where the EIA predicts a significant adverse effect on one or more receptors, mitigation measures are identified where possible to avoid or minimise the effect, or to reduce the likelihood of the effect happening. The use of such mitigation will be secured through Requirements included within the draft DCO or through other legislation and consenting regimes. Details of the EIA Assessment Methodology are provided within Chapter 2: Assessment Methodology (ES Volume I, Document Ref. 6.2).

2.2 EIA Scoping (Selection of Environmental Topics to be assessed)

2.2.1 EIA Scoping is a process that is designed to identify relevant topics that should be included in the EIA and reported in the Environmental Statement (ES). An EIA Scoping Report and a request for an EIA Scoping Opinion under Regulation 10 of the EIA Regulations was submitted to the Planning Inspectorate (PINS) and relevant consultees on 20th February 2019 to allow them to comment on the extent and approach to the environmental assessments to be undertaken.

2.2.2 A Scoping Opinion was received from PINS on 2nd April 2019 and is presented within Appendix 1B in ES Volume III (Documents Ref. 6.2). The ES is based on the Scoping Opinion and therefore includes assessments of the following environmental topics:

- air quality;
- surface water environment (hydrology and water resources including flood risk);
- geology, hydrogeology and contaminated land;
- noise and vibration;
- terrestrial ecology and nature conservation;
- aquatic ecology;
- marine ecology and nature conservation;
- ornithology;
- traffic and transport;
- landscape and visual amenity;
- archaeology and cultural heritage;
- marine heritage;
- socio-economics and tourism;
- climate change;
- major accidents and natural disasters;
- population and human health; and
- cumulative and combined effects.

2.2.3 Following the completion of an EIA Scoping Report and publication of PINS' Scoping Opinion, the environmental information for a DCO is reported in two stages:

- a PEI Report, which is prepared to inform consultation with the public and other stakeholders about the Proposed Development, based on the preliminary environmental information available at the time of consultation; and
- an ES, which is then prepared to accompany the DCO Application and includes the EIA of the Proposed Development, taking account of any design evolution that has taken place as well as feedback received during consultation.

2.2.4 The PEI Report for the NZT Project was prepared to meet the requirements of Regulation 12(2) of the EIA Regulations and was published in June 2020. In order to enable consultees to understand the likely environmental effects of the Proposed Development, the PEI Report presented preliminary findings of the environmental assessments undertaken up to that point in time. This allowed consultees the opportunity to provide informed comments on the

Proposed Development, the assessment process and preliminary findings, through a consultation process prior to the finalisation of the ES.

2.2.5 Regulation 14(2) describes the requirements of an ES, which includes a description of the Proposed Development, its likely environmental effects, measures to avoid, prevent, reduce and offset likely significant adverse effects, a description of alternatives and reasons for the options chosen, and a nontechnical summary of the information. This document is the non-technical summary of the ES submitted with the DCO application.

2.3 Consultation

2.3.1 Consultation is integral to the preparation of DCO applications and to the EIA process. The Planning Act requires applicants for development consent to carry out pre-application consultation on their proposals. This includes consultation on the PEI Report, as described above.

2.3.2 Consultation with key stakeholders has been ongoing throughout the EIA process and on publication of the PEI Report, and comments have been addressed in the ES where applicable.

2.3.3 All the consultation responses received have been considered in the preparation of the Application and supporting documentation, as set out in the Consultation Report (Document Ref. 5.1) that also accompanies the DCO application.

2.4 ES Report Structure

2.4.1 The format of the ES is as follows:

2.4.2 Volume I of the ES (Document Ref.6.2) is structured into chapters, as follows:

- Chapters 1 and 2 – an introduction to the ES and EIA assessment methodology approach;
- Chapters 3 to 6 – a description of the Proposed Development including information on the surrounding area and on construction timescales and alternatives;
- Chapter 7 – a summary of relevant legislation and policy;
- Chapters 8 to 23 –assessments of the likely significant effects of the Proposed Development in relation to the environmental topics considered in the EIA;
- Chapter 24 – an assessment of the potential for cumulative and combined effects to occur as a result of the Proposed Development; and
- Chapter 25 – a summary of the potential significant environmental effects identified.

2.4.3 Volumes II (Document Ref. 6.3) and III (Document Ref. 6.4) of the ES contain the figures and technical appendices respectively that accompany each chapter of Volume I.

2.4.4 The ES is accompanied by this NTS (Document Ref. 6.1).

3. Description of the Existing Environment

3.1 The Site Details

3.1.1 All of the land included within the DCO boundary (or 'Order Limits') is referred to as 'the Site' for the purposes of the ES and this NTS. The Site has an area of 462.0 ha and contains all of the land required for the Proposed Development.

3.1.2 Also within the Site is the area referred to as the Power, Capture and Compressor site (the 'PCC Site') within which the main built development will take place and which will be the location of the power station together with the associated carbon capture and compression facilities.

3.1.3 The Site is divided into the following areas (described in more detail in Chapter 3: Description of the Existing Environment (ES Volume I, Document Ref. 6.2). Further detail on the different areas which make up the Proposed Development is provided in this Section 4 of the NTS and Chapter 4: Proposed Development (ES Volume I, Document Ref. 6.2).

- The Site boundary and the PCC Site (refer to Diagram NTS 4);
- CO_2 Export Pipeline (refer to Diagram NTS 5);
- Natural Gas Connection (refer to Diagram NTS 6);
- Electrical Connection (refer to Diagram NTS 7);
- Water Connections (refer to Diagram NTS 8); and
- CO_2 Gathering Network (refer to Diagram NTS 9).

3.1.4 The PCC Site has an area of approximately 42.5 ha and will be located on the existing Teesworks site. This is land which was formerly part of the former Redcar Steelworks site and is located on the south bank of the River Tees, to the south-east of the Redcar Bulk Terminal, in the South Bank Ward of RCBC

3.1.5 The former Redcar Steelworks site comprises approximately 225 ha of land previously used for iron and steel manufacture developed on land reclaimed from the Tees Estuary over the late 19th and 20th centuries. The area in which the PCC will be developed currently contains some redundant large-scale plant and buildings associated with the steelworks although these will be removed prior to construction of the Proposed Development.

3.1.6 The former Redcar Steelworks site also contains parts of parts of the CO_2 Export Pipeline Corridor, parts of the CO_2 Gathering Network Corridor, parts of the Natural Gas Pipeline Corridor, and parts of the Water Supply and Discharge Connection Corridors.

3.1.7 Both the Water Discharge Corridor and the CO_2 Export Pipeline cross Coatham Dunes and Coatham Sands before continuing seaward. The Water Supply Corridor follows the route of the former Northumbrian Water feed to the former Redcar Steelworks site.

3.1.8 The PCC Site is remote from residential receptors, although there are areas of public/private amenity close to its northern and eastern boundary. The nearest residential settlements are the town of Redcar (approximately 1.8 km east of the PCC Site) including the suburb of Dormanstown (approximately 1.4 km to the south east of the PCC Site) and the village of Warrenby (approximately 0.7 km to the south-east of the PCC Site), which consists of the Warrenby Industrial Estate and a single residential property (Marsh House Farm).

3.1.9 The other Connections Corridors outside the former Redcar Steelworks site are located within and around land developed for use by the steel industry from the late 19th century and by the chemical industry after the second world war, including land at Billingham and Seal Sands. The majority of this land has also been reclaimed from the Tees Estuary in the past.

3.1.10 The other connections corridors pass through vacant land or existing utilities corridors to the south and north of the River Tees.

3.2 The Surrounding Area

3.2.1 The area surrounding the site is described in more detail in Chapter 3: Description of the Existing Environment (ES Volume I, Document Ref. 6.2). The area surrounding the Site is predominantly characterised by industrial land uses.

3.2.2 To the north of the Site lie the coastal areas of South Gare and Coatham Sands. To the south and west lie Northumbrian Water's Bran Sands wastewater treatment plant and operational land of PD Ports Teesport. To the south-east is the Wilton International chemical complex.

3.2.3 The Site extends north and west across the River Tees through Seal Sands and on towards Billingham. On the north bank of the River Tees industrial complexes are present at Seal Sands and Billingham, with both industrial and residential development at Port Clarence.

3.2.4 Access routes to the Site will be via existing access roads from the A1085 Trunk Road between Redcar and the A1053 Tees Dock Road, north of Grangetown and approximately 4 km south of the PCC Site. From here, the A19 will be accessed from either the A66, passing north of Middlesbrough, or the A174, passing to the south. Traffic accessing parts of the Site located to the north of the River Tees will travel from the A19 via the A1046, A178 and A1185.

3.3 Potential Sensitive Receptors

3.3.1 A number of environmental receptors have been identified within and outside the boundary of the Site and are described in more detail in Chapter 3: Description of the Existing Environment (ES Volume I, Document Ref. 6.2). Distances are provided as the shortest distance between the receptor and the closest point of the boundary of the Site and/or the PCC Site.

3.3.2 Key receptors for each topic area have been identified as part of the assessment process and details are included in the relevant technical

chapters (Chapters 8 to 24, ES Volume I, Document Ref. 6.2). A summary is also provided below.

Residential Receptors

3.3.3 There are no residential receptors within 500 m of the PCC Site. The closest residential properties (individual receptors) to the PCC Site are those at Marsh House Farm in Warrenby 650 m to the east and on Broadway West in Dormanstown, approximately 1.4 km to the south-east. There no residential receptors within the wider Site boundary.

Sensitive Environmental Receptors

3.3.4 There are no statutory designated ecological sites within the PCC Site. Three statutory designated ecological sites are located immediately north of the PCC Site and which are also crossed by the Site boundary. These are:

- Teesmouth and Cleveland Coast Special Protection Area (SPA);
- Teesmouth and Cleveland Coast Ramsar site; and
- Teesmouth and Cleveland Coast Site of Special Scientific Interest (SSSI).

3.3.5 The SPA/Ramsar sites include a range coastal habitats (sand and mud-flats, rocky shore, saltmarsh, freshwater marsh and sand dunes) on and around the Tees Estuary and are designated for internationally important numbers of marine and shore birds including breeding and wintering waterfowl. The SPA/Ramsar site was recently extended to include Coatham Dunes. The SSSI is nationally important for sand dune and salt marsh habitats, breeding harbour seals and a range of bird species.

Public Rights of Way and Highways

3.3.6 There are no adopted highways within the PCC Site. The Site extends across a number of transport routes (highways and railways). These include (but are not limited to):

- A178;
- A66;
- A1085;
- A1053;
- A1046;
- A1185;
- B1275;
- A1058;
- A1056;
- A1185;
- B1275;
- South Gare Road;
- Tees Valley railway line; and
- Stockton to Hartlepool railway line.

3.3.7 The PCC Site is not crossed by any Public Rights of Way (PRoW). The nearest PRoW to the PCC Site are:

- Bridleway 116/32/1– the nearest point of which is approximately 630 m east of the PCC Site; and
- Footpaths 116/31/1 and 116/31/2 – approximately 1.65 km south of the PCC Site.

3.3.8 A number of PRoW cross the Site away from the PCC Site, namely:

- Footpath 116/31/1 at Dabholm Gut;
- Footpath 116/31/2 at Dabholm Gut
- Bridleway 116/9/1 to the south of Bran Sands wastewater treatment plant; and
- Bridleway 116/9/2 to the south of Bran Sands wastewater treatment plant.

3.3.9 Two long-distance footpaths cross the Site, namely the England Coast Path and the Teesdale Way which run through the Site to the north, east and south of the PCC Site. The Teesdale way crosses the routes of the Water Discharge Corridor and the CO_2 Export Pipeline Corridor. The England Coast Path crosses the CO_2 Gathering Network Corridor in Saltholme.

Air Quality

3.3.10 There are no Air Quality Management Areas (AQMAs) within the Site boundary as no AQMAs have been declared in either of the administrative areas of RCBC or STBC.

Geology and Hydrogeology

3.3.11 Man-made Ground is widespread across the former Redcar Steelworks site. This Made Ground is associated with the reclamation of land from the Tees estuary using waste materials (including slag) and the long historical industrial use of the Site and surrounding area.

3.3.12 The Site is underlain by superficial deposits, including but not limited to peat, beach and tidal flat deposits and glacial till.

3.3.13 The bedrock geology underlying the Site includes:

- Sherwood Sandstone Group (Triassic) in the north and west;
- Mercia Mudstone Group (Triassic) in the centre (underlain by the Sherwood Sandstone Group);
- Penarth Group (Triassic), which occurs as a thin bed between the Mercia Mudstone Group and the overlying Redcar Mudstone Formation; and
- Redcar Mudstone Formation (Jurassic) in the south and east (underlain by the Mercia Mudstone Group, Penarth Group and Sherwood Sandstone Group).

3.3.14 The Sherwood sandstone and Mercia Mudstone are classified by the Environment Agency as Principal Aquifer and Secondary Aquifer respectively.

3.3.15 There are no Groundwater Dependent Terrestrial Ecosystems or Source Protection Zones that can potentially be impacted by the Proposed Development.

Hydrology and Flood Risk

3.3.16 The PCC Site is located in Flood Zone 1 (low risk). There are areas within the wider Site Boundary that are within Flood Zone 1, Flood Zone 2 (medium risk) and Flood Zone 3 (high risk). Some of the land in Flood Zone 3 benefits from flood defences.

3.3.17 The nearest designated watercourse to the PCC Site is the River Tees, located approximately 1.6 km to the west (at its closest point). The Proposed Development includes proposed pipeline crossings under the River Tees.

3.3.18 The Dabholm Gut flows to the River Tees approximately 0.8 km south of the PCC Site. The Dabholm Gut is tidal and receives water from The Fleet, The Mill Race and Dabholm Beck.

3.3.19 The North Sea is approximately 400 m north of the PCC Site and the Site Boundary extends into the North Sea at Coatham Sands.

3.3.20 The Site Boundary crosses a number of minor surface water courses and there are other water bodies including localised drains, pools/surface water bodies and areas of marshy ground within the Site.

Cultural Heritage Receptors

3.3.21 There are no designated heritage assets within the Site.

3.3.22 There is one Scheduled Monument located within 5 km of the PCC Site; a World War I early warning acoustic mirror located approximately 4.7 km east of the PCC Site. There are 25 Scheduled Monuments within 5 km of the Site boundary.

3.3.23 There are at least 80 listed buildings within 3 km of the PCC Site, 5 of which are Grade I and 9 of which are Grade II*. There is a cluster of 23 listed buildings at Kirkleatham, five of which are Grade I and six of which are Grade II*.

3.3.24 There are a further 23 listed buildings in the vicinity of Lazenby, Wilton and Lackenby, two of which are Grade II*. There is a further Grade II* listed building located approximately 1 km south of the proposed Site Boundary at Billingham and one at South Bank located approximately 1.4 km west of the proposed Site Boundary.

3.3.25 There are Conservation Areas at Wilton, Kirkleatham and Yearby, all located more than 2.5 km to the south-east of the Site.

3.3.26 Albert Park is a Registered Park and Garden which is located approximately 3.4 km southeast of the Site boundary in Middlesbrough

Diagram NTS 4: Site Boundary and PCC Site

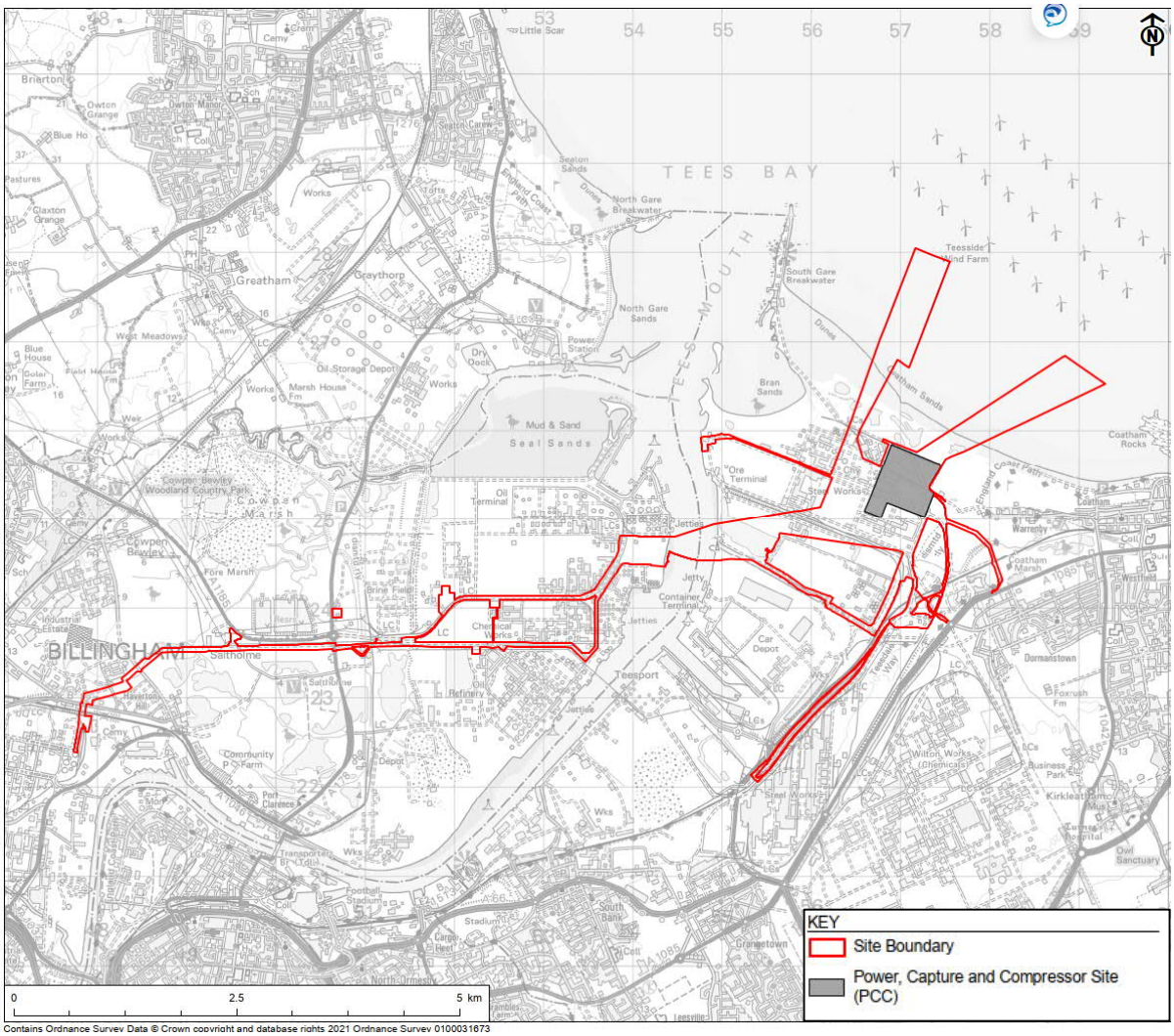

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Diagram NTS 5: CO2 Export Pipeline

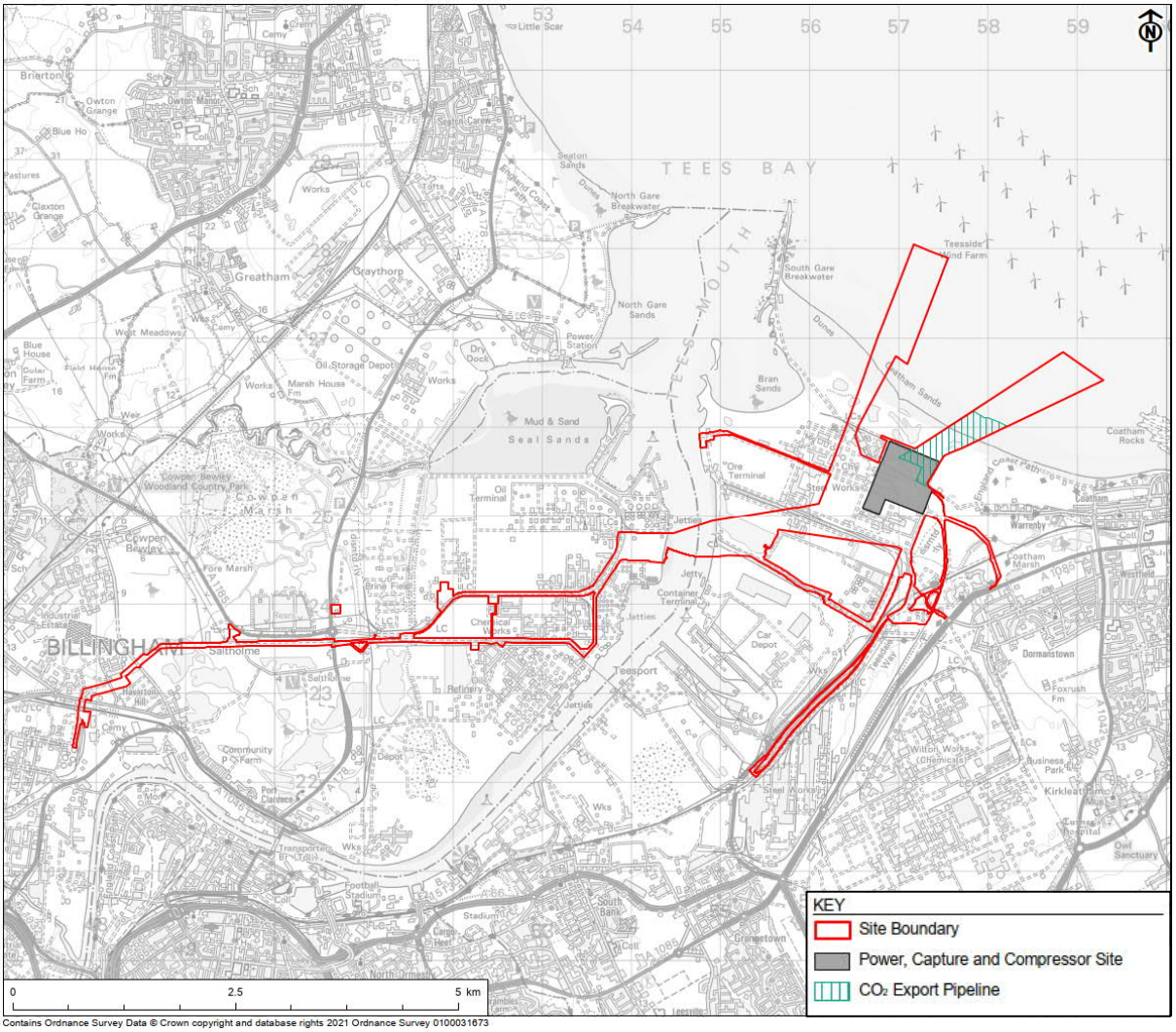

Diagram NTS 6: Natural Gas Connection

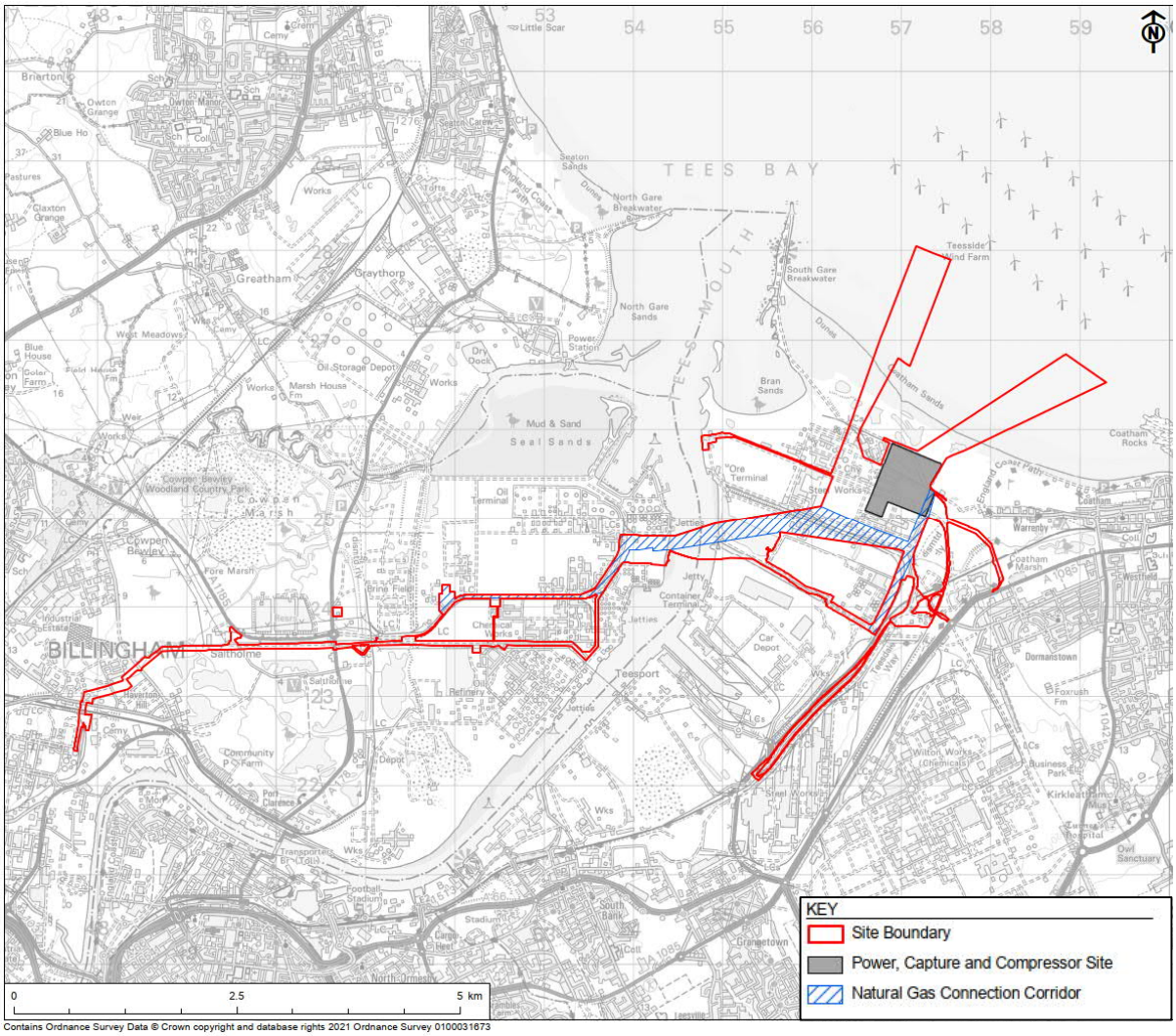

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Diagram NTS 7: Electrical Connection

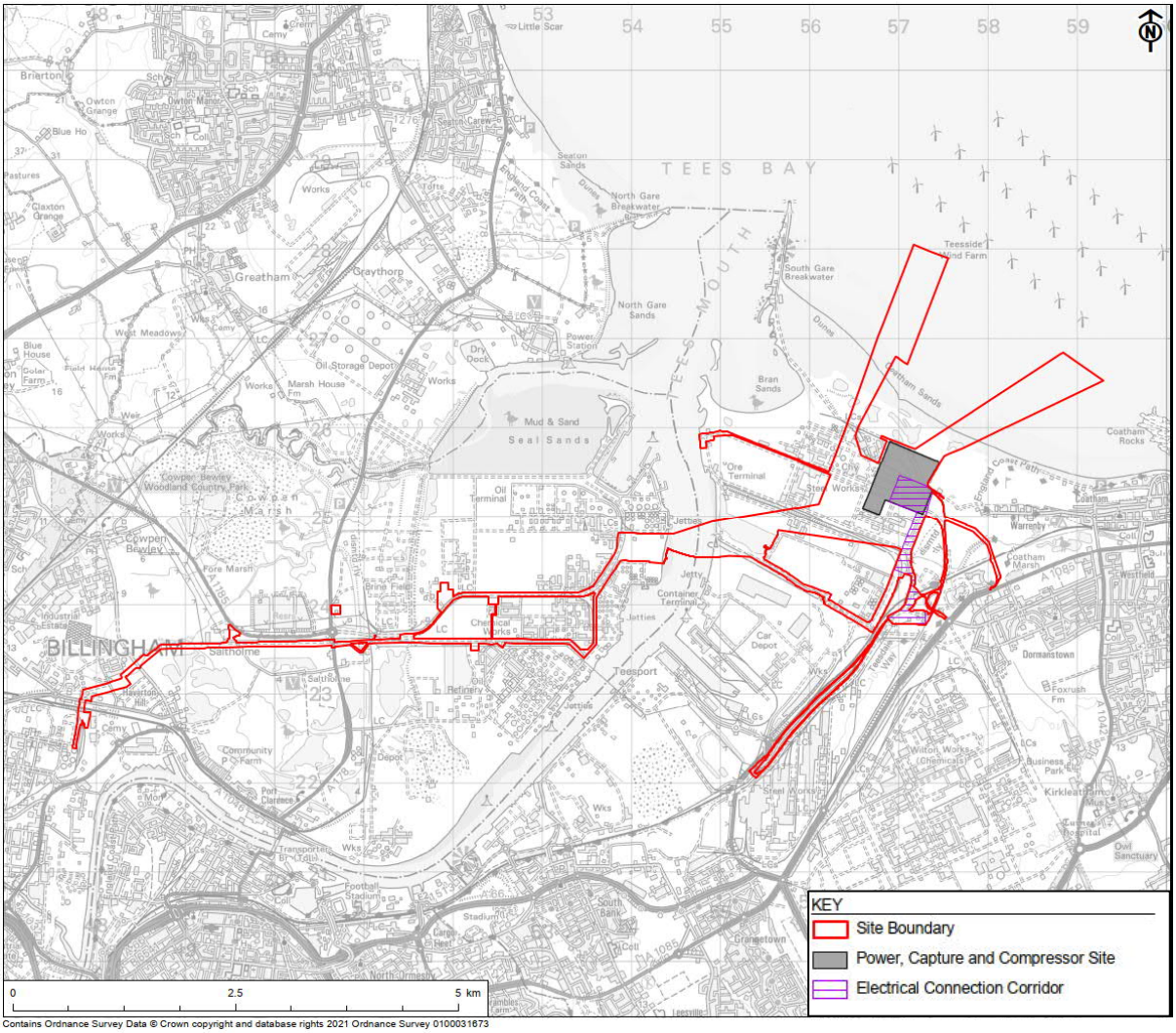


Diagram NTS 8: Water Connections

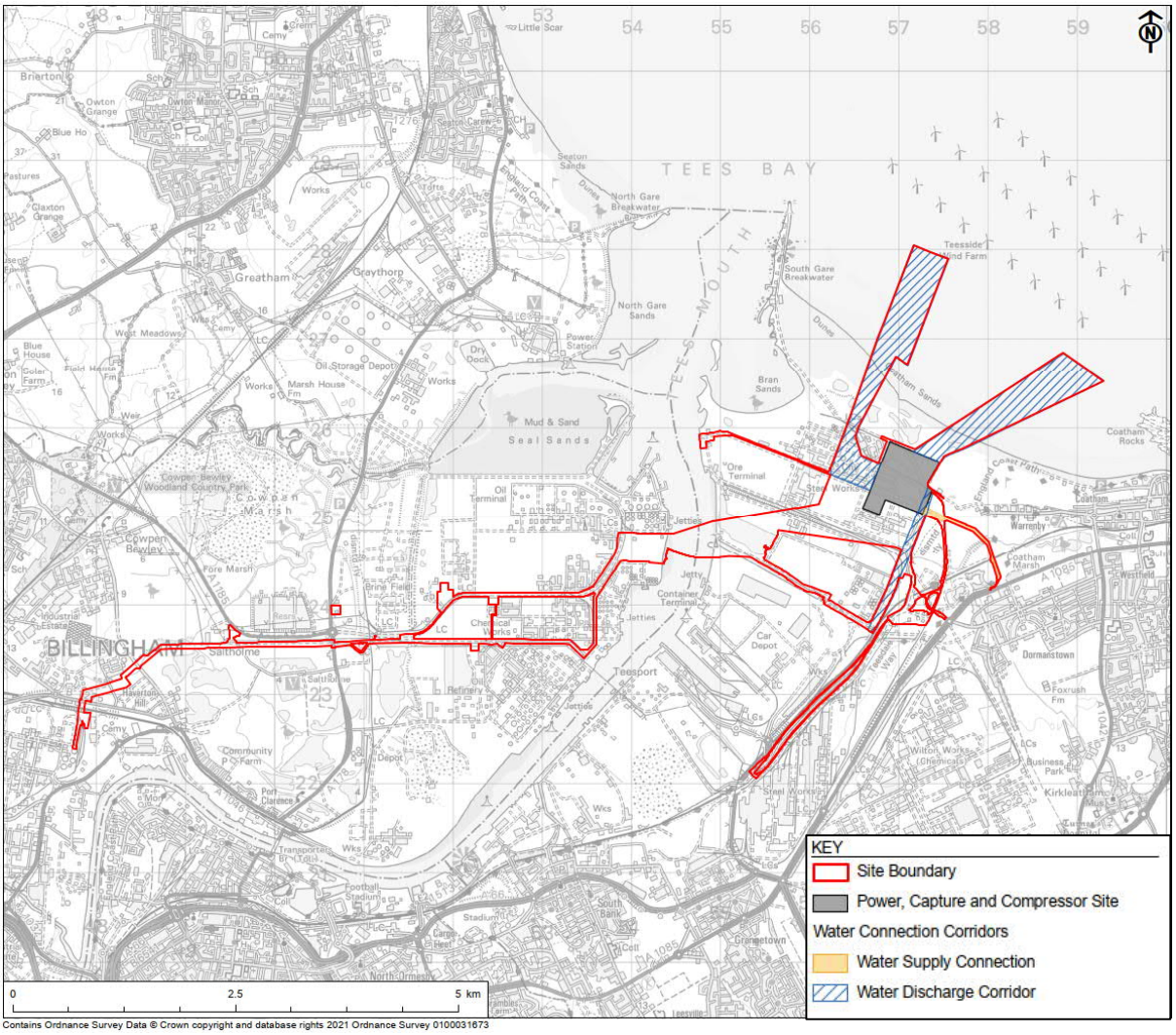
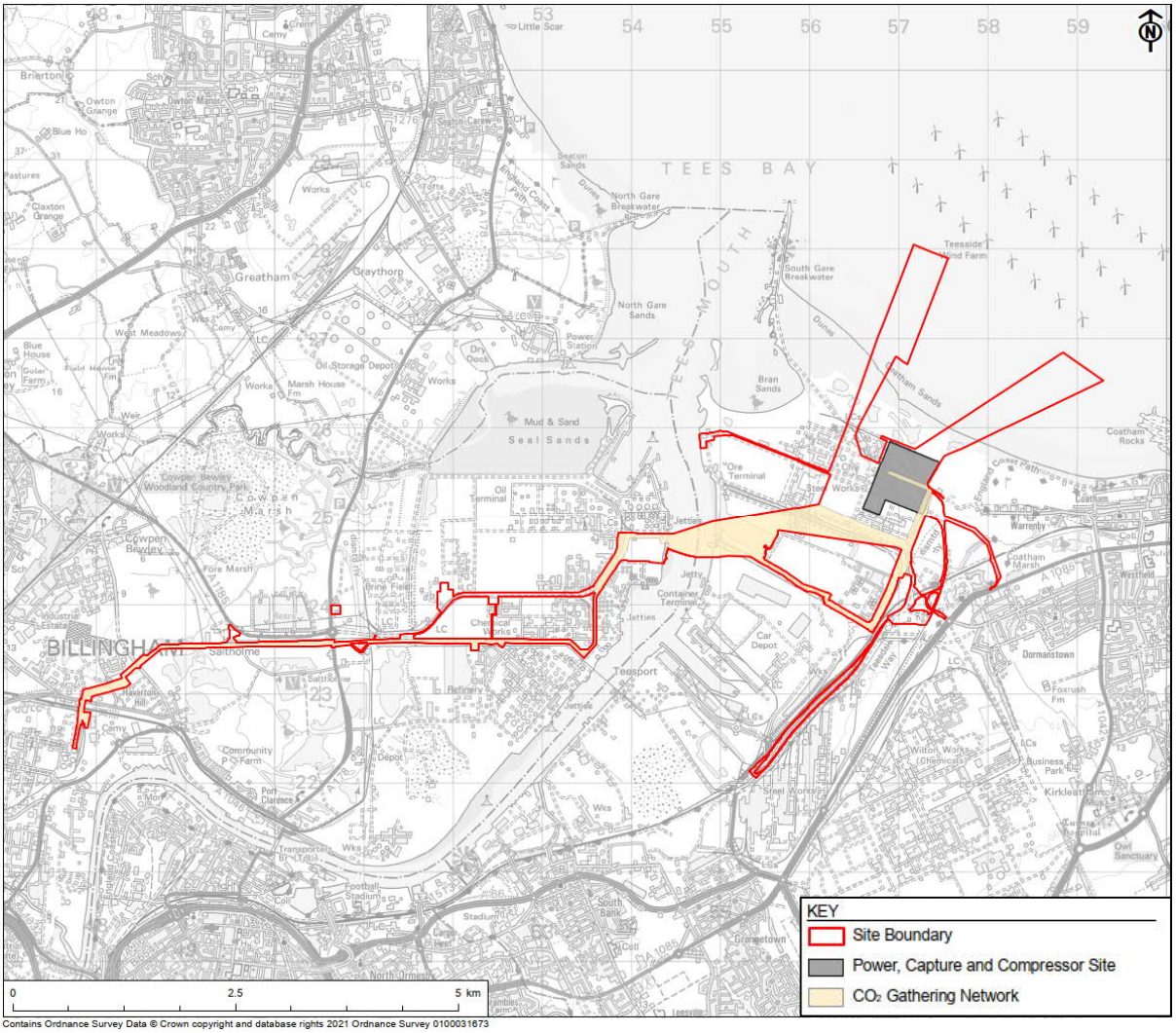


Diagram NTS 9: CO_2 Gathering Network



4. The Proposed Development

4.1.1 This section of the NTS provides a summary of the Proposed Development

4.1.2 The Proposed Development comprises the construction, operation, maintenance and eventual decommissioning of a CCUS project. It includes a Low-Carbon Power Station with a gross output of up to 860 MWe together with equipment required for the capture and compression of CO_2 emissions from the generating station and the installation of a wider industrial CO_2 Gathering Network on Teesside. The Proposed Development is described in detail in Chapter 4: Proposed Development (ES Volume I, Document Ref. 6.2).

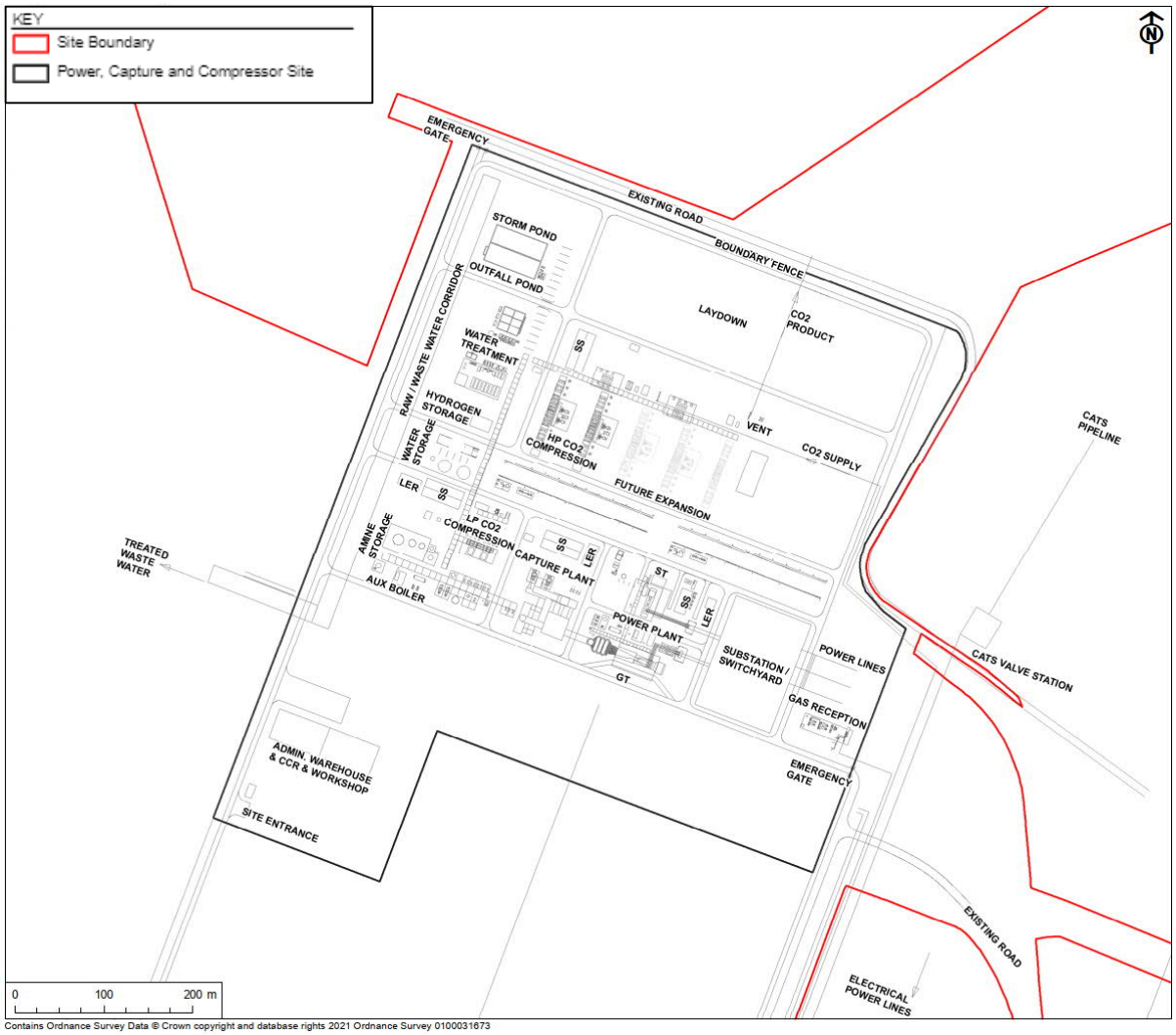
4.1.3 The Works Plans (Document Ref. 4.4) define the areas (referred to as 'Work Nos.') within which each element of the Proposed Development will be located. In summary the Proposed Development comprises:

- A new build low carbon gas-fired power station consisting of a single CCGT train with integrated carbon capture unit, low pressure CO_2 compression and associated utilities and buildings on the PCC Site (**Low-Carbon Electricity Generating Station, Work No. 1**);
- Natural gas pipeline to supply the power station (**Natural Gas Connection, Work No. 2A**) and (**Above Ground Installation, Work No. 2B**));
- Electrical power export lines from the Low-Carbon Electricity Generating Station to the national grid system (**Electrical Connection, Work No. 3**);
- Water Connections including:
  - a connection corridor to public utility raw water supply infrastructure, for the provision of water for the Proposed Development (**Water Supply Connection, Work No. 4**);
  - an existing or replacement outfall and associated pipework for the discharge of treated effluent and surface water to Tees Bay (including a potential pipeline connection for transportation of process water to Bran Sands Waste Water Treatment Plant and return for discharge) (**Water Discharge Connection, Work No. 5**);
- CO_2 Gathering Network connecting various industrial installations across the Tees Valley (**CO_2 Gathering Network, Work No. 6**);
- High Pressure CO_2 Compression facilities (**HP Compression Station, Work No. 7**) - on the PCC Site;
- High pressure CO_2 export pipeline (**CO2 Export Pipeline, Work No. 8**);
- Temporary Construction and Laydown Areas (**Laydown Areas, Work No. 9**); and
- Access and Highway Improvements (**Access and Highways Improvements, Work No. 10**).

4.1.4 The carbon capture plant will be designed to capture up to 95% of the CO_2 emitted from the power station, likely to be through the use of an amine-based solvent. This captured CO_2 will be compressed for transport to off-shore storage.

4.1.5 The Site Boundary and PCC Site, CO_2 Export Pipeline, CO_2 Gathering Network and the other Connections are shown in Diagrams NTS 4 to NTS 9 above. An indicative layout for the PCC Site is shown on Diagram NTS 10 below.

Diagram NTS 10: Indicative PCC Site Layout



5. Construction Programme and Management

5.1 Construction Programme

5.1.1 The construction programme is currently anticipated to commence shortly after the Development Consent Order (DCO) is granted (projected to be in or after the final quarter of 2022) and after a final investment decision is made to proceed with the Project.

5.1.2 The construction phase is expected to last approximately 4 years, however detailed phasing will be the responsibility of the appointed Contractors.

5.1.3 Table 5-1 presents the Indicative Construction Programme which has been used to inform the EIA.

5.1.4 Each environmental assessment topic within the ES identifies and assesses the reasonable 'worst case' construction scenario for that topic, where relevant.

Table 5-1: Indicative Construction Programme[1]

	2022				2023				2024				2025				2026			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Enabling works																				
Site establishment																				
Preparation of site roads to allow deliveries from Redcar Bulk Terminal to the PCC site																				
Tees and Dunes/Foreshore Crossings for CO_2 export pipeline and potentially the outfall																				
PCC Construction																				
Electrical Connection																				
Gas Connection																				
CO_2 Gathering Network																				
Commissioning																				

[1] This programme excludes demolition and remedial works undertaken by Teesworks but which have been assessed in the ES

5.2 Construction Activities

5.2.1 Before the Applicant takes possession of the site, preliminary works will be required. The site preparation and remedial works at the PCC Site are expected to be completed by Teesworks' demolition and civils contractor to create a suitable development platform for the Proposed Development.

5.2.2 These works will include the following activities which have been assessed as part of the EIA:

- demolition of existing structures within the boundary of the PCC Site and laydown areas within the Teesworks site: principally the former raw materials handling facility, sinter plant and conveyor systems;
- turnover of the made ground to remove unsuitable/contaminated materials including removal and crushing of derelict underground structures and obstructions, as required;
- targeted removal of additional underground structures and remediation as requested by the Applicants; and
- placement of suitable material to form appropriate platform levels for development.

5.2.3 Construction activities for the Proposed Development itself will include:

- establishment of construction laydown areas (e.g. site offices, storage areas, security fencing and gates);
- earthworks to prepare the Site;
- construction of foundations, which is likely to require the piling of key structures;
- erection of buildings and structures and installation of plant and equipment;
- installation of utilities and utility connections (electricity, natural gas and water);
- construction of the CO_2 Gathering Network and CO_2 Export Pipeline; and
- commissioning (testing) of the plant prior to operation.

5.2.4 The Applicants would appoint contractors to undertake the construction phase of the Proposed Development. The Applicants would retain overall responsibility for the project and would ensure that the works would be undertaken in accordance with legal requirements.

5.2.5 A detailed Construction Environmental Management Plan (CEMP) will be prepared prior to construction. The submission, approval and implementation of this will be secured by a requirement of the draft DCO. A Framework CEMP (Appendix 5A in ES Volume III, Document Ref. 6.4) has been prepared and is submitted as part of the ES to support the DCO Application. The Framework CEMP sets out the key measures to be employed during construction to control and minimise the impacts on the environment.

5.2.6 Full details of the construction phase is outlined in Chapter 5: Construction and Programme Management (ES Volume I, Document Ref. 6.2).

6. Alternatives and Design Evolution

6.1.1 The EIA Regulations state that an ES should include a description of reasonable and relevant alternatives studied by an applicant and the main reasons for selecting the chosen development, taking into account the environmental effects.

6.1.2 Chapter 6: Alternatives and Design Evolution (ES Volume I, Document Ref. 6.2) provides this information in respect of the Proposed Development. In summary, alternatives have been considered during the evolution of the Proposed Development including:

- alternative technologies;
- alternative sites/ locations;
- alternative locations within the Teesworks site;
- alternative connection routing and corridors; and
- alternative layouts and design options within the Site (including changes to the Site boundary).

6.1.3 The environmental effects of these alternatives has been compared to inform the Proposed Development layout and design.

6.1.4 The Proposed Development includes an appropriate degree of flexibility in the dimensions of buildings and structures to allow for the selection of the preferred technology and contractors.

6.1.5 In order to ensure a robust assessment, a maximum built 'envelope' (also referred to as the 'Rochdale envelope') has been defined to accommodate this necessary flexibility and to enable the EIA to consider the 'worst case'. For example, the landscape and visual impact assessment has assessed the largest massing of buildings that could be required.

6.1.6 It is considered that the choice of technology, the choice of fuel for the power station and the inclusion of the associated connections and extent of the CO_2 gathering network are appropriate based on the consideration of alternatives that has been undertaken as part of the EIA and based on the purpose of the Proposed Development, which is to develop a First Of Kind (FOAK) carbon capture cluster for the collection and disposal of carbon dioxide emissions from a power station and industrial sources.

6.1.7 The Proposed Development design and layout (including the routeing of the connections) have continued to evolve following consultation and also consideration of access points, site layout, equipment sizing and capacity, land ownership, interaction with other developments and the phasing of construction. Site Boundary changes, biodiversity mitigation and enhancement proposals, water connection options, and environmental effects of each option have been appraised alongside technical and commercial considerations.

6.1.8 The Teesworks site is deemed the most appropriate site for the PCC, given it comprises previously developed land suitable for redevelopment, that is

situated in close proximity to a number of existing industrial sources, is adjacent to the North Sea shoreline to enable the export CO_2 pipeline to be rapidly transported offshore and is also some distance from residential properties.

7. Summary of Environmental Effects

7.1 Introduction

7.1.1 The likely significant environmental effects of the Proposed Development are described in Chapter 8 - 24 of the ES (ES Volume I, Document Ref. 6.2) and its accompanying technical appendices (ES Volume III, Document Ref. 6.4). This section provides a brief summary of the overall findings of the EIA.

7.1.2 An assessment of the environmental effects of the Proposed Development during its construction and operation (including maintenance) has been completed for each of the topics that have been scoped for inclusion within the EIA.

7.1.3 During the eventual decommissioning of the Proposed Development, for the purposes of the EIA the effects are considered likely to be comparable to, or less than, those for construction activities (and controlled similarly) and therefore although these are discussed in each chapter of the ES, decommissioning effects have not been specifically mentioned within this NTS unless otherwise stated.

7.2 Air Quality

Introduction

7.2.1 Chapter 8: Air Quality (ES Volume I, Document Ref. 6.2) considers potential impacts from the Proposed Development on both human health and ecological receptors.

7.2.2 There are no Air Quality Management Areas (AQMAs) identified in the area with the potential to be affected by the Proposed Development.

7.2.3 Baseline air quality has been determined using available local authority and Defra published data and data collected by the Applicants.

7.2.4 The air quality assessment uses screening tools and computer models to predict the dispersion of air emissions from the Proposed Development including emissions associated with the construction of the Proposed Development and emissions from the proposed stacks (chimneys) of the operational development. These predict concentrations of pollutants in ambient air which are compared to national air quality standards where available, or other appropriate levels as agreed with regulators.

Effects During Construction

7.2.5 During construction, impacts could arise due to:

- dust from demolition and construction activities;
- emissions from construction vehicles and mobile construction plant; and
- emissions from construction phase road traffic (using traffic data in the form of traffic flows, composition and speed).

7.2.6 Through the use of standard construction management measures, which reduce dust and emissions from demolition, site clearance and site preparation activities, emissions to air from construction activities are assessed to have no significant adverse effects on human or ecological receptors. Such measures would include standard best practice construction measures such as appropriate storage of materials, suppression of dust from soil movement and material storage, cleaning of vehicles and locating construction plant away from sensitive receptors; these measures would be incorporated into the Final CEMP.

7.2.7 Based on expected vehicle movements, construction traffic air impacts are considered to be negligible at all human receptors and the effect is therefore not significant.

7.2.8 No additional mitigation other than the use of the CEMP has been identified as necessary for the construction phase of the Proposed Development.

Effects During Operation

7.2.9 During operation, impacts could arise due to:

- process emissions from the operational Proposed Development (stack emissions, including N-amines in respect of human health); and
- emissions from operational road traffic (using traffic data in the form of traffic flows, composition and speed).

7.2.10 Dispersion modelling has been used to calculate the predicted concentrations of pollutants arising from the emissions to atmosphere for the operation of the Proposed Development.

7.2.11 Predicted ground level concentrations of relevant air pollutants (principally nitrogen oxides, ammonia and amines) due to air emissions from the operation of the Proposed Development have been assessed. No significant effects are expected to occur as a result of the Proposed Development at the identified human receptors.

7.2.12 The deposition of nutrient nitrogen on sensitive ecological receptors from the air emissions of nitrogen oxides and ammonia has also been calculated. No significant effects are expected to occur as a result of the Proposed Development at the identified ecological receptors based on the predicted concentrations and the areas of potential impact.

7.2.13 Emissions from the Proposed Development during operation will be carefully controlled and regulated by the Environment Agency through the Environmental Permit and in accordance with the use of Best Available Techniques (BAT). The Permit must be granted prior to operation of the Proposed Development. The Applicants are working with the Environment Agency and other parties to determine BAT for carbon capture plants given the First Of A Kind nature of the Proposed Development. An application for a permit in principle is being prepared by the Applicants for submission to the Environment Agency for determination alongside the DCO application.

7.2.14 An assessment of visible plume formation from the cooling plant has been undertaken which indicates that a short visible plume may be present for the

majority of the time once the Proposed Development becomes operational but is unlikely to cross the boundary of the power station site.

7.2.15 No detailed assessment of operational traffic emissions has been required, as the numbers of additional vehicles associated with the operational phase of the Proposed Development is relatively low and below the screening threshold at which detailed modelling of traffic emissions is required.

Summary

7.2.16 In summary no significant Air Quality effects are predicted during the construction or operation (including maintenance) of the Proposed Development.

7.3 Surface Water, Flood Risk and Water Resources

Introduction

7.3.1 Chapter 9: Surface Water, Flood Risk and Water Resources (ES Volume I, Document Ref. 6.2) presents the findings of the assessment of likely significant effects on the surface water environment (including inland, estuarine and coastal surface waters) and flood risk as a result of the Proposed Development.

7.3.2 Key water bodies that may receive runoff or discharges from the Proposed Development during construction, operation and decommissioning have been identified, and the potential contamination risk to these water bodies has been assessed. The Study Area for surface water has been defined based on the potential for impacts to occur. Consideration has also been given to the potential for use of and, if necessary, refurbishment of the existing former steelworks outfall to Tees Bay.

7.3.3 The main surface watercourses within or close to the Proposed Development are outlined in Section 3 of this NTS. There are also numerous minor watercourses and water features in and around the Proposed Development. The Site is not located within a Drinking Water Protected Area, Drinking Water Safeguard Zone or near any Source Protected Zones.

7.3.4 The PCC Site is located within Flood Zone 1 (low risk) as defined by the Environment Agency. A small area of the CO_2 Gathering Network and the Natural Gas Connection Corridor lies within Flood Zone 3 (high risk).

Effects During Construction

7.3.5 The assessment considered potential effects for the construction phase in relation to the following:

- temporary impacts on surface water quality;
- temporary impacts on sediment dynamics and morphology in Tees Bay; and
- increase in surface water run-off and groundwater flood risk.

7.3.6 No potentially significant effects during the construction phases have been identified. Potentially significant impacts on all surface waterbodies have been avoided by using trenchless technologies for pipeline installation (i.e. not involving trenching) for river crossings and the export pipeline construction which do not disturb the bed or bank habitats or mobilise sediments.

7.3.7 Potential significant adverse effects to water quality from suspended fine sediments and accidental spillages will be prevented or minimised through the use of a CEMP and preventative measures. While flood risk is low at the PCC Site, flooding arising from surface water on the Site will be minimised through the use of an appropriate drainage design.

7.3.8 Where construction is required in areas of higher flood risk, those works are relatively minor in nature, comprising construction of a pipeline that will either be located on existing pipe racks or buried underground. These works will be managed through the implementation of the CEMP to minimise the risk of increased flooding and to site any storage of materials away from areas of higher flood risk to reduce the risk of contamination.

Effects During Operation

7.3.9 The assessment considered potential effects for the operational phase in relation to the following:

- long term impacts on surface water quality (including those from thermal discharges);
- long term impacts on waterbodies as a result of atmospheric emissions;
- increase in surface water and groundwater flood risk; and
- potable water demand.

7.3.10 A detailed drainage strategy, which will have regard to the findings of the of the FRA and water quality assessment, will be defined and prepared for the Proposed Development in consultation with the Environment Agency, the Lead Local Flood Authorities (RCBC and STBC) and other statutory bodies.

7.3.11 The proposed drainage system would provide attenuation capacity and treatment of runoff to ensure potential adverse effects on water quality are avoided.

Summary

7.3.12 In summary no significant effects are predicted for surface water, water resources and flood risk during the construction or operation (including maintenance) of the Proposed Development.

7.4 Geology, Hydrogeology and Contaminated Land

Introduction

7.4.1 Chapter 10: Geology, Hydrology and Contaminated Land (ES Volume I, Document Ref. 6.2) presents the findings of the assessment of likely significant effects on geology, soils and contaminated land as a result of the

Proposed Development. Consideration has been given to geology: superficial soils and bedrock, geological and hydrogeological designations, soils and agricultural land classification, existing contamination and minerals rights.

7.4.2 A desk-based assessment of historical ground condition information and information from historical site investigations have been used to identify the potential effects associated with ground conditions.

Effects During Construction

7.4.3 The construction phase of the Proposed Development will involve activities that may have potential impacts on the soils, geology, hydrogeology and potentially contaminated land resources. Following a ground investigation, targeted remediation will be undertaken involving either treatment of soils on-site or removal and disposal at a suitably permitted facility.

7.4.4 Potential impacts during the construction phase include :

- mobilisation of contaminants during remediation and construction;
- changes to hydrogeological regimes (e.g. during dewatering activities); and
- changes to surface water quantity and quality.

7.4.5 Impacts will be managed by appropriate construction mitigation measures (which will be outlined in the CEMP) and as such no significant adverse effects are anticipated.

Effects During Operation

7.4.6 The operational impacts of the Proposed Development with regards to geology, hydrogeology and contaminated land are associated with the permanent site infrastructure which includes plant and buildings, roadways, service corridors and areas of hardstanding.

7.4.7 The potential impacts (without mitigation) that could arise during the operational phase of the Proposed Development include:

- permanent soil loss where permanent infrastructure is installed. However, the loss is likely to be negligible given the low quality of the existing soils and the widespread existing industrial development (hardstanding) already present across the Site; and
- impacts to soil quality, groundwater and watercourses, which could potentially occur during operation as a result of accidental spills from the handling or leakage of fuels, lubricants, stored chemicals and process liquids.

7.4.8 However, with appropriate management, housekeeping and preventative maintenance practices (such as appropriate storage of potentially contaminating chemicals), as required by the Environmental Permit that will be needed for the operational Site, potential impacts to soil and groundwater will be minimised. As such, significant adverse effects are not predicted to occur.

Summary

7.4.9 In summary no significant effects are predicted with regards to geology, hydrogeology and contaminated land during the construction or operation (including maintenance) of the Proposed Development

7.5 Noise and Vibration

Introduction

7.5.1 Chapter 11: Noise and Vibration (ES Volume I, Document Ref. 6.2) presents the findings of the assessment of likely significant noise and vibration effects as a result of the Proposed Development.

7.5.2 Potential noise sensitive receptors, residential, industrial (local offices), and ecological (birds associated with the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site), have been identified around the Site boundary. Noise levels during construction and operation of the Proposed Development have been predicted and the results compared with measured baseline noise levels at the identified receptors during the day and night. National standards have been applied to determine whether there is the potential for significant effects without further mitigation measures being applied.

7.5.3 The assessment has also considered the potential for vibration effects from construction, operation and decommissioning of the Proposed Development. Vibration is likely to occur for a short period of the construction works as piling is likely to be required for some of the main structures.

Effects During Construction

7.5.4 The assessment considered potential effects during construction in relation to the following:

- noise and vibration levels during site clearance, remediation, construction and piling works; and
- predicted changes in road traffic noise levels on the local road network.

7.5.5 Based on the conservative assumptions made, no significant noise effects are predicted on residential, nearby industrial, or ecological receptors through the implementation of best practice measures to control construction noise that will be applied in accordance with Requirements of the draft DCO.

Effects During Operation

7.5.6 The assessment has concluded that no significant operational noise effects are predicted to occur at residential, industrial or ecological receptors during operations.

Summary

7.5.7 In summary no significant effects on residential, industrial or ecological receptors are predicted with regards to noise and vibration during the construction or operation (including maintenance) of the Proposed Development

7.6 Terrestrial Ecology and Nature Conservation

Introduction

7.6.1 Chapter 12: Terrestrial Ecology and Nature Conservation (ES Volume I, Document Ref. 6.2) presents the findings of the assessment of likely significant effects on terrestrial ecology (habitats and protected species including bats) and nature conservation. Impacts on aquatic ecology, marine ecology and birds are assessed in Sections 7.7, 7.8 and 7.9 below.

Effects During Construction

Designated Sites

7.6.2 Given the that during the construction phase trenchless technologies for pipeline installation (i.e. not involving trenching) will be used there are no pathways by which there would be the potential for impacts (including noise and vibration) to designated sites including Teesmouth and Cleveland Coast SSSI. Therefore, direct impacts during construction on these sites have been mitigated by design and no further mitigation is required.

Habitats

7.6.3 Construction activities have the potential for the following impacts on habitats:

- permanent losses of semi-improved grassland habitat for the construction of the PCC Site;
- temporary losses of additional areas of semi-improved grassland and scrub for temporary construction laydown and/or construction corridors; and
- disturbance of Open Mosaic Habitats (OMH) habitats for construction of the Natural Gas Connection.

7.6.4 Measures have been proposed with the Indicative Landscape and Biodiversity Strategy that has been submitted with the draft DCO (Document Ref. 5.12) for reinstatement and enhancement of habitats within and around the PCC Site. As a result, no significant effects are predicted and it is the intention that biodiversity enhancement is achieved through the Proposed Development.

Species

7.6.5 No significant effects are predicted on terrestrial species as a consequence of construction activities, based on the absence of protected species identified within and near to the Proposed Development Site. However appropriate pre-construction surveys will be undertaken prior to works commencing to confirm that no protected species are present in working areas.

Effects During Operation

7.6.6 The main potential source of operational effects is from emissions to air from the operation of the Proposed Development. Operational noise effects on terrestrial ecological receptors will not be significant.

7.6.7 Based on the results of the operational air quality impact assessment (Appendix 8B, ES Volume III, Document Ref. 6.4) consideration has been

given to potential pathways for an air quality impact from operation of the PCC Site on nature conservation designations. This is further considered within the Habitats Regulations Assessment Report (Document Ref. 5.13) submitted with the draft DCO. No significant effects on any ecological receptors are predicted.

7.6.8 In addition, the EIA considers the potential for significant effects on bats as the only terrestrial ecological species with the potential to be impacted during operation at the PCC Site. No significant effects on bats or their conservation status are predicted, as lighting during the operation of the Proposed Development will be managed in accordance with the measures outlined within the Indicative Lighting Strategy (Document Ref. 5.11) prepared and submitted with the draft DCO.

Summary

7.6.9 In summary no likely significant effects on terrestrial nature conservation designations, habitats or species are anticipated as a consequence of construction or operation (including maintenance) of the Proposed Development.

7.7 Aquatic Ecology

Introduction

7.7.1 Chapter 13: Aquatic Ecology (ES Volume I, Document Ref. 6.2) presents a summary of the likely impacts on aquatic ecology (habitats and species) and nature conservation as a result of the Proposed Development.

Effects During Construction

7.7.2 During the construction phase, trenchless technologies for pipeline installation (i.e. not involving trenching) will be used for crossing watercourses or water bodies. There will therefore be no pathways by which there would be the potential for impacts to designated sites including the Teesmouth and Cleveland Coast SSSI. Therefore, direct impacts during construction on these sites have been mitigated by design and no further mitigation is required.

7.7.3 The assessment of the likely significant effects on aquatic ecology and nature conservation has therefore assessed other potential construction related impacts which include:

- impacts on undesignated habitats (watercourses and ponds) e.g. on water quality as a result of construction activities;
- impacts on fish and their habitats e.g. through unavoidable release of sediments to water bodies; and
- impacts on macroinvertebrates and macrophytes e.g. through reduced habitat quality which may result in the changes to the composition of the community.

7.7.4 These potential impacts can be mitigated by adherence to measures in the Construction and Environmental Management Plan (Appendix 5A, ES Volume

III, Document Ref. 6.4) and there will therefore be no significant effects during construction.

Effects During Operation

7.7.5 The assessment considers the potential for operational impacts which include:

- impacts from atmospheric deposition of nitrogen on ponds with the potential to result in nutrient enrichment;
- indirect impacts on fish, macroinvertebrates and macrophytes on their habitats and water quality.

7.7.6 The assessment has concluded that the potential for effects on aquatic habitats and species associated with operation of the Proposed Development (when all of the likely impacts above are considered) will be not-significant. Run-off from the operational development at the PCC Site will be appropriately managed to minimise impacts on aquatic receptors. Similarly process wastewater will be appropriately treated and any discharge controlled through monitoring and control measures specified within the Environmental Permit.

Summary

7.7.7 no significant effects were identified on aquatic habitat, species and communities during the construction or operational phases of the Proposed Development. Therefore, no additional mitigation is necessary besides the current design of the Proposed Development, impact avoidance strategy and embedded mitigation.

7.8 Marine Ecology and Nature Conservation

Introduction

7.8.1 Chapter 14: Marine Ecology and Nature Conservation (ES Volume I, Document Ref. 6.2) presents a summary of the likely impacts on marine ecology (habitats and species) and nature conservation as a result of the Proposed Development.

7.8.2 Marine ecological receptors have been identified in and around the Proposed Development through a desk-based study and ecological surveys in the surrounding area.

7.8.3 The Site is situated within or adjacent to the Teesmouth and Cleveland Coast Special Protected Area SPA/Ramsar site and the Teesmouth and Cleveland Coast Site of Special Scientific Interest (SSSI). These sites are designated for the protection of breeding/ non-breeding bird species and other important waterfowl species associated with the site and include a range of coastal habitats (sandflats and mudflats, rocky shore, saltmarsh, freshwater marsh and sand dunes) within and around the Tees Estuary.

7.8.4 A number of protected or notable marine animal species have been identified as present, or potentially present, within the marine ecology study area which incorporates some areas of the Greater North Sea Ecoregion. These include harbour porpoise, minke whale, bottlenose dolphin and white-beaked dolphin, grey seal and harbour (or common) seal. In addition, several protected or

notable migratory and commercial fish and shellfish species have been identified.

Effects During Construction

7.8.5 Potential impacts to marine ecological receptors as a result of the Proposed Development have been identified and these include:

- direct loss and physical disturbance to habitat and species (including intertidal and subtidal benthic ecology, fish and shellfish and marine mammals) under the footprint of the marine construction works associated with the Water Connections through:
  - installation of rock armouring / scour protection around the outfall head if required;
  - creation of breakout points within the foreshore for the CO_2 Export Pipeline and (if required) replacement outfall installed using trenchless technologies; and
  - anchoring, grounding or positioning of work boat(s) and /or barge(s) on the seabed.
- physical disturbance to benthic habitats and species from increased suspended sediment concentrations (i.e. turbidity) and deposition;
- indirect effects to marine ecology from changes in marine water quality (excluding turbidity);
- changes in underwater soundscape; and
- changes in airborne soundscape.

7.8.6 Having taken into account the proposed design, good practice, underwater sound mitigation, and in general the temporary nature of the impacts the assessment has concluded no significant adverse effects to marine ecology from construction of the Proposed Development.

Effects During Operation

7.8.7 Potential impacts to marine ecological receptors as a result of the Proposed Development have been identified and these include:

- thermal effects from treated cooling water discharge;
- chemical effects from any treated wastewater discharge; and
- effects to intertidal habitats and species (including fish) from the deposition of airborne pollutants;

7.8.8 The cooling water and treated wastewater discharges will be controlled and discharged through either the existing or proposed outfall extending into the Tees Bay such that the residual thermal or pollutant levels rapidly disperse to insignificant levels. Monitoring and control of the discharges will be regulated by the Environment Agency through an Environmental Permit. Having taken into account the design and good practice the assessment has concluded no significant adverse effects to marine ecology from the operation of the Proposed Development.

Summary

7.8.9 In summary no likely significant effects on marine ecology are anticipated as a consequence of construction or operation (including maintenance) of the Proposed Development.

7.9 Ornithology

Introduction

7.9.1 Chapter 15: Ornithology (ES Volume I, Document Ref. 6.2) presents a summary of the likely impacts and effects to ornithological receptors as a result of the Proposed Development. The Site is situated within the Teesmouth and Cleveland Coast Special Protected Area SPA/Ramsar site and the Teesmouth and Cleveland Coast Site of Special Scientific Interest (SSSI).

7.9.2 In addition, a Habitats Regulations Assessment (HRA) (Document Ref. 5.13) has been prepared and submitted with the DCO application.

Effects During Construction

7.9.3 Potential impacts to ornithological receptors as a result of the construction of the Proposed Development that have been included within the assessment include:

- temporary degradation or losses of habitat;
- disturbance of birds, principally from noise;
- impacts from emissions such as dust, particulate matter, from construction plant and construction traffic;
- increases in surface water run-off and flood risk;
- changes in water quality from run-off to surface waters affecting wetland habitats used by birds and distribution/quality of foraging resources;
- permanent losses of habitat used by nesting, roosting and feeding birds where new infrastructure is installed;
- permanent losses of and physical impacts on subtidal habitats;
- disturbance of marine birds arising from the presence of work boats and/or barges and the presence of construction workers in the offshore environment.

7.9.4 No likely significant residual effects have been identified following consideration of the relevant ornithological baseline conditions, potential impact pathways and the proposed embedded mitigation to be used during construction, which will be specified in the CEMP (including use of trenchless technologies for crossing Coatham Dunes and Sands and use of bored rather than impact piling).

Effects During Operation

7.9.5 Potential impacts to ornithological receptors as a result of the operation of the Proposed Development and that have been included within the assessment include:

- disturbance of birds, principally from noise (PCC Site and CO_2 Gathering Network)
- increases in surface water run-off and flood risk;
- emissions from operational vehicular traffic;
- point source emissions of NOx, acid and nutrient nitrogen;
- impacts (thermal and chemical) on marine and benthic organisms arising from treated water discharge, resulting in reductions of available foraging resources for some fish-eating birds; and
- impacts of tall structures as a barrier to movement of birds for which Teesmouth and Cleveland Coast Ramsar, SPA and SSSI are designated.

7.9.6 Impacts predicted to arise as a result of the Proposed Development will be controlled, mitigated or compensated for through appropriate design and mitigation measures (cladding for example) and the location of the PCC Site. No significant residual effects on ornithological receptors are anticipated during the operation of the Proposed Development.

Summary

7.9.7 In summary no likely significant effects on ornithology are anticipated as a consequence of construction or operation (including maintenance) of the Proposed Development.

7.10 Traffic and Transport

Introduction

7.10.1 Chapter 16: Traffic and Transport (ES Volume I, Document Ref. 6.2) identifies the potential effects of the Proposed Development on traffic and transport in the surrounding area. The assessment considers the predicted number of vehicle movements generated during the construction and operation of the Proposed Development, and the sensitivity (including pedestrian and cyclist safety) and capacity of the local road network.

Effects During Construction

7.10.2 The construction phase will result in temporary increases of traffic flows, including HGVs. However, the assessment concludes that these additional traffic movements will not result in any significant effects. Any abnormal loads would be timed to minimise disruption following consultation with the local authority and secured through the requirements in the DCO; where possible the nearby Redcar Bulk Terminal and Teesport will be used for delivery of abnormal loads to minimise HGV movements on the public highway.

7.10.3 A construction worker traffic management plan and a construction HGV traffic management plan will be developed by the contractor in accordance with a Requirement in the draft DCO in order to manage and where possible, reduce the number of vehicles required. Consequently, the effects of construction traffic on all road links and junctions within the Study Area are considered to be not significant.

Effects During Operation

7.10.4 Operational staff movements (60 site-based staff working in three shifts and 40 office-based staff working normal hours) would result in average of 71 cars per day (142 two-way vehicle movements).

7.10.5 HGV traffic generated by deliveries of operational and maintenance plant will be relatively limited (expected to be a maximum of four HGVs per day). Fuel for the new power station will be natural gas imported to the PCC Site via pipeline and there will be no vehicular movements associated directly with this.

7.10.6 Due to the very low traffic flows which will result once the Proposed Development is first operational in 2026, the vehicle numbers generated during operation are therefore considered to be negligible and not significant.

Summary

7.10.7 In summary no likely significant effects on traffic and transport are anticipated as a consequence of construction or operation (including maintenance) of the Proposed Development.

7.11 Landscape and Visual Amenity

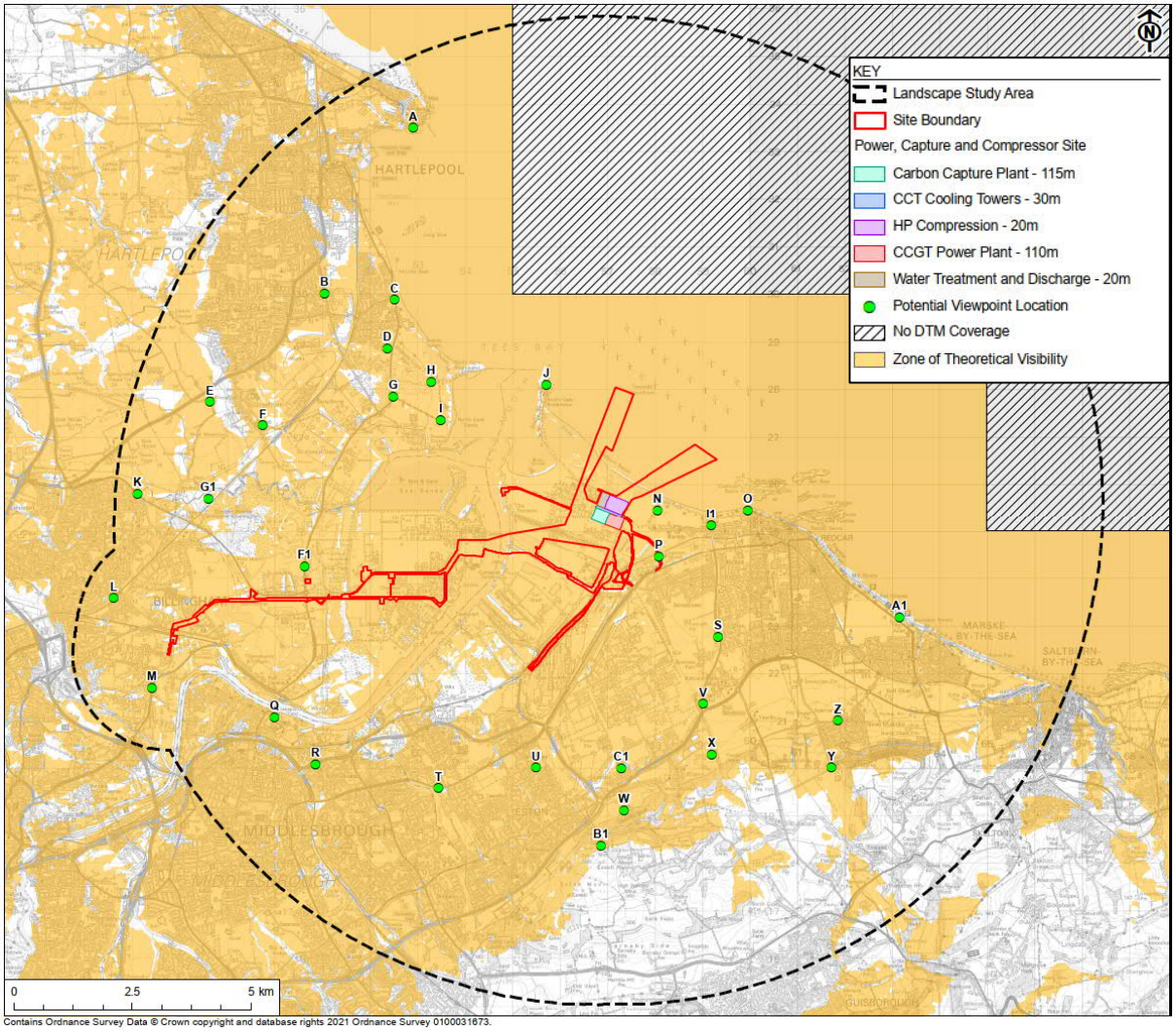
Introduction

7.11.1 Chapter 17: Landscape and Visual Amenity (ES Volume I, Document Ref. 6.2) addresses the potential effects of the Proposed Development on landscape character and visual amenity.

7.11.2 The Study Area for landscape and visual effects includes areas where it is considered that there is potential for significant direct or indirect effects on landscape character or sensitive views due to the construction or operation of the Proposed Development.

7.11.3 The area in which the Proposed Development is likely to be visible (known as the Zone of Theoretical Visibility (ZTV)) is shown on Diagram NTS 11. Additionally, the visual assessment considers effects on 12 representative viewpoints located around the Proposed Development, due to changes during the construction, operation and decommissioning phases which are also shown on Diagram NTS 11.

Diagram NTS 11: ZTV and representative viewpoints



7.11.4 The assessment is based upon the largest possible dimensions for the Proposed Development and on a worst-case stack height of up to up to 128 m Above Ordnance Datum (AOD) for the absorber stack (which equates to 115 m above ground level) and 110 m AOD for the Heat Recovery Steam Generator (HRSG) stack, as these are considered to represent the worst-case scenario. Even using these dimensions, it is considered highly unlikely that significant effects would occur outside of the 10 km study area.

7.11.5 Due to the existing industrial character of the setting of the PCC Site and surrounding landscape, it is anticipated that there is a low likelihood that construction and operational effects will result in a long-term change to the existing landscape character at local, regional or national scale.

Effects During Construction

7.11.6 During construction, views for residential receptors at various viewpoints surrounding the Proposed Development will either be oblique or contain clear views of structures associated with the construction of the Proposed Development. At some viewpoints, views of ground level construction activities will be limited as a result of intervening vegetation and existing large-scale structures. No significant effects are predicted.

7.11.7 Moderate adverse (significant) effects are expected to occur at a small number of recreational receptors; South Gare Breakwater (Viewpoint 5), England Coastal Path (Viewpoint 7) and Redcar seafront (Viewpoint 8). These are likely to experience short-term moderate adverse (significant) effects during construction as a result of the close distance to the PCC Site and limited intervening vegetation.

Effects During Operation

7.11.8 During opening and operation no significant effects on residential receptors are predicted. There are expected to be moderate adverse (significant) effects at Viewpoint 7: England Coast Path as a result of the path's close proximity to the PCC Site. It is not possible to eliminate the visual impacts associated with the development PCC Site due to its scale. Mitigation is therefore not possible to reduce the visual intrusion of the buildings in the landscape and minimise impact on visual amenity. However, as far as reasonably practicable, the design of the Proposed Development will seek to minimise adverse impacts on visual amenity through appropriate siting of infrastructure and through the selected building materials and colours, as set out in the Design and Access Statement (Document Ref. 5.4) that accompanies the DCO application.

Summary

7.11.9 In summary there are no likely significant effects on landscape and residential receptors anticipated as a consequence of construction and operation (including maintenance) of the Proposed Development. Impacts on visual amenity are predicted during construction due to the close proximity of the PCC Site to receptors. As far as reasonably practicable, these impacts will be mitigated through siting and design.

7.12 Cultural Heritage

Introduction

7.12.1 Chapter 18: Cultural Heritage (ES Volume I, Document Ref. 6.2) considers the permanent and temporary impacts to cultural heritage assets which comprises archaeology, built heritage and historic landscape resulting from the construction and operation of the Proposed Development.

7.12.2 A summary of cultural heritage receptors is outlined in Section 3 of this NTS.

7.12.3 Known heritage assets have been avoided by design through the use of trenchless technologies for pipeline installation (i.e. not involving trenching) and the siting of infrastructure in an existing, above ground, pipeline racking network, where practicable. As such, the risk of impact to known heritage assets has been eliminated and additional mitigation measures are not required.

Effects During Construction

7.12.4 The assessment considers the likelihood temporary and permanent effects to heritage assets as a result of changes to their setting and permanent loss of heritage value as a result of construction related activities.

7.12.5 There would be no impacts on archaeological remains or cultural heritage assets during construction. Known heritage assets have been avoided by design through the use of trenchless technologies and the use of existing service corridors for pipelines. As such, the risk of impact to known heritage assets has been eliminated and additional mitigation measures are not required.

7.12.6 A protocol will be adopted in order to mitigate any impacts to previously unknown archaeological assets that may be encountered during construction and will ensure that any finds are promptly reported, archaeological advice is obtained, and any recovered material receives the appropriate level of stabilisation, recording and conservation, proportionate to its heritage value.

Effects During Operation

7.12.7 There would be no impacts to buried archaeological remains during operation. The Proposed Development would represent a new component into an existing industrial landscape. Its inclusion within the visual setting of heritage assets is not incongruous to the current setting and would not result in significant change the theses asset’s setting or value.

Summary

7.12.8 In summary no likely significant effects on cultural heritage are anticipated as a consequence of construction and operation (including maintenance) of the Proposed Development.

7.13 Marine Heritage

Introduction

7.13.1 Chapter 19: Marine Heritage (ES Volume I, Document Ref. 6.2) assesses the potential impacts of the Proposed Development during the construction and operation of the Proposed Development.

Effects During Construction

7.13.2 No significant effects are predicted to occur during construction of the Proposed Development on any designated or undesignated paleoenvironmental assets or any designated maritime assets as the CO_2 Export Pipeline and replacement Water Discharge corridors have been located to avoid known marine heritage assets.

Effects During Operation

7.13.3 There will be no physical impact upon any heritage assets during operation of the Proposed Development.

Summary

7.13.4 In summary no likely significant effects on cultural heritage are anticipated as a consequence of construction and operation (including maintenance) of the Proposed Development.

7.14 Socio- economics and Tourism

Introduction

7.14.1 Chapter 20: Socio Economics (ES Volume I, Document Ref. 6.2) addresses the potential effects of the Proposed Development on employment, local businesses and the local population during both the construction, operation and decommissioning phases. The assessment has taken into account the demographics of the area surrounding the Proposed Development when considering the impacts which are likely to occur.

7.14.2 Economic benefits can arise directly (through employment of local people) and indirectly (e.g. during the construction phase, when contractors may be using local accommodation and other amenities).

Effects During Construction

7.14.3 Net construction employment created by the construction phase of the Proposed Development is predicted to have a major beneficial (significant) short-term effect in the local area with increased local demand for accommodation having a positive impact on the local economy.

7.14.4 Construction is anticipated to last for up to four years and is estimated to generate a minimum of 1,760 net construction jobs to support the Proposed Development. It is anticipated that a minimum of 880 are expected to be from the Middlesbrough and Stockton Travel to Work Area (TTWA). Proposed skills and employment enhancement programmes provided by the Applicant are also expected to bring a positive impact.

7.14.5 Minor disruption on the local community, businesses, tourism and wider amenities is expected during construction but it is not expected to generate any significant effects. Additionally, use of some public rights of way including the Teesdale Way and England Coast path may be temporarily disrupted during construction which will require either controlled access to allow crossing of construction areas or, as a last resort, temporary diversions.

Effects During Operation

7.14.6 The Proposed Development will generate long-term jobs once operational. Operation of the Proposed Development is estimated to generate a total of 100 direct employees, of which 90 are anticipated to be from the TTWA. The direct, indirect and induced employment created by the operational phase of the Proposed Development is likely to have a moderate beneficial (significant) long-term effect.

7.14.7 There is expected to be a negligible effect on community disruption and demographic change.

Summary

7.14.8 In summary significant (beneficial) effects on socio-economics and tourism are anticipated as a consequence of construction and operation (including maintenance) of the Proposed Development.

7.15 Climate Change

Introduction

7.15.1 Chapter 21: Climate Change (ES Volume I, Document Ref. 6.2) assesses the potential impacts of the construction and operation of the Proposed Development on the climate and the impact of future climate change on the Proposed Development and surrounding environment.

7.15.2 The assessment includes:

- Greenhouse Gas impact assessment (the potential effect the Proposed Development may have on GHG emissions and therefore climate change);
- In-combination climate change impacts (ICCI) (the combined effect of the Proposed Development and climate change on surrounding receptors); and
- Climate change resilience review (the resilience of the Proposed Development to future projections for climate change).

GHG Assessment Summary

7.15.3 The receptor for the GHG assessment is the global climate. The UK's carbon budgets are used as a proxy to assess the impacts to this receptor.

7.15.4 Emissions associated with the Proposed Development have been examined for their significance against the UK Carbon Budgets for the ES. However, the Proposed Development is a low carbon generating station capturing more than 90% of the carbon that would otherwise be emitted. It also facilitates the future capture of carbon emitted from existing industrial sources in the area.

7.15.5 It has been concluded that the magnitude of impact of the Proposed Development is therefore considered 'low' against the current UK carbon budgets. The overall significance of effect is considered as minor adverse which is not significant and therefore the operations of the Proposed Development are not expected to affect the UK in meeting its current Carbon Budgets.

7.15.6 Once neighbouring industries are able to connect to the CO_2 gathering network and carbon can be captured from existing sources, it is envisaged that the project as a whole could result in a net reduction in carbon emissions from current levels and a beneficial effect on annual UK carbon emissions.

In-Combination Climate Impact Assessment Summary

7.15.7 The In-Combination Climate Impact (ICCI) assessment considers the existing and projected future climate conditions for the geographical location and assessment timeframe. It identifies the extent to which identified receptors in the surrounding environment are potentially vulnerable to and affected by these factors.

7.15.8 Factors considered as part of the assessment include:

- extreme weather;
- precipitation change;
- temperature and humidity;
- sea level rise;
- sea temperature; and
- wind.

7.15.9 No potential ICCI impacts or effects during construction, operation or decommissioning of the Proposed Development have been identified.

Climate Change Resilience Summary

7.15.10 The potential impacts and effects of projections for climate change to the Proposed Development have been assessed and resilience measures assumed to be built into the design taken into account. These include use of Sustainable Drainage Systems (SuDS) to mitigate flood risk. The embedded design measures are deemed sufficient to reduce the likelihood or consequence of an impact occurring as a result of these projected climate hazards. As such, no significant resilience risks have been identified.

7.16 Major Accidents and Natural Disasters

Introduction

7.16.1 Chapter 22: Major Accidents and Natural Disasters (MA&NDs) (ES Volume I, Document Ref. 6.2) presents an assessment of the MA&NDs that have the potential to arise during the construction and operation of the Proposed Development.

7.16.2 Major accidents are incidents such as fires and explosions that could result in serious harm to people. They also have the potential to cause widespread damage to property and the environment. Disasters can be naturally occurring events, such as earthquakes, landslides and flooding. The impact of MA&NDs can be very significant, but the likelihood of occurrence is low.

Summary

7.16.3 Fifteen hypothetical MA&NDs scenarios were identified for the Proposed Development which would have significant consequences to people and the environment, but at a very low probability of occurrence. These scenarios include fire, explosion, toxic release, high rainfall and storm surges from the River Tees.

7.16.4 The engineering design, construction and operation of the Proposed Development will incorporate appropriate standards and mitigation measures necessary to reduce the risks of MA&NDs to an acceptable level, i.e. as low as is reasonably practicable (ALARP), which is the standard expected by the Regulatory Authorities (Health and Safety Executive (HSE) and Environment Agency). As well as an Environmental Permit, if appropriate, the operational plant will be regulated under a Control of Major Accident Hazards (COMAH) Licence regulated by the HSE.

7.16.5 Consequently, based on the design of the Proposed Development and the proposed operational control measures to be applied, no significant effects have been identified.

7.17 Population and Human Health

Introduction

7.17.1 Chapter 23: Population and Human Health (ES Volume I, Document Ref. 6.2) addresses the potential effects of the Proposed Development upon human health, taking into account information relating to key aspects of the other technical assessments that are relevant to human health, as well as information on potential electromagnetic field (EMF) health effects from electricity cables associated with the Proposed Development.

7.17.2 The assessment identifies the potential effects on the health and wellbeing of those communities in Redcar, Stockton-on-Tees and Teesside as a consequence of the Proposed Development.

Summary

7.17.3 The Proposed Development incorporates embedded mitigation measures to avoid any significant human health effects. These include (but are not limited to):

- determination of an appropriate stack height based on air quality modelling to ensure no significant adverse effects on human receptors;
- process emissions to air will comply with the Emission Limit Values (ELV) specified in the Environmental Permit and based on the use of Best Available Techniques;

- measures to reduce traffic for example the implementation of a Construction Worker Travel Plan;
- implementation of an appropriate drainage system for process, foul and surface wastewater together with appropriate wastewater treatment prior to discharge;
- pollution prevention measures during construction and operation;
- operation in compliance with an Environmental Permit regulated by the Environment Agency; and
- use of below ground installation of electrical transmission cables to avoid effects from electromagnetic fields on humans.

7.17.4 These measures will help to ensure that impacts on the health and well-being of the local population, as well as construction workers and operational staff, are not significant. In summary significant effects relating to population and human health are restricted to beneficial construction and operation employment effects. No significant adverse human health effects have been identified.

7.18 Cumulative and Combined Effects

7.18.1 The purpose of Chapter 24: Cumulative and Combined Effects (ES Volume I, Document Ref. 6.2) is to provide an assessment of the potential for cumulative and combined effects to occur as a result of the Proposed Development being built and operated at the same time as other committed developments.

7.18.2 The potential for cumulative effects with these other developments has been considered for all of the environmental topics by a review of the available information (including published environmental information where available). A number of other developments have been identified with the potential for cumulative effects including the York Potash developments, Redcar Energy Centre and the wider Teesworks development proposals.

7.18.3 No significant additional cumulative or combined effects during either construction or operation have been identified.

8. Summary and Conclusions

8.1.1 The ES explains the findings of the EIA process that has been undertaken for the Proposed Development.

8.1.2 Following assessment of a comprehensive range of environmental topics as agreed through the EIA Scoping and wider consultation process the following significant residual effects (adverse and beneficial) (i.e. effects after implementation of mitigation where mitigation measures are proposed) have been identified:

- significant adverse visual effects from nearby viewpoints during construction and operation of the Proposed Development; and
- significant beneficial socio-economic effects (through the creation of employment) during construction and operation of the Proposed Development.

8.1.3 A number of environmental impact avoidance, design and mitigation measures have been identified to mitigate and control environmental effects during construction and operation of the Proposed Development. These will be secured through appropriate requirements within the DCO for the Proposed Development. Additional controls will be applied through other legislative requirements including an Environmental Permit and, if required, a COMAH Licence for the operation of the Proposed Development.

8.1.4 Whilst there are no significant visual effects on residential receptors, there are impacts on visual amenity during construction (South Gare, England Coast Path and Redcar seafront) and operation (England Coast Path only) of the PCC Site. Due to the nature and scale of the development, it is not possible to mitigate the impacts on visual amenity on nearby receptors associated with the construction and operation of the PCC Site. However, as far as reasonably practicable the design of the Proposed Development will seek to minimise adverse impacts on visual amenity through appropriate siting of infrastructure and architectural design of the development (including choice of materials and colours).

APPENDIX 3B

ENVIRONMENTAL STATEMENT CHAPTER 4

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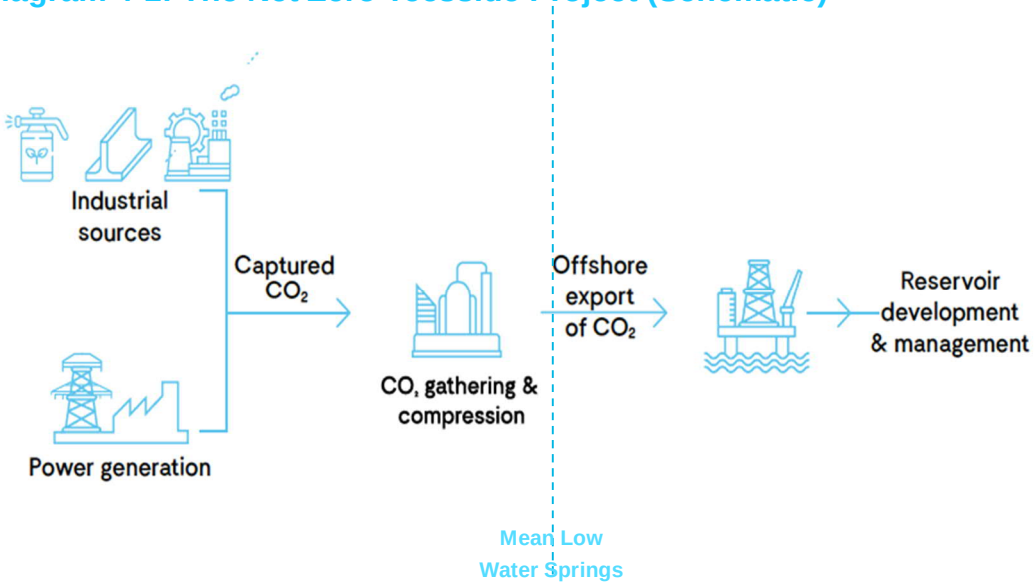
4. Proposed Development

4.1 Introduction and Project Overview

4.1.1 The Proposed Development comprises the construction and operation (including maintenance) and decommissioning of a Carbon Capture Usage and Storage (CCUS) facility comprising a gas-fired generating station with an electrical output of up to 860 MWe, together with equipment required for the capture and compression of carbon dioxide (CO_2) emissions from the power generating station. In addition, there is a need for the provision of supporting infrastructure and connections to support the power generating station and to facilitate the development of a wider industrial carbon capture network on Teesside, the construction of which also forms part of the Proposed Development. The Proposed Development also includes high-pressure compression of CO_2 and the onshore section of a pipeline to export the captured CO_2 for off-shore storage.

4.1.2 The Proposed Development forms the onshore part of the wider Net Zero Teesside (NZT) Project. A schematic of the overall NZT Project including the Proposed Development is shown in Diagram 4-1. Specifically, the Proposed Development to which the Application and supporting Environmental Statement (ES) relates covers all works associated with the Project down to Mean Low Water Springs (MLWS). This includes the initial section of CO_2 export pipeline as well as replacement or maintenance of an effluent outfall into the Tees Bay.

Diagram 4-1: The Net Zero Teesside Project (Schematic)



4.1.3 Whilst the Proposed Development is designed for the future collection and sequestration of CO_2 from third-party industrial emitters, the capture and compression at source of third-party CO_2 emissions from these locations before entering the proposed CO_2 Gathering Network does not form part of

the Application and is not considered in this ES. Development of these third party carbon capture and compression facilities will be the subject of separate consent applications by the operators of these facilities which will, if necessary require separate environmental impact assessments including assessments of cumulative and combined effects.

4.1.4 As discussed in Section 4.8, works below MLWS associated with the construction and operation of the wider Project do not form part of the Application. NZNS Storage will also be responsible for the offshore elements of NZT, comprising the offshore section of the CO_2 export pipeline (below MLWS) to a suitable offshore geological CO_2 storage site under the North Sea, CO_2 injection wells and associated infrastructure.

4.1.5 The consent application for the offshore works is currently being progressed and will be supported by a separate Environmental Impact Assessment (EIA). Nevertheless, it is recognised that the onshore and offshore works together comprise the wider Project. Therefore, the combined effects of the onshore and offshore works in the vicinity of Tees Bay are considered in Chapter 14 Marine Ecology and Chapter 24 (ES Volume I, Document Ref. 6.2). Combined effects with the wider off-shore scheme are considered in Appendix 24C: Statement of Combined Effects (ES Volume III, Document Ref. 6.4). As the offshore EIA is still being developed, there is currently limited information available on the offshore effects, so the Statement of Combined Effects Report that accompanies the Application is relatively high level but provides information to allow consideration of the likely significant effects of the wider off-shore scheme. The offshore EIA will be submitted Q2 2022 for approval Q1 2023, in support of the separate offshore consent application.

4.2 Proposed Development

4.2.1 The Proposed Development includes the following components (references to "Work No." is to the corresponding work number in Schedule 1 to the Draft Development Consent Order (DCO) (Document Ref. 2.1) and as shown on the Work Plans (Document Ref. 4.4):

- A new build low-carbon gas-fired generating station with associated carbon capture plant, low pressure CO_2 compression and associated utilities and buildings (**Low-Carbon Electricity Generating Station, Work No. 1**), comprising:
    a. Combined Cycle Gas Turbine (CCGT) Plant;
    b. Cooling Infrastructure for the CCGT;
    c. Carbon capture and low pressure compression plant for the CCGT; and
    d. Administration, control room and stores.
- Natural gas pipeline to supply the Low-Carbon Electricity Generating Station (**Natural Gas Connection Corridor, Work No. 2A**) and (**Above Ground Installation, Work No. 2B)**;

- Electrical power export lines from the Low-Carbon Electricity Generating Station sub-station on the PCC Site to a new NZT substation to be constructed adjacent to the existing National Grid Electricity Transmission (NGET) substation at Tod Point. The existing Tod Point sub-station will also be extended by the addition of bays to the north and south of it (**Electrical Connection, Work No. 3A and Work No. 3B**);
- A connection corridor to public utility raw water supply infrastructure, for the provision of water for the Proposed Development (**Water Supply Connection Corridor, Work No. 4**);
- Water discharge using an existing or replacement outfall and associated pipework for the discharge of treated effluent and surface water to Tees Bay (including a potential pipeline connection for transportation of process water to Bran Sands Waste Water Treatment Plant and return for discharge) (**Water Discharge Connection Corridor, Work No. 5**);
- Gaseous phase medium pressure CO_2 Gathering Network for the purpose of connecting various industrial installations across the Tees Valley (**CO_2 Gathering Network Corridor, Work No. 6**);
- High Pressure CO_2 Compression facilities (**HP Compressor Station, Work No. 7**);
- High pressure dense-phase CO_2 export pipeline (**CO_2 Export Pipeline Corridor, Work No. 8**);
- Temporary Construction and Laydown Areas (**Laydown Areas, Work No. 9**); and
- Access and Highway Improvements (Access and Highways Improvement Works, Work No. 10).

4.2.2 The Low-Carbon Electricity Generating Station together with the associated Carbon Capture and Compression facilities are referred to as the “PCC Site” in this ES. Further details of the Proposed Development are set out in Section 4.3 and Figures 3-2A to E in ES Volume II, Document Ref. 6.3.

4.2.3 The Proposed Development is a ‘First Of A Kind’ for this type of infrastructure project. Consequently, at this consenting stage of the project, the design of the Proposed Development needs to incorporate a degree of flexibility in the technology used and the dimensions and configurations of buildings and structures to allow for the future selection of the preferred technology and contractor(s).

4.2.4 In order to ensure a robust assessment of the likely significance of the environmental effects of the Proposed Development therefore, the EIA is being undertaken adopting the principles of the ‘Rochdale Envelope’, where appropriate. This involves assessing the maximum (or where relevant, minimum) parameters for the elements where flexibility needs to be retained (such as the building dimensions or operational modes for example). Where

this approach is being applied to the specific aspects of the EIA, this is confirmed within the relevant chapters of this ES.

4.2.5 Justification for the need to retain flexibility in certain parameters is outlined in this chapter and also in Chapter 6: Alternatives and Design Evolution (ES Volume I, Document Ref. 6.2). As such, this ES represents a reasonable worst-case assessment of the potential impacts of the Proposed Development at its current stage of design.

4.2.6 Construction of the Proposed Development is detailed in Chapter 5: Construction Programme and Management (ES Volume I, Document Ref. 6.2). At this stage in the project development a detailed construction programme is not available as this is normally determined by the contractors which have not yet been appointed. However, an indicative construction programme is presented within Chapter 5: Construction Programme and Management (ES Volume I, Document Ref. 6.2) on which the potential environmental effects of the Proposed Development have been assessed.

4.2.7 Should a DCO be granted for the construction, operation and decommissioning of the Proposed Development (which at this stage is anticipated to be late-2022 at the earliest), then, subject to final investment decision, construction is likely to commence 2023 (following the commencement of site preparation and remediation works, expected to be by Teesworks, the landowner). It is anticipated that operation of the Proposed Development would commence in 2026.

4.2.8 It is envisaged that the PCC Site will have an expected design life of around 25 years. At the end of the expected design life, these elements would be assessed for ongoing viability and, only if no longer viable, be decommissioned. It is therefore anticipated that, at the earliest, decommissioning of the PCC Site would be expected to commence at some point after 2051. This ES has assumed that the Proposed Development could operate for longer than a 25 year design life, and in relevant chapters has considered and assessed the potential for operational impacts / effects to continue beyond this timeframe.

4.2.9 The CO_2 Gathering Network and CO_2 Export Pipeline have been designed to operate independently of the PCC Site and will have a design life of around 40 years.

4.2.10 This chapter is supported by Figures 3-2A to E (ES Volume II, Document Ref. 6.3), which show the layout of the Proposed Development. In addition, Figures 4-1 and 4-2 (ES Volume II, Document Ref. 6.3) show an indicative layout of the PCC Site and the location of the proposed landscaping and biodiversity areas.

4.3 Components of the Proposed Development

Low-Carbon Electricity Generating Station

Overview

4.3.1 The proposed Low-Carbon Electricity Generating Station (Work No. 1) will be a gas fired generating station comprising a single high efficiency CCGT unit. The location of the Low-Carbon Electricity Generating Station is shown on Figure 3-2A in ES Volume II (Document Ref. 6.3). An indicative layout for the Low-Carbon Electricity Generating Station within the PCC Site is shown on Figure 4-1 (ES Volume II, Document Ref. 6.3).

4.3.2 Given the 'First-Of- A-Kind' nature of the Proposed Development, the design assessed in this ES is based on a range of the most likely CCGT equipment to be used and most likely licensor designs for the carbon capture plant. This means that the likely range of electrical output of the Low-Carbon Electricity Generating Station for the PCC Site is significant.

4.3.3 In unabated mode (without carbon capture) power output could range from around 650 MWe to over 850 MWe. Since power outputs increase with cooler ambient temperatures, the maximum outputs for any chosen configuration can periodically be higher than this. However, the upper limit on power output is ultimately limited by the grid connection, which is rated at 860 MWe.

4.3.4 In abated mode, when the carbon capture plant is in operation, the auxiliary loads are considerable, and the net output reduces and accordingly the range of carbon-abated export power is likely to be in the range of around 580 MWe to 760 MWe.

4.3.5 In accordance with Rochdale Envelope principles, for the purposes of this Application, the Low-Carbon Electricity Generating Station is therefore described in this document as having a "nominal output of up to 860 MWe unabated (760 MWe abated)".

4.3.6 The integrated power generation and carbon capture facilities within the Low-Carbon Electricity Generating Station (the Site) will comprise:

- a gas turbine;
- a heat recovery steam generator (HRSG);
- a steam turbine (collectively the turbines and HRSG comprise a CCGT);
- gas and steam turbine buildings;
- gas turbine intake filters;
- selective catalytic reduction (SCR) equipment for the removal of nitrogen oxides (NOx) from the flue gas;
- absorber column for carbon capture;
- solvent regenerator / CO_2 stripper enabling re-concentration of the solvent and liberation of atmospheric CO_2;

- CO_2 treatment and low pressure compression;
- mechanical draught cooling towers;
- gas reception facility;
- auxiliary boilers and/or diesel generators;
- a stack for the discharge of treated flue gas from the absorber column plus stacks discharging emissions to air from the HRSG and auxiliary boiler;
- continuous emissions monitoring system;
- onsite substation adjacent to new power generation facility;
- transformers (for the import and export of electricity);
- deaerator and feed water pump buildings;
- chemical sampling/dosing plant;
- demineralised water treatment plant, including storage tanks; and
- ancillary equipment (including compressors, pumps, chemical storage facilities, fan coolers, water treatment plant and pipework etc.).

4.3.7 The electrical, steam, steam condensate and water circuits between the power generation and capture plant will be integrated as far as is technically practicable in order to reduce energy use. For example, steam will be extracted from the HRSG for use in the capture plant and, once used, condensed and returned to the HRSG for re-use. However, consideration has also been given to the potential for export of usable waste heat from the Proposed Development to third party users (known as Combined Heat and Power (CHP)) – see the Combined Heat and Power Assessment (Document Ref. 5.8).

Power Generation

4.3.8 Natural gas supplied by the Natural Gas Connection (Work No. 2) that has been conditioned offsite (by others) to the required temperature and pressure will be combusted in the CCGT. The gas turbine selected will be provided with dry low-nitrogen oxides (NOx) burners to minimise the formation of NOx. Potentially, SCR will be used to reduce this even further before the gas passes into the carbon capture process – see 4.3.14.

4.3.9 Following combustion in the gas turbine, the hot gases that are produced are directed through the turbine section where they will expand across the blades of the turbine causing it to rotate and drive an electrical generator. The gas turbine exhaust gases are passed through the HRSG to recover the useful heat within them in order to produce steam (at various pressures) which is used to generate further power via a separate steam turbine, and for heating of process streams within the carbon capture unit.

4.3.10 The steam exhausting from the steam turbine will be cooled and condensed with the condensate returned to the steam-water cycle of the HRSG for

continued reuse. Water used within this steam/water cycle will need to be treated to be of extremely high purity to regulate the build-up of residual dissolved solids in pipework arising from the continuous evaporation and condensing of water within the cycle. To further manage this, it will be necessary to purge a small amount of the recirculating water (known as boiler blowdown) intermittently. Any blowdown removed from the cycle will need to be made up with fresh demineralised water.

4.3.11 The condensation of steam exiting the steam turbine will be achieved using a separate circuit of cooling water that is recirculated through mechanical draught cooling towers which are lower in height than traditional natural draught cooling towers. These can give rise to visible plumes of water vapour dependent on the ambient weather conditions. A short visible plume may be present for the majority of the time once the Proposed Development becomes operational. However, the proportion of time that the visible plume is predicted to extend beyond the boundary of the Low Carbon Electricity Generating Station site (taken as being approximately 100 m from the emission source for the purposes of the assessment) is less than 1% (see Appendix 8B, ES Volume III, Document Ref. 6.4).

4.3.12 The need for an auxiliary boiler will be considered in further design studies at the front-end engineering design stage. If required, the auxiliary boiler would provide heat/steam during commissioning, start-up, shutdown and maintaining carbon capture equipment in a “hot” or “warm” stand-by state when the CCGT is off-line. Exhaust emissions from the auxiliary boiler would be via a dedicated stack. An inline electrical heater would also be used to heat the fuel gas to the gas turbine prior to the availability of steam during start-up.

4.3.13 Emergency diesel generators may need to be installed in order to provide a short-term source of electricity, in the event of a simultaneous loss of power generation and external power supply, to provide power for emergency and safety critical equipment until external power can be re-established.

Selective Catalytic Reduction

4.3.14 Combustion of natural gas is highly efficient, and, due to the composition of the gaseous fuel, the combustion gases from a CCGT contain negligible amounts of sulphur dioxide (SO_2) and particulate matter. In addition, the optimisation of combustion within a gas turbine is well understood, such that the emissions of NOx and carbon monoxide (CO) are carefully controlled by design and typically through the implementation of primary control measures such as burner design and staged combustion.

4.3.15 In August 2017, revised Best Available Techniques (BAT) Conclusions for Large Combustion Plants were published (European Commission, 2017), which set out the Achievable Emission Levels (AEL) for combustion plant, including new CCGTs. Achievement of these AELs in high efficiency CCGT units may require secondary abatement measures to be used in addition to the primary control measures such as use of dry low-NOx burners. In addition, NOx concentrations in the flue gases entering the carbon capture plant need

to be minimised to prevent the degradation of the solvent within the carbon capture process and in order to optimise CO_2 capture efficiency.

4.3.16 Secondary NOx abatement in the form of SCR will therefore be required to control NOx levels entering the carbon capture system. SCR is a secondary abatement technique involving either the injection of urea or ammonia into the flue gas to react with any NOx present in the presence of a catalyst. The SCR equipment, will be installed within the HRSG, as is common practice within the power industry.

4.3.17 The level of NOx removal required is the subject of on-going technical studies regarding the capture plant and emission limits that will be required to be met from the Generating station and will be partially dependent upon the sensitivity of the carbon capture solvent to NOx. These studies will seek to optimise the operation of a plant in order to maximise carbon capture efficiency and minimise emissions and waste.

4.3.18 The assessment of NOx emissions presented in Chapter 8: Air Quality (ES Volume I, Document Ref. 6.2) has assumed NOx emissions at the BAT-associated emission levels (BAT-AELs), set out in the BAT Reference Document for Large Combustion Plants (European Commission, 2017).

4.3.19 In a conventional CCGT plant, the flue gas from the HRSG is released to atmosphere from an exhaust stack. However, in this plant the flue gas from the HRSG will be ducted directly into the carbon capture plant for the removal of carbon dioxide from the gas stream. However, there will still be a stack located between the HRSG and the capture plant for use at times when the carbon capture plant is not operational, and the plant is operating in unabated mode.

Carbon Capture Plant

4.3.20 The CCGT will be served by a dedicated carbon capture plant. The carbon capture plant will include:

- flue gas pre-treatment, including cooling/scrubbing;
- flue gas blower;
- CO_2 absorption column (absorber);
- CO_2 removal column (stripper/regenerator); and
- ancillary equipment (including heat exchangers, pumps, chemical storage, water treatment plant and associated inter-connecting pipework).

4.3.21 The carbon capture plant will be designed to capture up to approximately 95% by weight (w/w) of the CO_2 emitted from the CCGT. This could equate to a capture of around 1.7 to 2 million tonnes of CO_2 per year, dependent upon the turbine equipment chosen and the dispatch load factor of the power plant. The minimum capture efficiency for the plant will be 90%.

4.3.22 Prior to their introduction into the absorber column, the flue gases from the CCGT will be cooled to the required design temperature (approximately 40°C)

potentially by using a direct contact cooler/flue gas quencher that contacts the hot flue gases with a fine water spray in a packed column.

4.3.23 Once cooled, the flue gases from the CCGT will be introduced to an absorber column. In the column, the flue gases will pass through a solvent that will remove the CO_2 from the gas stream. The solvent to be used is the subject of on-going technical studies but is likely to be an aqueous solution of amines. The alkaline nature of the solvent will mean that it will selectively absorb acidic gases such as CO_2.

4.3.24 Even with the use of SCR technology, it will not be possible to entirely remove NOx or other impurities from the flue gases from the generating station, therefore, some solvent will periodically need to be purged and made-up with fresh solvent.

4.3.25 The CO_2 lean flue gases (treated flue gas) will exit from the top of the absorber column via a dedicated stack for dispersion to the atmosphere. A flue gas washing unit is usually located as a separate stage within the absorber column to remove entrained solvent from the flue gases prior to release. A series of wash stages may be required on the absorber comprising water wash and acid wash steps so as to effectively remove amines and ammonia emissions from the flue gas before it is discharged to atmosphere. The number and nature of the wash steps will be determined based on the solvent selected for the carbon capture plant.

4.3.26 CO_2 rich solvent from the absorber will pass from the bottom of the absorber column to a stripper column for regeneration. The stripper column uses heat to release the CO_2 from the solvent. The hot CO_2 lean solvent then leaves the stripper column and is recirculated, likely via a heat exchanger, back to the top of the absorber column.

4.3.27 The CO_2 gas exiting the top of the stripper column will be passed through a condenser to remove water and solvent vapours. The CO_2 stream will then pass to the CO_2 conditioning/compressor unit.

CO_2 Conditioning and Low Pressure Compressor Unit

4.3.28 The gas CO_2 stream from the capture plant will be saturated with water and will contain traces of oxygen which will need to be reduced in a gas conditioning facility. The conditioning equipment/processes are the subject of on-going technical studies; however, it is envisaged that the captured CO_2 stream will be cooled and partly compressed before the trace oxygen and water are removed.

4.3.29 Once compressed, treated and metered, the CO_2 stream will be at a low pressure between 12 and 20 bar above ambient pressure (barg) and will enter the part of the medium pressure CO_2 Gathering Network within the PCC Site. No on-site storage of compressed CO_2 will be required.

Water Treatment

4.3.30 A water treatment plant will be needed to treat the water feed to the plant to remove dissolved solids present and provide make-up water to the

steam/water cycle, cooling water system, fire water system and for dilution of make-up solvent within the capture plant.

4.3.31 In addition, wastewater treatment will be required for treatment of process effluent from the flue gas quencher and generating station prior to discharge to the environment. Two options are under consideration for the approach to wastewater treatment.

4.3.32 The first option is that the process effluent will be treated on site to an appropriate standard using a wastewater treatment plant (WwTP) and then discharged to Tees Bay via the outfall. The alternative wastewater treatment option under consideration is that the process effluent flow will be directed to Northumbrian Water Ltd (NWL) Bran Sands WwTP via a new dedicated pipeline for treatment there prior to discharge. The treated effluent may be returned by a new return pipeline to the PCC Site for discharge to Tees Bay via the outfall or discharged to the Dabholm Gut from the existing consented outfall for the Bran Sands WwTP.

4.3.33 Wastewater treatment in the Bran Sands facility will be a techno-commercial arrangement and may not be fully agreed until a later stage in the project development.

4.3.34 Other effluent streams, including potentially contaminated surface water, process water from CO_2 compression and blowdown from cooling towers and boilers, will be subject to re-use where practically possible and when not possible, on-site treatment (e.g. by chemical dosing) followed by retention prior to discharge to the outfall. The exact treatment for these streams will be determined during Front-End Engineering Design (FEED).

CO_2 Gathering Network

4.3.35 The UK Government published its Clean Growth Strategy in October 2017 (amended April 2018) (BEIS, 2017) which included CCUS as part of the strategy for decarbonisation. Net Zero Teesside (and prior to that the Teesside Collective) has been actively engaged in the development of industrial CCS solutions for some time in the area identified for the Proposed Development.

4.3.36 It is intended that the Proposed Development facilitates future third-party industrial carbon capture connections to the off-shore storage site. This is to be achieved through the installation of the CO_2 Gathering Network (Work No. 6) across the surrounding area, to allow different users to connect CO_2 streams into the Network.

4.3.37 The capture and compression of CO_2 from third-party industrial emitters at source does not form part of the Application and is not considered in this ES but will be the subject of separate consent applications as and when investment decisions are made by third-party operators to connect into the CO_2 Gathering Network infrastructure.

4.3.38 The potential routeing of the initial phase of the CO_2 Gathering Network is shown on Figure 3-2E in ES Volume II (Document Ref. 6.3).

4.3.39 The CO_2 Gathering Network will predominantly use an existing above ground pipe racking network and using existing culverts and overbridges. The CO_2

Gathering Network is proposed to start in Billingham, pass through the Seal Sands industrial area and cross under the River Tees before entering the PCC Site for high pressure (HP) compression.

4.3.40 The routeing of the CO_2 Gathering Network across the River Tees will be either:

- via a micro-bored tunnel from Seal Sands directly to the PCC (and shared with the Natural Gas Connection) and then below ground along the southern side of the Teesworks Spine Road to the PCC Site; or
- installed using a horizontal directional drilled (HDD) bore from Seal Sands to the northern bank of the mouth of Dabholm Gut and then above ground along the northern bank of Dabholm Gut past Bran Sands Wastewater Treatment Plant and then north to the PCC Site (see Figure 5-2, ES Volume II, Document Ref. 6.3).

4.3.41 The selection of the Tees crossing method will be dependent on an assessment of complexity, land availability, constructability, risk assessments, safety and cost-effectiveness.

4.3.42 It will also be necessary to run a fibre-optic control cable for control of the CO_2 Gathering Network from the north bank of the Tees to the PCC Site. This will either cross the Tees via the micro-bored tunnel or, if this option is not used, using an existing services tunnel beneath the Tees.

4.3.43 On a few occasions during the lifetime of the onshore facilities there may be the need to vent some or all of the medium pressure CO_2 in the Gathering Network to atmosphere. Any venting will be a planned activity and will be managed in such a way so as to not exceed acceptable noise limits at residential properties.

CO_2 Export

4.3.44 The export of CO_2 from Teesside to the Endurance store will include an onshore high-pressure (HP) Compressor Station located within the PCC Site adjacent to the Low-Carbon Electricity Generating Station, and the commencement of an export pipeline to the off-shore elements of the Net Zero Teesside (NZT) Project development.

4.3.45 The offshore CO_2 export and storage elements below Mean Low Water Springs (MLWS) will be separately consented and do not form part of the Proposed Development – including the offshore section of the CO_2 Export Pipeline, the CO_2 store itself and CO_2 injection wells into the store and the associated off-shore infrastructure (either platform or subsea or combination thereof) (see Section 4.8).

High Pressure Compressor Station

4.3.46 The HP Compressor Station will be the collection point for CO_2 from the medium pressure CO_2 Gathering Network (including CO_2 from the PCC).

4.3.47 The Compressor Station will consist of inlet metering and compression facilities. CO_2 will be compressed from a pressure of around 12 barg at the

inlet to a pressure between 120 to 190 barg ('dense phase') prior to introduction into the CO_2 Export Pipeline.

4.3.48 The HP Compressor Station will be located on land adjacent to Coatham Dunes to minimise the on-shore length of the high-pressure CO_2 Export Pipeline. The location of the Compressor Station is shown on Figure 3-2A and on Figure 4-1 in ES Volume II (Document Ref. 6.3).

4.3.49 The design life of the HP Compressor Station is longer than the power and capture elements of the Proposed Development. During operation of the Low-Carbon Electricity Generating Station, power for the HP Compressor Station (30 MWe) will be supplied from the generating station with back-up from National Grid's Tod Point substation. After the Low-Carbon Electricity Generating Station has been decommissioned power for the HP Compressor Station will solely come from Tod Point substation.

CO_2 Export Pipeline

4.3.50 The conditioned and compressed CO_2 will be transported off-shore via a new pipeline that will direct the dense phase fluid to the subsurface storage site. The storage site will be located in the Endurance underground storage reservoir beneath the North Sea located approximately 145 km to the east/south-east of the Proposed Development. Endurance is the UK's largest and most well-understood saline aquifer for carbon storage.

4.3.51 The route corridor considered for the onshore and to MLWS section of the CO_2 Export Pipeline to be consented by the DCO is shown in Figure 3-2A in ES Volume II (Document Ref. 6.3).

4.3.52 The section of the CO_2 Export Pipeline included in the DCO application will start within the PCC Site boundary at the HP Compressor Station and pass under the private road to South Gare, under Coatham Dunes and Sands to MLWS. To facilitate this, the pipeline will need to pass under parts of the Teesmouth and Cleveland Coast Special Protection Area (SPA)/Ramsar and the Teesmouth and Cleveland Coast Site of Special Scientific Interest (SSSI).

4.3.53 The on-shore and near shore section of the CO_2 Export Pipeline will have an indicative diameter of up to 800 millimetres (mm) and will be installed below ground using trenchless techniques, with the depth increasing for areas below key receptors or infrastructure e.g. South Gare Road and Coatham Dunes/Coatham Sands.

4.3.54 Although the current project will allow storage of up to 4 million tonnes per annum (TPA) of CO_2, the export pipeline will be sized to allow up to 10M TPA of CO_2 to be stored. This will provide sufficient capacity for future additional connections from industrial emitters to the CO_2 Gathering Network and for potential future expansion of the Power and Capture plant should this be required.

4.3.55 It will be necessary to run power and fibre-optic control cables from the PCC Site to the off-shore installation and to a remote isolation valve. These will be installed at the same time as the CO_2 Export Pipeline using separate trenchless crossings.

4.3.56 The offshore works associated with construction and operation of the CO_2 pipeline beyond MLWS and operation of the off-shore storage facility will be consented separately supported by a separate EIA (see Section 4.8[1]). Environmental effects from the construction and operation of the off-shore elements of the Project are considered in in Appendix 24C: Statement of Combined Effects (ES Volume III, Document Ref. 6.4) and in the cumulative impact assessment in this ES for the Proposed Development as presented in Chapter 24: Cumulative and Combined Effects (ES Volume I, Document Ref. 6.2).

4.3.57 The Endurance geological storage facility will be operated under a licence from the Oil and Gas Authority (OGA) and regulated by the OGA under a storage permit.

Other Connections

Natural Gas Connection

4.3.58 Natural gas will be used as the fuel for the operation of the Low-Carbon Electricity Generating Station. Subject to agreement with National Gas Grid (NGG), natural gas will be supplied via a tie-in to the gas transmission network in the area (Work No. 2) on the north bank of the Tees at Seal Sands with subsequent transport through a new 24" buried gas line. This option requires a crossing of the Tees direct to the STDC site via a new tunnel shared with the CO_2 Gathering Network. Upon exit from the tunnel the new gas pipeline terminates at the PCC with a new gas receiving facility (Above Ground Installation (AGI)).

4.3.59 The route corridors being considered for connection to the high-pressure transmission system are shown in Figure 3-2B in ES Volume II (Document Ref. 6.3).

4.3.60 The new gas pipeline will be installed below ground using a combination of open-cut and trenchless technologies, depending on the constraints or crossings required.

4.3.61 Two new co-located AGIs will be constructed next to the existing NGG facility at Seal Sands. The first (NGG) AGI will receive the natural gas from the newly created tie-in to the existing NGG pipeline; in turn this will cross feed to the second new (NZT) AGI and then on into the new 24" buried gas line described above. The new NZT AGI will include metering, isolating valves and Pipeline Inspection Gauge ("pig") launcher.

4.3.62 The project has identified two alternative routes for the new gas supply which will be further developed during the design phase:

- the outlet from the new NZT AGI gas could be routed into the existing, disused 24" Trafigura pipeline which runs between the Tees Gas Processing Plant (TGPP) on Seal Sands to the Navigator Terminal. At this location a tie-in will be constructed (new AGI with pig receiver)

[1] Note: Land between MHWS and MLWS is covered by both the DCO and Marine Licensing regimes

which then connects (via a new AGI with pig launcher) into the new 24" gas line and into the new tunnel and on to STDC as described above. At present the Trafigura line is under long term preservation and detailed assessment will be undertaken to understand the re-use of this pipeline.

- the outlet from the new NZT AGI could be fed into the existing, disused 24" Sembcorp gas line which runs through North Tees. The existing Sembcorp pipeline crosses the river Tees and lands on the north bank of Dabholm Gut and runs on to Wilton site on the South Tees. At a point near the NWL Bran Sands WwTP, a new tie-in will be constructed which then connects via a new AGI into a new gas pipeline which could run to the STDC site to the new gas receiving station via a wayleave to the South of the NWL Bran Sans WwTP. At present the Sembcorp line is under long term preservation and detailed assessment will be undertaken to understand the re-use of this pipeline. In the event the Sembcorp tie-in is adopted, as this is located on the south bank of the Tees there will be no requirement for a tunnel under the Tees.

4.3.63 The choice of gas connection will be based on techno-commercial considerations and will be made in 2022.

Electrical Connection

4.3.64 The existing electrical infrastructure in the Teesside area comprises 275 kilovolt (kV) and 400 kV overhead lines as well as lower voltage above and below underground cables that serve the existing National Grid Electricity Transmission (NGET) substation at Tod Point.

4.3.65 The proposed Electrical Connection (Work No. 3A) for the import/export of electricity will be between the substation forming part of the Low-Carbon Electricity Generating Station (Work No. 1) and NGET's Tod Point substation 1.3 km to the south (see Figures 3-2C and 5-3 in ES Volume II, Document Ref. 6.3) and the Electrical Connection Plans (Document Ref. 4.8).

4.3.66 The Electrical Connection (Work No. 3A) will comprise a 275 kV single circuit cable route and control system cables connecting the substation on the PCC Site into a new NZT owned Electrical Substation (Work No. 3B) adjacent to the existing NGET 275kV Tod Point substation (also within Work No. 3A). The electrical connection works will also involve NGET extending its Tod Point substation by adding new bays to the existing Tod Point substation compound. This extension to the NGET substation is included in Work No. 3B.

4.3.67 Two possible routeings for the Electrical Connection (1A and 1B) are shown on Figure 5-3 (ES Volume II, Document Ref. 6.3) and the Electrical Connection Plans (Document Ref. 4.8). These two options only relate to the routeing of the cables across part of the Teesworks site and crossing the rail line and are due to uncertainty in the timing and exact location of third party infrastructure being developed in this part of the Site by the site operator and the York Potash project. This infrastructure will be used to facilitate the crossing of the Tees Valley railway line by the Electrical Connection for the Proposed Development.

4.3.68 The remainder of the corridor for the Electrical Connection is broad in parts due to the fact that the site is the subject of development proposals by Teesworks which are still being worked up and designed in detail, and the Electrical Connection routeing needs to be flexible to fit with the development that actually comes forward.

4.3.69 All electrical and control system cables will be installed below ground or at ground level (with a crossing over the railway line) - no new overhead transmission lines are proposed as part of the works. The proposed Electrical Connection corridor and proposed location of the new electrical substation are shown on the Electrical Connection Plans (Document Ref. 4.8). These plans also show the indicative layout and elevation of the new NZT electrical substation and the extension to the existing NGET substation. NGET will be responsible for adding new bays to the existing Tod Point substation; such works would be within the existing Tod Point substation compound. The area required for the new electrical substation and the extension to the adjacent NGET Tod Point substation are both within Work No. 3B and Work No. 3A as illustrated on the Works Plans (Document Ref. 4.4) to facilitate the construction of the connection between them.

4.3.70 The maximum parameters for the new electrical substation are specified in Table 4-1 below. Within Work No. 3B the exact location of the proposed new electrical substation is not currently known as this will be dependent on which of the connection options (1A or 1B) is selected (which is dependent on any development proposals which come forward within Work 3A) and detailed design. Therefore, the area covered by Work No. 3B is larger than required for the new electrical substation but the maximum parameters are as specified in Table 4-1 and the Design Parameters within the draft DCO.

4.3.71 Within the PCC Site a generating station substation will also be constructed. The indicative location in which it will be built within Work No. 1 and its maximum parameters are illustrated on The PCC Facility Plans (Document Ref. 4.6) and in Table 4-1. The area defined for the electrical connection within Work No. 1 is larger than required for the generating station substation to allow a degree of flexibility regarding its exact location but the maximum parameters are as specified in Table 4-1 and the Design Parameters within the draft DCO.

4.3.72 Environmental effects associated with the construction and operation of the Electrical Connection including the Electrical Substation Extension and generating station substation are assessed as part of this Environmental Impact Assessment – see Chapter 5 (Construction Programme and Management), Chapter 11 (Noise and Vibration), Chapter 17 (Landscape and Visual Amenity) and, for Electromagnetic Field (EMF) effects, Chapter 23 (Population and Human Health). No other potentially significant environmental effects have been identified associated with the proposed Electrical Connections and associated infrastructure. The worst case locations within Work Nos. 1 and 3B have been assessed for the effects of the substation infrastructure.

4.3.73 At the time of Application submission, NZT Power Ltd. and NGET have executed the bilateral connection agreement, construction agreement and

related document(s), thus confirming the planned connection date and sufficiency of capacity at the Tod Point substation to accommodate the export of electricity from the Low-Carbon Electricity Generating Station located within the PCC Site.

Water Supply Connection

4.3.74 Water make-up will be required to provide cooling for the Low-Carbon Electricity Generating Station and carbon capture plant. Demineralised water will also be required in order to provide make-up to the steam/water cycle of the Power and Capture plant. There will also be a requirement for water for domestic and sanitary use. The water source will be the existing NWL raw water supply to the Teesworks site.

Water Discharge Connections

4.3.75 The existing on-site outfall to the Tees Bay is proposed for the development. The outfall may require refurbishing or alternatively replacing on a new alignment adjacent to the CO_2 Export Pipeline. As replacement represents the worst-case option, both this and refurbishment are assessed in this ES.

4.3.76 Should the alternative that utilises the Bran Sands WwTP be selected, then a pipeline connection for the return of treated effluent from Bran Sands WwTP to the PCC Site will be included to enable the treated effluent to be discharged to the Tees Bay via the outfall.

4.3.77 Discharge of domestic/sanitary effluent would be to the local sewerage system for treatment with a tie-in on the Teesworks site being proposed. The current system is routed to Marske-by-the-Sea sewage treatment works.

4.3.78 The location of the Water Supply and Discharge Connections is shown on Figure 3-2D in ES Volume II, Document Ref. 6.3.

Chemical Storage

4.3.79 A number of chemicals will be required to be stored and used on the PCC Site. Some of these materials will be classed as hazardous. Where any substance could pose a risk to the environment through its uncontrolled release (e.g. surface water drains), the substance will be stored within appropriate containment facilities including impermeable concrete surfaces and appropriately designed and sized bunds.

4.3.80 The inventory of materials to be stored on the PCC Site will be finalised through the detailed design. However, where storage of hazardous materials, individually or in-combination exceeds the relevant thresholds, consent separate permissions will need to be sought from the Hazardous Substances Authority, Health and Safety Executive (HSE) and local planning authority for their storage, under the Control of Major Accident Hazards (COMAH) and Hazardous Substance Consent and COMAH regimes respectively. All chemical storage will be regulated by the Environment Agency through an environmental permit that will be required for the operation of the Proposed Development.

Design Parameters

4.3.81 The design of the Proposed Development is not yet finalised and will not be completed until the detailed design stage. However, the final design will be within the parameters assessed within this ES which will be retained in order to allow construction of the Proposed Development to progress from Q3 2022. The evolution of the Proposed Development to date is outlined in Chapter 6: Alternatives and Design Evolution (ES Volume I, Document Ref. 6.2).

4.3.82 Some of the design aspects and features of the Proposed Development cannot be confirmed until the Engineering, Procurement and Construction (EPC) contractor has been appointed. For example, the building sizes may vary depending on the contractor selected and their specific configuration and selection of plant. Focussed use of the Rochdale Envelope approach has therefore been adopted to define appropriate parameters for use in the EIA.

4.3.83 Table 4-1 sets out the maximum dimensions for the principal elements of the Proposed Development which have been used for the basis of the various technical assessments. Maximum and minimum parameters have been devised to enable the EIA to progress in the absence of the final design information and to enable the compilation of a robust assessment based on a reasonable and appropriate worst-case option. The parameters selected have been identified as sufficient to allow a robust worst-case impact assessment to be made in the individual assessments in Chapter 8 – 24 (ES Volume I, Document Ref. 6.2).

4.3.84 Existing ground levels at the proposed location of the PCC Site are approximately 4 to 8 m Above Ordnance Datum (AOD). Ground elevations post- site clearance and remediation are anticipated to be a maximum of 13 m AOD for the development platform. Existing ground levels at the proposed location of the Electrical Substation Extension (Work No. 3B) are assumed to be up to 10 m AOD.

4.3.85 The limits of deviation for the following aspects of the Proposed Development are as shown on Figures 3-2A-E (including optionality for the routeing of the Natural Gas Connection and CO_2 Gathering Network) and the Works Plans (Document Ref. 4.4):

- Low-Carbon Electricity Generating Station (including stack locations) (Work No. 1);
- Natural Gas Connection (Work No. 2A) and Above Ground Installation (Work No. 2B);
- Electrical Connection - including the electrical connection itself (Work No. 3A) and substation works at Tod Point (Work No. 3B);
- Water Supply Connection (Work No. 4);
- Water Discharge Connection (Work No. 5);
- CO_2 Gathering Network (Work No. 6);
- HP Compressor Station (Work No. 7);

- CO_2 Export Pipeline (Work No. 8);
- Construction Laydown (Work No. 9); and
- Highway Improvements and Access (Work No. 10).

4.3.86 The detailed design of the development will be secured by a Requirement in the DCO.

Table 4-1. Maximum Design Parameters

Component		Dimensions (m)		
		Length	Width	Maximum Height in Metres (mAOD)*
Gas Turbine Hall		76	76	30 (<43 mAOD)
HRSG Building		63	28	50 (<63 mAOD)
HRSG Stack		-	6.5 m inner diameter	85 m (<98 mAOD)
Steam Turbine Hall		64	54	30 (<43 mAOD)
Absorber Tower		35	25	80 (<93 mAOD)
Absorber Stack		-	6.5 m inner diameter	115 m (<128 mAOD)
Generating station substation (PCC Site)		130	120	29 m (<42 mAOD)
New NZT Electrical Substation (Tod Point)		80	60	12 m (<22 m AOD)
Extension to NGET Electrical Substation (Tod Point)	Northern Bay Extension	70	50	12 m (<22 m AOD)
	Southern Bay Extension	60	30	

* Heights above ordnance datum for the PCC Site assume a maximum development platform level of 13 m AOD following site clearance and associated earthworks. The minimum height of the absorber stack will be controlled by a Requirement.

4.4 Proposed Development Operation

Operational Modes

4.4.1 The Low-Carbon Electricity Generating Station is designed to be able to operate in either baseload or in a flexible (dispatchable) mode in the future.

4.4.2 Baseload mode power refers to power generation that generally runs continuously at high levels of power output throughout the year and whereby the CCGT plant is operated at stable power output levels. Dispatchable mode generation refers to highly flexible operation when the Low-Carbon Electricity

Generating Station will be on demand and dispatched according to market conditions and requirements needs.

4.4.3 A CCGT plant generating station capable of running in both baseload and dispatchable modes is:

- able to provide robust utility scale power throughout the year;
- responsive to seasonal demand fluctuation;
- responsive to daily demand fluctuation (flexible power);
- able to address renewables intermittency (in particular wind and solar) by replacing the electricity supplied by renewables at time of low renewable generation capacity; and
- able to adapt to a changing market in the future (i.e. an increase in renewables capacity).

4.4.4 It is anticipated that on commissioning, the Low-Carbon Electricity Generating Station will operate in baseload mode with continuous operation with carbon capture for several years. Continuous and stable CO_2 production and export is preferable during this period to minimise changes to injection rates to the offshore underground storage reservoir.

4.4.5 After a period of base-load operation, and after CO_2 within the wider gathering network has grown and stabilised, there is the opportunity for the Low-Carbon Electricity Generating Station plant to be able to operate in dispatchable mode, i.e. being able to export power into the day-ahead market to match the anticipated intermittency of renewable power in the future power market. Operating in dispatchable mode could involve multiple start-up/shutdown cycles per year. Operations in baseload mode are considered the worst-case in terms of environmental impacts and have therefore been assessed in the ES.

Hours of Operation

4.4.6 The Low-Carbon Electricity Generating Station will be designed to operate 24 hours per day, 7 days per week with programmed offline periods for maintenance (see below for information on these).

Staff

4.4.7 It is anticipated that during the operational phase, the Proposed Development will generate approximately 60 - 100 full-time permanent jobs. Operations staffing will be on a shift basis to be spread over a 24-hour period.

4.4.8 Temporary and contractor employees associated with maintenance activities will also be employed at the PCC Site as required.

Process Inputs

4.4.9 The Proposed Development will use various raw materials during operation. Except for natural gas and water, it is anticipated these will be delivered to the facility in bulk transportation vehicles. Storage capacity on Site will be set to reflect the process requirements and delivery capability.

4.4.10 The Proposed Development will also use a number of chemicals during operation. These are anticipated to include:

- amine based solvent;
- urea or ammonia solution;
- water treatment chemicals (including sodium hypochlorite, hydrochloric/sulphuric acid, sodium hydroxide, sodium hypochlorite, carbohydrazide (or alternative oxygen scavenger), urea and trisodium phosphate);
- distillate fuel;
- nitrogen (for purging of the natural gas system and other equipment);
- cleaning chemicals;
- acetylene (metal cutting);
- inert fire-fighting gases;
- lubricating oils;
- hydrogen for generator cooling and deoxygenation of product CO_2 stream; and
- carbon dioxide for purging of electrical generators for maintenance purposes.

4.4.11 In order to reduce the risks of contamination to processes and surface water, all liquid chemicals stored on site will be kept in bunded controlled areas with a volume of 110% of storage capacity and be appropriately segregated.

Maintenance

4.4.12 Inspection and Maintenance activities will be one of the key factors for consideration in the design and layout of the PCC Site. The objective of plant maintenance is to ensure the PCC elements of the Site and the Connections operate safely and reliably.

4.4.13 Routine maintenance will be planned and scheduled via the maintenance management system with on-going regular maintenance and major overhauls occurring approximately once every five years. These maintenance activities will require additional contractors to work on-site.

4.4.14 The maintenance strategy to be adopted will use established methods such as Risk Based Inspection and Reliability Centred Maintenance to support the required facility availability. Therefore, to support the maintenance strategy for the PCC facilities each major equipment item will have appropriate access and laydown areas and the road scheme for the PCC Site will enable free movement for cranes and heavy lifting equipment.

4.4.15 Pipeline inspection plans will be prepared and if required, pig launching and receiving facilities for intelligent “pigging” operations will be considered.

4.4.16 It is anticipated that an integrated Operations and Maintenance team will have responsibility for daily operations, including troubleshooting and effecting minor repairs on the PCC. Major and specialist Operations and Maintenance interventions (turn-arounds, CCGT scheduled maintenance and overhauls, etc) are likely to be outsourced and major equipment items serviced by original equipment manufacturers.

4.4.17 It is intended that major maintenance activities be harmonised around the longest or most constrained outages. For example, it is likely that maintenance of the CO_2 compressors will be aligned with shutdowns of the CO_2 emitter facilities or the Low-Carbon Electricity Generating Station.

Hazard Prevention and Emergency Planning

4.4.18 The Applicants aims to protect human health by safely and responsibly managing activities on site. A Health and Safety Plan covering the works, commissioning and operation of the Proposed Development will be prepared by the Operator. For design and construction, a competent and adequately resourced Construction (Design and Management) (CDM) Coordinator and Principal Contractor will be appointed. The Applicants will ensure that their own staff, designers and contractors follow the Approved Code of Practice laid down by the CDM Regulations 2015.

4.4.19 Written procedures clearly describing responsibilities, actions and communication channels will be available for operational personnel dealing with emergencies. Procedures will be externally audited, and contingency plans written in preparation for any unexpected complications.

4.4.20 The inventory of materials to be stored on the PCC Site will be finalised through the detailed design. However, where storage of hazardous materials, individually or in-combination exceeds the relevant thresholds, consent separate permissions will need to be sought from the HSE and local planning authority for their storage, under the COMAH and Hazardous Substance Consent regimes respectively. All chemical storage will be regulated by the Environment Agency through an environmental permit that will be required for the operation of the Proposed Development.

4.4.21 As set out in Chapter 22: Major Accidents and Natural Disasters (ES Volume I, Document Ref. 6.2), CO_2 is not harmful to human health at low concentrations, it is not flammable and will not support combustion. However, as the concentration of CO_2 in air rises, the hazardous effects on people and the environment increase. The key risk relates to its toxicity at elevated concentrations and potential to act as an asphyxiant gas in low lying locations or confined spaces should it displace air from these locations due to its density being higher than that of air.

4.4.22 Guidance and best practice information for carbon capture technology and transport via pipeline is available from the HSE. The Proposed Development is anticipated to be subject to the Hazardous Substance Consent and potentially COMAH Regulations due to storage of hazardous materials (see Chapter 22: Major Accidents and Disasters in ES Volume I (Document Ref. 6.2). The Applicants are currently working on the basis that the Proposed

Development will come under lower tier COMAH as a minimum, this will be confirmed during detailed design once all chemicals required have been identified along with the quantities which will be stored on the PCC Site.

4.4.23 CO_2 is not currently defined as a dangerous substance under The COMAH Regulations 2015. The HP Compressor Station and the CO_2 Export Pipeline have been located to maximise the distance to residential properties, to minimise the length of the on-shore part of the CO_2 Export Pipeline and taking into consideration the prevailing wind strength and direction for the Site. A Major Accident Prevention Document will be produced during the design process and the HSE will be consulted.

External Lighting

4.4.24 An Indicative Lighting Strategy is included in the Application (Document Ref. 5.11). Before any lighting is installed at the Proposed Development a detailed lighting scheme will be submitted to Redcar and Cleveland Borough Council (RCBC) for approval. The external lighting scheme will be designed in accordance with relevant standards, such as the Guidance Notes for the Reduction of Obtrusive Light (2020) published by the Institute of Lighting Engineers and/or Chartered Institution of Building Services Engineers requirements, as appropriate.

4.4.25 The external lighting scheme will be designed to provide safe working conditions in all areas of the Site whilst reducing light pollution and the visual impact on the local environment. This is likely to be achieved using luminaires that eliminate the upward escape of light. This will be secured by a Requirement in the draft DCO.

Environmental Management

4.4.26 The Proposed Development will comply with the Environmental Permitting (England and Wales) Regulations 2016 under its Environmental Permit so that any impacts of emissions to air, soil, surface and groundwater, to the environment and human health will be minimised and avoided where possible.

4.4.27 The Site will be operated in line with appropriate standards and the operator will implement and maintain an Environment Management System (EMS) which will be certified to International Standards Organisation (ISO) 14001. The EMS will outline requirements and procedures required to ensure that the Site is operating to the appropriate standard.

4.4.28 Sampling and analysis of pollutants will be undertaken where required including monitoring of exhaust emissions levels using a Continuous Emissions Monitoring System prior to discharge from the stacks, in accordance with the Environmental Permit.

Heavy Good Vehicle Movements

4.4.29 The PCC Site will be accessed from the A1085 via the former Redcar Steelworks entrance. Operational and Construction traffic movements are detailed within the Transport Assessment (Appendix 16A, ES Volume III, Document Ref. 6.4). In summary it is anticipated that during the operational

phase of the Proposed Development, total Heavy Goods Vehicle (HGV) movements at the PCC Site will be less than 5 to 10 in and out movements per day. These figures include movements associated with delivery of consumables and removal of waste products.

4.4.30 The air quality, noise and transportation assessments (Chapters 8, 11 and 16 respectively in ES Volume I, Document Ref. 6.2) consider the worst-case traffic profile relevant to that topic which are associated with construction. Construction traffic movements are described in Chapter 5: Construction Programme and Management (ES Volume I, Document Ref. 6.2).

4.5 Landscaping and Biodiversity

4.5.1 Construction of the PCC will involve the removal of existing habitats within the PCC Site. The proposed landscaping and biodiversity enhancement measures will be provided within the PCC Site on land within the long-term management control of the Applicants. It will therefore be provided at the location affected by substantive permanent land take for the Proposed Development. The locations of the landscaping and biodiversity enhancement measures are shown on Figure 4-2 (ES Volume II, Document Ref. 6.3)

4.5.2 The frame of reference for the proposed approach is defined by the existing baseline of post-industrial land and extensive relatively species-poor unmanaged secondary grassland, and proximity to high quality habitats and open landscape of the Teesmouth and Cleveland Coast SSSI. The proposed approach therefore allows for compensation of some of the original losses of sub-optimal grassland, and to 'put back better' by making use of the existing favourable ground conditions (nutrient-poor, free-draining and summer drought-stressed) to create semi-improved grassland and favourably manage it thereafter. Tree planting is not proposed given the unfavourable coastal location, but scattered scrub will be provided within grassland areas to add structural diversity and enhance the biodiversity value of the grassland. The surface water drainage arrangement will also be used to secure additional complementary habitat for biodiversity.

4.6 Decommissioning

4.6.1 The power generation and carbon capture elements of the Proposed Development are expected to have a design life of approximately 25 years. At the end of its design life it is expected that these elements of the Proposed Development may have some residual life remaining and the operational life may be extended. The design life of the CO_2 Gathering Network, the HP Compressor Station and the CO_2 Export Pipeline is anticipated to be around 40 years and they could operate independently of the power generation elements of the Proposed Development.

4.6.2 Consequently, decommissioning of the following elements are likely to occur separately, at different times:

- the Low-Carbon Electricity Generating Station and associated connections; and

- the CO_2 Gathering Network, HP Compressor Station, Electrical Connection and CO_2 Export.

4.6.3 At the end of its operating life, it is anticipated that all above-ground equipment associated with the parts of the Proposed Development to be decommissioned will be decommissioned and removed from the Site. Prior to removing the relevant plant and equipment, all residues and operating chemicals will be cleaned out from the plant and disposed of in an appropriate manner.

4.6.4 The bulk of the relevant plant and equipment will have some limited residual value as scrap or recyclable materials, and the construction contractor will be encouraged to use materials that could be recycled.

4.6.5 Prohibited materials such as asbestos, polychlorinated biphenyls, ozone depleting substances and carcinogenic materials will not be allowed within the design of the Proposed Development. Other materials recognised to pose a risk to health, but which are not prohibited, will be subject to a detailed risk assessment.

4.6.6 Prevention of contamination is a specific requirement of the Environmental Permit for the operation of the Proposed Development and therefore it is being designed such that it will not create any new areas of ground contamination or pathways to receptors as a result of construction or operation. Once the relevant plant and equipment have been removed to ground level, it is expected that the hardstanding and sealed concrete areas will be left in place. Any areas of the PCC Site which are to be decommissioned and that are below ground level will be backfilled to ground level to leave a levelled area.

4.6.7 The decommissioning of the Proposed Development will be considered during design with the objective that that no additional significant hazards would exist during the decommissioning phase. A Decommissioning Plan (including Decommissioning Environmental Management Plan (DEMP)) will be produced within the period specified in the relevant legislation in force at the time of cessation of operations of either the power generation or off-site CO_2 Gathering Network, compression and export facilities and agreed with the Environment Agency as part of the Environmental Permitting and site surrender process. The DEMP will consider in detail all potential environmental risks and contain guidance on how risks can be removed, mitigated or managed. This will include details of how surface water drainage should be managed during decommissioning and demolition. The DEMP will be secured by a Requirement.

4.6.8 The Decommissioning Plan will include an outline programme of works. For the Low-Carbon Electricity Generating Station, it is anticipated that it would take up to a year to decommission, with demolition following thereafter, taking approximately two years to complete.

4.6.9 During decommissioning and demolition there will be a requirement for the provision of office accommodation and welfare facilities.

4.6.10 Any demolition contractor would have a legal obligation to consider decommissioning and demolition under the CDM Regulations 2015, or the equivalent prevailing legislation at that time.

4.6.11 Decommissioning activities will be conducted in accordance with the appropriate guidance and legislation at the time of the Proposed Development's closure. All decommissioning activities will be undertaken in accordance with the waste hierarchy. Materials and waste produced during decommissioning and demolition will be stored in segregated areas to maximise reuse and recycling. All materials that cannot be reused or recycled will be removed from the Site and transferred to suitably permitted waste recovery/disposal facilities. It is anticipated that a large proportion of the materials resulting from demolition will be recycled and a record will be kept in order to demonstrate that the maximum level of recycling and reuse has been achieved.

4.6.12 Upon completion of the decommissioning programme, including any remediation works that might be required, the Environment Agency will be invited to witness a post-decommissioning inspection by site staff. All records from the decommissioning process will be made available for inspection by the Environment Agency and other relevant statutory bodies, in accordance with the Environmental Permit requirements.

4.6.13 In the light of the control measures set out above that would form part of the DEMP, decommissioning is not anticipated to present any significant environmental impacts beyond those assessed for the construction phase of the Proposed Development.

4.7 Elements of the Proposed Development Consented under a Deemed Marine Licence

Marine Licensing

4.7.1 In England, the Marine and Coastal Access Act (2009) (MCAA) provides that a ML is required for certain ‘licensable activities’ within the UK Marine Area (Section 42, MCAA). These activities include deposits, removals and construction/’alteration’ works (Section 66, MCAA) which are below Mean High Water Springs (MHWS).

4.7.2 A ML can be issued via a ‘standalone’ Marine Licence Application (MLA) or a licence ‘deemed’ within the body of the DCO i.e. a Deemed Marine Licence (DML). The MMO is the body responsible for issuing, revoking and enforcing a Marine Licence, other than where a licence is in the form of a DML, in which case the Secretary of State has the power to grant it.

4.7.3 Several aspects of the Proposed Development are considered to require MLs from the MMO. The Application includes a request to grant MLs for NZT Power and NZNS Storage via DMLs for the following.

CO_2 Export Pipeline – Near-shore Section

4.7.4 The near-shore section of the CO_2 Export Pipeline includes a portion of the corridor which is below MHWS and above Mean Low Water Springs (MLWS).

Outfall Refurbishment and/or Replacement

4.7.5 Pending the condition of the existing outfall infrastructure, works may be required below MHWS at Coatham Sands within the wider Tees Bay to either refurbish or replace the existing discharge. Replacement will involve use of Trenchless Technologies to reach a suitable discharge point within the Tees Bay whilst minimising impact to the surrounding environment. At the outfall, the emplacement of a suitable discharge head would also be required to be placed via a jack-up barge or similar.

Tees Crossings

4.7.6 The CO_2 Gathering Network and the Natural Gas Connection both require crossings underneath the tidal River Tees using either a micro-bored tunnel (Natural Gas Connection and CO_2 Gathering Network) or a pipeline installed using HDD techniques (CO_2 Gathering Network only) which are below MWHS.

4.8 Off-shore Elements Separately Consented

4.8.1 The following parts of the Proposed Development (as shown in Diagram 4-2) will be located off-shore below MLWS:

- installation of the continuation of the CO_2 Export Pipeline from below MLWS to the Endurance geological storage facility, located beneath the North Sea approximately 145 km to the east south-east of Teesside; and
- the construction of either a sub-sea injection system or an un-manned platform for the injection of exported CO_2 using a well or wells drilled into the underground storage reservoir over 1,000 m below sea level. The injection wells will be drilled and completed using an appropriate mobile offshore drilling unit.

4.8.2 The Endurance geological storage will require an Oil and Gas Authority (OGA) Carbon Dioxide Appraisal and Storage Licence and Permit). The offshore CO_2 Export pipeline will also require consent under the Petroleum Act 1998. A Marine Licence may also be required. These elements do not form part of this Application.

4.8.3 Potential combined effects of the on-shore and off-shore elements of the project are considered in Chapter 14: Marine Ecology and Chapter 24: Cumulative and Combined Effects (ES Volume I, Document Ref. 6.2) and Appendix 24C Statement of Combined Effects (ES Volume III, Document Ref. 6.4).

Diagram 4-2: Off-Shore Elements

4.9 References

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APPENDIX 3C

ENVIRONMENTAL STATEMENT CHAPTER 25

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25.2 Significant Environmental Effects and Proposed Mitigation Measures 25-1

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25. Summary of Significant Effects

25.1 Introduction

25.1.1 Chapters 8 to 24 of this Environmental Statement (ES) have considered the potential environmental impacts and effects of the Proposed Development. This chapter provides a summary of those adverse and beneficial environmental effects that at this stage in the project development and based on preliminary assessments to date are considered to be significant (i.e. moderate and major effects).

25.2 Significant Environmental Effects and Proposed Mitigation Measures

25.2.1 Table 25-1 summarises the significant environmental effects of the Proposed Development that have been identified, following implementation of the embedded mitigation or impact avoidance measures included in the design of the Proposed Development (as detailed in Chapters 8 to 24, ES Volume I, Document Ref 6.3, where relevant). Table 25-1 also summarises any additional mitigation measures that have been identified in the technical assessments contained in the ES.

25.2.2 For each topic, the reasonable worst case scenario is assessed, including the construction programme scenario and design parameters, by applying the Rochdale Envelope, as set out in Chapter 4: Proposed Development and Chapter 5: Construction Programme and Management, ES Volume I, Document Ref 6.3. Where applicable, the reasonable worst case appropriate for each assessment is described in Chapters 8 to 24.

25.2.3 Effects have been assessed for the construction, operation (including maintenance) and decommissioning scenarios.

25.2.4 As outlined in Chapter 2: Assessment Methodology (ES Volume I, Document Ref 6.3), for the purposes of this Environmental Impact Assessment (EIA), an effect is considered to be 'significant' if it is assessed to be moderate (adverse or beneficial) or major (adverse or beneficial). Minor and negligible effects are only referenced in this chapter where a 'significant' (moderate or major) effect has been reduced to a 'not significant' effect following mitigation.

25.2.5 To provide further clarification on the nature of the effects, each has been identified for the purposes of this summary as:

- short term (St) – effects occurring only over a short period of time, e.g. an effect that only lasts for the duration of the construction period, or one that lasts for only part of the operational phase;
- medium term (Mt) – effects occurring for the duration of the Proposed Development's operation, but which cease when operations cease; or
- long term (Lt) – effects occurring beyond the operation of the Proposed Development, for example the permanent loss of semi-improved grassland associated with the Proposed Development;

- temporary (T) – effects that are not permanent because the effect would no longer occur if the impact was removed within the relevant timescale (for example the visual amenity impact of construction structures would be described as St, T as the impact goes when the structures are removed); or
- permanent (P) – effects that are permanent and cannot be readily reversed within the relevant timescale (for example an environmental feature that is lost and cannot be replaced until after decommissioning would be Mt, P. In the event that it could not be replaced at all, this would be Lt, P); and
- direct (D) – effects that result from a direct impact, for example, the loss of ecological habitat; or
- indirect (In) – also known as secondary effects are effects that result indirectly, for example, increased traffic could indirectly impact on air quality.

Table 25-1: Summary of Significant Effects

Development stage	Environmental Impact (following development design and impact avoidance measures)	Classification of effect prior to mitigation	Mitigation/ enhancement (if identified)	Classification of residual effect after mitigation	Nature of effect(s) (Lt/ Mt/ St and P/ T and D/ In)
Chapter 8: Air Quality					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur.				
Decommissioning	No significant effects are predicted to occur.				
Chapter 9: Surface Water, Flood Risk and Water Resources					
Construction	Surface water quality effects: chemical spillages (Tees Estuary, Tees Bay and Belasis Beck)	Moderate adverse (significant)	Further to the implementation of the CEMP and WMP (embedded mitigation), water quality monitoring pre-construction and during construction will be undertaken.	Slight adverse (not significant)	St, T, D
Operation	No significant effects are predicted to occur.				
Decommissioning	No significant effects are predicted to occur.				
Chapter 10: Geology and Hydrogeology					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur.				
Decommissioning	No significant effects are predicted to occur.				
Chapter 11: Noise and Vibration					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur.				
Decommissioning	No significant effects are predicted to occur.				

Development stage	Environmental Impact (following development design and impact avoidance measures)	Classification of effect prior to mitigation	Mitigation/ enhancement (if identified)	Classification of residual effect after mitigation	Nature of effect(s) (Lt/ Mt/ St and P/ T and D/ In)
Chapter 12: Terrestrial Ecology and Nature Conservation					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur				
Decommissioning	No significant effects are predicted to occur.				
Chapter 13: Aquatic Ecology and Nature Conservation					
Construction	No significant effects are predicted to occur with use of embedded mitigation (e.g. pollution control measures).				
Operation	No significant effects are predicted to occur with use of embedded mitigation (e.g. pollution control measures).				
Decommissioning	No significant effects are predicted to occur with use of embedded mitigation (e.g. pollution control measures).				
Chapter 14: Marine Ecology and Nature Conservation					
Construction	Underwater Sound – Pinnipeds Effects to pinnipeds, including harbour seals, from underwater sound generated by Unexploded Ordnance (UXO) detonations, if required, during the construction phase.	Significant	Should UXO detonation only be required in Tees Bay or further offshore, with the adoption of the JNCC standard mitigation measures, the effect of UXO detonations upon seals is predicted to be Not Significant. If UXO detonations are required within the Tees Estuary, it is proposed as additional mitigation that they should be carried out outside of the sensitive breeding and moulting season for harbour seals (June to early September). Abatement measures such as implementation of acoustic barrier technologies, deflagration and the use of acoustic deterrent devices shall also be investigated and incorporated into the Proposed Development where practicable.	Not significant	T, St, D
Operation	No significant effects are predicted to occur.				

Development stage	Environmental Impact (following development design and impact avoidance measures)	Classification of effect prior to mitigation	Mitigation/ enhancement (if identified)	Classification of residual effect after mitigation	Nature of effect(s) (Lt/ Mt/ St and P/ T and D/ In)
Decommissioning	No significant effects are predicted to occur.				
Chapter 15: Ornithology					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur.				
Decommissioning	No significant effects are predicted to occur.				
Chapter 16: Traffic and Transportation					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur.				
Decommissioning	No significant effects are predicted to occur.				
Chapter 17: Landscape and Visual Amenity					
Construction	Impact on recreational users at viewpoint 5 South Gare Breakwater- during construction activities	Moderate adverse (significant)	No potential mitigation has been identified due to the proximity to the Proposed Development and the scale of the structures.	Moderate adverse (significant)	St, T, D
Construction	Impact on recreational users at viewpoint 7 England Coastal Path – during construction activities	Moderate adverse (significant)	No potential mitigation has been identified due to the proximity to the Proposed Development and the scale of the structures.	Moderate adverse (significant)	St, T, D
Construction	Impact on recreational users at viewpoint 8 Redcar seafront during construction activities	Moderate adverse (significant)	No potential mitigation has been identified due to the proximity to the Proposed Development and the scale of the structures.	Moderate adverse (significant)	St, T, D

Development stage	Environmental Impact (following development design and impact avoidance measures)	Classification of effect prior to mitigation	Mitigation/ enhancement (if identified)	Classification of residual effect after mitigation	Nature of effect(s) (Lt/ Mt/ St and P/ T and D/ In)
Opening	Impact on recreational users at viewpoint 7 England Coastal Path – during opening	Moderate adverse (significant)	Partial mitigation through layout and design	Moderate adverse (significant)	Lt, P, D
Operation	Impact on recreational users at viewpoint 7 England Coastal Path – during operation	Moderate adverse (significant)	Partial mitigation through layout and design	Moderate adverse (significant)	Lt, P, D
Chapter 18: Archaeology and Cultural Heritage					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur.				
Decommissioning	No significant effects are predicted to occur.				
Chapter 19: Marine Heritage					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur.				
Decommissioning	No significant effects are predicted to occur.				
Chapter 20: Socio-economics and Tourism					
Construction	Construction employment - the estimated net employment generated during the construction phase is 2,440 workers per annum of which 1,220 are likely to be from the Middlesbrough and Stockton Travel to Work Area (TTWA).	Major beneficial (significant)	N/A	Major beneficial (significant)	T, St, D/In

Development stage	Environmental Impact (following development design and impact avoidance measures)	Classification of effect prior to mitigation	Mitigation/ enhancement (if identified)	Classification of residual effect after mitigation	Nature of effect(s) (Lt/ Mt/ St and P/ T and D/ In)
Operation	Operation employment – increased levels of employment.	Moderate beneficial (significant)	N/A	Moderate beneficial (significant)	P, Lt, D/In
Decommissioning	No significant effects are predicted to occur.				
Chapter 21: Climate Change					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur.				
Decommissioning	No significant effects are predicted to occur.				
Chapter 22: Major Accidents & Natural Disasters					
Construction	No significant effects are predicted to occur.				
Operation	No significant effects are predicted to occur.				
Decommissioning	Decommissioning of the Proposed Development is not specifically included at this stage as not enough information is known in relation to decommissioning activities. However, it is likely that impacts during the decommissioning stage would be similar to those assessed for the construction phase i.e. no significant effects are predicted to occur.				

Development stage	Environmental Impact (following development design and impact avoidance measures)	Classification of effect prior to mitigation	Mitigation/ enhancement (if identified)	Classification of residual effect after mitigation	Nature of effect(s) (Lt/ Mt/ St and P/ T and D/ In)
Chapter 24: Cumulative and Combined Effects					
Construction	Construction employment	Major beneficial (significant)	N/A	Major beneficial (significant)	T, St, D/In
	Visual impact on Recreational users at South Gare, England Coast Path and Redcar seafront	Moderate adverse (significant)	N/A	Moderate adverse (significant)	St, T, D
Operation	Operation employment	Moderate beneficial (significant)	No potential mitigation has been identified due to the proximity to the Proposed Development and the scale of the structures.	Moderate beneficial (significant)	P, Lt, D/In
	Visual impact on Recreational users of the England Coast Path	Moderate adverse (significant)	Partial mitigation through layout and design	Moderate adverse (significant)	Lt, P, D
Decommissioning	As the Proposed Development has an estimated design life of 25 years, cumulative effects during decommissioning are not considered as it is not possible to predict the developments which would be in progress at that point in time.				

Note: Lt = long term, Mt = medium term, St = short term, P = permanent, T = temporary, D = direct and In = indirect.

APPENDIX 3D

EXAMINING AUTHORITY REPORT

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008 (as amended)

Dogger Bank Teesside A and B Offshore Wind Farms

Examining Authority's Report of Findings and Conclusions

and

Recommendation to the
Secretary of State for Energy and Climate Change

Examining Authority

Rynd Smith

Jeremy Aston

Guy Rigby

5 May 2015

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The Planning Inspectorate

ERRATA SHEET – Dogger Bank Teesside A&B Offshore Wind Farm – Ref. EN010051

Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 5 May 2015

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
99	5.1.3	"This status will remain until such time until the site"	'This status will remain until the site'.
119	5.7.28	"MMO advised the panel that no further comment could be made at during",	The 'at' should be removed.
119	5.7.29	"scientific doubt no AEoI on integrity",	no need for the 'on integrity'
120	5.7.32	Final sentence "to take whatr",	the what needs the 'r' removing
122	5.7.39	"It would be most inappropriate the Panel"	It would be most inappropriate 'for' the Panel
122	5.7.39	Second sentence, Dogger Bank C &.	The D is missing
132	5.7.85	Final sentence, "Farne islands SPA, in in"	one 'in' needs removing
137	5.7.104	Final sentence, "Fowlsheugh islands SPA, in in	one 'in' needs removing
139	5.8.12	"It the panel's view that",	needs an 'is' at the end of the sentence
57	4.3.17	(line 5) "…freehold land.lignment through…"	This is a quote from [REP120] from which a line has been omitted and should read as follows: '[i]t was not Forewind's intention to affect Grainco. It was always envisaged … that

			the route … would remain on Sembcorp's freehold land. Sembcorp always expected the route of the cables to avoid Grainco demised area [sic] and, subject to agreement upon the remainder of the route alignment through Wilton International, it … is willing to enter into legal agreements for … a route which runs to the south of the Grainco site.'
77	4.7.28	"However, NE these concerns were resolved"	'However, these NE concerns were resolved…'
86	4.10.10	"leisure and recreation"	should be "extractive industries"
92	4.12.1	No consideration of the Historic Environment	"Consideration was given to the historic environment. No matters of importance or relevance emerged that had not been addressed appropriately in the evidence base, the ES or required to be addressed differently than as proposed in the draft DCO."
135	5.7.96	"NE"	Should be "SNH"
75	4.7.17	"73.8m"	Should be "73.8km"
96	4.13.18	"powers if acquisition"	Should be "powers of acquisition"
100	5.1.8	"not Likely Significant Effect"	"the onshore works would not have a Likely Significant Effect (LSE)")
120	5.7.32	3rd line from bottom – "whatr"	the what needs the 'r' removing
121	5.7.39	First sentence	Should read "'However, turning to the effects of this position for this decision,'
122	5.7.39	5th line	Insert "D" in "C &…."
141	6.1.7	"compulsory acquisition affect persons"	Should be "affected" rather than "affect"
177	6.4.165	3rd bullet point – reference to "section 6.4 below"	Should be "section 6.4 above"
187	6.10.14	again "section 6.4 below"	Should be "section 6.4 above"
189	6.11.10	5th bullet point – "he" applicant	Should be "the" applicant
189	6.11.10	final sentence "in	Should be "in earlier sections of

		later sections of this chapter below" –	this chapter above"
189/190	6.11.11	"Section 6.4" below x 2	Delete: 'a matter that is returned to in section 6.4 below'
203	7.2.32	4th bullet – missing apostrophe after "Parties;"	Should be "Parties'"
203	7.2.32	4th bullet – missing apostrophe in "undertaker's" x2	There is a missing apostrophe but the reference is plural, not singular so it should be "undertakers' "
203	7.2.32	8th bullet "is is"	Should be "it is"
205	7.2.40	omission of apostrophe from "applicants"	Should be "applicant's"
207	7.2.46	Second instance "to refer"	Remove "to refer"
29 of Appendix A	Appendix A Article 42(1) (a)-(n) of the recommended draft DCO (Page 29)	Needs document references added	Insert " document reference x dated xx xxxxxxxx 201x" etc

Kingston upon Hull and Beverley, also in East Yorkshire. It passes to the south of the North York Moors National Park area.

2.4.7 The Panel has considered cumulative and in-combination impacts arising from the interaction between Dogger Bank Teesside A&B and Dogger Bank Creyke Beck. Question 5.4 of the Panel's second written questions sought to ascertain whether impacts might arise if construction of the two projects occurred simultaneously [PD-036]. Conclusions on these points are reached in Chapters 4 & 5 below.

2.4.8 On the date the Dogger Bank Teesside A&B examination closed, the Dogger Bank Creyke Beck application had not yet been decided by the SoS. The Panel is aware that the SoS has now made a decision on the Dogger Bank Creyke Beck application. However, as the Panel had no power to reopen the examination and seek representations on the SoS's decision it has not, as a matter of procedural fairness, been taken into account by the Panel in reaching its findings and conclusions, because IPs would not have been able to make representations which took that decision into account and responded to it. Nor has regard been had to the application documentation and examination submissions relating to the Dogger Bank Creyke Beck project, save for those documents that were specifically submitted to the Dogger Bank Teesside A&B examination by the applicant.

Dogger Bank Teesside C & D

2.4.9 Dogger Bank Teesside C & D are the two offshore wind farms proposed by the applicant as the third stage in the development of the Dogger Bank zone. Figure 1.1 of the ES Introduction [APP-066] illustrates the location of this proposal in relation to the application proposal. Whilst this proposal is likely to be a NSIP, by the close of this examination it had not yet become the subject of an application or applications to the Planning Inspectorate, although the Panel has noted that the applicant submitted a response to Redcar and Cleveland Borough Council's draft local plan[11] which included an indicative plan of the Dogger Bank Teesside C&D onshore cable route [REP-472].

2.4.10 The Panel had considered possible cumulative and in-combination impacts, and at Question 5.5 of the ExA's 2nd written questions asked the applicant to explain the cumulative impact of a concurrent development of Dogger Bank A&B and Dogger Bank Teesside C&D [PD-036]. Conclusions on these points are reached in Chapters 4 & 5 below.

2.5 OTHER MAJOR USES AND PROPOSALS

2.5.1 There are four major existing or proposed uses within the vicinity of the application site on land, which interact with or have been

[11] This draft plan has been withdrawn and so is not progressing towards adoption (see Chapter 3 below).

considered to have the potential to interact with the application proposal.

- the Wilton Complex;
- the Teesside steel industry;
- the Cleveland Potash Boulby Mine; and
- the York Potash projects.

The Wilton Complex

2.5.2 The Wilton Complex (also referred to as Wilton International) is a large industrial / manufacturing site located between Redcar and Middlesbrough, to the south of the steel-making enclave and Teesport described above and to the north of the A174 Redcar - Middlesbrough road. Its significance to this application is that the proposed converter station compound is sited on land adjacent within the complex, necessitating the passage through it of the proposed HVDC and HVAC cable alignments.

2.5.3 Initially developed by the former Imperial Chemical Industries (ICI), the Wilton Complex commenced operation in the 1950s as a major integrated petrochemical facility, supported by internal electricity generation facilities. Following the disaggregation of ICI in around the year 2000, the complex continues to contain major petrochemical process plant including one of three operating steam crackers in the UK (the others are located at Grangemouth and Mossmoran in Fife, Scotland).

2.5.4 Its operation is now split between interested party Sembcorp Utilities UK Ltd (Sembcorp), freeholder and integrated infrastructure provider to the entire complex and a series of individual process and related industrial undertakings. Those involved or referred to in the examination are:

- SABIC UK Petrochemicals Ltd (SABIC);
- GrainCo; and
- M & G Solid Fuels Ltd.

2.5.5 The complex has diversified to include:

- petrochemical production (including SABIC);
- plastics production (eg low density polyethylene) (including SABIC);
- bioethanol and CO_2 production;
- energy and bio-industry feedstock and grain reception, storage and drying (including GrainCo);
- short rotation coppice growing;
- energy industries meeting the energy needs of the complex and other consumers (the Teesside Power Station gas generation facility is currently being decommissioned but biomass, energy from waste and onshore wind energy facilities are either operational or under development);

- solid fossil fuel reception, processing and distribution (M & G Solid Fuels Ltd.); and
- office and production research facilities.

2.5.6 The existing SABIC Olefins 6 facility - the cracker - is located adjacent to proposed HVDC cable works on Land Plan plot 52A. It is required to undergo periodic maintenance work on a six year cycle for which access and laydown areas across and adjacent to this land are required. These works proceed without planning permission being required on the basis that they are operational maintenance and not development [REP-313].

2.5.7 A major upgrade is proposed to occur in 2016 that is considered to be development and for which SABIC intend to make an application for planning permission to Redcar and Cleveland Borough Council [REP 313]. This proposal would change the cracker feedstock from naphtha to ethane and would involve:

'the creation of new ethane import infrastructure comprising an import terminal and storage tank at the North Tees site [on the north bank of the River Tees / Teesport] and a new interplant pipeline between North Tees and the Olefins 6 plant. In addition, significant changes to the Olefins 6 plant are required in order to process the new feedstock. These on-plant changes will include the installation of a new distillation column and ancillaries at the south edge of the plant as well as changes to existing furnaces, compressors, heat exchangers and control systems.

'Discussions have been underway with Redcar and Cleveland Council. These have concluded that the 2016 scheme does require planning permission [...] A separate planning application for the works at the North Tees has already been made.' [REP-295, 313]

2.5.8 These proposed works entail access for additional labour and plant and the movement of large process components within the Wilton Complex, and will thus constitute a major construction and engineering project in its own right involving up to 1,000 additional workers and 30 cranes.

2.5.9 SABIC is concerned to ensure that its plant is able to undergo planned periodic maintenance and upgrades during the construction, operation and decommissioning periods for the application proposal. [REP-295, 313]

2.5.10 The Wilton Complex contains significant areas of serviced but undeveloped land on which industry with a chemicals or renewable energy focus is currently encouraged to develop as part of the Tees Valley Enterprise Zone. Sembcorp is concerned to ensure that development and operation of the application proposal does not adversely affect existing operations or the potential of those future development plots. [REP-129].

2.5.11 Raw materials are imported to and exported from the Wilton Complex via marine terminals in Teesport, by pipeline, by road and by rail. The Wilton Complex lies at the centre of the UK ethylene pipeline distribution system, which includes the Trans-Pennine Ethylene Pipeline (T-PEP), a facility linking Wilton to Runcorn, Holford and Stanlow in Cheshire, operations at Wilton are potentially affected by the application proposal [REP-295]. The complex also utilises and transports saturated brine and drainage water by pipelines that are potentially affected by the application process [REP-295].

2.5.12 The Wilton Complex contains an extensive network of internal infrastructure, providing gas, electricity, water, steam, drainage, pipe and road connectivity, moving inputs, products, by-products and wastes between different production facilities. Some of this infrastructure is prominently located above ground in gantry mounted cables, pipes and ducts. Some is in the form of buried pipes, drains and cables. There is a complex structure of legal relationships set out in property and contractual documents which underpin the provision and receipt of these complex infrastructure services and the various producers located at the Wilton Complex rely upon its continuation. Compulsory acquisition and construction works proposed by the applicant have the potential to affect these in both physical and legal terms [REP-295].

2.5.13 Some of the manufacturing processes and products managed, stored and transported within the Wilton Complex are potentially hazardous to the workforce, local populations and the environment. Facilities within the complex are on the register maintained by the Health and Safety Executive (HSE) under the Control of Major Accident Hazards Regulations 1999 (COMAH). Parts of the complex are also within a secure, access controlled perimeter for these reasons. Parts of the complex are also within a landscaped containment consisting of planted mounds and bunds, providing visual, acoustic and blast screening for nearby land, including residences in the village of Lazenby.

2.5.14 Both Sembcorp and SABIC are concerned to ensure that the internal site infrastructure is not disrupted by the applicant's proposals in ways that lead to economic harm, loss of employment, additional operational safety or environmental concerns for the existing plant within the Wilton Complex.

2.5.15 Due to the disaggregated nature of operations in the Wilton Complex and to the commercially confidential nature of some relevant information, the Panel was not able to obtain aggregate value and employment statistics for the complex as a whole. Due to the strategic significance of facilities such as the SABIC cracker and the location and role of the complex in relation to the national ethylene distribution system (T-PEP), the Wilton Complex is an important and relevant matter which is considered in Chapters 4 and 6 below.

Felixstowe. The East Offshore area encompasses the marine area from 12 nautical miles out to the maritime borders with the Netherlands, Belgium and France.

3.6.12 At Paragraph 2.3.10 of the applicant's Planning and Design Statement [APP-061] it states that the Dogger Bank Teesside A and B wind farm arrays both lie within the East Offshore Plan area. The export cables lie within the East Inshore Plan area. This was not disputed by the MMO during the examination and is therefore agreed.

3.7 OTHER LEGAL AND POLICY PROVISION

The National Planning Policy Framework (NPPF) and Planning Practice Guidance (NPPG)

3.7.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. The introduction to the NPPF[14] makes clear that it '…does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the National Planning Policy Framework).'

3.7.2 The Panel has considered NPPF policy applicable to:

- industrial land;
- employment;
- environmental management / hazards; and
- agricultural land.

3.7.3 NPS EN-1 at paragraph 4.1.7 identifies that the Infrastructure Planning Commission (IPC) (and hence the SoS) should have regard to advice in Circular 11/95 'The Use of Conditions in Planning Permissions' or any successor to it when considering the imposition of requirements in DCOs. Paragraph 5.11.11 provides the same advice in respect of requirements to secure mitigation. On 6 March 2014, a wide range of guidance in planning circulars (including the main body of Circular 11/95) was cancelled and on-going guidance was consolidated into the online Planning Practice Guidance prepared under the NPPF (referred to in this report as NPPG). It follows that the Panel has had specific regard to NPPF paragraphs 203 - 206 and to NPPG guidance on the use of planning conditions under ID:21a in order to discharge the policy arising from NPS paragraphs 4.1.7 and 5.11.11.

[14] NPPF Introduction - Paragraph 3

3.7.4 As the Panel has recorded elsewhere in this report, it has provided the applicant and IPs with an opportunity to draw any issues arising from the NPPF to its attention in their answers to written questions. The Panel asked questions on the NPPF and NPPG in questions 1.9, 1.10, 1.14, and 1.16 of their first written questions [PD-023]. No such issues were specifically identified. The four areas identified above were considered as providing the context for the consideration of the LIR, local policies and matters raised within it.

Natural Environment and Rural Communities Act 2006

3.7.5 The Natural Environment and Rural Communities Act (NERCA2006) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the conservation of biodiversity. In complying with this, regard must be given to the UNEP Convention on Biological Diversity of 1992.

3.7.6 This duty is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development. When deciding an application for development consent the SoS must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 (through Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010). Its consideration has been integrated into the consideration of the issues arising from the application in Chapter 4 below and into the consideration of matters relevant to Habitat Regulations Assessment (HRA) in Chapter 5.

The Town & Country Planning Act 1990 (as amended), The Planning & Compulsory Purchase Act 2004 and Development Plans

3.7.7 The application site includes land within the Borough of Redcar and Cleveland and is within close proximity to the northern and eastern boundaries of the North York Moors National Park.

3.7.8 The Panel is conscious of paragraph 4.1.5 of NPS EN-1 which provides that NPS policy takes precedence over development plan policy in any instance of conflict. It has nevertheless had regard to the following local plans (together with relevant NPPF content) for localities subject to direct and indirect effects and within the vicinity of the application site:

- Redcar and Cleveland Borough Council Local Development Framework (LDF) 2007[15]; and

[15] The Redcar & Cleveland Publication Local Plan was considered by Borough Council on the 31st July 2014 with a view to replacing the LDF, but was not approved. The Council is now considering its options and will set out a new timetable for preparing the Local Plan in due course.

- North York Moors National Park Authority Local Development Framework (NPLDF) 2008[16].

3.7.9 The LDF contains planning policy for Redcar and Cleveland, including the Wilton Complex, but excluding land within the North York Moors National Park. It comprises the Core Strategy Development Plan Document (DPD), the Development Policies DPD and various other DPDs. The Borough Council drew attention to the policies relevant to the proposal in their LIR and the policies identified in paragraph 7.0 of the LIR have been considered by the Panel.

3.7.10 This NPLDF comprises Core Policies and Development Policies that form the Development Plan for the National Park and again policies have been considered to the extent that they are relevant.

Other policy sources

3.7.11 The Panel has also had regard to the following relevant policy sources:

- The Energy White Paper: Meeting the Challenge (May 2007) ;
- The UK Low Carbon Transition Plan, National Strategy for Climate and Energy (July 2009);
- The UK Renewable Energy Strategy (July 2009); and
- Planning Our Electric Future: a White Paper for secure, affordable and low carbon electricity (July 2011).
- The Tees Valley Unlimited (TVU) Tees Valley Strategic Economic Plan (May 2014).

[16] The policies in the North York Moors Local Development Framework replace the saved policies in the North York Moors Local Plan (2003).

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.0 INTRODUCTION

4.0.1 This chapter of the report identifies the key issues arising from the application and the action taken during the examination to address these.

4.1 INITIAL ASSESSMENT OF PRINCIPAL ISSUES

4.1.1 At the outset of the examination process, the Panel made an initial assessment of the principal issues arising from its consideration of the application documents and relevant representations. These issues are recorded below in summary form and in alphabetic order. They in turn were included in the Rule 6 letter, the Panel's initial correspondence with the applicant, IPs and invited persons [PD-005].

- Biodiversity, Ecology and Natural Environment;
- Compulsory Acquisition;
- Construction;
- Draft Development Consent Order (DCO);
- Debris, Waste and Contamination;
- Electric and Magnetic Fields (EMFs);
- Historic Environment;
- Marine and Coastal Physical Processes;
- Navigation – Air and Marine;
- Noise;
- Other Projects and Proposals;
- Socio-Economic Effects;
- Townscape, Landscape and Visual; and
- Transportation and Traffic.

4.2 ISSUES FRAMEWORK IN THIS CHAPTER

4.2.1 Of the issues described in section 4.1 above, matters relating to the Habitat Regulations Assessment (HRA) consequences of the application proposal for biodiversity, ecology and the natural environment are considered in Chapter 5, matters relating to compulsory acquisition are considered in Chapter 6 and matters relating to the draft DCO are considered in Chapter 7.

4.2.2 All other important and relevant issues that emerged during the examination are analysed within the issues framework contained in this chapter. However, the Panel has changed the order in which they are addressed from the order above, to an order more closely related to factors including their scale, their timing in the project delivery process and their significance to the recommendation as a whole. This chapter addresses these groups of issues in the following order:

- the relationship of the proposed development to land uses projects and proposals, the location in which the most significant

set of issues raised in this examination are set out, those relating to the Wilton Complex;

- the relationship of the proposed development to sea uses, the inshore and offshore fishing industries;
- the achievement of grid connections;
- whether the proposal represents good design;
- effects on biodiversity, ecology and the natural environment;
- construction, operation and decommissioning effects at sea;
- construction, operation and decommissioning effects on land;
- social and economic effects at sea;
- social and economic effects on land;
- historic environment effects; and
- seascape, landscape and visual effects.

In the light of all of these considerations, the Panel applies a planning balance at the end of this chapter and the need for and approach taken to the proposed development.

4.2.3 It should be made clear that in relation to the first two of these subject matters, the Panel had a substantial volume of submissions to consider. They also give rise to considerations of substantial weight in the minds of the Panel, although a substantial element of those considerations arose from matters that are reported here in relation to CA in chapter 6 below.

4.2.4 In relation to the remaining issues, these include legally and technically important matters such as biodiversity, ecology and the natural environment, where the Panel must seek the advice of the SNCBs and also received submissions from other natural environment interests.

4.2.5 The also include a range of subject matters where the role of the Panel has been essentially inquisitorial because few or no relevant or important matters were raised in submissions, but the Panel nevertheless needed to satisfy itself that the application proposal as a whole was sound and that NPS policy was complied with. However, where there was limited or no contention and few or no residual matters of relevance and importance, the Panel takes a briefer approach to reporting but has considered all the evidence which is covered in the Examination Library.

4.3 INDUSTRY AND AGRICULTURE

4.3.1 This part of the report considers the relationship between the application proposal and the main onshore land-uses onshore, in respect of which most representations proceeded from those most active IPs who made substantial written representations and / or requested to be heard orally.

- The petrochemical industry and the Wilton Complex.
- Agriculture.

Other concerns emerged from the steel industry and from extractive industry (potash mining). However, as is detailed in Chapter 2 which provides a description of the land use context of the application proposal, steel industry and potash industry submissions related to matters that were either negotiated to a point of settlement between the applicant and the relevant parties, or they were on balance of insufficient importance or relevance to bear on the SoS's decision.

The Wilton Complex

4.3.2 The buried onshore cable route passes through the Wilton International, formerly Imperial Chemical Industries (ICI) Wilton, which is also the location where the converter stations would be located.

4.3.3 Wilton International is a major industrial complex hosting a variety of industries:

- most of which are broadly in the related sectors of hydrocarbons, petrochemicals and energy generation;
- many of which are physically integrated, even though they are in separate ownerships, meaning that raw materials, products and by-products pass from one to another along pipes and ducts;
- which contains a significant research, development and office use; and
- which is divided between large, complex and hazardous plant that is within a secured perimeter, less sensitive uses including grain and biomass storage and significant areas of open or undeveloped land.

It is described in chapter 26 of the Environmental Statement as 'an industrial area managed by Sembcorp Utilities (UK) Limited. It encompasses a large area of chemical industry related buildings and equipment. It is a privately owned site and has an internal network of roads, buried and gantry infrastructure [REP-143], which is also described in Chapter 2 above.

4.3.4 This landholding and integrated plant is coordinated by Sembcorp, as freeholder and specialist utility provider to the industries on the site.

4.3.5 The Panel describes the landholding of Sembcorp as the Wilton Land - including undeveloped land and as the Wilton Complex, where the predominant land use is for heavy industry.

4.3.6 Sembcorp is 'currently marketing available … sites, earmarked for potential development, within the Wilton Complex.' and that there is 'a large number of utilities of all types identified within the site that provide services to the various industrial units … the number crossed by the cable route is approximately 52.'[REP-143].

4.3.7 Those interested party or affected person industry bodies which the Panel considers to be significant in respect of this application are:

- Sembcorp Utilities (UK) Ltd (Sembcorp);
- SABIC UK Petrochemicals Limited (SABIC); and
- GrainCo.

4.3.8 There is no explicit policy guidance in the National Policy Statements in respect of the impact of offshore wind farms on major onshore industrial operations such as the Wilton Complex. However, paragraph 4.1.3 of the Overarching National Policy Statement for Energy (EN-1) states that 'In considering any proposed development, and in particular when weighing its adverse impacts against its benefits …' the Panel 'should take into account its potential benefits … and its potential adverse impacts'.

4.3.9 Paragraph 4.1.4 of the Overarching National Policy Statement for Energy (EN-1) states that 'social and economic benefits and adverse impacts' should be taken into account 'at national, regional and local levels'.

4.3.10 Also, in paragraph 2.5.32 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) it states that 'The impacts identified in Part 5 of EN-1 and this NPS are not intended to be exhaustive …' and that the Panel … 'should therefore consider any impacts which it determines are relevant and important to its decision.'

Sembcorp

4.3.11 In its relevant representation [REP-071], Sembcorp states that it 'is a major industrial energy and integrated utilities service provider to the process industry in the Tees Valley (which is, in turn, the largest integrated chemical complex in the UK in terms of manufacturing capacity and the second largest in Western Europe).'

4.3.12 Sembcorp 'owns approximately 667 hectares of land at Wilton International; of which approximately 170 hectares is heavy and light industrial development plots. Since 2003, Sembcorp has invested over £200 million developing new assets and improving its existing facilities '… with a view to securing inward investment and further industrial customers.' [REP-071].

4.3.13 Sembcorp expressed itself as 'generally in favour of the project.' and 'recognises a number of benefits which the project will bring' [REP-071]. It is part of its diversification plan for the Wilton Complex that it contains energy generation and related uses. Historically the site hosted a coal fired and combined cycle gas generating facilities (the latter in the process of decommissioning, providing power to the energy intensive industrial uses present on the site. In more recent times, new development has included biomass and energy from waste generation. Some wind turbines have been constructed and there are proposals for more, contributing towards carbon emissions reduction for a heavy energy consuming site. The applicant's converter stations form a contribution to that diversification. They would also be very

appropriately sited, within an existing industrial area, largely screened from nearby residents by existing landscaped, acoustic and blast bunding.

4.3.14 Sembcorp also stated [REP-071] that '... Wilton International is a hub of petrochemical, speciality and other process manufacturing businesses and these businesses are vital contributors not only to the regional, but also the national economy'. It raised the following operational concerns:

- cable route width and alignment sterilising high value development plots;
- an error in the route at the GrainCo grain storage and processing site;
- construction and operational impacts on Wilton business operations and development;
- being 'blamed' for noise impacts from the converter stations; and
- EMF and heat from buried cables.

4.3.15 These concerns form the basis of a SoCG with the applicant [REP-120] and are discussed below.

4.3.16 Sembcorp identified a cable route issue in its (late) response to ExQ1 question 3.3 [REP-129], specifically referring to the HDD entry point at the eastern end of the site adjacent to the A174 roundabout access as 'in the largest remaining consented development plot ... and the cable alignment ... is such that there is a significant reduction in the land area for future development ...' but, following the second Issue Specific hearing and further discussions with the applicant, this representation was withdrawn [REP-314].

4.3.17 In paragraph 4.1 of the SoCG [REP-120], the error in respect of the GrainCo facility was acknowledged by the applicant: 'and, 'subject to an agreement upon the remainder of the route '[i]t was not Forewind's intention to affect Grainco. It was always envisaged ... that the route ... would remain on Sembcorp's freehold land.lignment through Wilton International, it ... is willing to enter into legal agreements for ... a route which runs to the south of the Grainco site.' In its (late) submission for Deadline IV [REP-233], Sembcorp reported that 'agreement in principle has been reached that the cable route should be realigned' (plans PA 2526-LP-05 and -06 refer).

4.3.18 Referring to the regional and national importance of businesses within the Wilton complex in respect of construction impacts on Wilton business operations, Sembcorp states that 'accordingly any development ... must ... not materially disrupt those existing residents ...' and expresses itself as 'understandably keen to ensure that the works are undertaken ... so as not to affect existing operations'. Explicit reference is made to 'chemical and manufacturing processes' and, in respect of traffic, that this 'does not block or restrict access' [REP-071].

4.3.19 In respect of noise impacts from the proposed converter stations, Sembcorp 'is keen to ensure that the noise of the converter stations, any other parts of the onshore development … during construction, maintenance or decommissioning does not … restrict existing operations … nor prevent the development of future projects' [REP-071], and responded to ExQ1 question 10.8 to say that 'ambient noise levels … fallen significantly in the past few years …' [REP-129]. Although its response to the Panel's Rule 17 question [R17-27] was not unequivocal, it appears that the basis for a common approach has been agreed and consequently there is nothing to suggest that this is now an issue which the Panel needs to consider further [REP-540].

4.3.20 Sembcorp is 'keen to ensure that neither the cables nor the converter stations generate EMF s and/or heat which could adversely affect existing operations … and/or prevent or limit the type of project that could be attracted to the adjacent development plots' [REP-071].

4.3.21 The Panel undertook an accompanied site visit to the Wilton complex on the afternoon of 15 October 2014 in order to obtain an overview of operations on the site and in particular to view:

- the HDD entry point at the eastern end of the site;
- the passage of the proposed cable alignments within the Wilton Complex; and
- the proposed change to the cable alignment to avoid the GrainCo facility.

4.3.22 The consequent proposed change to the order limits to avoid the GrainCo site, and hence the need for a change to the application, was heard on day 3 of the first issue-specific hearing on 16 October 2014 and is discussed further below. The need for a change to the area of land subject to compulsory acquisition is dealt with in chapter 6 of this report.

SABIC

4.3.23 SABIC UK Petrochemicals Limited (SABIC) (an affected person and a tenant of Sembcorp) is not explicitly described in the Environmental Statement and made no representation until the examination was well under way on 5 November 2014 [REP-295]. At that point its representation focused primarily on the impact and potential impact of the proposal on its business, without much detail of what type or size that business is or its regional and national importance.

4.3.24 SABIC is a subsidiary of SABIC Europe bv. It's parent company SABIC (Saudi Basic Industries Corporation) is one of the world's leading manufacturers of chemicals, fertilisers, plastics and metals.

4.3.25 SABIC is a major regional industry, effectively continuing the ICI legacy by producing and selling specialist chemical products, and 'owns and operates facilities on and around the Wilton International site …. including

- The Olefins 6 facility (known as the Cracker)
- The Trans-Pennine Ethylene Pipeline (known as the TPEP)
- Three brine pipes which broadly follow the route of the TPEP
- a drain associated with the brine pipes and which would manage accidental spillage [REP-295].

4.3.26 Explaining SABIC's (late) submission for Deadline III dated 5 November 2014[REP-295], Bond Dickinson states that 'SABIC has been in discussions (with the applicant) … for some time … however these discussions have centred around technical issues relating to the crossing point of Works 6A and 6B and the TPEP and Brine Mains. There have not been any discussions in relation to legal issues arising out of the proposed Development Consent Order. As a result, SABIC have come to realise relatively late in the day that they need to make representations to …. ensure that they are able to continue to operate from the Wilton Site.'

4.3.27 Although much of the cable would be buried in conventional trench, HDD would be used at certain key locations 'including the Trans Pennine Ethylene Pipeline …' [REP-071]. SABIC's concerns [REP-295] nevertheless relate to operational issues in respect of:

- access to the Cracker, both day-to-day and in respect of 'the multi-million pound improvement and upgrade to SABIC's Olefins 6 plant …' [REP-071], due to take place in 2016 and for which plans are at an advanced stage;
- potential severance of its Trans-Pennine Ethylene Pipeline (TPEP), which 'is used to transport ethylene … to Ineos' Castner-Keller facility at Runcorn';
- potential severance of the Brine Pipes, which 'would effectively shut down operations at Wilton. The brine … is highly concentrated and would kill any vegetation it came into contact with …';
- any adverse effects on the Drain, 'a very important safety feature relating to the Reservoirs'.

4.3.28 Further information pertaining to the Cracker site including abnormal indivisible load (AIL) access arrangements was provided by SABIC following the second Issue-Specific Hearing [REP-313].

GrainCo Ltd

4.3.29 GrainCo Ltd (GrainCo) owns and operates a grain storage and processing facility which is an integral part of the Wilton Complex and its linked operations [REP-071]. Grain is used as feedstock for bioethanol. The cable alignment as originally submitted ran through the GrainCo land, but this was resolved during the examination and is no longer a concern (See Chapter 2 and Chapter 6).

Economic weight

4.3.30 The Panel enquired into the potential impacts of the development affecting the Wilton operators and the following evidence was presented in response;

4.3.31 Sembcorp [REP-540, Appendix C] provided evidence of the effects of impacts affecting the Wilton Complex (all operators interests):

- The Wilton Complex is a significant contributor to the estimated £10 billion of annual sales generated by the process industry in the Tees Valley.
- Of the order of 2,000 people work at Wilton.
- Dealing solely with the cost of disruption to Sembcorps own assets, costs of £400-500,000 per day could be incurred.

4.3.32 SABIC [REP-541] provided evidence of the effects of shutting down its Cracker plant:

- Margin £500k per day 2014/15 prices or £1,000,000 at 2017 prices;
- Shutdown costs typically 10 days £5M;
- Fixed costs of operation £100M p.a.; and
- Employment headcount 300 (2014/15); 450 (2017).

4.3.33 The applicant [REP-539] provided the following evidence of equivalence in terms of the economic weight of its activities:

- the largest single contribution towards the 2020 renewable energy generation targets;
- 8,410GWh (gigawatt hours), enough to power approximately 1.8 million homes;
- Construction - 1,092 and 1,644 full time equivalent (FTE) direct employment and 588 to 984 indirect employment;
- Operation - 216 and 300 FTE direct employment and 180 to 216 indirect employment;
- indicative single project capital expenditure of £3.6billon (£7.2 billion application total);
- has estimated the costs of a single operational cable repair offshore, due to lost revenue and works costs, would be in the region of £112m to £175m; and
- wind farm revenue would typically be expected to be on average around £1.5m per day.

Effects on agriculture

4.3.34 The cable alignment passes across agricultural land from the landfall to the Wilton Complex and as it leaves Wilton onwards to the NGET substation. Representations were received from affected persons as detailed in Chapter 6 on the basis that they were all provided within the context of concerns about compulsory acquisition.

4.3.35 Potential effects on land were raised including, issue of sterilisation of the land above the cable [REP-290], drainage and cropping [REP-308], access, noise, security and vibration during construction [REP-378], the effects on field drainage [REP-393-397].

4.3.36 In terms of access, security, noise, vibration and drainage the DCO requirement 26 and the Code of Construction Practice (CoCP) makes provision for mitigation, cascading down to requirements 27 and the Construction Environmental Management Plan (CEMP), providing for construction method statements, drainage method statements, and the construction, noise and vibration management plan [REP-494]. Land sterilisation and cropping are dealt with compensation matters in CA.

4.3.37 Conclusions

4.3.38 In respect of the Wilton Complex including the land interests of Sembcorp and SABIC there were potential residual effects of major significance. The major concern remaining at the end of the examination was that the applicant's works would be implemented in a way that would leave Wilton operators exposed to events or disruption that could have the effect of harming the safe operation of plant, damaging infrastructure, adversely affecting the ability of plant operators to deliver planned maintenance or planned upgrades.

4.3.39 The applicant made clear that it would not wish to harm the operation of any Wilton plant or give rise to any adverse effects. However, in the absence of clear protective provisions, Sembcorp and SABIC remained unclear that the applicant would protect their interests. The difficulty faced by Sembcorp and SABIC was that the applicant's draft protective provisions essentially left judgements about the operational effects of complex petrochemical plant in the hands of the applicant.

4.3.40 Having heard both the applicant and the Wilton Parties on this point, the Panel formed the view that the applicant's/undertakers works and the Wilton operations were essentially of equal weight. A further consideration was that, because of the applicant's proposed transfer of benefits provisions (which the Panel considers more broadly to be necessary to enable the commercial development of the application proposal) the applicant will not necessarily be the undertaker and so cannot make direct agreements or undertakings. Measures to ensure that that the Wilton Parties operations are adequately protected have to set within the DCO.

4.3.41 The implications of this were that the management of protective provisions should not in the Panel's view rest in the hands of the undertakers alone. There should in the Panel's view be broad equity between the undertakers and the Wilton Parties, and the Wilton Parties' expertise in relation to their own operations should be used to manage down potential conflict between them and the undertakers. This reasoning is taken further in respect of the proposed protective

provisions in the Panel's consideration of CA and of the DCO provisions in Chapters 6 and 7 below.

4.3.42 In terms of agriculture, taking these remaining issues into account, the Panel concludes that the public benefits of the project significantly outweigh its effects given mitigation secured through DCO requirements 26 and 27, the CoCP, the CEMP and related plans.

4.4 FISHING

4.4.1 The effects of the application on sea use for fisheries were issues that again resulted in significant engagement between the Panel and IPs.

4.4.2 Matters relating to offshore social and economic impacts on commercial fisheries are covered by the applicant in chapter 15 of the Environmental Statement [APP-119].

4.4.3 These matters were examined both through written questions and on the second day of the second issue-specific hearing on 12 November 2014. Additional time was also made available on the first day of the third issue-specific hearing on 2 December 2014.

4.4.4 Matters relating to effects on fish species and the status of fishing (as a plan or project) were also examined through written questions and were heard at the first issue-specific hearing in October 2014: these matters are covered in chapter 5.

4.4.5 The area of the Dogger Bank in which the application proposal is situated is a location where major offshore commercial fishing takes place. There is also day fishing activity in inshore waters in the area traversed by the proposed export cable.

4.4.6 The applicant has agreed Statements of Common Ground with no issues unresolved with the following organisations:

- German Fishermen's Association [REP-075];
- Swedish Fishermen's Federation [REP-084];
- Rederscentrale (Belgian fishermen and shipowners) [REP-093];
- Norwegian Fishermen's Association and Fiskebat [REP-094];
- Redcar and Teesbay Fishermen's Association [REP-103];
- Comite Regional des Peches Maritimes et des Elevages Marins (Nord Pas-de-Calais Picardie) [REP-107];
- North Eastern Inshore Fisheries and Conservation Authority (NEIFCA) [REP-122]

4.4.7 Residual issues relating to effects on fisheries are then divided into:

- Offshore fishing issues (involving the NFFO and VisNed); and
- Inshore fishing issues (involving EPIC Regeneration for Hartlepool Fishermen's Society Ltd (HFS).

The balance of benefit and harm

4.13.14 The test in PA2008 s 104 (7) provides that the SoS must decide an application in accordance with NPS policy unless:

'the adverse impact of the proposed development would outweigh its benefits'.

4.13.15 There were two bodies which made representations that the balance between the need for the application proposals as supported in NPS policy and the adverse effects of the harm that might be done by them should be struck in favour of rejecting the application. Representations from Sembcorp and SABIC in respect of the Wilton Complex sought reassurance that cable alignments passing through this specialised industrial site and close to large petrochemical plant could be constructed and operated without a significant risk of harm to these facilities.

4.13.16 The harm suggested as arising related to:

- damage to existing Wilton Complex service infrastructure by construction works, leading to the leakage of piped materials such as saturated brine or ethane;
- lack of coordination between the applicant's proposed works and works to Wilton Complex plant;
- effects (arising from compulsory acquisition) on the interplay of existing rights enabling companies within the Wilton Complex to share infrastructure and products; and
- obstruction of access, particularly to a steam cracker and to a laydown area intended to be used for the upgrade of the cracker, a major project in its own right.
- The effects of these harms could include significant environmental and/or economic damages including pollution incidents, plant shut downs with consequential economic and employment losses and, due to increased uncertainty, investment decisions that lead to either delayed implementation or higher project costs.

4.13.17 In circumstances where the risk of such harm could not be adequately controlled, Sembcorp and SABIC submitted that the consequential prospects of harm to society, the economy and / or the environment were potentially of such seriousness that the application proposals should not proceed. The applicant took the view that this case could not be made out and that the balance of benefit favoured the grant of the application as submitted.

4.13.18 The Panel has carefully considered the balance to be struck here, as the matters of concern to Sembcorp and SABIC are ones that it considers to be of significant weight. The Panel considers that applicants proposed powers in Part 5 of the DCO, (powers if acquisition) in addition to Part 3 powers over street works if unalloyed would damage the future economic prospects of the Wilton Complex.

4.13.19 Equally, the Panel considers that the protective provisions proposed by Sembcorp and SABIC to be included in Schedule 8 Part 6 of the DCO, if left unalloyed would damage the deliverability and commercial viability of the project. However, as set out above, the Panel takes the view that the potential harm done can be sufficiently mitigated, as long as there are appropriately crafted protective provisions in place. The compulsory acquisition implications of this are set out in Chapter 6 below. The amendments to Schedule 8 Part 6 necessary to achieve an appropriate planning balance are discussed further in Chapter 7.

4.13.20 In relation to other issues:

- the relationship of the proposed development to sea uses, the inshore and offshore fishing industries;
- the achievement of grid connections;
- whether the proposal represents good design;
- effects on biodiversity, ecology and the natural environment;
- construction, operation and decommissioning effects at sea;
- construction, operation and decommissioning effects on land;
- social and economic effects at sea;
- social and economic effects on land;
- historic environment effects; and
- seascape, landscape and visual effects;

the Panel notes that there were few matters raised by interested parties and affected persons. Similarly the Panel found that there are few impact considerations of any weight. On balance, none indicate against the grant of the Order by the Secretary of State.

4.13.21 In relation to these remaining issues, the Panel concludes that the DCO as recommended in Appendix A below provides sufficient mitigation to address the few issues raised.

Conclusions

4.13.22 The Panel concludes that the need case for the application is supported by NPS policy. It has not been challenged in representations in a way that would entitle the Panel to recommend against the application. The site selection process was compliant with NPS policy and again has not been put to challenge. The balance of benefit and harm within the Wilton Complex is significant in the Panels final recommendation but can be addressed. On that basis, the Panel concludes that the case for development is made out and therefore the issues raised can be carried forward for consideration in respect of HRA (Chapter 5), CA (Chapter 6), for detailed consideration of the DCO (Chapter 7) and to the over-arching conclusion (Chapter 8).

individual circumstances here that would justify a departure from the findings that the Panel has already made. The Panel therefore observes that the applicant's proposals for the cable corridor are acceptable subject to satisfactory safeguards in respect of security and reinstatement. The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name) includes a land use and agriculture element that addresses drainage and soils and plans for private access across the alignments.

Sembcorp Utilities (UK) Limited (Sembcorp)

6.4.88 Concerns were raised by Sembcorp in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 45A, 45B, 46A, 46B, 47A, 47B, 48, 49A, 49B, 50, 51A, 51B, 52A-C, 53, 55, 56, 57, 58, 58B, 58F-H, 58X-Z, 59, 59i, 60A, 60B, 61A, 61B, 64, 66, 67A-F, 74; 86, 87; freehold interest.

6.4.89 Although all plots are in the ownership of Sembcorp, not all plots are within the Wilton Complex itself.

6.4.90 The Wilton Complex is a large, specialised industrial, research and development park hosting petrochemical and energy industries. It is chiefly occupied by an integrated petrochemical facility within a secure perimeter, but also contains some undeveloped land. The complex is owned by Sembcorp, but individual industrial processes are carried on by a range of individual operators who hold leases and receive infrastructure support from Sembcorp. Chapter 2 of this report set out a description and history of the Wilton Complex, the role of Sembcorp and the activities undertaken there by Sembcorp's tenants, which should be referred to by the reader at this point as it provides useful context for the description and reasoning which follows.

6.4.91 The Sembcorp objection also relates closely to that of SABIC set out from paragraph 6.4.125 below. SABIC is a tenant of Sembcorp and operates a cracking plant within the Wilton Complex. The Panel has given their objections individual consideration although recognising that their operational interests are closely interrelated.

Objection

6.4.92 Sembcorp has expressed itself throughout the examination as generally in favour of the principle of the application proposal. It is in the process of negotiating heads of terms with the applicant prior to preparing and executing the necessary land agreements [REP-070] for what it would hope to be the siting of the converter stations, the routing of the HVDC cable alignments to it and the routing of the HVAC cable alignment from it through the Wilton Complex [REP-129].

6.4.93 However, concerns were raised by Sembcorp in its representations in respect of:

- the width of the cable alignments passing through the Wilton Complex [REP-071, REP-129];
- the sterilisation of potential industrial development plots [REP-071, REP-129, REP-532]; and
- the routing of the cables through land recently developed and occupied by GrainCo on a long lease [REP-071].

6.4.94 Significant areas of land within and adjacent to the secure perimeter of the Wilton Complex remain undeveloped. Sembcorp is seeking tenants and developers for this land (GrainCo being is one), with a preference for new use and development that will make best use of this existing heavy industrial, petrochemical and energy industry location with extensive access to existing production processes and specialist infrastructures and with a port close by. This endeavour is supported through the designation of undeveloped land in this location as an Enterprise Zone. Sembcorp's vision for the future of this land, its significance and the general suitability of the applicant's proposed use and development of it is shared with Redcar and Cleveland Borough Council [REP-073] and the Local Economic Partnership Tees Valley Unlimited [REP-072].

6.4.95 Sembcorp submitted that poorly considered siting, poor coordination of acquisition, and poorly executed construction of the cables and related infrastructure by the applicant and the Bizcos could reduce the development potential of this specialised industrial land by reducing plot sizes and generating new development constraints. However, the concern that the applicant's proposals would affect the newly developed GrainCo facility was resolved through a proposed change to the application (identified in Chapter 2) and which Sembcorp now supports.

6.4.96 The matters raised in the Sembcorp objection were heard on 13 November 2014 and 13 January 2015. Following the 13 November 2014 hearing, Sembcorp submitted a progress update [REP-314] confirming (at page 2 paragraph 3) the withdrawal of its remaining representations in respect of land sterilisation and the width of cable corridors (to the extent that too much or unnecessary land or rights were sought). It follows that these objections to the application from Sembcorp are resolved. It should also be noted that Sembcorp does not object to the principle that the converter stations should be located within its land holding.

6.4.97 In paragraph 3 on page 2 of its update [REP-314], Sembcorp summarised its remaining concerns as relating to:

- objections to the applicant being granted compulsory acquisition powers within Wilton; and
- the need for the applicant to propose and negotiate key requirements and protective provisions to form a new Part 6 of Schedule 8 to the DCO in respect of the Wilton complex (the Wilton Provisions) as part of the DCO.

6.4.98 At and following the 13 November 2014 hearing, Sembcorp made the following submissions [REP-402]:

- it has since 2003 held the role of 'ringmaster' in relation to the Wilton Complex, in a manner that has enabled the continued safe, effective and integrated operation of diverse, complex and potentially hazardous industrial plant in separate ownerships, thus inferring that it should be treated as being analogous to a statutory undertaker;
- this 'ringmaster' role has enabled potential conflicts between tenants managing and upgrading large and complex plant to be avoided in a manner that has maximised the social and economic benefit to be obtained from the complex as a whole;
- the application proposal was for what amounted to another energy industry use of land on the Wilton Complex, and the passage of the cable alignments and the related development process within the complex would best be regulated alongside other existing and proposed uses and developments within the complex, in order to avoid unforeseen conflicts between the application proposal and other use and development; and
- it did not believe that the applicant had demonstrated that the public benefit arising from compulsory acquisition in the Wilton complex outweighs the private loss

6.4.99 Following the 13 January 2015 hearing, Sembcorp submitted a summary of representations [REP-483], appending a joint Sembcorp/SABIC version of protective provisions for the Wilton Complex (described as the 'Wilton Provisions') and also reinforcing its arguments that:

- it effectively operates in a manner analogous to a statutory undertaker within the Wilton Complex and should continue to do so in order to protect the economic benefit to be derived from the activities taking place within the complex; and
- the applicant's proposals in respect of funding and insurances in place in respect of the protection of apparatus and rights of operators within the Wilton Complex are insufficient, should the applicant's proposed works disrupt these in any way

6.4.100 In order to assist in progressing agreement on the Wilton Provisions, the Panel issued on 21 January 2015 question 17-20 under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010. Sembcorp submitted a response [REP-540] which effectively reiterated the points it made at the 13 January 2015 hearing, there having been no significant movement in the applicant's position.

6.4.101 In particular, Sembcorp submitted that it remained opposed to the granting of compulsory acquisition powers within the Wilton Complex, stating that the applicant should give up powers which, by its own oral submissions on 13 January 2015, it does not expect to use (Appendix A paragraph 4). The applicant should align its operations within the complex with the established principles and procedures adopted by all

the other Wilton operators. The applicant should accept that it is but one of the 'ecosystem' of operators there and should be subject to a method for expert determination of any dispute affecting the relationship between the delivery of the application proposal and another Wilton operation.

6.4.102 Sembcorp also expressed remaining concerns in respect of the level of insurance being subject to expert determination after works have commenced, and invited the Panel to modify the draft DCO to include SABIC's version of the Wilton Provisions.

6.4.103 In order to assist in its determination of public benefit and private loss, and whether a change to the DCO were feasible, the Panel issued questions 17-30 and 17-31 under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 to the applicant and SABIC on 29 January 2015. These questions sought views on the balance to be struck between the needs of Wilton operators and the needs of the applicant. In its comment on the Panel's Rule 17 question 17.31, Sembcorp expressed itself as being in favour of changing the draft DCO to enhance protective provisions for the Wilton Complex and to remove compulsory acquisition powers, without recommending refusal of the application as a whole. It also supported SABIC's latest iteration of the draft Wilton Provisions [REP-540].

6.4.104 In its closing submission [REP-550], Sembcorp reiterated its opposition to the granting of compulsory acquisition powers, acknowledging that adoption of SABIC's version of the Wilton Provisions might slightly extend the cost and/or delivery time of the application proposal but would not prevent it from going ahead.

6.4.105 Sembcorp remained concerned that the granting of compulsory powers to the applicant would be used (by the applicant's successors) to circumvent the Wilton Provisions, and again invited the Panel to consider:

- whether the public benefit outweighs private loss; and
- whether compulsory acquisition of the Wilton land should be excised from the DCO

The applicant's response

6.4.106 The applicant's case explaining the overarching need for compulsory acquisition [REP-327] does not address the specific issues arising within the Wilton Complex in detailed terms. A response to the issues raised at the 13 November 2014 hearing was given orally at that hearing and in writing thereafter [REP-373].

6.4.107 Following the 4 December 2014 hearing, at which the applicant's overall case for compulsory acquisition was examined and tested by the Panel, the applicant submitted a summary of the hearing [REP-424], and also made written submissions in respect of Deed of Grant [REP-418] and Restrictive Covenants [REP-419]. A response to the issues raised at the 13 January 2015 hearing was given orally at that

hearing and submitted in writing thereafter [REP-466]. In summary, the applicant's position was that little movement had occurred between the parties.

6.4.108 The applicant provided its proposed wording for the Wilton Provisions and stated that its case relevant to compulsory acquisition is that:

- the DCO powers should be capable of exercise subject to the Wilton Provisions; and
- the additional control and absence of compulsory acquisition powers proposed by the Wilton parties put the delivery programme at risk and may deter funders [REP-471]

6.4.109 In its Deadline IX (27 January 2015) response to the Panel's Rule 17 question 17-20, the applicant confirmed [REP-502] that its preferred Wilton Provisions had been submitted to the Panel within version 7 of the draft DCO at Deadline IX (27 January 2015) [REP-499, REP-500]. The applicant also acknowledged that issues of principle remained outstanding: these were submitted separately by the applicant as a Statement of Reservations at Deadline X (2 February 2015) [REP-537].

6.4.110 In its Deadline X (2 February 2015) response to the Panel's Rule 17 question 17-31, the applicant argued against excising the Wilton section of the cable route from the DCO [REP-539] on the basis that:

- its draft protective provisions (as included in version 7 of the draft DCO) provide proportionate, robust and enforceable mechanisms for addressing the legitimate concerns about the effect of the project on operations at Wilton; and
- its proposed Wilton Provisions strike the right balance between public benefit and private loss

6.4.111 In its Deadline X (2 February 2015) response to the Panel's Rule 17 question 17-32, the applicant acknowledged that important private interests could be affected by its proposal, and that the continued safe and economic operation of Wilton businesses, including the SABIC cracker, is in the public interest [REP-539].

6.4.112 However, the applicant submitted that there is a balance to be struck between the national public interest of its proposal and the public and private interests in the operations at Wilton, and in its response to question 17-32 quantified the potential socioeconomic benefits of its application proposal [REP-539].

6.4.113 The applicant made its final submission to the Panel by way of a response to Sembcorp's Deadline X (2 February 2015) submissions [REP-547] at Deadline XI (4 February 2015). In its response, the applicant stated that the project could be delivered with the SABIC version of the Wilton provisions (albeit that these subordinate the national interest to the interests of Wilton operators and that there are safeguards preventing improper exercise of the DCO powers), but not

if part of the cable route is excised. The applicant also appended a further and final draft version of its Wilton Provisions.

Panel consideration

6.4.114 The Panel undertook an accompanied site inspection to view the Wilton Complex on 15 October 2014 [REP-070, HR-015]. The Panel has also given careful consideration to the submissions made by Sembcorp and to the responses from the applicant.

6.4.115 Although some progress was made during the examination period, core differences in position remain between the applicant and Sembcorp in respect of compulsory acquisition and protective provisions.

6.4.116 As set out in Chapter 4, the Wilton Complex as a whole is a highly significant economic asset. It is not an NSIP or the subject of NPS policy. Nor do Sembcorp or any of the Wilton Complex tenants have the status of statutory undertakers. However, the Wilton Complex does make an important and relevant contribution to national economic life as an integrated petrochemical facility. This is a matter to which the Panel attaches considerable weight. The success of the Wilton operation as such is secured through the 'ringmaster' role played by Sembcorp since 2003, whereby each individual tenant is provided with the infrastructure that it requires to operate and that the development plans of each tenant and operator are balanced with those of other tenants and operators to ensure that the safety and economic well-being of each is achieved without compromising the safety and economic well-being of its neighbours.

6.4.117 Sembcorp achieves these outcomes in large part through the complex interplay of existing contracts and property rights that regulate its relationship with tenant plant operators and regulate access and the exchange of materials through highly complex shared infrastructure. It also acts in many respects as a 'quasi-public authority', convening, representing and regulating its tenants to maximise shared benefit and minimise conflict. The unfettered operation of compulsory acquisition powers in the absence of engagement between the undertakers and Sembcorp could have significant adverse effects on the continued safe and economic operation of the Wilton Complex.

6.4.118 The continued safe operation of the Wilton complex, employment and the generation of economically significant products and other economic benefits there is in the public as well as the private interest. The applicant acknowledges this. The public benefit offered by the continued successful operation of the Wilton Complex as a whole is relevant and important under the PA2008, is substantial and forms an important and relevant consideration in the decision to be taken on this application. It follows that there is not a simple trade-off within the Wilton Complex between the public interest as represented by the development of the proposed NSIP and the private interests of Sembcorp.

6.4.119 This is important because, just as the applicant is concerned that Sembcorp as 'ringmaster' of the Wilton Complex might act to frustrate the delivery of the application proposal if too much power is ceded to it over decisions relating to delivery, so Sembcorp is concerned about the applicant being provided with powers that enable it to interfere with the operations of Sembcorp and others within the Wilton Complex. Sembcorp's concerns are essentially that the applicant and its successors in title have neither the duty nor necessarily the technical understanding to balance their needs against those of Sembcorp and its tenants.

6.4.120 This position takes account of the fact that several Sembcorp tenants are operating large, technically complex and high economic value petrochemical plant. This is plant which may cause significantly adverse and possibly hazardous social, economic and environmental effects should access to it be blocked, repairs or upgrades be delayed or significant infrastructure be damaged. If the applicant has pre-emptive powers, including the compulsory acquisition of land within the operational area of such an integrated petrochemical plant, the potential for the timing of acquisition and development and for the interference with access, operations and other upgrade proposals could be significantly detrimental to the continuing safe and economic operation of plant, both that of individual operators and within the Wilton Complex as a whole.

6.4.121 The main disagreement is focused on where and how the balance between the public benefit of the applicant's proposal and of the Wilton operations on the one hand and the private loss to the various operations at Wilton, including existing and planned employment, is to be struck. Here, the Panel is clear that the weight to be accorded to the public benefit of the applicant's NSIP is equivalent to the weight to be accorded to the continuing safe and economic operation of the Wilton Complex.

6.4.122 The Panel has deliberated at length as to whether the compulsory acquisition and related powers associated with this section of the cable route through the Wilton Complex should be excised from the Order. The Panel concludes that this would be a disproportionate response in view of the wider benefits of the applicant's proposal as a whole. This is because, as set out in Chapter 7 below, the Panel is satisfied that protective provisions capable of controlling the effects of the exercise of compulsory acquisition and related powers on Sembcorp's interests can be included in the DCO and has recommended accordingly. As is explained more fully in Chapter 7, the purpose of the proposed protective provisions is to ensure that the applicant cannot use CA (in addition to other) powers in a way that would frustrate or damage planned maintenance and upgrade proposals for the Wilton Complex and lead to substantial social and economic harm. The protective provisions as recommended by the Panel would provide that the applicant must consult with Wilton owners and operators before putting CA powers into effect. The effect of these changes would be to ensure that the undertakers' delivery programme is designed taking

full account of any Wilton upgrades and maintenance proposals. It is not necessary to excise the compulsory acquisition powers in order to respond to Sembcorp's concerns.

6.4.123 In reaching this conclusion, the Panel has noted Sembcorp's support for the principle of the application as a whole and for the use of land at Wilton to host development associated with it. The Panel also notes that the delivery of the cable alignments through the Wilton Complex is agreed to be technically feasible, as long as the applicant is prepared to take its place as one of the 'eco system' of entities active within the complex, ensuring that its needs are balanced with those of other entities rather than taking precedence over them. This is a matter to which the Panel returns in Chapter 7 below (the DCO) where Schedule 8 Part 6 (protective provisions for the Wilton Complex) are discussed.

6.4.124 The Panel therefore observes that the applicant's compulsory acquisition proposals for the cable corridor as a whole are acceptable subject to satisfactory protective provisions which safeguard Sembcorp's interests locally while enabling the project as a whole to proceed. The means by which this can be achieved is set out in Chapter 7 below when discussing protective provisions in Schedule 8 Part 6 of the DCO.

SABIC UK Petrochemicals Limited (SABIC)

6.4.125 Concerns were raised by Bond Dickinson representing SABIC in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:

- Plots 42A, 42B, 43A, 43B, 44A, 44B; easements or other private rights; and
- plots 48, 49A, 49B, 50; 52A, 53; right of way

6.4.126 Although all plots are on Wilton land, not all are within the Wilton Complex itself. They relate chiefly to access, including access for large loads such as Abnormal Indivisible Loads, to the Cracker and to the Trans Pennine Ethylene Pipeline (TPEP) and the Brine Pipes.

Objection

6.4.127 In its written representation [REP-295], SABIC's relevant concerns are in respect of extinguishment of rights in relation to access to the Cracker, particularly in view of the planned overhaul in 2016, and in respect of the TPEP and the Brine Pipes.

6.4.128 At the 13 November 2014 hearing, SABIC's initial view was that it required protection of its easements, and that the Wilton Provisions might be capable of allaying its concerns [REP-313].

6.4.129 SABIC also stated that planning consent will be required for the planned 2016 upgrade to the Cracker, for which an application has been submitted, but not for a maintenance overhaul [REP-313].

7 THE DEVELOPMENT CONSENT ORDER

7.0 INTRODUCTION

7.0.1 This chapter of the report addresses the draft Development Consent Order (DCO). It contains two main parts:

- **Part 7.1: From the application to the applicant's Preferred Revised Draft DCO** summarises changes proposed during the early part of the examination, up to and including the DCO issue-specific hearings and publication by the Panel of a revised Draft DCO (based on version 6) on 23 December 2014 taking issues raised and comments into account [REP-426].
- **Part 7.2**: **Towards the recommended Draft DCO** addresses a second stage, in which the Panel sought written representations from the applicant and IPs on the applicant's Preferred Revised Draft DCO (v7) that it issued with commentary at Deadline IX on 27 January 2015.

7.0.2 The main issues addressed in this chapter relate to the absence of agreement between the applicant, SABIC and Sembcorp (the Wilton parties) about a range of matters requiring provision in the DCO including compulsory acquisition and the protection of the Wilton Complex.

7.0.3 Towards the end of the examination it became apparent that significant points of principle remained outstanding between the applicant and the Wilton parties. These issues related to the cable alignments through the Wilton Complex, the management of the potential effects of the application proposal on operations at Wilton (in particular SABIC's operations) and the settlement of protective provisions for Wilton operators.

7.0.4 The Panel continued to encourage dialogue between the applicant and the Wilton parties to remove or narrow the remaining points of difference. Once it became likely that agreement would not be reached, the Panel requested final position statements from the applicant and each Wilton party by the close of the examination. Moving towards the close of the examination, the Panel also issued a final round of questions. These set out a range of possible decisions that the Panel might make ahead of a recommendation to the SoS. This process enabled all IPs (but particularly the applicant and the Wilton parties) to review and respond to a range of possible outcomes that the Panel might recommend to address the absence of agreement and provide their views upon them.

7.0.5 These final statements and the responses to the final questions form the basis of the Panel's Recommended Draft DCO, which is included as Appendix A to this report.

7.1.8 Version 4 DCO [REP-251] (Change log [REP-253]) included clarification of the responsibilities of the MMO and changes to ensure that the SoS receives and certifies the following plans and documents:

- outline Code of Construction Practice;
- draft fisheries liaison plan;
- In Principle Monitoring Plan; and
- outline post construction maintenance plan.

The Panel had identified these as key to securing environmental mitigation.

7.1.9 Version 5 DCO [REP-374] (Change log [REP-376]) set out changes that were being considered regarding consent to transfer benefit of the Order to address the MMO's concerns.

7.1.10 Version 6 DCO [REP-426] (Change log [REP-428]) corrected errors identified by the applicant and responded to further matters raised in oral responses given at hearings, together with matters arising from relevant representations, written representations and statements of common ground were then used to develop an Examining Authority commentary on the draft DCO, which aimed to take all outstanding matters raised up to that point into account. This was published as the Consultation Draft DCO [PD-048 on 23 December 2014. Submissions on the form and content of the DCO that the Panel might recommend were sought.

7.1.11 A period until 19 January 2015 was provided for the submission of written representations on the Consultation Draft DCO [PD-048], following which the applicant was requested to provide a consolidated preferred draft DCO, taking full and reasoned account of all matters raised in the examination up to that point. This was provided as DCO Version 7 [REP-499-501], the content of which is addressed in detail in section 7.2 below.

7.1.12 On the basis that, all IPs and other persons participating in the examination were provided with opportunities to participate in oral hearings, to comment on the Consultation Draft DCO [PD-048] and in turn were able to respond to DCO Version 7 [REP-499-501], the Panel is satisfied that iterations of the draft DCO prior to Version 7 have to a large extent passed into history. We do not analyse those documents in any further detail here.

7.2 TOWARDS THE RECOMMENDED DRAFT DCO

7.2.1 This part sets out the Panel's detailed reasoning on the DCO as recommended together with all changes proposed to be made to it, in response to issues which arose from Panel's Consultation Draft DCO [PD-048] responses to that consultation by IPs and further written representations that raised DCO-relevant matters after the DCO consultation had taken place.

7.2.2 It takes account of representations made for Deadline VIII (19 January 2015) by the applicant [REP-467-468], a draft DCO Version 7 [REP-499-500] and change log [REP-501] prepared in response to the consultation draft DCO. The applicant sought to address as many of the outstanding concerns from the first stage of the examination as they considered that they were able to address in DCO Version 7.

7.2.3 A significant number of the changes fall into the following types:

- non-substantive changes, to place the DCO into conformity with the Statutory Instrument template;
- non-contentious or non-substantive changes to remedy minor technical drafting concerns which do not materially affect the examined proposal; or
- confirmation of non-contentious changes proposed by the Panel in the notes to our Consultation Draft DCO, for example to confirm references to a plan or drawing.

7.2.4 The DCO version 7 became what is referred to below as the applicant's preferred draft and changes to it from the Panel's Consultation Draft DCO are all addressed below.

7.2.5 The applicant also submitted an updated Hierarchy of Offshore and Onshore Plans that are referred to within the DCO, many of which secure mitigation [REP-494].

7.2.6 In addition to the applicant, the following IPs made submissions that responded to the Panel's DCO consultation and these are also taken into account in the Panel's reasoning.

Responses to the draft as a whole

- **MMO**
- Submissions from the MMO providing comprehensive commentary on the draft DCO, with particular reference to the DMLs [REP-459][REP486][REP-533].
- **The Crown Estate**
- Submissions from The Crown Estate providing commentary on the draft DCO and addressing the question of Crown consent to the provisions of the DCO [REP-482][REP-544].

Responses relating to the natural environment and mitigation measures

- **NE**
- Submissions from NE providing commentary on the draft DCO and noted no wish to make further submissions at Deadlines X and XI [REP-462][REP-485][REP-542][REP-549].

Responses relating to protective provisions

- **Northumbrian Water Ltd (NWL)**

- Submissions from NWL seeking to resolve protective provisions [REP-383].

- **National Grid Electricity Transmission (NGET)**
- Submissions from NGET, seeking to resolve commercial agreements and protective provisions [REP-458][REP530][REP-543].

Northern Powergrid (North East) Ltd (NPG)
- Submissions from NPG, confirming resolution of commercial agreements and withdrawing outstanding representations [REP-531].

Responses relating to the Wilton Complex

- **Sembcorp**
- Submissions from Sembcorp in respect of compulsory acquisition and protective provisions for the Wilton Complex [REP-483][REP-540][REP-550].

SABIC
- Submissions from SABIC in respect of compulsory acquisition and protective provisions for its plant in the Wilton Complex [REP-463][REP-487][REP-541][REP-548].

Final responses from the applicant

- Submissions responding to the MMO with post preferred draft DCO changes [REP-546]; and
- Submissions responding to Sembcorp (and SABIC) with post preferred draft DCO changes [REP-547].

7.2.7 Some of the issues raised in these submissions address progress in ongoing negotiations between the applicant and IPs about matters of detail where there is relatively little contention. For example, submissions from NWL, NGET and NPG record progress towards agreement on protective provisions and commercial agreements. The major outstanding subject matters subject to unresolved contention after the submission of the applicant's preferred draft DCO are as follows:

- matters relating to marine construction and operation and the DMLs, raised by the MMO;
- matters relating to securing decommissioning, raised by the Panel and NE; and
- disputed provisions for the Wilton integrated petrochemical facility (the Wilton Complex), affecting the interests of freeholders Sembcorp and major plant operators SABIC.

7.2.8 These are addressed immediately below on a subject matter basis. This part then concludes by consideration of the remaining provisions of the draft DCO that have been the subject of any outstanding

concern by the Panel or IPs, taken in part and schedule order. Recommendations for changes are made in respect of those matters that applicant's preferred draft DCO has not addressed.

Marine Considerations

7.2.9 The MMO made submissions following its consideration of the Consultation Draft DCO and the applicant's preferred draft DCO [REP-459] expressing concern at the applicant's proposed approach to:

- article 2 (interpretation) and related matters of interpretation;
- article 8 (transfer of benefit); and
- article 10 (power to make agreements).

At the core of each of these concerns was the view that the applicant was providing a level of flexibility in the DCO that was not warranted and that would provide the MMO with insufficient certainty as to who (at any one time) would be responsible for the development or operation of the application proposal. If transfers of benefit were to take place, the MMO considered that it needed a means to know who would be responsible for construction or operation as the case may be and in turn was subject to the benefit and burden of the Order or parts of it.

7.2.10 The power to make agreements was an equivalent concern, as this supports the ability of the undertakers / Bizcos to assign duties and benefits between themselves by agreement.

7.2.11 The applicant set out its response [REP-503] which the Panel has considered. This largely acceded to the MMO's definitional concerns and set out a range of amendments that have been included in the applicants preferred draft DCO.

7.2.12 On article 8 the applicant strongly resisted, basing its view on the approach taken to the transfer of benefit in the Hornsea One made Order. For commercial and risk control reasons, the applicant wishes to be able to transfer all or part of the benefit of the order including all or part of the benefit of a DML - in effect meaning that the application proposal might be subdivided into tranches smaller than array A and array B, within those works areas.

7.2.13 The Hornsea Order provides that the undertaker, with the consent of the SoS may transfer to another person any or all of their benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights.

7.2.14 The examining authority's report of findings and conclusions for Hornsea Project One noted:-

"... if it is legal then it should not be refused, but must be made a practicable proposition. The ExA's view is that the applicant's final proposals for Article 34 make this both practicable and transparent,

there. It has reviewed the applicant's drafting in requirement 15 which provides that '[t]he submitted scheme shall accord with the principles set out in the Outline Decommissioning Statement.' It is satisfied that the security for decommissioning is present, but that the subsequent discretion of the SoS under the 2004 Act has not been fettered.

7.2.25 Finally, on a separate matter, NE made clear that it is content that all plans required to secure appropriate mitigation have been captured in the DMLs. However, it requested that all plans which have been referred to within the DMLs that have not been defined, should be so defined. The applicant's preferred draft DCO has included provision in each DML defining the relevant plans. Having had sight of these changes, NE confirmed that it had no further submissions to make.

7.2.26 The Panel is satisfied that the recommended draft DCO addresses NE's concerns, without a requirement for any further changes.

The Wilton Provisions

7.2.27 The most significant element of dispute around the development of the DCO in the examination process related to the development of protective provisions for the Wilton Land and Wilton Complex. The applicant, Sembcorp and SABIC (the Wilton Parties) were able to reach broad agreement that protective provisions (the Wilton Provisions) were necessary (DCO Schedule 8 Part 6). However, as is recorded in Chapter 4 above, at the end of the examination there was still substantial disagreement on the precise form which those provisions should take. Whilst the Panel encouraged negotiations between the parties and held hearings seeking agreement, it became clear that full agreement could not be achieved by the examination closing date.

7.2.28 The Panel's approach to this disagreement in DCO terms was to ensure that:

- the applicant had stated its preferred form of the draft Wilton Provisions;
- the Wilton Parties had equivalently stated their preference in an alternative form of the draft Wilton Provisions;
- the differences between these and positions and the reasons for them were understood by the parties and by the Panel;
- each party made a 'statement of reservations' in which the matters on which there was outstanding disagreement were made clear;
- at the same time, a Rule 17 question process was used to explore the parties views on a wide range of alternative solutions that the Panel could consider.

It follows that all IPs and affected persons to whom the Wilton Provisions were relevant had a full and fair opportunity to make their case on the development of these provisions to the Panel. This in turn

ensures that, whilst the Panel makes recommendations below in respect of protective provisions that were not fully agreed by the applicant or the Wilton Parties, there are no aspects of the provisions as recommended by the Panel that have not been considered by both the applicant and the Wilton Parties.

7.2.29 The Panel commenced its consideration of the DCO provisions by considering whether the nature of the disagreement between the applicant and Wilton Parties was so substantial that it would not be possible to put forward Provisions of any description as a matter of principle, and so the Order would have to fail. Neither the applicant nor the Wilton Parties agreed that this was the case. The Panel is satisfied that meaningful and effective Wilton provisions can be included in a recommended Order.

7.2.30 In such circumstances, the Panel has made recommendations that adjudicate between the position of the applicant and the positions of the Wilton Parties. Its starting point has been the applicant's preferred draft Wilton Provisions as set out in DCO v7 [REP-499]. The Panel has recommended amendments drawn from the Wilton Parties representations [REP-540, 541, 547, 548 and 550], whilst also taking full account of the applicant's responses to these [REP-536, 537, 539 and 547].

7.2.31 As is set out in Chapter 4 above, in the light of these submissions, the Panel agreed as follows.

- Changes to the applicant's preferred draft Wilton Provisions are required to address the important and relevant concerns raised by the Wilton Parties, enabling existing operations, employment, chemical production and economic benefit to be protected, which we find to be important and relevant and upon which we have placed substantial weight.
- However, these changes must not be of a magnitude that leaves the undertakers with an un-implementable Order and projects (because if they were of this magnitude, then the Panel would not consider it appropriate to recommend that the Order be made in such terms).

7.2.32 The Panel's recommended changes in summary are as follows.

- The Wilton Parties sought to dis-apply the Order powers conferred by article 15 (temporary stopping up of streets), article 16 (access to works), article 18 (discharge of water), article 20 (authority to survey and investigate the land), article 22 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 26 (private rights of way), article 28 (rights under or over streets), article 29 (temporary use of land for carrying out the authorised project) and article 30 (temporary use of land for maintaining the carrying out the authorised project) ("the identified powers") unless consent in writing has been obtained from the relevant Wilton party.

- The Panel agrees with this request, but on the basis that such consent must not be unreasonably withheld (a provision to which the Wilton parties were prepared to agree).
- Having regard to the applicant's statement of reservations, the Panel considers that it is then very important to ensure that the Wilton Provisions specify that the undertakers may refer the question of consent unreasonably withheld to an expert person for determination. It should be noted that the applicant and the Wilton parties both agreed on the necessity of providing for expert determination to resolve disputes under these provisions - they did not reach final agreement as to what powers would be within the scope of this person's appointment. What the Panel recommends to be now paragraph 19 achieves this outcome.
- The Wilton Parties draft Wilton Provisions sought the inclusion of decision guidelines for the expert person, essentially to ensure that Wilton operational and economic considerations must be taken into account, whilst also balancing these against a requirement that the undertakers operational and economic considerations must equally be taken into account. The applicant had opposed the Wilton draft on this point, but the Panel agrees that it is necessary for the expert person to be required to consider these matters. If they do so however, the Panel also considers that the decision guidelines must be reasonable and balanced and must equally require the expert person to have regard to the undertakers powers to deliver a NSIP and the significance of the application proposal.
- The applicant was concerned that if the Wilton Parties obtained a consent process to be discharged before the undertakers could exercise any of the identified powers, the Wilton Parties could subject the application proposal to unreasonable delay.
- To address this, the Panel has recommended what amounts to a right of appeal benefiting the undertakers. In circumstances where a Wilton Party does not respond to and decide a consent application after thirty days, the undecided application for consent is deemed to have been unreasonably withheld and can be referred to the expert person for determination. In this way, the Wilton Parties cannot frustrate the project.
- The Panel has agreed with the applicant's proposal that there should be a time limit on operation of the expert's jurisdiction of sixty days. This is again to ensure timeliness and reduce the risk of delay to the application proposal.
- The applicant and the Wilton Parties both agreed that an expert determination would be final and binding, unless there was a 'manifest error' in its outcome. The Panel considers that is is important to ensure that a dispute about what constitutes 'manifest error' does not lead to uncertainty. For this reason, it recommends that in any such instance, arbitration under article 44 of the DCO would be the means to finally address any such dispute.

7.2.33 The Panel's recommended provisions accede to Sembcorp's request in oral hearings that the undertaker should join the existing Wilton noise

liaison committee, as its works and operations would be perceived by neighbouring residents as ‘Wilton’ problems. This appears to be a reasonable request, without which there will be activities within Wilton that are accounted upon to this committee, and other activities which are not. This is provided in paragraphs 14 and 15 of the provisions.

7.2.34 Using these means, the Panel agrees that it is appropriate to enable all Part 3 and Part 5 powers in the DCO to be capable of being exercised in the Wilton Land and Wilton Complex, once consent for their exercise has been applied for and granted. The potentially harmful effects of the applicant’s unalloyed exercise of these powers on the Wilton operations has been made subject to an expert resolution process that would apply before any of the powers identified in the first bullet point of paragraph 7.2.32 above could be exercised. This would provide greater certainty to the Wilton Parties than the applicant’s alternative, which would have left the powers subject to ‘best endeavours’ provisions requiring the undertakers to consider Wilton Parties interests and avoid harm to them.

7.2.35 The applicant's best endeavours provisions 'to minimise , as far as reasonably practicable' the effect of the operation of the unalloyed versions of " the identified powers" (as set out in the DCO version 7 in paragraph 3, are recommended to be removed from the draft DCO. This is because they would leave the Wilton Parties subject to the substantial concern that the identified powers could be used without an expert determination of the justification for project delivery arrangements that would harm the manufacturing capability at Wilton and the economic benefit flowing from it, which that Panel has found to be relevant and important.

7.2.36 A worst case scenario would be that an undertaker seeks consent to commence the operation of say article 25(compulsory acquisition) powers in Wilton and the relevant Wilton Party refuses consent or fails to deal with the application within thirty days. The undertaker would then either change the delivery timetable and arrangements to address the concerns raised (accepting them as reasonable) or refer the matter to the expert for determination (as unreasonable or undetermined). Sixty days after a reference to the expert there would be a binding decision taking account of the concerns raised and mitigations sought by the Wilton party and the public interest in the Wilton operations as well as the public interest justification for the applicant’s request.

7.2.37 Only if the expert were to make what all parties refers to as ‘manifest error’ would there be any further delay, and there the Panel recommends that it is necessary for article 44 to apply and to deliver a final and binding determination shortly thereafter.

7.2.38 It appears that these recommended amendments address the Wilton Parties’ concerns and provide a clear means whereby these can be taken into account before the identified powers are used by the

undertaker, but would not provide any significantly likelihood of substantial delay or uncertainty in the project.

7.2.39 The Panel recommends that the DCO should be revised to include Schedule 8 Part 6, the Wilton Provisions, as set out in Appendix A.

Other Protective Provisions

7.2.40 In addition to the submissions about and after the Consultation Draft DCO made by the Wilton parties, second stage written representations about relevant protective provisions were made by Northumbrian Water Ltd (NWL)[REP-383], National Grid Electricity Transmission (NGET)[REP-458][REP530][REP-543] and Northern Powergrid (North East) Ltd (NPG)[REP-531]. Each of these bodies reached agreement with the applicant over the protection of their interests and these agreements are reflected in the applicants preferred draft DCO.

7.2.41 There are no protective provisions in relation to civil and military aviation, ports and harbours, shipping and navigation. However, there are no outstanding concerns from the CAA, the MoD, any airport or aviation undertaking, port, harbour, shipping or navigation undertakers. The Panel is satisfied that no additional provisions on these subject matters are required.

The Remaining Provisions of the DCO

7.2.42 The remainder of this part addresses the draft DCO components as follows:

- articles (articles 1 - 44);
- authorised development (Schedule 1, Part 1);
- ancillary works (Schedule 1, Part 2);
- requirements (Schedule 1, Part 3);
- access and street works (Schedules 2, 3 and 4);
- compulsory acquisition and temporary possession (Schedules 5 and 6);
- form and function of the DMLs;
- generation assets DMLs (Schedule 7, Parts 1 (A and B) and 2 (A and B)); and
- transmission assets DML (Schedule 7, Parts 3 (A and B) and 4 (A and B)); and
- protective provisions (Schedule 8).

Articles
(articles 1 - 44)

7.2.43 The principal powers proposed to be granted in the draft DCO articles are as follows:

- to carry out the authorised development (including associated development) and ancillary works relating to the construction of two offshore wind farms (project A to be delivered by Bizco 2 and

APPENDICES

APPENDIX A: RECOMMENDED DEVELOPMENT CONSENT ORDER

S T A T U T O R Y I N S T R U M E N T S

201X No.

INFRASTRUCTURE PLANNING

The Dogger Bank Teesside A and B Offshore Wind Farm Order 201X

Made - - - - *[***] 201X*

Coming into force - - *[***] 201X*

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 made under sections 37, 42, 48, 51, 56, 58, 59 and 232 of the Planning Act 2008 ("the 2008 Act")(**a**) for an Order under sections 37, 55, 115, 120, 121, 122, 140 and 149A of the 2008 Act;

The application was examined by an Examining authority appointed by the Secretary of State pursuant to Chapter 4 of the 2008 Act;

The Examining authority, having considered the national policy statements relevant to the application and concluded that the application accords with these statements as set out in section 104(3) of the 2008 Act;

The Examining authority, having considered the objections made and not withdrawn, and the application with the documents that accompanied the application, has recommended the Secretary of State to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change in the proposals;

The notice of the Secretary of State's determination was published;

As the Secretary of State in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 149A of the 2008 Act the Secretary of State makes the following Order.

(**a**) 2008 c.29

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Dogger Bank Teesside A and B Offshore Wind Farm Order and comes into force on 201X.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1990 Act" means the Town and Country Planning Act 1990(**d**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**e**);

"the 2004 Act" means the Energy Act 2004(**f**);

"the 2008 Act" means the Planning Act 2008(**g**);

"the 2009 Act" means the Marine and Coastal Access Act 2009(**h**);

"ancillary works" means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by the Order and which are not development within the meaning of section 32 of the 2008 Act;

(**a**) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

(**b**) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(**c**) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and1 (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**d**) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(**e**) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(**f**) 2004 c.20

(**g**) 2008 c.29.

(**h**) 2009 c.23.

"array area" means the area within which Work Nos. 1A(a) to (e) and 1B(a) to (e) may be constructed which are the areas enclosed within a straight line drawn between points whose coordinates are set out in the respective tables in Part 1 of Schedule 1 to this Order and which are shown on the Offshore Order Limits and Grid Co-ordinates Plan;

"Array Location and Layout Plan" means the plan which details the specification and layout of all wind turbine generators, HVAC cables, substations, platforms and meteorological masts;

"authorised development" means the development and associated development described in Part 1 of Schedule 1 (authorised project) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

"the authorised project" means the authorised development and the ancillary works authorised by this Order;

"Bizco 2" means Doggerbank Project 2 Bizco Limited (Company number 07791977) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

"Bizco 3" means Doggerbank Project 3 Bizco Limited (Company number 07791964) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"cable" includes, in respect of any onshore cable, direct lay cables and/or cables laid in cable ducts; and in respect of any cable whether onshore or offshore may include fibre optic cables;

"cable crossings" means the crossing of existing sub-sea cables and pipelines by the inter-array, inter platform and/or export cables authorised by this Order together with physical protection measures including cable protection;

"cable protection" means the measures to protect cables from physical damage and exposure due to loss of seabed sediment. The range of remedial cable protection parameters and technology options, to the extent assessed in the Environmental Statement, including, but not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

"carriageway" has the same meaning as in the 1980 Act;

"combined platform" means a single offshore platform constructed in an array area comprising two or more of any of the following—

(a) an offshore collector platform;

(b) an offshore converter platform;

(c) an offshore accommodation or helicopter platform;

"commence" means either—

(a) in relation to the licensed marine activities seaward of MHWS referred to in the deemed marine licences in Schedule 7 to this Order (deemed marine licence under the Marine and Coastal Access Act 2009) the first carrying out of any licensed marine activities authorised by the deemed marine licences except for the pre-construction surveys and monitoring; or

(b) in relation to the activities landward of MLWS and beginning to carry out any material operation (as defined in section 155 of the 2008 Act) in respect of the authorised development, forming part of the authorised development other than operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "commencement" is to be construed accordingly;

"commercial operation" means—

(a) in relation to the Project A Offshore works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works; and

(b) in relation to the Project B Offshore works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"construction compound" means a secure temporary construction area associated within the onshore works, including temporary fencing, lighting and ground preparation, to be used for the location of site offices; general storage; storage of plant, cable drums, ducting and other construction materials; welfare facilities; car parking; waste management; lay-down areas; bunded generators and fuel storage or any other means of enclosure of areas required for construction purposes;

"Dogger Bank Zone" means the Dogger Bank Offshore Wind Farm Zone located in the North Sea between 125 kilometres and 290 kilometres off the UK coast and extending over an area of approximately 8,660 km^2;

"draft fisheries liaison plan" means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

"electrical converter substation and compound" means an electrical converter(s) housed within one or more converter halls and a compound containing electrical equipment including power transformers, switchgear, reactive compensation equipment, harmonic filters, cables, lightning protection systems including masts, control buildings, communications masts, back-up generators, access, fencing and other associated equipment, structures or buildings;

"Examining authority" means the Examining authority appointed under the 2008 Act to examine the application to this Order;

"the Environmental Statement" means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

"gravity base foundation" means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbine generators and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"horizontal directional drilling" is a steerable trenchless method of installing underground pipes, ducts and cables in a shallow arc along a prescribed underground bore path by using a surface launched drill;

"HVAC" means high voltage alternating current;

"In Principle Monitoring Plan" means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

"the land plan" means the Land Plan Offshore and Onshore Land Plan as certified as the land plan by the Secretary of State for the purposes of this Order;

"maintain" includes upkeep, inspect, repair, adjust, alter, relay and remove, to the extent assessed in the Environmental Statement and any derivative of maintain is to be construed accordingly;

"MCA" means the Maritime and Coastguard Agency or any successor to its function;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"mean low water springs" or "MLWS" means the average of the low water heights occurring at the time of spring tides which is also the outermost extent of the relevant planning authority jurisdiction;

“meteorological mast” or “meteorological station” means a fixed or floating structure housing or incorporating equipment to measure wind speed and other meteorological and oceanographic characteristics, including a topside which may house electrical switchgear and communication equipment and associated equipment, and marking and lighting;

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of each deemed licence under the 2009 Act or any successor to its function;

“monopole foundation” means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers and abrupt steps. Sub types for wind turbine generators and meteorological stations include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

“multileg foundation” means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include: offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

“National Grid substation” means the existing National Grid Electricity Transmission UK Substation located at Lackenby;

“offshore accommodation or helicopter platform” means a platform (either singly or as part of a combined platform) housing or incorporating some or all of the following: accommodation for staff during the construction, operation and decommissioning of the offshore works, landing facilities for vessels and helicopters, re-fuelling facilities, communication and control systems, electrical systems such as metering and control systems, small and large scale electrical power systems, J-tubes, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore converter platform” means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable High Voltage Direct Current transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore platform” means any of the following—

(a) an offshore accommodation or helicopter platform;

(b) an offshore collector platform;

(c) an offshore converter platform; or

(d) a combined platform

"the Offshore Order Limits Plan and Grid Co-ordinates Plan" means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

"offshore works" means the Project A Offshore works and the Project B Offshore works, the relevant shared works and any other authorised development associated with those works;

"offshore works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order;

"the Onshore Order Limits Plan and Grid Co-ordinates Plan" means the plans certified as the onshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

"onshore works" means the Project A Onshore works, the Project B Onshore works, the shared works and any other authorised development associated with those works;

"onshore works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order;

"Order land" means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

"the Order limits" means—

(a) the limits shown on the Offshore Order Limits and Grid Coordinates Plan within which the offshore works may be constructed as part of the authorised project; and

(b) the limits shown on the Onshore Order Limits and Grid Coordinates Plan within which the onshore works may be constructed as part of the authorised project;

"outline Code of Construction Practice" means the document certified as the outline Code of Construction Practice by the Secretary of State for the purposes of this Order;

"outline post construction maintenance plan" means the document certified as the outline post construction maintenance plan by the Secretary of State for the purposes of this Order;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**a**);

"Project A" means the Project A Offshore works and the Project A Onshore works;

"Project A Offshore works" means Work Nos. 1A, 2A and 3A and any other authorised development associated with those works;

"Project A Onshore works" means Work Nos. 4A, 5A, 6A and 8A and any other authorised development associated with those works;

"Project B" means the Project B Offshore works and the Project B Onshore works;

"Project B Offshore works" means Work Nos. 1B, 2B and 3B and any other authorised development associated with those works;

"Project B Onshore works" means Work Nos. 4B, 5B, 6B and 8B and any other authorised development associated with those works;

"relevant planning authority" means Redcar and Cleveland Borough Council;

"relevant planning authority for the port" means Redcar and Cleveland Borough Council as the local planning authority responsible for the port used to service construction of offshore works and the local planning authority or authorities responsible for any port or ports outside the Redcar and Cleveland Borough which will be used to service construction of offshore works;

"restricted work area" means restricted work area shown on offshore works plans;

(**a**) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

"requirements" means those matters set out in Part 3 Schedule 1 (requirements) to this Order;

"scheduled works" means the numbered works specified in Schedule 1 to this Order, or any part of them;

"scour protection" means measures to prevent loss of seabed sediment around foundation bases by use of bagged solutions filled with grout or other materials, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

"the shared works" means Work Nos. 2T, 7, 7L, 8S, 9 and 10A to 10K;

"statutory undertaker" means any person falling within section 127(8) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"streets and public rights of way plans" means the plans certified by the streets and public rights of way plans by the Secretary of State for the purposes of this Order;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"tribunal" means the Lands Chamber of the Upper Tribunal;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"undertaker" means —

(a) in relation to the Project A Offshore works and the Project A Onshore works, Bizco 2;

(b) in relation to the Project B Offshore works and the Project B Onshore works, Bizco 3; and

(c) in relation to the shared works, Bizco 2 or Bizco 3.

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"wind turbine generator" means a structure comprising a tower, rotor with 3 blades, nacelle and ancillary electrical and other equipment which may include: J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter transfer facilities and other associated equipment, fixed to a foundation; and

"works plans" means the plans certified as the onshore works plans and offshore works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project are to be taken to be measured along that work, except in respect of the parameters referred to in Part 2 requirements 3 to 12 and 18; and in Schedule 7 deemed marine licences Part 1B Conditions 3 to 11 and Part 2B Conditions 3 to 11; and Part 3B Conditions 3 to 8 and Part 4B Conditions 3 to 8.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) References in this Order to points identified by letters are to be construed as references to the points so lettered on the onshore works plans.

(6) A reference in this Order to a co-ordinate is a reference to World Geodetic System 1984 datum (WGS84).

(7) The expression "includes" is to be construed without limitation.

(c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

10.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any damage to the fishery;

(c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;

(d) any flooding or increased flooding of any such lands; or

(e) inadequate water quality in any watercourse or in any groundwater, which is caused by the construction of any of the specified works or any act or omission of the undertaker its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

11. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

12. Any dispute arising between the undertaker and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 44 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and after notice in writing by one to the other.

PART 6

For the protection of owners and operators at Wilton

1.—(1) The following provisions, unless otherwise agreed in writing between the parties, have effect.

(2) In this Part of this Schedule:-

"alternative apparatus" means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

"apparatus" means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"construction access plan" means a plan identifying how access will be maintained to land within the Wilton Complex during the construction of the authorised project and shall identify—

(a) any restrictions on access, including the timing of restrictions;

(b) any alternative accesses or routes of access which may be available to the undertaker using the Wilton Site Roads within the Wilton Complex;

(c) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works which they have notified to the other operators at the Wilton Complex as of the date when the plan is published) have been taken into account in preparing the plan.

"description of the works" means a detailed description of those works and includes full detail of any protective measures proposed to be incorporated as part of those works (for example to safeguard any apparatus the removal of which has not been required by the undertaker under paragraph 4 (2);

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"maintenance access plan" means a plan identifying how access will be maintained to land within the Wilton Complex during the maintenance of the authorised project and shall identify—

(d) any restrictions on access, including the timing of restrictions;

(e) any alternative accesses or routes of access which may be available to the undertaker using the Wilton Site Roads within the Wilton Complex;

(f) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works which they have notified to the other operators at the Wilton Complex as of the date when the plan is published) have been taken into account in preparing the plan.

"major works" means works by any person requiring the closure diversion or regulation of any of the Wilton Site Roads;

"owner" in the context of the Wilton Land means any party with an interest in the land, with rights in, on under over the Wilton Land or with apparatus in, on or under the Wilton Land and in the context of the Wilton Complex means any owner or occupier within the Wilton Complex and their successors in title;

"operator" means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the Wilton Complex but who is not an owner in the context of the Wilton Land or the Wilton Complex.

"Wilton Complex" means the industrial and manufacturing plant shown edged red on Plan T-MIS-0065-01;

"Wilton Land" means the Wilton Complex and Plots 42A, 42B, 43A, 43B, 44A, 44B, 63A, 63B, 64, 65, 66, 67A, 67B, 67C, 67D, 67E, 67F, 68, 86 and 87; and

(3) "Wilton Site Roads" mean any of the roads shown in [red] on T-MIS-0066-01, to the extent these are within the Wilton Complex and includes any part of such a road or part of the width of such a road.

2. The following provisions of this Part of this Schedule have effect for the benefit of owners and operators within the Wilton Complex and owners of the Wilton Land.

3.—(1) The undertaker must not exercise the powers conferred by article 15 (temporary stopping up of streets), article 16 (access to works), article 18 (discharge of water), article 20 (authority to survey and investigate the land), article 22 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 26 (private rights of way), article 28 (rights under or over streets), article 29 (temporary use of land for carrying out the authorised project) and article 30 (temporary use of land for maintaining the carrying out the authorised project) (together "the identified powers") over the Wilton Land without the consent in writing of the relevant owner of the Wilton Land over whose land the exercise of any of the identified powers is sought, or without the written consent of the relevant operator where the exercise of any identified powers affects apparatus in the Wilton Land that is operated for the benefit of the Wilton Complex.

(2) Where a person is asked to give consent pursuant to paragraph 3 (1), such consent must not be unreasonably withheld.

(3) In the event that—

(a) the undertaker considers that consent has been unreasonably withheld it may refer the request to an expert appointed in accordance with paragraph 19 for determination.

(b) an owner or operator fails to determine a request for consent within a period of 30 days consent shall be deemed to have been unreasonably withheld and the undertaker may refer the request to an expert appointed in accordance with paragraph 19 for determination.

(4) The undertaker must not in the exercise of the powers of this Order acquire, appropriate, extinguish or suspend any rights in land where the authorised project can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment or suspension.

(5) The undertaker in the exercise of the powers of this Order must at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on owners and operators including any disruption to access and supplies of utilities and other services which are required by them in order to carry out their operations.

(6) Save in the case of emergency, or as otherwise provided for within this Part, the undertaker shall give the affected owners of the Wilton Land a minimum of 30 days notice of the proposed exercise of any of the identified powers.

(7) Before carrying out any works on any part of the authorised project on the Wilton Land the undertaker must put in place a policy of insurance, consistent with the terms proposed in this sub-paragraph or as may be determined by the expert in accordance with paragraph 19, with a reputable insurer against consequential loss and damage suffered by owners of the Wilton Land and evidence of that insurance shall be provided on request to owners of the Wilton Land.

(8) Not less than 90 days before the carrying out of any works on any part of the authorised project on the Wilton Land, or when proposing to change the terms of the insurance policy, the undertaker must notify the owners of the Wilton Land of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(9) The undertaker shall maintain insurance in relation to works or the use of the authorised project affecting owners of the Wilton Land during the operation of the authorised project at the level specified in the notice of proposed insurance.

(10) If any owner or operator believes that any proposed exercise of the identified powers is in breach of paragraph 3(1) or 3(4) or there is a dispute about the terms or level of cover of the proposed insurance to be provided under paragraph 3(7) then they shall be entitled to refer the matter to an expert for determination under paragraph 19 and the undertaker must not exercise the relevant identified power(s) until that determination has been provided.

(11) Nothing in this Part of the Schedule shall apply to apparatus in respect of which the relations between the undertaker and an owner are regulated by the provisions of Part 3 of the 1991 Act.

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, that apparatus must not be removed and any right to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and equivalent rights for the alternative apparatus have been granted to the owner or operator of the apparatus.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the owner or operator in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case the undertaker must afford to the owner the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed

between the owner or operator in question and the undertaker or in default of agreement settled by a person appointed under paragraph19.

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an expert in accordance with paragraph 19, and after the grant to the owner of any such facilities and rights as are referred to in sub-paragraph (2), and also after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the owner or operator in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the owner or operator, shall be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) In the event that works are executed by the undertaker in accordance with sub-paragraph (5) the owner or operator of the apparatus must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3,000 millimetres of the apparatus without the written agreement of the owner or operator such agreement not to be unreasonably withheld.

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an owner or operator facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the owner or operator in question or in default of agreement determined by an expert in accordance with paragraph 19 such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorise development, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised project and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to and be no less favourable as a whole than the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the expert must make such provision for the payment of compensation by the undertaker to that owner or operator as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

6.—(1) Not less than 30 days before starting the execution of any works of the type referred to in paragraph 4(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), and in all cases where such works are within 3,000 millimetres of any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), the undertaker must submit to the owner or operator in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may

be made in accordance with sub-paragraph (3) by the owner or operator for the alteration or otherwise for the temporary or permanent protection of the apparatus, or for securing access to it, and the owner or operator must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of those works.

(3) Any requirements made by an owner or operator under sub-paragraph (2) must (except in circumstances where the same reasonably arise from the owners or operators watching, monitoring and inspection of those works) be made within a period of 30 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it and where the works relate to the installation or construction of the authorised project such requirements may require the protective measures referred to in sub-paragraph (2) to be retained in place at any time that the authorised project is installed.

(4) If an owner or operator in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 3 to 7 must apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan, section and description.

(6) On the reasonable and evidenced request of an owner or operator affected by proposed works the undertaker shall extend the periods in this paragraph by a reasonable time.

(7) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall undertake those works in such manner as has regard to the potential lack of suitable temporary or permanent protection of the owner's or operator's apparatus and must give to the owner or operator in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an owner or operator the reasonable expenses incurred by that owner or operator in, or in connection with—

(a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part of this Schedule;

(b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;

(c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;

(d) the design, project management, supervision and implementation of works;

(e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;

(f) monitoring the effectiveness of any protective measures referred to in paragraph 6(3) and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those protective measures; and

(g) any other work or thing reasonably required in consequence of the exercise by the undertaker of any such power or by the service by the undertaker of any notice, plan, section or description, within a reasonable time of being notified by the owner that it has incurred such expenses.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an expert in accordance with paragraph 19 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the owner in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (3) regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(5) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to an owner or operator in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on the owner or operator by deferment of the time for renewal of the apparatus in the ordinary course of that owner's business practice, be reduced by the amount which represents that benefit.

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised project and any such works referred to in paragraph 4(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an owner or operator, or there is any interruption in any service provided by or operations of the owner or operator, the undertaker must—

(a) bear and pay the cost reasonably incurred by that owner or operator in making good such damage or restoring the supply and operations; and

(b) make compensation to that owner or operator and any other person whose supply or operations are affected by the interruption for any other expenses, loss, damages, penalty or costs incurred by them,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an owner or operator, its officers, servants, contractors or agents.

(3) An owner or operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of any claim made against the owner or operator by any third party shall be made without the consent of the undertaker which, if it withholds such

consent, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

9.—(1) The undertaker must not in the exercise of the powers conferred by this Order unreasonably delay or prevent the construction, installation, adjustment, alteration, operation, use, repair, maintenance, renewal, inspection, removal or replacement of apparatus in the Wilton Land.

(2) If an owner or operator considers that the undertaker is in breach of paragraph (1) it may refer the matter to an expert for determination pursuant to paragraph 19.

10.—(1) Subject to sub-paragraph (2) the undertaker will afford to owners of the Wilton Land rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of apparatus in the Wilton Land acquired by the undertaker or affecting the rights of, or permitted under the rights acquired by, the undertaker granted upon such terms and conditions to be materially no worse than the terms and conditions that apply to similar apparatus affecting the authorised works as may be agreed between the undertaker and the person wishing to construct, adjust, alter, use, repair, maintain, renew, inspect, remove and replace apparatus in question or in default of agreement determined by an expert in accordance with paragraph 19.

(2) In settling the terms and conditions of any grant of rights regard shall be had to the terms and conditions applicable from time to time to the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and/or replacement of other apparatus within the Wilton Complex.

11.—(1) Before carrying out any construction works affecting access rights over the Wilton Site Roads, the undertaker must prepare a draft construction access plan and, publicise and consult upon this draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the construction access plan.

(3) No works affecting access rights over the Wilton Site Roads shall commence until thirty days after the approved construction access plan has been served on owners and operators in the Wilton Complex.

12.—(1) Before carrying out any maintenance works affecting access rights over the Wilton Complex, the undertaker must prepare a draft maintenance access plan and, publicise and consult upon this draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the maintenance access plan.

(3) No works affecting access rights shall commence until thirty days after the approved construction access plan has been served on owners and operators in the Wilton Complex

13.—(1) In preparing a construction access plan pursuant to paragraph 11 or a maintenance access plan pursuant to paragraph 12 the undertaker shall—

(a) establish the programme for any other major works within the Wilton Complex and shall programme the construction or maintenance of the authorised project to prevent (or, if such conflict cannot be reasonable prevented, to minimise) any conflict between the construction or maintenance of the authorised project and the programmed major works; and

(b) establish where an owner or operator has a reasonable expectation to exercise access rights over particular Wilton Site Roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby it can be met.

(2) For the purposes of this paragraph “programmed” means that the owner of the Wilton Site Roads has been notified of the dates between which works are programmed to be carried out.

(3) In exercising any right of access over the Wilton Site Roads, the undertaker must repay to the owner the reasonable expenses incurred by that owner in operating, repairing, maintaining, renewing, inspecting and replacing that Wilton Site Road together with any perimeter

gatehouses and other security serving the Wilton Complex having regard to user within a reasonable time of being notified by the owner that it has incurred such expenses.

(4) On the reasonable and evidenced request of an owner or operator in the Wilton Complex affected by proposed works the undertaker shall extend the periods in this paragraph by a reasonable time.

(5) Where a reference is made to expert determination in accordance with paragraph 19 in relation to any disagreement about a construction access plan the appointed person shall have regard to—

(a) whether major works were, at the date of the consultation already programmed to take place;

(b) the extent to which the authorised project can be accommodated simultaneously with the programmed major works;

(c) the usual practice in respect of conditions or requirements subject to which authorisation is given by the owner of the Wilton Site Road;

(d) the undertaker's programme in respect of the authorised project and the extent to which it is reasonable for it to carry out the authorised project at a different time;

(e) the availability (or non-availability) of other times during which the authorised project could be carried out;

(f) the programme in respect of the major works and the extent to which it is reasonable for the owner or operator at the Wilton Complex to carry out the major works at a different time; and

(g) the financial consequences of the decision on the undertaker and on any owner and operator in the Wilton Complex.

14. Before undertaking any work in the Wilton Land or exercising any rights relating to or affecting the Wilton Land the undertaker will consult with the owners of the Wilton Land.

15. Before undertaking any works in the Wilton Land or exercising any identified powers relating to or affecting owners or operators in the Wilton Complex the undertaker will participate in any relevant consultation groups operated in the Wilton Complex.

16. Before undertaking any construction works on the Wilton Land or commencing the operation of Schedule 1 Part 1 Work No 7 where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Wilton Land in terms of—

(a) construction or operational noise and vibration management;

(b) air quality including dust emissions;

(c) waste management;

(d) traffic management and materials storage on site;

(e) water management (surface water and groundwater); or

(f) artificial light emissions—

the undertaker will participate in any relevant community environmental liaison group that might from time to time be established between the owners or operators at the Wilton Complex and local residents.

17.—(1) Subject to sub-paragraph (2) in undertaking any works in the Wilton Land or exercising any rights relating to or affecting owners and operators in the Wilton Complex the undertaker will comply with such conditions, requirements or regulations relating to the health, safety, security and welfare as are operated in relation to access to or activities within the Wilton Complex.

(2) In carrying out any works as part of the authorised project the undertaker will not be bound by any condition, requirement or regulation that is—

(a) introduced after the date on which notice of those works was given unless its introduction is by way of legislation or policy emanating from the government, any relevant government agency, local government or the Police; or

(b) determined by the expert following a determination under paragraph 19 to—

(i) create significant engineering, technical or programming difficulties; or

(ii) materially increase the cost of carrying out those works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation arises as a consequence of a direction from a police or government authority.

18. The undertaker will co-operate with the owners and operators in the Wilton Complex to respond promptly to any complaints raised in relation to the construction or operation of the undertaker's authorised project within the Wilton Complex or the traffic associated with the authorised project.

19.—(1) Except as provided for in sub-clause (7) below, the provisions of article 44 do not apply to this Part.

(2) Any difference under this Part may be referred to and settled by a single independent and suitable person acting as an expert holding appropriate professional qualifications and being a member of a professional body relevant to the matter in dispute, such person to be agreed between the differing parties or failing agreement identified on the application of either party, with notice to the other, by the local authority.

(3) All parties involved in settling any difference must use best endeavours to do so within a maximum of 60 days from the date of an expert first being proposed.

(4) The fees of the expert shall be shared between the differing parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the differing parties to make submission to the expert in writing in a specified period;

(b) permit the differing parties to make comments on the submissions made by the other party;

(c) give reasons for their decision

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;

(e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost effective manner;

(f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;

(g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;

(h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(i) any other important and relevant consideration.

(7) Any determination shall be final and binding save where manifest effort is found in which case the difference which has been subject to expert determination may be referred to and settled by arbitration under article 44.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of two generating stations in the sea between 125 kilometres and 290 kilometres off the UK coast together with all necessary and associated development. For the purposes of the development this Order authorises the compulsory purchase of land and rights in land and rights to use land as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants deemed marine licences for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of the generating stations and associated development. The deemed marine licences impose requirements in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 42 (certification of plans, etc) of this Order may be inspected free of charge at the offices of Redcar and Cleveland Borough Council, Redcar & Cleveland House, Kirkleatham Street, Redcar, TS10 1RT.

APPENDIX E: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
AONB	Area of Outstanding Natural Beauty
APFP regulations	Applications: Prescribed Forms and Procedures
CA	Compulsory Acquisition
CAA	Civil Aviation Authority
CDM	Construction (Design and Management)
Cefas	Centre for Environment, Fisheries and Aquaculture Science
CIA	Cumulative Impact Assessment
CPO	Compulsory purchase order, not made under the Planning Act 2008
CRA	Collision Risk Assessment
CRM	Collision Risk Model
cSAC	candidate Special Area of Conservation
CUSC	Connection and Use of System Code
DCLG	Department for Communities and Local Government
DCLG compulsory acquisition guidance	'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land', Department of Communities and Local Government, September 2013
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DML	Deemed Marine Licence
EA	Environment Agency
EEZ	Exclusive Economic Zone
EH	English Heritage
EIA	Environmental Impact Assessment
EMF	Electro Magnetic Field
EPR	Examination Procedure Rules
ERCOP	Emergency Response Co-operation Plan
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
GES	Good Environmental Status
GW	Gigawatt
HDD	Horizontal Directional Drilling
HPA	Health Protection Agency
HRA	Habitat Regulations Assessment
HSC	Historic Seascape Characterisation
HSE	Health and Safety Executive
IPMP	In Principle Monitoring Plan
ISH	Issue Specific Hearing

Abbreviation or usage	Reference
JNCC	Joint Nature Conservation Committee
LA	Local Authority
LAT	Lowest Astronomical Tide
LBBG	Lesser Black-backed Gull
LDF	Local Development Framework
LIR	Local Impact Report
LPA	Local Planning Authority
MACAA2009	Marine and Coastal Access Act 2009
MCA	Maritime and Coastguard Agency
MCZ	Marine Conservation Zone
MHWS	Mean High Water Springs
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MoD	Ministry of Defence
MPS	Marine Policy Statement
MW	Megawatt
NE	Natural England
NERCA2006	The Natural Environment and Rural Communities Act
NFFO	National Federation of Fishermen's Organisations
NGET	National Grid Electricity Transmission
nm	Nautical Miles
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NRA	Navigation Risk Assessment
OFCOM	The independent regulator and competition authority for UK communications industries
OFGEM	The independent regulator and competition authority for UK gas and electricity markets
OFTO	Offshore Transmission Operator
PA2008	Planning Act 2008
PVA	Population Viability Analysis
Ramsar	The Ramsar Convention on Wetlands
RES	Renewable Energy Sources
REWS	Radar Early Warning System
REZ	Renewable Energy Zone
RIES	Report on the Implications for European Sites
RSPB	Royal Society for the Protection of Birds
RYA	Royal Yachting Association
SAC	Special Area of Conservation
SNCB	Statutory Nature Conservation Body
SNCBs	Statutory Nature Conservation Bodies – a collective reference
SOCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Sites of Special Scientific Interest

Abbreviation or usage	Reference
SLVIA	Seascape, Landscape and Visual Impact Assessment
TB	Transboundary
TEC	Transmission Entry Capacity
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VER	Valued Ecological Receptors
ZTV	Zone of theoretical visibility

APPENDIX 3E

DECISION LETTER

Department for Energy Security & Net Zero

3-8 Whitehall Place
London
SW1A 2AW
energyinfrastructureplanning@energysecurity.gov.uk
www.gov.uk/desnz

Ref: EN010103

Rob Booth
DWD

28 October 2025

By email: Rob.Booth@dwd-ltd.co.uk

Dear Mr Booth,

PLANNING ACT 2008

PROPOSED NON-MATERIAL CHANGE TO THE NET ZERO TEESSIDE DEVELOPMENT CONSENT ORDER 2024 (S.I 2024 NO.174) AS CORRECTED BY THE NET ZERO TEESSIDE (CORRECTION) ORDER 2024 (S.I 2024 NO.1384)

1. I am directed by the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to advise you that consideration has been given to the application ("the Application") which was made by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited ("the Applicants") on 13 March 2025 for changes which are not material to be made to the Net Zero Teesside Order 2024 ("the 2024 Order") under section 153 of, and Schedule 6 to, the Planning Act 2008 ("PA2008"). This letter is the notification of the Secretary of State's decision in accordance with Regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) ("the 2011 Regulations").

2. The original application for development consent under the PA2008 was granted consent on 16 February 2024[1]. Development consent was granted for the onshore elements of the proposed full chain Carbon Capture, Usage and Storage project comprising a number of elements including a new gas-fired electricity generating station (with an electrical output of up to 860 megawatts) with post combustion carbon capture plant; gas, electricity and water connections (for the electricity generating station); a carbon dioxide (CO_2) pipeline network (a 'gathering network') for gathering CO_2 from a cluster of local industries on Teesside; a high pressure CO_2 compressor station and an offshore CO_2 export pipeline. On 20 December 2024, the Secretary of State issued a Correction Order correcting minor drafting and typographical errors within the Order[2].

3. The Applicants are seeking consent for changes to Schedule 1 'Authorised Development' and Schedule 2 'Requirements' of the Order. The changes are:

[1] https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010103-002914-Decision%20Letter_Net%20Zero%20Teesside%20Project.pdf
[2] https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010103-002945-uksi_20241384_en.pdf

- Change 1- Addition of 'Work No. 6A' to Schedule 1 'Authorised Development' of the Order. This work would comprise a new Above Ground Installation ("AGI") for the CO_2 gathering network and associated apparatus to be located at Seal Sands. Change 1 also includes the addition of 'Work No. 9G' to Schedule 1 'Authorised Development' of the Order. This work would comprise a temporary construction laydown area adjacent to the new AGI at Work No. 6A to facilitate the construction of the AGI.

- Change 2- Extension of the area allocated for 'Work No. 2B' to Schedule 1 'Authorised Development' of the Order. This would comprise expansion of the area for the proposed natural gas AGI at the CATS Terminal (Seal Sands).

- Change 3- Addition of 'Work No. 6A' to Schedule 1 'Authorised Development' of the Order. This work would comprise a new AGI and associated apparatus to be located at the Power, Capture and Compression ("PCC") Site. Change 3 also includes realignment of the CO_2 gathering network which is 'Work No. 6' to Schedule 1 'Authorised Development' of the Order.

- Change 4- Extension of the area allocated for 'Work No. 3A' to Schedule 1 'Authorised Development' of the Order. This would comprise above ground and underground high voltage electrical cabling, two cable support structures adjacent to existing bridges over the Tees Valley Line, River Fleet and existing pipelines to support the cables. In association with this, the Applicants request a change to Requirement 3(4) of Schedule 2 'Requirements' of the Order to ensure that details of the two proposed cable support structures are submitted for the approval of the relevant planning authority.

Summary of the Secretary of State's Decision

4. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make non-material changes ("NMCs") to the Order to authorise the changes as detailed in the Application.

The Applicants' Consultation on the Non-Material Change Application

5. In accordance with Regulation 7(3) of the 2011 Regulations, the Secretary of State agreed to a reduced consultee list on 18 December 2024[3]. The Applicants proposed to consult 33 parties including the relevant local authorities, the Environment Agency, Natural England, South Tees Development Corporation and affected landowners. The Secretary of State considered that the Applicants should further consult the Health and Safety Executive. In accordance with the requirements of Regulation 7 of the 2011 Regulations, these specified parties were notified of the Application by email on 19 March 2025.

6. The Applicants published a notice of the Application in accordance with Regulation 6 (publicising the application) of the 2011 Regulations (the "Regulation 6 notice") for two consecutive weeks in the local press (the Teesside Gazette and Northern Echo on 20 and 27 March 2025 and the Darlington and Stockton Times on 21 and 28 March 2025). The Application was also made publicly available on the Planning Inspectorate's ("PINS") website, such that

[3] https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010103-002946-241218_Net%20Zero%20Teesside_Regulation%207(3)%20Letter%20for%20Limited%20Consultation_Final.pdf

there was an opportunity for anyone not notified through the consultation process to also submit representations to PINS.

7. The deadline for receipt of representations on the Application was 25 April 2025. In accordance with the requirements of Regulation 7(5) of the 2011 Regulations, the Secretary of State made available all responses to the consultation on the PINS website on 1 May 2025[4].

8. The Applicants submitted a Consultation and Publicity Report as required by Regulation 7A of the 2011 Regulations on 27 May 2025, which included a copy of the Regulation 6 notice and which stated that the Applicants had complied with all necessary steps set out in Regulations 6 and 7 of the 2011 Regulations in respect of stakeholder consultation and set out its public engagement approach. This was published on the PINS website on 7 October 2025[5].

9. A representation was received and considered from Network Rail Infrastructure Limited ("NRIL"). NRIL by email on 25 April 2025[4] stated that negotiations are ongoing between the parties to document the rights which the Applicants require on parts of the land currently outwith the Order limits via private agreement. NRIL stated that the agreement was close to being in place and accordingly NRIL was not submitting any substantial representations at this stage. NRIL stated it fully reserved its right to submit further representations should the need arise in order to protect its position with respect to the safe operation of the railway network.

The Secretary of State's Consideration of the Responses Received and Further Consultation Required

10. The Secretary of State carefully considered the Application documents, including NRIL's representation. The Secretary of State found that the Application did not contain sufficient clarity or detail to enable him to reach informed conclusions and he therefore wrote to the Applicants on 31 July 2025[6] requesting further information regarding the changes being proposed and their likely environmental effects ("the Secretary of State's consultation letter"). The Applicants responded to the Secretary of State's consultation letter on 18 August 2025[7] ("the Applicants' consultation response"). The Secretary of State has considered the Applicants' consultation response in detail and addresses this, where appropriate, in the following paragraphs.

11. The Secretary of State's consultation letter noted that only NRIL had responded to the Applicants' consultation and requested the Applicants to confirm if they had received any representations directly or wanted to inform the Secretary of State of any pre-application consultation undertaken. The Applicants' consultation response confirmed that no consultee responses were received following the publication and issue of consultation materials associated with the Application. The Consultation and Publicity Report sets out the various

[4] https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010103-002948-THE%20NET%20ZERO%20TEESSIDE%20ORDER%202024%20(SI%202024_174)%20REPRESENTATIONS%20ON%20BEHALF%20OF%20NETWORK%20RAIL%20INFRASTRUCTURERedacted.pdf

[5] https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010103-002949-NZT%20NMC%20-%20Consultation%20and%20Publicity%20Statement%20%28May%202025%29.pdf

[6] https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010103-002980-NZT%20SoS%20Consultation%20Letter%20Final.pdf

[7] https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010103-002984-NZT%20NMC%20-%20Applicants%20Response%20to%20SoS%20RFI%20(18%20August%202025).pdf

methods used to publicise the Application in accordance with Regulation 7(3) of the 2011 Regulations. In terms of pre-application consultation on the proposed changes, the Applicants did engage with affected landowners prior to the submission of the Application.

12. The Secretary of State is satisfied that the Applicants have complied with the 2011 Regulations. Following the Applicants' consultation response, the Secretary of State does not consider that any further information needs to be provided by the Applicants or that further consultation is necessary in order for the Secretary of State to determine the Application.

Guidance Relating to the Materiality of the Proposed Changes

13. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the PA2008 and Part 1 of the 2011 Regulations.

14. The Secretary of State has considered whether the elements of the Application are material or non-material changes. In doing so, the Secretary of State has had regard to paragraph 2(2) of Schedule 6 to the PA2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.

15. Guidance produced by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government), entitled the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Guidance")[8] makes the following points in relation to whether a proposed change is likely to be material or non-material:

    (a) given the range of infrastructure projects that are consented through the Planning Act 2008, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material;

    (b) however, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. Four examples are given in the Guidance as a starting point for assessing the materiality of a proposed change, namely:

        (1) whether an update would be required to the Environmental Statement ("ES") (from that at the time the Order was made) to take account of new, or materially different, likely significant effects on the environment;

        (2) whether there would be a need for a Habitats Regulations Assessment ("HRA"), or a need for a new or additional licence in respect of European Protected Species ("EPS");

        (3) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the Order; and

        (4) whether the proposed change would have a potential impact on local people and business (for example, in relation to visual amenity from changes to the size and height of buildings; impacts on the natural and historic environment; and impacts arising from additional traffic).

[8] https://www.gov.uk/government/publications/changes-to-development-consent-orders

(c) although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.

The Secretary of State's Consideration of the Application

16. The Secretary of State has considered the four changes proposed by the Applicants against the four matters set out in (1), (2), (3) and (4) above.

Change 1

17. The Secretary of State has considered Change 1 against the four matters set out in (1), (2), (3) and (4) in Paragraph 14 above:

(a) The Secretary of State notes that the Environmental Statement Addendum Volume 1 ("ES Addendum") supports the Applicants' conclusions that there are no new, or materially different, likely significant effects in respect of Change 1 from those assessed in the ES. The Secretary of State considered that the ES Addendum, while covering all topics from the ES, was brief and lacked detail and therefore asked for additional information from the Applicants.

The Secretary of State requested the Applicants to update the percentage increases in traffic movements as presented in the original ES and confirm whether they would remain below the GEART[9] thresholds for assessment. The Applicants responded that the new percentage increase is presented in Table 4-1 of the ES Addendum as 13.3%. However, the Secretary of State notes that an increase of 13.3% (equivalent to 10 HGV movements per day) is the original increase presented in the ES [APP-098 Table 16-15] and that the Applicants have not added the additional six daily HGV movements arising from Change 1 as requested and presented in the ES Addendum. The Secretary of State calculates the new increase on Link 13 as 21% ((10+6) / 75 x 100). This remains below the 30% GEART threshold for further assessment.

With regard to the Application documents, including the ES Addendum, and the information provided in the Applicants' consultation response, the Secretary of State is satisfied that Change 1 will not give rise to new, or materially different, likely significant effects on the environment.

(b) The Secretary of State has concluded that, given the nature and impact of Change 1, there is not likely to be a significant effect on any European site or the need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective. Therefore, the Secretary of State is satisfied that a new HRA is not required in respect of Change 1.

(c) The Application documents stated that the land required for Change 1 would be acquired by agreement, but the Applicants' application documents did not include confirmation of the identity of the current landowners or details of their involvement in the application process. The Secretary of State requested that the Applicants evidence if they had

[9] Institute of Environmental Assessment Guidelines for the Environmental Assessment of Road Traffic

acquired the land. The Applicants' consultation response outlined that Sembcorp Utilities (UK) Limited is the freehold owner of the land and the Applicants have the benefit of an option agreement for leases which has been completed between the parties. Sembcorp Utilities (UK) Limited was a consultee in respect of the Application. The Applicants confirmed that they undertook negotiations in relation to the project, including the land required to deliver Change 1 and the parties specially negotiated and completed contracts with the Applicants. The Secretary of State therefore concludes that Change 1 does not require any additional compulsory acquisition of land.

(d) The Secretary of State notes that the impacts on local people and businesses relating to Change 1 are no greater than those arising from the development permitted by the Order.

18. The Secretary of State concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggests that Change 1 constitutes a material change.

19. The Secretary of State is satisfied that Change 1 is required to enable the spur line connection to potential industrial emitters via a new AGI and associated temporary construction area. The Secretary of State is satisfied that there would be no new significant or materially different effects resulting from Change 1 when compared to the effects set out in the original ES. The Secretary of State concludes that Change 1 is acceptable and can be consented as a non-material change.

Change 2

20. The Secretary of State has considered Change 2 against the four matters set out in (1), (2), (3) and (4) in Paragraph 15 above:

(a) The Secretary of State notes that the ES Addendum supports the Applicants' conclusions that there are no new, or materially different, likely significant effects in respect of Change 2 from those assessed in the ES. The Secretary of State has concluded that no update is required to the ES in respect of Change 2.

(b) The Secretary of State has concluded that, given the nature and impact of Change 2, there is not likely to be a significant effect on any European site or the need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective. Therefore, the Secretary of State is satisfied that a new HRA is not required in respect of Change 2.

(c) The Secretary of State notes that Change 2 does not require any additional compulsory acquisition of land.

(d) The Secretary of State notes that the impacts on local people and businesses relating to Change 2 are no greater than those arising from the development permitted by the Order.

21. The Secretary of State concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggests that Change 2 constitutes a material change.

22. The Secretary of State is satisfied that Change 2 is required to enable the natural gas connection works. The Secretary of State is satisfied that there would be no new significant or

materially different effects resulting from Change 2 when compared to the effects set out in the original ES. The Secretary of State concludes that Change 2 is acceptable and can be consented as a non-material change.

Change 3

23. The Secretary of State has considered Change 3 against the four matters set out in (1), (2), (3) and (4) in Paragraph 15 above:

(a) The Secretary of State notes that the ES Addendum supports the Applicants' conclusions that there are no new, or materially different, likely significant effects in respect of Change 3 from those assessed in the ES.

The Secretary of State noted that the ES Addendum Table 4-3 mentioned the pipeline construction but not the new Above Ground Installation ("AGI") in terms of noise and vibration and requested the Applicants to provide this. The Applicants' consultation response stated the construction of the AGI would occur within the proposed Power, Capture and Compression ("PCC") site. The Applicants noted the typical plant and quantities needed to construct the additional AGI are already included in the overall construction plant list for the PCC sites building and general site activities and will remain the same with the addition of the AGI. Therefore, the Applicants stated the construction of the AGI would not change the conclusions of the construction noise and vibration assessment carried out in the original ES. The Secretary of State was satisfied with this explanation.

The Secretary of State noted that the ES Addendum Table 4-3 stated that Works No.6/6A were not predicted to result in any additional construction vehicle trips and requested the Applicants to provide details to justify this conclusion, given the construction of the new AGI. The Applicants' consultation response stated that the construction vehicles required to construct a new AGI would not breach the worst-case scenario traffic numbers (e.g. a total of 855 daily arrivals and 855 daily departures) already assessed within the original ES. The proposed works will also not change the peak month of construction that has been assessed within the original ES. The Secretary of State is satisfied with this explanation.

With regard to the Application documents, including the ES Addendum, and the information provided in the Applicants' consultation response, the Secretary of State is satisfied that no update is required to the ES in respect of Change 3.

(b) The Secretary of State has concluded that, given the nature and impact of Change 3, there is not likely to be a significant effect on any European site or the need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective. Therefore, the Secretary of State is satisfied that a new HRA is not required in respect of Change 3.

(c) The Secretary of State notes that Change 3 does not require any additional compulsory acquisition of land.

(d) The Secretary of State notes that the impacts on local people and businesses relating to Change 3 are no greater than those arising from the development permitted by the Order.

24. The Secretary of State concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggests that Change 3 constitutes a material change.

25. The Secretary of State is satisfied that Change 3 is required to enable connection to the CO_2 gathering network in the southern part of the site and to avoid other apparatus identified during the detailed design stage. The Secretary of State is satisfied that there would be no new significant or materially different effects resulting from Change 3 when compared to the effects set out in the original ES. The Secretary of State concludes that Change 3 is acceptable and can be consented as a non-material change.

Change 4

26. The Secretary of State has considered Change 4 against the four matters set out in (1), (2), (3) and (4) in Paragraph 15 above:

    (a) The Secretary of State notes that the ES Addendum supports the Applicants' conclusions that there are no new, or materially different, likely significant effects in respect of Change 4 from those assessed in the ES.

    The Secretary of State noted that smaller-scale plant and equipment were not included on the photowires and photomontages in the original ES as they were considered to be inconsequential in the context of the larger proposed and existing surrounding industrial structures and installations and requested the Applicants to clarify if the changes proposed, particularly Change 4, are regarded as small-scale equipment and to explain the basis for this conclusion. If not, the Secretary of State asked the Applicants to include these in updated photowires and photomontages and submit these as necessary. The Applicants responded that Change 4 specifies that the electrical connection will cross the Tees Valley railway line and River Fleet using steel-framed cable support structures located next to the existing road bridges and that similar structures of comparable height, including the road bridges, already exist in the area. Given this context, the proposed structures are considered to be small-scale, not visible from identified viewpoints and therefore will not be shown in the photowires or photomontages. The Applicants stated the steel-framed cable supports will have a maximum height of 7.2m above ground level: the same as the AGI and lower than the substation at Tod Point (12m above ground level). The proposed structures will be screened by vegetation, existing buildings and landform, further reducing their visibility such that they are not expected to be visible from the identified viewpoints and therefore the Applicants have not updated the photowires and photomontages. The Secretary of State considers that the structures are not likely to be visible from the identified viewpoints and is therefore satisfied that the photowires and photomontages do not require updating for Change 4, or indeed any of the other proposed changes.

    The Secretary of State noted that the original ES concluded no effects on watercourses resulting from morphological changes and accidental pollution/sediment runoff due to the use of existing watercourse crossings at the electrical connection. As Change 4 would introduce above ground crossings of the Mill Race and Fleet watercourses and works close to these watercourses, the Secretary of State requested the Applicants to identify specific avoidance/mitigation measures and relevant control documents relevant to this change and

explain whether any amendments to these control documents were necessary. The Applicants' consultation response set out that the crossings of the Mill Race and Fleet watercourses would not require any works within the channel with the potential to cause adverse hydromorphological effects to the bed or banks or direct water quality effects. The Applicants stated that the works could create potential for indirect water quality effects relating to runoff of sediments, accidental chemical spillages conveyed to these watercourses, or other debris/materials falling into the channel. The Applicants stated that mitigation outlined in the original ES would remain applicable and control this risk to ensure residual effects were not significant. Measures were expanded upon in the framework Construction Environment Management Plan ("CEMP"), which require a Water Management Plan ("WMP") to be appended to the final CEMP. The submission and approval of the final CEMP is secured by Requirement 16 in Schedule 2 to the DCO. The WMP would provide greater detail regarding site-specific mitigation to be implemented to protect the water environment during construction and mitigation measures would apply equally to the proposed watercourse crossings required by Change 4 and would ensure no significant adverse effects to water quality. The Applicants considered that no amendments to the existing control documents were necessary. The Secretary of State is satisfied that the measures to be secured in the final CEMP will control risks to ensure residual effects are not significant.

The Secretary of State noted that ES Addendum Table 4-4 states there are no changes to the conclusions of the noise and vibration assessment due to Change 4. However, the Secretary of State understood that the nature of the proposed construction works at the electrical connection has changed, including piling up to 18m depth for the cable support structures and considered it was not clear whether piling and foundation works would result in higher noise levels than the topsoil strip assumed in the original ES and whether the ES Addendum should now assess piling and foundation works. The Secretary of State considered there was insufficient information to determine whether this would result in materially different effects at Noise Sensitive Receptor 3 ("NSR 3"), given the original conclusions of minor adverse effects at nighttime and that original predicted noise levels were close to noise limits. The Applicants' consultation response provided a table to present the updated prediction for rotary bored piling and foundation works. The Applicants concluded that, at the closest approach to NSR 3 (485m) the noise level is predicted to be 49 dB LAeq,T which, during daytime and evening/weekend periods, would result in negligible effects. This updated noise level based on rotary bored piling is slightly lower than the predicted level for the topsoil strip as assessed in the original ES. The framework CEMP specifies that no piling works will be conducted at night and so the conclusions from the original ES regarding night-time construction works, albeit based on topsoil strip, remain applicable. The Secretary of State is satisfied that Change 4 would not result in new or materially different effects due to noise and vibration.

The Secretary of State noted that ES Addendum Table 4-4 stated that Work No.3A is not predicted to result in any additional construction vehicle trips and requested the Applicants to provide details to justify the conclusion that construction of above ground and underground high voltage cabling and two cable support structures would not result in any

additional construction traffic. The Applicants' consultation response stated that the development change was not expected to affect the originally assessed traffic increases of 3-5% on the A1085 in the original ES [APP-098] as the predicted number of vehicle trips associated with Change 4 were within the tolerance assessed in the original ES. The Secretary of State is satisfied that Change 4 would not result in new or materially different effects due to traffic movements.

With regard to the Application documents, including the ES Addendum, and the information provided in the Applicants' consultation response, the Secretary of State is satisfied that Change 4 will not give rise to new, or materially different, likely significant effects on the environment.

(b) The Secretary of State has concluded that, given the nature and impact of Change 4, there is not likely to be a significant effect on any European site or need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective. Therefore, the Secretary of State is satisfied that a new HRA is not required in respect of Change 4.

(c) The Application documents did not explain how it was proposed that the land for Change 4 would be acquired and the Applicants had not confirmed the identity of the current landowners or their involvement in the application process. The Secretary of State requested that the Applicants evidence if they had acquired the land. The Applicants' consultation response outlined that there were two landowners. South Tees Developments Limited is the freehold owner of the majority of the 'additional land' and the Applicants have the benefit of an option agreement for an easement which has been completed between the parties. Network Rail Infrastructure Limited is the freehold owner of the remainder of the 'additional land', including the rail line which will be crossed by Work No. 3, and the Applicants have the benefit of an option agreement for an easement which has been completed between the parties. Both South Tees Developments Limited and Network Rail Infrastructure Limited were consultees in respect of the Application. The Applicants confirmed that they undertook negotiations in relation to the project, including the land required to deliver Change 4 and the parties specially negotiated and completed contracts with the Applicants. The Secretary of State therefore concludes that Change 4 does not require any additional compulsory acquisition of land.

(d) The Secretary of State notes that the impacts on local people and businesses relating to Change 4 are no greater than those arising from the development permitted by the Order.

27. The Secretary of State concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggests that Change 4 constitutes a material change.

28. The Secretary of State is satisfied that Change 4 is required to enable the electrical connection. The Secretary of State is satisfied that there would be no new significant or materially different effects resulting from Change 4 when compared to the effects set out in the original ES. The Secretary of State concludes that Change 4 is acceptable and can be consented as a non-material change.

Environmental Impact Assessment

29. The Secretary of State has considered whether the Application would give rise to any new significant or materially different effects when compared to the effects set out in the ES for the development authorised by the Order.

30. The Secretary of State is satisfied that the environmental information provided by the Applicants in the Application and the further clarification received in response to the Secretary of State's consultation is sufficient to allow him to make a determination on the Application.

31. The Secretary of State has considered all relevant information provided and the comments of consultees. The Secretary of State agrees with the Applicants' conclusions that there will not be any new or materially different likely significant effects when compared to the effects set out in the ES for the development authorised by the Order.

32. As there are no new significant or materially different environmental impacts as a result of the proposed change, the Secretary of State considers that there is no requirement to update the ES.

33. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

The Habitats Regulations

34. The Secretary of State has considered the relevant requirements as set out in the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site within the national site network, known as "protected sites". The Secretary of State also considers it relevant to consider whether there could be significant effects on protected sites in other European Economic Area ("EEA") States. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to Regulation 63(1) of the Habitats Regulations, *"to make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives".* The Secretary of State may only agree to the Application (subject to Regulation 64) if he has ascertained that it will not adversely affect the integrity of the protected site concerned.

35. The Secretary of State has considered the information submitted in the Application and is satisfied that the proposed changes do not alter the conclusions set out in the Applicants' ES and the Secretary of State's HRA for the Order, and therefore a new HRA is not required.

General Considerations

Transboundary Impacts

36. Under Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended), the Secretary of State has considered whether the

Development is likely to have a significant effect on the environment in another EEA State. The Secretary of State has considered whether the changes sought through this Application will have any potential impacts on an EEA State and has concluded that there is no change in the environmental impacts considered within the existing ES for the project. Consequently, the Secretary of State has concluded that there would not be likely significant effects on the environment of any other EEA State whether the Application is considered of itself or cumulatively with the environmental effects already considered for the Order.

37. The Secretary of State has also considered whether there may be potential impacts on protected sites in EU Member States, known as "transboundary sites", from this Application. Noting that the Secretary of State has reached a conclusion that there will be no likely significant effects on protected sites, the Secretary of State has also concluded that there are no realistic impact pathways whereby transboundary sites may be impacted by this Application.

38. The Secretary of State therefore concludes there is no need for transboundary consultation with EEA States.

Equality Act 2010

39. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sex, sexual orientation, gender reassignment; disability; marriage and civil partnerships;[10] pregnancy and maternity; religion or belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

40. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010 and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

Human Rights Act 1998

41. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. The Secretary of State considers that the grant of this Application would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

42. The Secretary of State notes the "general biodiversity objective" to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006, and considers the application consistent with furthering that objective whilst having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that

[10] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

biodiversity has been considered sufficiently in this Application for an amendment to accord with this duty.

Amendments to the 2024 Order

43. The Secretary of State has noted the content of the Applicants' proposed draft order to give effect to the proposed changes to the 2024 Order. The Secretary of State has made some drafting changes which it is considered have the same effect but add some additional clarity in terms of the amendments to the provisions relating to compulsory acquisition of interests in or rights over land.

The Secretary of State's Conclusions and Decision

44. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to PA2008 to make non-material changes ("NMCs") to the Order to authorise the changes as detailed in the Application.

45. The Secretary of State has considered whether the Application is for a material or non-material change. In doing so, the Secretary of State has had regard to paragraph 2(2) of Schedule 6 to the PA2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.

46. The Secretary of State has considered the ongoing need for the Development and considers that the project continues to conform with the policy objectives outlined in the Overarching National Policy Statement for Energy (EN-1), National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2), National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) and National Policy Statement for Electricity Networks Infrastructure (EN-5). The Secretary of State considers this conformity applies to both 2011 and 2024 iterations, the latter of which is now in force. The need for the Development remains as set out in the Secretary of State's letter of 16 February 2024.

47. For the reasons set out in the paragraphs above, the Secretary of State is satisfied that the Applicants' request is acceptable. Furthermore, the Secretary of State considers that the Applicants have demonstrated that the proposed changes will not result in changes to the conclusions of the ES that accompanied the original application.

48. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to Schedule 1 and Schedule 2 of the Order. The Secretary of State is satisfied that the changes requested by the Applicants are not material changes to the Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the Order to authorise the changes detailed in the Application.

Challenge to Decision

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

Publicity for Decision

50. The Secretary of State's decision on this Application is being notified as required by Regulation 8 of the 2011 Regulations.

Yours sincerely,

John Wheadon

John Wheadon

Head of Energy Infrastructure Planning Delivery & Innovation

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Amendment Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010103

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

APPENDIX 4

Wheelabrator Kemsley Generating Station documents comprising:	
Appendix 4A	Examining Authority Report
Appendix 4B	Decision Letter

APPENDIX 4A

EXAMINING AUTHORITY REPORT

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Wheelabrator Kemsley Generating Station (K3)

and

Wheelabrator Kemsley North (WKN) Waste to Energy Facility

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for

Department for Business, Energy & Industrial Strategy

Examining Authority

Grahame J Kean BA (Hons), Solicitor HRA

19 November 2020

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OVERVIEW

File Ref: EN010083

The Applicant, WTI/EFW Holdings Ltd (WTI), made an application under section 37 of the Planning Act 2008 which was received in full by The Planning Inspectorate on 11 September 2019 (the Application).

The Application was accepted for examination on 8 October 2019.

The examination of the Application began on 19 February 2020 and was completed on 19 August 2020.

The Proposed Development comprises two projects. The first is to increase the generating capacity of Wheelabrator Kemsley (K3) generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum ("K3 Proposed Development" or "Project K3"). Secondly, Wheelabrator Kemsley North (WKN) would be a waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste. ("WKN Proposed Development" or "Project WKN"). The Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) made a direction under Section 35 of the Planning Act 2008 to treat the Proposed Development as one for which development consent is required.

Together the two projects are referred to as the Proposed Development. It would be located adjacent to the DS Smith Paper Mill to the north of Kemsley in Sittingbourne, Kent.

The K3 grid connection is constructed as part of the construction of the K3 facility and both Project K3 and Project WKN would connect to an existing UK Power Networks electricity substation located within the DS Smith Paper Mill site.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should grant consent for the K3 Generating Station only and should make the Order in the form attached at Appendix D.

The Examining Authority recommends that the Secretary of State should withhold consent for the WKN generating station. If, however the Secretary of State decides to give consent, then the Examining Authority recommends that the Order should be in the form attached at Appendix E.

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ERRATA SHEET – Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility – Ref. EN010083

Examining Authority`s Recommendation to the Secretary of State for the Department for Business, Energy and Industrial Strategy dated 19 November 2020

Corrections agreed by the Examining Authority prior to a decision being made:

Page No.	Paragraph	Error	Correction
1	1.1.4	"However, all references to the 2019 ES unless stated otherwise."	"However, all references are to the 2019 ES unless stated otherwise."
2	1.4.4	"…Hempstead House Hotel, London Road, ME9 9PP…"	"…Hempstead House Hotel, London Road, Sittingbourne ME9 9PP…"
3	1.4.7	"…exactly which matters are not agreed as well as well as those that are agreed…"	"…exactly which matters are not agreed as well as those that are agreed…"
3	1.4.11	"…but due to the outbreak of Covid 19 had to be cancelled."	"…but, due to the outbreak of Covid 19, it had to be cancelled."
3	1.4.14	"…Hempstead House Hotel, London Road, ME9 9PP…"	"…Hempstead House Hotel, London Road, Sittingbourne ME9 9PP…"
6	1.4.29	"Matters concerning MMO are dealt with…"	"Matters concerning the MMO are dealt with…"
9	1.6.1	"…for which a Habitats Assessment Regulations (HRA) Report has been provided."	"…for which a Habitats Regulations Assessment (HRA) Report has been provided."
11	1.8.2	"…to amend the K3 EP…"	"…to amend the K3 Environmental Permit (EP)…"
11	1.8.3	"and that "An application for the WKN Environment Permit is anticipated to made in April 2020"…"	"and that "An application for the WKN Environment Permit is anticipated to be made in April 2020"…"
18	2.4.8	"…an area is fenced off area containing…"	"…an area is fenced off containing…"
25	3.3.18	"Paragraph 2.5.9 notes that waste to energy generating stations would take fuel (waste) that would otherwise be sent or landfill…"	"Paragraph 2.5.9 notes that waste to energy generating stations would take fuel (waste) that would otherwise be sent for landfill…"
29	3.4.17	"Article 6 of the rFWD…"	"Article 6 of the rWFD…"
29	3.4.18	"Article 6 of the rFWD…"	"Article 6 of the rWFD…"

37	3.6.2	Formatting error	
43	4.4.5	“These documents the principle of…”	“These documents set out the principle of…”
49	4.10.2	Formatting error - shouldn`t have a paragraph number.	
49	4.10.6	Formatting error - shouldn`t have a paragraph number.	
50	4.10.7	“Member States of the EU are required by Article 4(1) of the to apply the hierarchy…”	“Member States of the EU are required by Article 4(1) of the Waste Framework Directive to apply the hierarchy…”
51	4.10.15	Formatting error - shouldn`t have a paragraph number and should be italicised.	
61	4.10.68	“…not least as the data (except for local authority collected waste, or ‘LACW’),…”	“…not least as the data (except for local authority collected waste, or ‘LACW’), is very uncertain and is dependent on the accuracy of waste generators, carriers, operators and the regulator when completing relevant forms recording the amount of waste and its end destination.”
62	4.10.70	“…the focus of Tolvik Review 2017…”	“…the focus of the Tolvik Review …”
63	4.10.74	Formatting error	
67	4.10.90 (second sub bullet)	“…Committee of Climate Change’s latest advice…”	“…UK Committee on Climate Change’s latest advice…”
67	4.10.92	“In particular in the Applicant made comments [REP5-022] on Responses to D4 submissions…”	“In particular, the Applicant made comments [REP5-022] in reply to Responses to D4 submissions…”
68	4.10.98	“…the waste strategy and plans examined would nonetheless appropriate…”	“…the waste strategy and plans examined would nonetheless be appropriate…”
68	4.10.98	“…if the view were taken that Proposed Development provides too much waste capacity…”	“…if the view were taken that the Proposed Development provides too much waste capacity…”
74	4.10.129	Formatting error - shouldn`t have a paragraph number.	

75	4.10.131	"It was found to sound by the EPR Inspector."	"It was found to be sound by the EPR Inspector."
75	4.10.133	"…travelling time from the facility, would also be contrary to…"	"…travelling time from the facility, it would also be contrary to…"
97	4.14.8	Formatting error - shouldn`t have a paragraph number.	
97	4.14.12	"…*to reduce greenhouse gas emissions s,…"*	"…*to reduce greenhouse gas emissions,…"*
97	4.14.12	*"(paragraphs 2.2.5 and 2.2.6)""*	*"(paragraphs 2.2.5 and 2.2.6)."*
101	4.14.35	"… is predicted by WRATE be a GHG emissions reduction…"	"… is predicted by WRATE to be a GHG emissions reduction…"
102	4.14.43	"…since publication in 2011 of NPS EN-01 or NPS EN-03…"	"…since publication in 2011 of NPS EN-1 and NPS EN-3…"
106	4.14.60	"…in relation to the WKN Proposed Development neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations…"	"…in relation to the WKN Proposed Development, while neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations…"
125	4.17.27	"…in the DCO would comply with NPS EN-1, NPS EN-2 and the NPPF…"	"…in the DCO would comply with NPS EN-1, NPS EN-3 and the NPPF…"
139	4.18.79	"…used in the TA the Ratio of Flow to Capacity (RFC) and queue."	"…used in the TA were the Ratio of Flow to Capacity (RFC) and queue."
142	4.19.6	"NPS EN-2…"	"NPS EN-3…"
148	4.19.47	"NPS EN-2…"	"NPS EN-3…"
170	6.2.57	"…would comply with NPS EN-1, NPS EN-2 and the NPPF…"	"…would comply with NPS EN-1, NPS EN-3 and the NPPF…"
171	6.2.62	"… to impose a further restriction in these HGV movements."	"… to impose a further restriction on these HGV movements."
172	6.2.68	"…in accordance with EN-1, EN-2, the NPPF…"	"…in accordance with EN-1, EN-3, the NPPF…"
180	7.2.25	"Responses to the EXA's Preferred Changes…"	"Responses to the ExA's Preferred Changes…"
182	7.3.12	"In section 4.20 of this Report…"	"In section 4.18 of this Report…"
183	7.3.20	Formatting error - shouldn`t have a paragraph number.	

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility (the Proposed Development) EN010083 was submitted by the Applicant to the Planning Inspectorate on 11 September 2019 under section 31 of the Planning Act 2008 (PA2008) and accepted for Examination under section 55 of the PA2008 on 8 October 2019.

1.1.2. The Proposed Development comprises:

- Consent to realise a generating capacity of 75MW and total tonnage throughput of 657,000 tonnes per annum at K3, a waste to energy facility. The physical works necessary for this facility have been completed and would not require a change to the external design;
- Wheelabrator Kemsley North (WKN) a new waste to energy plant, capable of processing 390,000 tonnes of waste per annum with a generating capacity of 42MW;
- Each facility would require: tipping hall, waste fuel bunker, boiler hall, flue gas treatment building, turbine hall housing steam turbine and generator, air cooled condenser, stack and associated emissions monitoring system, electricity substation, stores and utilities, administration office, fire water tanks, stores, weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps and diesel generators;
- Installation of grid connection;
- Construction of surface water outfalls; and
- Construction and alteration of private access and haul roads.

1.1.3. The completed K3 facility was commissioned on 16 July 2020 pursuant to planning permission Ref SW/19/501345 granted on 14 June 2019 by Kent County Council (KCC) pursuant to section 73 Town and Country Planning Act 1990 (TCPA1990) permitting the construction and operation of a generating station having a capacity of up to 49.9MW. This consented facility is known as the Consented K3 Facility in this Report.

1.1.4. The location of the Proposed Development is shown in the Environmental Statement (ES) Chapter 3.1 [APP-055] an updated version submitted at D2 [REP2-015], and Land Plans, an updated version of which was received as Additional Submission [AS-008]. The site lies within the administrative areas of KCC and Swale Borough Council (SBC) and is wholly in England. It should be noted that due to the nature of the Application comprising Project K3 and Project WKN an earlier version of the ES was submitted in respect of the former. However all references to the 2019 ES unless stated otherwise.

1.1.5. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) in its decision to accept the Application for Examination in accordance with section 55 PA2008 [PD-003].

1.1.6. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [APP-003] that the Proposed Development is an NSIP as it is for the construction of a generating station (K3), in England, is within s15 PA2008, and so requires development consent in accordance with s31 PA2008. The Proposed Development as a whole therefore meets the definition of an NSIP set out in s14(1)(a) PA2008.

1.1.7. Project WKN would not meet the requirements to be an NSIP due to the generating capacity of up to 42MW. The Secretary of State exercised their powers under s35 PA2008 to make a decision that this would be treated as development for which development consent is required under the PA2008 (see S55 Checklist, Item 2 [PD-003]).

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 31 October 2019, Grahame Kean was appointed as the Examining Authority (ExA) for the application under s61 of PA2008 [PD-004].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

1.3.1. The persons involved in the Examination were:

- Persons who were entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a statutory party who requested to become an IP.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination began on 19 February 2020 and concluded on 19 August 2020.

1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

The Preliminary Meeting

1.4.3. On 21 January 2020, The ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EP Rules) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and any other early hearing [PD-006], outlining:

- the arrangements and agenda for the PM;
- notification of hearings to be held in the early stage of the Examination;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable;
- availability of RRs and application documents; and
- the ExA's procedural decisions.

1.4.4. The PM took place on 19 February 2020 at Hempstead House Hotel, London Road, Kent. An audio recording [EV-001] and a note of the

meeting [EV-002] were published on the Planning Inspectorate National Infrastructure website[1].

1.4.5. The ExA's procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-007], dated 26 February 2020.

Key Procedural Decisions

1.4.6. The procedural decisions set out in the Rule 8 Letter related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 Letter [PD-007] and so there is no need to reiterate them here.

1.4.7. However it is relevant to record here that insofar as the procedural decisions requested timely completion of the various Statements of Common Ground (SoCG) with the Applicant, that with Highways England (HE) was delayed to the end of the examination and was not completed. The concerns I expressed about this matter during the Examination can be seen in my commentary contained within ExQ3.13.7, ExQ3.13.9, ExQ3.14.1 and ExQ3.14.2. I explained that it was important to the ExA to have up to date draft versions of each SoCG so that matters in dispute could be clearly highlighted and explained. Finally, I stated in ExQ4.11.13:

"The intention in requesting such documents is not that parties should hold back from submitting them until they have agreed matters, but to assist the ExA by providing a continuous and candid explanation of exactly which matters are not agreed as well as well as those that are agreed. Please provide for D7 a SoCG with HE that fulfils this role"

1.4.8. The failure to produce a SoCG on traffic and transport matters had a material effect on the conduct of the Examination in rendering it more difficult for me to extrapolate the essential matters in dispute and how if at all such matters might be resolved.

Site Inspections

1.4.9. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.

1.4.10. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other

[1] https://infrastructure.planninginspectorate.gov.uk/projects/south-east/wheelabrator-kemsley-generating-station-k3-and-wheelabrator-kemsley-north-wkn-waste-to-energy-facility/?ipcsection=overview

technical considerations and / or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.

1.4.11. The ExA included an initial date for an ASI in its Rule 8 timetable issued on 15 April 2020 but due to the outbreak of Covid 19 had to be cancelled. An ASI (and further hearings) were scheduled for June 2020 but due to Covid 19 restrictions these events also had to be cancelled, and an amended Examination timetable was communicated to IPs on 22 May 2020 [PD-013].

1.4.12. The ExA has had regard to the information and impressions obtained during the Examination in all relevant sections of this Report.

Hearing Processes

1.4.13. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary:
  - where persons affected by compulsory acquisition (CA) and/or temporary possession proposals object and request to be heard at a Compulsory Acquisition Hearing (CAH); and / or
  - where IPs request to be heard at an Open Floor Hearing (OFH).
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

1.4.14. The ExA held an Issue Specific Hearing (ISH) under s91 PA2008 on the "s51" version of the draft Development Consent Order (dDCO) [AS-002], at Hempstead House Hotel, London Road, ME9 9PP which is approximately 4 miles from the proposed site.

1.4.15. As is made clear in the Explanatory Memorandum (ExMemo) [APP-006, REP2-004] the land required for the Proposed Development is in the ownership of DS Smith Paper Limited (DS Smith), or that of subsidiary entities controlled by it. DS Smith owns and operates the Kemsley Paper Mill on immediately adjacent land to the west. Therefore no compulsory acquisition or temporary possession of land or interests is sought in connection with the application, and no Compulsory Acquisition Hearings were held.

1.4.16. There were no requests to be heard at an Open Floor Hearing.

Written Processes

1.4.17. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the Application and arising from the Examination. All this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets []. For this reason, this Report does not contain

extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.

1.4.18. Key written sources are set out further below.

Relevant Representations

1.4.19. Nine RR were received by the Planning Inspectorate [RR-001 to RR009]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapters 4 and 5 of this Report.

Written Representations and Other Examination Documents

1.4.20. The Applicant and IPs were provided with opportunities to:

- make written representations (WRs) (Deadline (D)1) 2 March 2020);
- comment on WRs made by the Applicant and other IPs (D2 18 March 2020);
- summarise their oral submissions at hearings in writing (D3 22 April 2020);
- make other written submissions requested or accepted by the ExA; and
- comment on documents issued for consultation by the ExA including:
    - A Report on Implications for European Sites (RIES) [PD-018] published on 15 July with comments by D7 5 August 2020;
    - The Schedule of Examining Authority's preferred changes to the Applicant's Development Consent Order [PD-017] published on 15 July with comments by D7 5 August 2020; and
    - Examining Authority's Draft K3 Development Consent Order [PD-016] published on 15 July with comments by D7 5 August 2020; and
- reply to the ExA's Written Questions and comment thereon.

1.4.21. All WRs and other examination documents have been fully considered by the ExA. The issues that they raise are considered in all relevant Chapters of this Report.

Local Impact Reports

1.4.22. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 PA2008.

1.4.23. LIRs have been received by the ExA from the following relevant local authorities:

- Kent County Council [REP1-011].
- Swale Borough Council [REP1-012].

1.4.24. The LIRs have been taken fully into account by the ExA in all relevant Chapters of this Report.

Statements of Common Ground

1.4.25. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them as well as matters in dispute.

1.4.26. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:

- Environment Agency (EA) dated 30 June 2020 [REP7-012] – Final;
- Natural England (NE) dated 5 August 2020 [REP7-014] – Final;
- Kent County Council (KCC) dated 12 August 2020 [REP8-013] – Final.

1.4.27. SoCGs that were submitted but unsigned or incomplete were as follows:

- Swale Borough Council [REP5-006] – Draft submitted at D5.

1.4.28. A SoCG was initially requested to be completed between the Applicant and, respectively Network Rail (NR). In its covering letter to submissions at D1 [REP1-001] the Applicant stated it was not aware of any direct impacts arising from the Proposed Development on NR assets or of any NR rights or covenants affected by the Application. Therefore, the Applicant did not consider a SoCG with NR was necessary. As set out in the Statement of Commonality of SoCGs [REP8-014], NR confirmed on 6 March 2020 that no SoCG was required as they did not believe they would be affected by the applied for and did not request any Protective Provisions to be included in the DCO.

1.4.29. Although one was not requested by the ExA the Applicant considered the need for a SoCG with the Marine Management Organisation (MMO), but concluded it was unnecessary. Matters concerning MMO are dealt with in Chapters 4 and 5 of this Report.

The SoCG with Highways England (HE)

1.4.30. In its covering letter sent at D7 [REP7-001] the Applicant acknowledged the importance to the ExA of receiving SoCGs between it and HE.

1.4.31. In its covering letter sent at D8 the Applicant stated it remained in discussion with HE regarding its SoCG; it had provided an update on those discussions in the Statement of Commonality of SoCGs [REP8-014] and in its responses to submissions at D7 and "*intended to provide a full* position *[sic] as soon as possible following Deadline 8*". In the event no further submissions were made until 1655hrs on the last day of the Examination. For the reasons set out in its letter to the Applicant dated 21 August 2020 [PD-019] the ExA declined to accept these late submissions. No draft SoCG with HE whatsoever had been provided to the ExA prior to the time and date aforesaid. This matter is dealt with further in Chapter 4.

1.4.32. A Statement of Commonality of SoCGs which summarised the progress relating to the various SoCGs was last submitted at D8 [REP8-014]. This and the SoCGs and draft SoCG with SBC have been taken fully into account by the ExA in all relevant Chapters of this Report, and weight accorded to them as appropriate in the circumstances.

Written Questions

1.4.33. Due to the continuing restrictions related to the Covid 19 pandemic I consulted all IPs on 6 May 2020 when issuing ExQ2 Further Written Questions, [PD-012] regarding the process to be adopted in this Examination in light of the exceptional circumstances that have arisen due to the outbreak of Covid-19. The responses demonstrated a clear preference that the written procedure should be used in place of further Hearings. Taking all circumstances into account, I decided it would be expedient to follow the written process going forward.

1.4.34. The ExA asked 5 rounds of written questions, setting deadlines for replies and for comments thereon as follows.

- The ExA's first Written Questions (ExQ1) [PD-008] published on 26 February 2020: by D2 18 March 2020 with comments by D3 22 April 2020;
- ExQ1a [PD-010] published on 9 April 2020: by D3 22 April 2020 with comments by D4 20 May 2020;
- ExQ2 [PD-012] published on 6 May 2020: by D4 20 May 2020 with comments by D5 19 June 2020;
- ExQ3 [PD-014] published on 3 June 2020: by D5 19 June 2020 with comments by D6 29 June 2020; and
- ExQ4 [PD-015] published on 15 July 2020: by D7 5 August 2020 with comments by D8 12 August 2020.

1.4.35. All responses to the ExA's written questions have been fully considered and taken into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

1.4.36. The following persons who were not already IPs requested that the ExA should enable them to join the Examination at or after the PM. In each case the request was granted for the summary reasons given as follows:

- South East Waste Planning Advisory Group (SEWPAG) on 1 March 2020 by its submission at D1 [REP1-016] requested to be an IP.
    - Its concern focussed on the Proposed Development's compliance with NPS EN-3 by reference to relevant waste strategies and plans, as in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England.
- Royal Mail Group Limited made an additional submission [AS-014] and was accepted as an IP.

- Its concern was to protect its future ability to provide an efficient mail sorting and delivering service to the public, in light of the potential for the Proposed Development to cause disruption, road closures that might affect operations.

- Allyson Spicer made an additional submission [AS-015] and was accepted as an IP.
  - Her concern focused on the traffic impacts of the Proposed Development and was accepted as an IP. The matters she raised are considered further in Chapters 3 and 5.

- John C Twistleton made a submission at D1 [REP1-017] and was accepted as an IP.
  - His concern focussed on the impacts of the Proposed Development on the highway network.

1.4.37. During the Examination, as a consequence of discussion at hearings and/or discussions between relevant IPs/Other Persons and the Applicant, the following persons wrote to the ExA stating that their issues were settled, and their representations were withdrawn:

- On 19 June 2020 Royal Mail reached agreement with the Applicant regarding the Construction Traffic Management Plan (CTMP) [REP8-005] and withdrew its representation to the Examination. Royal Mail remained an IP for the duration of the Examination.

1.4.38. No other person wrote to me to formally record the settlement of their issues and the withdrawal of their representations.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

1.5.1. An Environmental Impact Assessment (EIA) was undertaken as both the K3 Proposed Development and WKN Proposed Development are of a type listed in part 10 Schedule 1 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (hereafter the EIA Regulations). The EIA assesses potential significant effects the Proposed Development is likely to have on the environment to ensure these are fully taken into account before development may proceed. The findings of the EIA are summarised in the Non-Technical Summary (NTS) [APP-068] and reference is also made to the 2010 NTS [APP-069].

1.5.2. The 2010 ES was submitted in support of the original K3 planning application in 2010. The EIA for the Proposed Development comprises both the 2010 and 2019 ESs, as documented in the 2019 ES, given development consent is sought for the construction and operation of Project K3. The 2010 NTS [APP-069] summarises the findings of the 2010 ES.

1.5.3. Following the approval of the original consent for the K3 application non-material amendments and variations were made resulting in three addendums to the 2010 ES. These were: ES Addendum (Air Quality) (June 2013) [APP-076 ES]; ES Addendum (Hydrology and Flood Risk) (May 2017) [APP-077]; and ES – Addendum (May 2018) [APP-078].

1.5.4. On 11 October 2018 Condition 3 of the original planning permission for the Consented K3 Facility granted in 2012 Ref SW/10/444 (K3 Planning Permission) was varied to increase the number of heavy goods vehicle (HGV) movements permitted for the Consented K3 Facility to result in the 348 movements currently consented. The May 2018 ES Addendum was included with that application and includes an assessment of the transport and air quality implications of that change. These documents form part of the ES.

1.5.5. On 7 September 2018, the Applicant submitted a Scoping Report [APP-013] to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion (a Scoping Opinion) about the scope of the information in the ES. On 18 October 2018 the Planning Inspectorate provided a Scoping Opinion [APP-014]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES.

1.5.6. On 9 December 2019 the Applicant provided the Planning Inspectorate with certificates confirming that the requirements of s56 and s59 PA2008 and Regulation 16 of the EIA Regulations had been met [OD-002].

1.5.7. Consideration is given to the adequacy of the ES and matters arising in Chapter 4 of this Report. The potential environmental effects have been assessed and set out in the ES. The ES includes details of measures proposed to mitigate likely significant effects identified by the Applicant.

1.5.8. I am satisfied that the ES met the requirements of Schedule 4 of the EIA Regulations and, together with the environmental information provided during the Examination, forms an adequate basis for decision making.

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. The Proposed Development is development for which a Habitats Assessment Regulations (HRA) Report has been provided.

1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 5 of this Report.

1.6.3. Under Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations), where required, an application must be accompanied with sufficient information to enable the relevant SoS to meet their statutory duties as the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) (as amended).

1.6.4. The RIES summarised the available environmental information [PD-018]. It compiled, documented and signposted information provided within the application and subsequent information submitted throughout the Examination by both the Applicant and IPs, up to D6, 29 June 2020.

1.6.5. The RIES was issued on 15 July 2020 to all IPs. Comments on the RIES were requested for D7, 5 August 2020, as set out in the last iteration of the Examination timetable [PD-013].

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. The original planning permission for the Consented K3 Facility granted in 2012 Ref SW/10/444 (the K3 Planning Permission) is the subject of a s106 agreement (Appendix B, Planning Statement [APP-082]) between KCC, EoN Energy from Waste UK Limited, DS Smith (including its subsidiaries SRP New Thames Limited and Grovehurst Energy Limited) and the Royal Society for the Protection of Birds (RSPB). There are 3 main elements, summarised in the SoCG between the Applicant and KCC [REP8-013]:

- Reedbed habitat creation within the Harty Marshes on the Isle of Harty, now the responsibility of RSPB to maintain in accordance with the Maintenance Scheme as set out in the s106. The Applicant's position is that this element of the s106 has been satisfied and does not need to be transferred through to the DCO;
- Employment Strategy, included as an approved plan for the purposes of the DCO. The Applicant's position is that will ensure it continues to apply to the operation of the plant if consent is granted;
- Relocation scheme providing for measures including habitat creation and management to secure mitigation relating to reptiles, nesting and foraging birds, protection of bird breeding habitats, habitat creation for invertebrates and mitigation for Beard Grass. The latest version of the Ecological Mitigation and Management Plan (EMMP) pursuant to Application ref SW/10/444/R is included as an approved document within the DCO. The Applicant's position is that it will ensure the necessary mitigation measures are included within the DCO.

1.7.2. KCC is recorded in the SoCG as being satisfied with the Applicant's positions as set out in relation to each of these 3 elements of the s106 agreement.

1.7.3. By the end of the Examination, there were no other matters subject to any separate undertakings, obligations and / or agreements. All relevant considerations are addressed in this Report as bearing on the DCO.

1.8. OTHER CONSENTS

1.8.1. In addition to the consents required under PA2008 (which is the subject of this report), the Applicant identified in section 24 of the Application Form [APP-003] the following consents that the Proposed Development must obtain to construct operate and maintain the Proposed Development and would be sought separately.

- Amendment to existing Environmental Permit (K3);
- Environmental Permit (WKN); and
- MMO Licence amendment (WKN).

1.8.2. Section 10 of the Planning Statement [APP-082] refers to these matters. It stated applications to amend the K3 EP to reflect the K3 Proposed Development and to seek an EP for WKN would be submitted alongside the DCO application. In the ExA's Q3.12.1 [PD-014] it was noted the EP application was due to be submitted by 1 July 2020 [REP4-006], an update was requested for D5 and confirmation that a copy of the application would be provided to the Examination upon its submission.

1.8.3. In reply to Q3.12.1 [PD-014] the Applicant stated the WKN EP application was submitted to the EA on 13th June 2020 but declined to supply a copy as it had "*not yet been accepted by the Environment Agency as being duly made*". The EA in the completed SoCG with the Applicant [REP7-012] stated that they "*see no reason why a new permit for the WKN Proposed Development should not be granted*" and that "*An application for the WKN Environmental Permit is anticipated to made in April 2020*" (despite the SoCG being signed and dated 30 June 2020). However it also stated:

"The Environment Agency does not currently have any concerns about permitting and based on the information provided in the ES (including noise and air emissions) see no reason why a varied permit for the K3 Proposed Development and a new permit for the WKN Proposed Development should not be granted."

1.8.4. In ExQ2 the ExA requested an update as to the progress of the WKN permit application which was by now expected to be submitted not later than 1 July 2020.

1.8.5. An MMO licence already exists for the discharge of clean surface water from the K3 lagoon into the Swale via an outfall which has already been constructed. No change is needed to that licence for the K3 Proposed Development. An additional outfall pipe would be added to discharge clean surface water from the proposed WKN lagoon, with an MMO licence already granted for that discharge activity.

1.8.6. In its submissions made at D5 [REP5-030] MMO stated:

"2.15. With regard to section 5.6.8 – the Marine Licence was varied to include a second outfall. As mentioned in previous deadline responses the discharge of water is not a licensable activity under the 2009 Act and MMO has encouraged engagement with the EA. However, the MMO require further elaboration on why there will be no LSE from the discharge of water (using a worst-case scenario for the volumes that could be discharged). As noted above the introduction of freshwater into the marine environment may disturb sediment and alter the salinity of the area. This could have an adverse impact on the surrounding saltmarsh and/or mussel beds."

1.8.7. In its submissions made at D6 [REP6-012] at paragraph 2.1 MMO stated:

"2.1 With regard to point 2.4.6 - the MMO advises that the applicant incorrectly references the application reference (MLA/2017/00316) as the licence number. The applicant should amend this to the correct licence

reference (L/2017/00482/2). The MMO regulate compliance with the marine licence and do not control the outfall."

2.2. With regard to point 2.4.8. The MMO would like to highlight that the discharge of water is not a licensable activity under that Marine and Coastal Access Act ,2009 ("the 2009 Act"). The MMO advise that the applicant change the wording of the following section to clarify that the variation was for the construction of the outfall - "The MMO licence for the K3 outfall has been varied to permit the discharge of clean water from the WKN Proposed Development through a separate outfall to be located adjacent to the existing K3 outfall."

1.8.8. In its submissions made at D7 [REP7-033] MMO stated at paragraph 3.3 "*With regard to Schedule 2 (Part 1 – 4) – the MMO acknowledge that the applicant has confirmed that the decommissioning of the outfalls will be applied for by way of a separate marine licence and have no other comments to raise*."

1.8.9. In relation to the outstanding consents recorded above, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the K3 Proposed Development or the WKN Proposed Development should the SoS grant consent for either or both the K3 Proposed Development and WKN Proposed Development.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application and the processes used to carry out the Examination and make this Report;
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects;
- **Chapter 3** records the legal and policy context for the SoS's decision;
- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination;
- **Chapter 5** considers effects on European Sites and Habitats Regulations Assessment (HRA);
- **Chapter 6** sets out the balance of planning considerations arising from Chapter 4, in the light of the factual, legal and policy information in Chapters 1 to 3;
- **Chapter 7** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO); and
- **Chapter 8** summarises all relevant considerations and sets out my recommendations to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Events;
- **Appendix B** – the Examination Library;
- **Appendix C** – List of Abbreviations;

- **Appendix D** – the DCO as recommended by the ExA to be made by the SoS (the Recommended DCO); and
- **Appendix E** - the DCO as recommended to be made by the SoS should consent be granted for the K3 Proposed Development and WKN Proposed Development (the Alternative Recommended DCO).

1.9.3. Given that the application and Examination material have been published online, this report does not contain extensive summaries of all the representations although regard has been had to them in my conclusions. I have considered all important and relevant matters and set out my recommendations to the SoS against the PA2008 tests.

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The Applicant submitted an application which is described in the Application Form [APP-003] as:

"the construction and operation of the Wheelabrator Kemsley (K3) and Wheelabrator Kemsley North (WKN) waste to energy generating stations in Kemsley, Sittingbourne, Kent.

Planning permission was granted for the K3 facility in 2012 by KCC and the facility is being constructed and is expected to be operational in late 2019, with a consented generating capacity of up to 49.9 MW and an annual throughput of up to 550,000 tonnes of waste. WTI have identified that K3 is capable, through internal efficiencies and upgrades, of generating an additional 25.1MW and through increased operational availability of the facility is capable of processing an additional 107,000 tonnes of waste per annum.

No physical works would be required to K3 to facilitate either the proposed increased generating capacity or the proposed increased waste tonnage throughput. The project cannot therefore be categorised as the extension of an existing generating station under the Planning Act 2008…consent is therefore being sought for the construction and operation of the K3 facility with a generating capacity of up to 75MW and a tonnage throughput of 657,000 tonnes per annum…

Wheelabrator Kemsley North (WKN) is a proposed waste to energy generating station with a generating capacity of up to 42MW and an annual throughput of up to 390,000 tonnes of waste. WKN is therefore not a nationally significant infrastructure project under…the Planning Act 2008. However on 27 June 2018 the Secretary of State for Business Energy and Industrial Strategy exercised his power under Section 35 of the Planning Act 2008 to direct that WKN is nationally significant and is therefore to be treated as a development for which development consent is required. The WKN development proposed is similar to that described in the WTI Section 35 request submitted to the Secretary of State and accordingly this application also seeks consent for the WKN project."

2.1.2. The location of the Proposed Development is identified as land at Kemsley, Sittingbourne, Kent, ME10 2TD.

2.2. THE APPLICATION AS EXAMINED

Principal Works

2.2.1. A full description of the K3 and WKN Proposed Developments is provided within ES Chapter 2 - Site Description and Proposed Development [APP-054]. The K3 and WKN Proposed Developments are split into a number of key works within the DCO boundary including areas where ancillary works are required for the construction and operation of the key works. A plan showing the DCO boundary and location of the key works are

provided as Doc 5.5 (a and b) submitted with the application [APP-094, APP-95].

2.2.2. The Proposed Development comprises the construction of K3 at its total generating capacity of up to 75MW (49.9MW consented + 25.1MW upgrade) together with its proposed tonnage throughput of up to 657,000 tonnes per annum (550,000 consented + 107,000 tonnage increase). It would combust post-recycled solid recovered fuel waste, commercial and industrial waste and pre-treated municipal solid waste to produce electricity which is exported to the national grid and steam which is supplied to the adjacent DS Smith Kemsley Paper Mill for use in the papermaking process. The Consented K3 Facility has been under construction and is now commissioned with effect from 16 July 2020.

2.2.3. Development consent is also sought for the proposed new WKN waste-to-energy facility, capable of processing 390,000 tonnes of waste per annum, with a generating capacity of 42MW. The electricity produced would be exported to the distribution network, owned and operated by UK Power Networks. The grid connection would be via the existing substation located within the DS Smith paper mill site to the immediate west.

2.2.4. The Applicant anticipates that (subject to a DCO being granted and a final investment decision being made) work would commence in 2021, with construction of the WKN Proposed Development expected to take 40 months.

2.2.5. The K3 and WKN Proposed Developments would each be expected to have an operating life of up to 50 years (paragraph 2.13.1, ES Chapter 2 [APP-054].

2.2.6. The effect in reality of the K3 Proposed Development ('the practical effect') would retain the Consented K3 Facility but generate an additional 25.1MW together with being able to process an additional 107,000 tonnes of waste per year.

2.2.7. Throughout this Examination therefore the following terms are used to distinguish the two elements of the Proposed Development, namely the K3 Proposed Development and the WKN Proposed Development. In the DCO they are referred to as "Project K3" meaning Work No 1 and any other authorised development associated with that work; and "Project WKN" meaning Work No 2 and any other authorised development associated with those works, as defined in the DCO versions submitted.

2.2.8. Depending on the context of the particular assessment undertaken by the Applicant, the "Practical Effects" of the K3 Proposed Development are assessed alongside the effects of the WKN Proposed Development.

2.2.9. As described in the ES: Site Description and Proposed Development [APP-054] together with the Planning Statement [APP-082] and Works Plans [APP-094, APP-095] and the submission version of the dDCO [AS-003] the main plant items were:

- Work No 1 – Construction and operation of an onshore generating station with a generating capacity of up to 75MW and permissible waste throughput of 657,000tpa (the K3 Proposed Development);
    - 1A - Installation of grid connection for Work No 1;
    - 1B- Installation of steam connection for Work No 1;
    - 1C- Alteration of existing private access road to construct, use and maintain Work No 1;
    - 1D- Creation of a temporary construction compound and laydown area for the construction of Work No 1;
    - 1E- Construction and operation of a surface water outfall for Work No 1;
- Work No 2- Construction and operation of a waste-to-energy facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of up to 42MW (the WKN Proposed Development);
- Work No 3- Installation of a grid connection for Work No 2;
- Work No 4- Alteration of existing private access road to construct, use and maintain Work No 2;
- Work No 5- Temporary construction or alteration of existing private haul road for the construction of Work No 2;
- Work No 6- Creation of a temporary construction compound and laydown area for the construction of Work No 2; and
- Work No 7- Construction and operation of a new surface water outfall for Work No 2.

2.3. THE APPLICATION AT THE CLOSE OF THE EXAMINATION

2.3.1. Following the acceptance of the application the Applicant was provided with advice under s51 PA2008 (s51 Advice) by the Planning Inspectorate. A submission of amended documents was made on the 18 October 2019, prior to the expiry period for Relevant Representations, to address the points raised in the s51 Advice. A covering letter [AS-009] detailed the changes made to the application documents.

2.3.2. The following documents were submitted as part of the S51 pack and the Application Guide updated to reflect the latest versions of those documents where necessary:

- S51 Application Guide [AS-001];
- S51 Draft Development Consent Order [AS-002];
- S51 DCO Validation Report [AS-003];
- S51 Book of Reference (BoR) [AS-004];
- S51 Summary of Land Interests and Rights (replaces Statement of Reasons) [AS-005];
- S51 Summary of Applicant's Structure and Standing (replaces Funding Statement) [AS-006];
- Consultation Report [AS-007]; and
- S51 Land Plan (9812-0057-005) [AS-008].

2.3.3. At the request of the ExA on a without prejudice basis and to provide appropriate plans should only Project K3 be recommended for development consent, alternative plans and BoR were submitted (dealt with further in Chapter 7) as follows:

- ExA's K3 Alternative DCO Works Plan [REP7-024];
- ExA's K3 Alternative DCO Land Plan [REP7-025]; and
- BoR [REP7-009];

2.4. DESCRIPTION OF THE APPLICATION SITE AND SURROUNDING AREA

2.4.1. The K3 and WKN sites lie to the north-east of the village of Kemsley, which itself sits at the north-eastern edge of Sittingbourne in Kent. The K3 and WKN sites lie immediately to the east of the Kemsley Paper Mill, a substantial industrial complex which is operated by DS Smith Paper Limited (DS Smith).

2.4.2. Unless the context otherwise requires "Application Site" or the "Site" refers to the K3 site and WKN site within the DCO boundary on the Site Location Plan [APP-090].

Wheelabrator Kemsley (K3) Site

2.4.3. The site is located on land immediately to the east of the Kemsley Paper Mill, 0.8km east of Kemsley, a residential suburb in the north of Sittingbourne in Kent (hereafter the 'K3 Site'). It lies adjacent to The Swale to its east, with the Isle of Sheppey beyond and within the administrative areas of Kent County Council (KCC) and Swale Borough Council (SBC). To the south of the K3 Site lies a capped former landfill site which lies adjacent to the confluence between Milton Creek and The Swale.

Wheelabrator Kemsley North (WKN) Site

2.4.4. The site is located on land immediately north of the Consented K3 Facility (hereafter the "WKN Site"). The WKN Site is currently being used by the Applicant as a laydown and parking area for the construction of the adjacent K3 facility. It has been cleared of vegetation and laid to concrete or hardcore with a perimeter fence. To the east of the WKN Site lies The Swale with the Isle of Sheppey beyond. Immediately to the north lie the Kemsley Marshes beyond which lies the Kemsley Paper Mill anaerobic digester treatment works and to the north east a jetty operated by Knauf for the import of gypsum by barge.

2.4.5. The nearest statutory designation in proximity to the Sites with regard to ecological interest is the Swale Special Protection Area and Site of Special Scientific Interest (SSSI) which lies approximately 100m east of the Sites at its closest point. Milton Creek Local Wildlife Site (LWS) is also less than 400m and 550m respectively from the K3 and WKN Sites.

2.4.6. The WKN Site is currently is use as a car park, office and construction lay down area for K3 being constructed immediately to the south. The

proposed construction laydown area for the WKN Proposed Development to the north-east currently comprises an open area of rough vegetation and crushed gravel. An existing access lies to the west of the WKN Site (Work No.4) and is to be used as the site access during operational. An existing haul road lies to the north of the WKN Site and is to be utilised during construction for access (Work No. 5) to the construction laydown area (Work No. 6).

2.4.7. The majority of the WKN Site comprises a car park with a generally level surface primarily covered by hardstanding but with some areas covered by gravel. Along the western and southern border of the WKN Site are temporary construction offices and containers associated with the construction of K3 to the south.

2.4.8. A ditch runs along the northern boundary of the WKN Site. In the south western corner, an area is fenced off area containing a remote mixing station for mortar.

2.4.9. The smaller, eastern area of the WKN Site is separated from the car park by fencing and comprises a construction lay down area. This area appears to comprise of made ground and gravel/rubble although it is largely covered by construction materials and plant. No hardstanding is present in this area. The southern area of this eastern part of the WKN Site comprises an access track for plant to the K3 Site.

2.5. RELEVANT PLANNING HISTORY

2.5.1. The full planning history of the K3 and WKN development sites is provided in Appendix A of the Applicant's Planning Statement [APP-082]

2.5.2. The K3 development site does not have a planning history prior to consent first being obtained for the K3 facility in 2012, under reference SW/444/10. Appendix B [APP-082] contains the original decision notice and s106 obligation relating to that application, with the committee report provided as Appendix C to this Statement.

2.5.3. Subsequently the K3 site has an extensive planning history relating to a series of non-material amendments, applications to vary the terms of the original K3 Planning Permission and to discharge conditions relating to it. Separately the access road serving the K3 site, which runs along the eastern side of the Kemsley paper mill, was the subject of its own planning permission granted in 2012 which has also been the subject of further amendments.

2.5.4. The current operational consent for the K3 facility is SW/19/501345, granted on 14 June 2019. It resulted from an application to remove a planning condition under s73 TCPA1990, specifically Condition 11 which had required the provision and management of a buffer zone to the west of the K3 site. The decision notice is at Appendix D of the Applicant's Planning Statement [APP-082].

2.5.5. The only consent associated directly with the WKN proposal site was that granted in 2017 for the construction and operation of an incinerator

bottom ash recycling facility on the WKN site. That consent expired in February 2020.

2.5.6. An anaerobic digester was granted planning permission in 2012 to serve the DS Smith Kemsley Paper mill and is constructed on land to the north of the Jetty Road which would be used to access the WKN construction laydown area. DS Smith obtained development consent in July 2019 for the construction and operation of 'K4', a gas fired combined heat and power (CHP) plant within the Kemsley Paper Mill site to replace an existing CHP plant ('K1') and provide heat and steam to the paper mill.

2.6. CUMULATIVE EFFECTS

2.6.1. As set out in paragraph 1.2.6 ES Chapter 1 - Introduction [APP-053], the Applicant's formal Environmental Impact Assessment (EIA) of the K3 and WKN Proposed Developments in winter 2018 to summer 2019 considered the likely significant effects of the K3 and WKN Proposed Developments individually as well as cumulatively with each other and with other relevant consented and planned projects.

2.6.2. Cumulative effects with other projects in the locality are considered in Chapter 3 of the ES [APP-055] which also explains the approach to addressing such matters. Figures 3.2 a and b [APP-055] map projects which were considered for the purpose of assessing the effects of the Proposed Development with other schemes which are under construction, consented or for which planning permission is being sought.

2.6.3. ES Chapter 14 - Summary Tables [APP-066] provides a summary of the likely significant cumulative effects predicted to result from the K3 and WKN Proposed Developments in combination with other committed/proposed developments as set out in Chapter 3 ES [APP-055]:

- Table 14.5 - Baseline + K3 Proposed Development + other relevant cumulative developments within the zone of influence of the K3 Proposed Development;
- Table 14.6 - Baseline + WKN Proposed Development + other relevant cumulative developments within the zone of influence of the WKN Proposed Developments; and
- Table 14.7 - Baseline + K3 Proposed Development + WKN Proposed Development + other relevant cumulative developments within the zone of influence of the K3 and WKN Proposed Developments.

2.6.4. The methodology used in the cumulative assessment of projects was not in issue except partially in regard to the traffic and transport implications of the Proposed Development which are considered in Chapter 4.

2.6.5. Overall, and as set out in the ES – Non-Technical Summary [APP-069] following the implementation of the mitigation measures described in the relevant ES chapters, the K3 and WKN Proposed Development in combination with the other cumulative developments identified would result in a significant adverse effect on sequential views along the Saxon Shore Way public right of way, an inevitable effect of the quantum of

development permitted or proposed in this locality. However, the K3 and WKN Proposed Development is considered to make a slight contribution to the cumulative effect.

2.6.6. I consider that the projects listed in the assessment as described above are appropriate for consideration as part of any cumulative assessment. The issue of cumulative effects is considered further in the relevant sections of Chapter 4.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

3.1.1. This Chapter sets out the relevant legal and policy context for the application. I have taken this into account in the Examination of the Proposed Development and in presenting findings and making recommendations to the Secretary of State (SoS).

3.1.2. The legal and policy context, as understood by the Applicant, is described in Sections 11, 12 and 13 of the Planning Statement [APP-082]. There is set out an assessment of the Proposed Development against the policy requirements of National Policy Statements (NPSs) EN-1 and EN-3. Individual chapters of the ES provide specific background relating to particular topics.

3.1.3. The Local Impact Reports (LIRs) of KCC and Swale Borough Council (SBC) [REP1-011, REP1-012] set out the local authorities' respective positions with regard to development plan policies.

3.2. THE PLANNING ACT 2008

3.2.1. Inasmuch as the Proposed Development includes the K3 Proposed Development the Application is for a Nationally Significant Infrastructure Project (NSIP), qualifying under the Planning Act 2008 (PA2008). It is for the construction, operation and maintenance of the K3 Generating Station with a gross installed capacity of up to 75MW. It is thus an onshore generating station in England having a capacity of more than 50MW pursuant to section s14(1)(a) and s15(2) of PA2008.

3.2.2. The Application also comprises the WKN Proposed Development, to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW. The Secretary of State for Business, Energy and Industrial Strategy (SoSBEIS) made a direction under Section 35 PA2008 to treat the WKN Proposed Development as one for which development consent is required.

3.2.3. Section 104 PA2008 applies to the Proposed Development because it is:

"in relation to an application for an order granting development consent [where] a national policy statement has effect in relation to development of the description to which the application relates".

3.2.4. Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary, these include:

- any NPS which has effect in relation to development of the description to which the application relates (a '*relevant national policy statement*');
- any LIR (within the meaning given by s60(3) of PA2008) submitted to the SoS before the specified deadline for submission;
- the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;

- any matters prescribed in relation to the development of the description to which the application relates; and
- any other matters which the SoS considers are both important and relevant to the decision.

3.2.5. Due to the "hybrid" nature of the Proposed Development consisting of two main projects only one of which is a nationally significant infrastructure project, it is necessary to examine the provisions of s104 in a little more detail.

3.2.6. Section 104 PA2008 applies to an application for an order granting development consent, specifically "*if a national policy statement has effect in relation to development of the description to which the application relates*".

3.2.7. In such a case not only must the SoS have regard to any relevant NPS but under s104(3) "*must decide the application in accordance with any relevant national policy statement*" except to the extent that the SoS is satisfied that one or more of subsections (4) to (8) applies, namely that, in summary, doing so:

- would lead to the United Kingdom being in breach of its international obligations;
- would lead to the SoS being in breach of any duty imposed on him under any enactment;
- would be unlawful by virtue of any enactment;
- the adverse impact of the proposed development would outweigh its benefits; or
- would meet any condition prescribed for deciding an application otherwise than in accordance with a NPS.

3.2.8. For decisions in cases where no national policy statement has effect, that is if s104 does not apply in relation to the application, then by s105 the SoS must have regard to:

- any LIR duly submitted;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the decision.

3.2.9. An NPS sets out national policy "in relation to one or more specified descriptions of development" (s5 PA2008). By s5(5) among other things, the policy in an NPS may in particular relate specifically to "a specified description of development".

3.2.10. The WKN Proposed Development falls short of the threshold for it to be examined as a nationally significant infrastructure project. The fact that the SoS made a direction under s35 PA2008 to treat the Proposed Development as one for which development consent is required, does not alter the position in that respect. Neither NPS EN-1 nor NPS EN-3 appear to be worded to include a project subject to a s35 direction.

3.2.11. However it has been held (in *The Queen (oao David Gate on behalf of Transport Solutions Fop Lancaster and Morecambe) v The Secretary of State for Transport v Lancashire County Council [2013] EWHC 2937 (Admin))* that:

"common sense would in any event dictate, that the decision maker is not precluded from taking into account matters incorporated within national policy statements which are not directly applicable to the development so long as he considers that they are both important and relevant to his decision"

3.2.12. Therefore, although the WKN Proposed Development does not meet the threshold for a nationally significant infrastructure project, matters in NPS EN-1 and NPS EN-3 may be taken into account in relation to that element of the application according to the extent that those matters are both important and relevant to the SoS' decision. The s35 direction is relevant to assessing such importance and relevance.

3.2.13. Neither NPS EN-1 nor NPS EN-3 has been reviewed by the Government under s6 PA2008. However, also pertinent to the importance and relevance of an NPS to a project the subject of a s35 direction (in which s104(3) does not apply), would appear to be the degree to which there has been a significant change in circumstances between the time the statement was designated, on the basis of which the policies set out therein were formulated, and the time of making the decision whether to grant consent. Whether or not the SoS has undertaken a formal review of policies, such an eventual change in circumstances could be potentially capable of being relevant and important factors to take into account.

3.2.14. The remainder of this Chapter addresses the identification and application of relevant NPSs and the LIR, and identifies other legal and policy matters that are capable of being important and relevant considerations.

3.3. NATIONAL POLICY STATEMENTS

3.3.1. NPSs set out Government policy on different types of national infrastructure development. NPSs which are relevant to this application are:

- NPS EN-1: Overarching National Policy Statement for Energy; and
- NPS EN-3: National Policy Statement for Renewable Energy Infrastructure

3.3.2. These NPSs were produced by the Department of Energy and Climate Change (DECC), (now the BEIS) and designated by the SoS for Energy and Climate Change in July 2011.

K3 Proposed Development

3.3.3. In relation to the K3 Proposed Development these NPSs form the primary policy context for this Examination given the statutory duties placed on the decision maker by s104 PA2008. The purpose and broad content of these NPSs is summarised here with subject specific consideration of

policy arising from them provided in the remainder of this Report, particularly in Chapter 4.

WKN Proposed Development

3.3.4. In relation to the WKN Proposed Development the NPSs are important and relevant matters to take into account in the view of the ExA, however the statutory duties as to the applicability of the NPSs do not apply in the same way as for development which is a nationally significant infrastructure project. The primary policy context is nevertheless found in the PA2008, namely s105 which requires the SoS to have regard to LIRs, matters prescribed by regulations in relation to development of the description to which the application relates; and other matters considered important and relevant which will include so far as relevant, the NPSs.

NPS EN-1: Overarching National Policy Statement for Energy

3.3.5. NPS EN-1 sets out the Government's policy for delivery of major energy infrastructure projects. Paragraph 3.1.1 states:

"the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions".

3.3.6. It also states that applications for development consent should be assessed *"on the basis that the Government has demonstrated that there is a need for those types of infrastructure"* (paragraph 3.1.3). Paragraph 3.1.4 indicates that the SoS *"should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008"*.

3.3.7. Section 3.6 of NPS EN-1 acknowledges that fossil fuel generation plays a vital role in providing reliable energy supplies and providing flexibility in response to changes in supply and demand and diversity in energy mix. Government policy is that they must be constructed and operate in line with increasingly demanding climate change goals.

3.3.8. Paragraph 4.1.2 of NPS EN-1 indicates that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs, and that the presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. This presumption is subject to the requirements of s104(3) PA2008.

3.3.9. As set out in paragraph 4.1.3 of NPS EN-1, account should be taken of the potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any longer term or wider benefits. Account should also be taken of potential adverse impacts, including any long term and cumulative ones, as well as measures to avoid, reduce or compensate for them.

3.3.10. Whilst other policies, including those contained in the development plan for the area may constitute matters that the SoS may regard as important and relevant to the decision, the primacy of NPSs for NSIPs is clear. In the event of a conflict between policies contained in any other document and those in an NPS, those in the NPS prevail for the purposes of decision making on nationally significant infrastructure (NPS EN-1, paragraph 4.1.5).

3.3.11. The presumption in favour of granting consent to applications for energy NSIPs is acknowledged in the NPS itself (paragraph 4.1.2) to be predicated on "the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS". That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.

3.3.12. The urgency of the need for new electricity capacity is explained in terms of (paragraph 3.3.15) meeting our obligations for 2050, particularly low carbon energy, whilst it is noted (paragraph 3.3.16) that a failure to decarbonise and diversify energy sources could result in becoming locked into a system of high carbon generation, making it very difficult and expensive to meet 2050 carbon reduction target.

3.3.13. Paragraph 3.3.24 states that it is not the Government's intention to set targets or limits on any new generating infrastructure to be consented in accordance with the energy NPSs.

NPS EN-3: – National Policy Statement for Renewable Energy Infrastructure

3.3.14. EN-3 sets out the specific policies relating to renewable energy infrastructure including energy from waste infrastructure. It covers generating stations that generate electricity using waste, including non-renewable sources of waste, as a fuel and that generate more than 50MW of electricity.

3.3.15. Paragraph 2.1.2 states that the starting point for decisions is that the need for the infrastructure covered by EN-3 has been demonstrated. Paragraph 2.3.3 states energy from waste generating stations are likely to require significant water resources and should consider how the plant will be resilient to increased risk of flooding and increase risk of drought affecting river flows as part of their ability to adapt to climate change.

3.3.16. Section 2.4 deals with good design for energy infrastructure.

3.3.17. Paragraph 2.5.2 recognises that the recovery of energy from the combustion of waste will play an increasingly important role in meeting the UK's energy needs that will form an important element of waste management strategies in England.

3.3.18. Paragraph 2.5.9 notes that waste to energy generating stations would take fuel (waste) that would otherwise be sent or landfill and this waste can come from municipal or commercial and industrial sources.

3.3.19. Paragraph 2.5.10 states a proportion of the biodegradable waste may be classed as "renewable" for the purposes of Renewable Obligation Certificates (ROCs) eligibility but this is not an issue of relevance to the decision maker. Paragraphs 2.5.12 and 2.5.13 2.5.12 state the fuel throughput capacity of the combustion plant may vary widely. Throughput volumes are not, in themselves, a factor in decision-making but the increase in traffic volumes, any change in air quality, and any other adverse impacts as a result of the increase in throughput should be considered in accordance with the NPS and balanced against the net benefits of the combustion of waste and biomass described in paragraph 2.5.2 and in Section 3.4 of EN-1.

3.3.20. EN-3 identifies assessment principles specific to energy from waste (EfW) generating stations, however, these overlap with the generic impacts of EN1: national designations – relating to biodiversity and geological conservation, landscape and visual and historic environment; Green Belts – not relevant to the proposed developments; and Other Locational Considerations.

3.3.21. EN-3 also provides details on the potential impacts that are specific to energy from waste generating stations, which expand on some of the generic impacts of EN-1: Air Quality and Emissions; Landscape and Visual; Noise and Vibration; Odour, Insect and Vermin Infestation; Waste Management; Residue Management; and Water Quality and Resources.

3.4. EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union (EU)

3.4.1. The UK has left the EU. The European Union (Withdrawal) Act 2018 provides that, subject to defined exceptions, EU law which is extant up to the point of exit will remain in force and be incorporated into UK law. This report has been drafted on the basis that relevant EU law (primarily environmental law) will be incorporated into UK law at the point when the SoS decides this application.

3.4.2. The UK government's Guidance: Upholding environmental standards from 1 January 2021, states the government is committed to:

"maintaining environmental standards and international obligations [sic] from 1 January 2021. The UK will continue its aim set out in the 25 Year Environment Plan to be the first generation to leave the natural environment in a better state than it inherited it. Existing EU environmental laws will continue to operate in UK law. The following will also continue:

- *the UK's legal framework for enforcing domestic environmental legislation by UK regulatory bodies or court systems*
- *environmental targets currently covered by EU legislation - they are already covered in UK legislation*
- *permits and licences issued by UK regulatory bodies*

From 1 January 2021, current legislation will be changed to:

- *remove references to EU legislation*
- *transfer powers from EU institutions to UK institutions*
- *make sure the UK meets international agreement obligations"*

The EIA Directive

3.4.3. Council Directive 2011/92/EU, amended by 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) defines the procedure by which information about the environmental effects of a project is collated and taken into account by the relevant decision-making body before consent is granted for a development. It applies to a wide range of defined public and private projects.

3.4.4. The Proposed Development falls to be considered under the UK legislation related to 2011/92/EU: The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations)

3.4.5. The Proposed Development falls within Schedule 2 paragraph 3(a) of the EIA Regulations. The location, scale and nature of the Proposed Development may have the potential to give rise to significant effects on the environment and is considered to be EIA development. The DCO application is therefore required to be accompanied by an ES prepared in accordance with the EIA Regulations.

Revised Waste Framework Directive (rWFD)

3.4.6. The rWFD came into force on 12 December 2008, establishing the overarching framework for the management of waste across the EU.

3.4.7. Article 4 of the revised EU Waste Framework Directive (Directive 2008/98/EC) sets out five steps for dealing with waste, ranked according to environmental impact - the 'waste hierarchy'. The definitions of each of the stages can be found in Article 3. It gives top priority to preventing waste. When waste is created, it gives priority to preparing it for re-use, then recycling, then recovery, and last of all disposal (e.g. landfill). A very key principle in the backdrop to the hierarchy is to pursue efficient use of resource.

3.4.8. Responsibility for compliance with the waste hierarchy lies with processors of waste whose compliance therewith is regulated and monitored by the Environment Agency (EA) (or other permitting authority if located elsewhere in the UK) through their respective Environmental Permits (EPs).

3.4.9. The rWFD enshrines compliance with the waste hierarchy into law, transposed into English law by the Waste (England and Wales) Regulations 2011 (2011 Regulations). Any entity which imports, produces, collects, transports, recovers or disposes of waste, or which as

a dealer or broker has control of waste is obliged to take *"all such measures available to it as are reasonable in the circumstances to apply the ..waste hierarchy as a priority order*". They may depart from the priority order where this is justified by life-cycle thinking on the overall impacts of the generation and management of the waste so as to achieve the best overall environmental outcome.

3.4.10. The revised hierarchy inherent in the rWFD points up the preference for waste prevention. It also confirms that waste treatment involving energy generation is a recovery operation provided it achieves energy recovery efficiency expressed as R1 of 0.65 or more. The way in which the R1 criterion is calculated is set out in the rWFD. The Government has published guidance "Waste incinerator plant: apply for R1 status" on 4 October 2016.

3.4.11. To provide a consistent approach to report recycling rates at UK level under the rWFD Waste from Households was first published by the Department for Environment, Food and Rural Affairs (DEFRA) in May 2014, and includes waste from: Regular household collection, Civic amenity sites, 'Bulky waste' 'Other household waste'. It does not include street cleaning/sweeping, gully emptying, separately collected healthcare waste, or asbestos waste. It is a narrower measure than 'municipal waste' and 'council collected waste'.

3.4.12. Ratification of the Circular Economy Package (CEP) across the Member States means that a revised legislative framework on waste came into force on 4 July 2018, including changes to the rWFD, as set out in Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (the '2018 Revised WFD'). The objectives of CEP measures are among other matters to reduce the adverse impacts of waste generation and the overall impacts of resource use by ensuring appropriate application of waste hierarchy by placing restrictions for landfilling and incineration, specifically:

- waste separately collected for preparing for re-use and recycling should not be landfilled or incinerated, with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which incineration or landfill is the best environmental outcome.

3.4.13. Member States have two years in which to transpose the agreed amendments. The UK Government has indicated it will implement the changes in full. On 30 July 2020 it published its statement setting out the approach the UK will take to transposing the EU's 2020 Circular Economy Package (EU CEP) measures.

3.4.14. On 30 July 2020 the government re-affirmed its commitment to recycling 65% of municipal waste by 2035 and set out its approach to transposing the EU CEP into domestic law. It would be mainly the same as the EU CEP, including targets such as sending no more than 10% municipal waste to landfill by 2035. The EU CEP was approved in April 2018 but will no longer apply in the UK following Brexit.

3.4.15. Notwithstanding that the Government has in effect published its own CEP there is still a legal obligation to transpose rWFD because the measures became EU law before the UK left the EU. On 25 August 2020 the Waste (Circular Economy) (Amendment) Regulations 2020 were made which are intended in effect to transpose the 2020 CEP in England and Wales.

3.4.16. Specifically regarding the waste hierarchy the rWFD added a paragraph requiring Member States to make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy (rWFD Annex IVa). In responding to this requirement the Government asserted in its Circular Economy Package Statement (Annex I – Summary of 2020 CEP measures and proposed approaches to transposition) that "*this will be delivered through existing provisions and, where relevant, measures will be included in Waste Prevention Programmes*", therefore "*no new measures are proposed*".

3.4.17. Article 6 of the rFWD specifies when and how end of waste is achieved, as amended under the CEP set out in Our Waste, Our Resources: A Strategy for England 2018 (WRS). A condition found in the rWFD is that Municipal Waste must be collected separately unless it is not "technically, environmentally and economically practicable" (TEEP) to do so. This is transposed by the 2011 Regulations, in particular Regulation 13.

3.4.18. Article 10(4) rFWD requires that waste separately collected for preparing for re-use or recycling is not to be incinerated. This is a new addition that requires Member States to ensure that waste materials collected separately for preparing for re-use or recycling must not be incinerated, except for waste resulting from subsequent treatment operations of the separately collected waste for which incineration delivers the best environmental outcome. Measures must be taken to achieve this.

3.4.19. The precise proposed approach to meet this requirement is unclear but CEP Policy Statement 30 July 2020, Annex I – Summary of 2020 CEP measures and proposed approaches to transposition states that it:

3.4.20. "*Includes legislative changes to prevent waste separately collected for preparing for reuse or recycling from being accepted at waste incinerators*", whilst noting that "*This approach will have a positive impact on recycling rates and help to deliver on ambitions ranging from the 25 YEP to climate change commitments*."

Industrial Emissions Directive (IED)

3.4.21. The Industrial Emissions Directive (IED) 20/75/EU applies to all incinerators and other energy-from-waste (EfW) facilities. The directive has been implemented by the Environmental Permitting (England and Wales) Regulations 2016 (as amended) (EP Regulations). Incineration includes treatment techniques such as pyrolysis, gasification or plasma processes, and the use of waste as a fuel or for energy recovery.

3.4.22. The IED provides operational limits and controls which plant must meet, including emission limit values (ELVs) for pollutant releases to air. The K3 Proposed Development would fall under the Large Combustion Plant

(LCP) requirements of the IED, being greater than 50MW in capacity. In addition, European Best Available Technique (BAT) reference documents (BREF) are published for each industrial sector regulated under the IED, and they include BAT-Achievable Emission Values to be met through the application of BAT. These values may be the same as those published in the IED, or they may be more stringent.

3.4.23. The application is considered against the EU Directive and other legislation relating to air quality matters in the relevant sections of Chapter 4 of this Report.

The Birds Directive

3.4.24. Council Directive 2009/147/EC on the conservation of wild birds (Birds Directive) is a European nature conservation legislative measure for the protection for all wild bird species naturally occurring in the EU. The Directive places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

The Habitats Directive

3.4.25. Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) is a European nature conservation legislative measure.

3.4.26. Habitat types requiring the designation of Special Areas of Conservation (SACs) are listed in Annex I of the Directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species.

The Habitats Regulations

3.4.27. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Assessment processes taking place pursuant to these regulations are referred to as Habitats Regulations Assessment (HRA).

3.4.28. The types of European site relevant to the Application are as follows:

- SACs designated pursuant to the Habitats Directive;
- SPAs designated pursuant to the Birds Directive; and
- Ramsar sites designated under the Ramsar Convention on Wetlands of International Importance.

3.4.29. These Directives and Regulations are relevant to this application in view of the presence of European sites within the region of 10km distance

from the Application Site. Chapter 5 gives further detailed consideration to these matters.

The Air Quality Directive

3.4.30. Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Air Quality Directive) requires Member States to assess ambient air quality with respect to sulphur dioxide (SO_2), nitrogen dioxide (NO_2), oxides of nitrogen (NO_x), particulate matter (PM_{10} and $PM_{2.5}$), lead, benzene, carbon monoxide and ozone. The Directive aims to protect human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollutants. It sets legally binding concentration-based limit values (LVs) as well as target values to be achieved for the main air pollutants and establishes control actions where these are exceeded. It is transposed into UK statute through the Air Quality Standards Regulations 2010 made under the Environment Act 1995 (EA1995).

The UK Air Quality Strategy

3.4.31. EA1995 established a requirement for the production of an Air Quality Strategy (AQS) for improving ambient air quality. The AQS establishes a long-term vision for improving air quality and offers options to reduce the risk to health and the environment from air pollution. It sets UK air quality standards and objectives for the pollutants in the Air Quality Standards Regulations.

3.4.32. Individual plans prepared beneath the AQS provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by local authorities aimed at reducing levels of the relevant pollutant.

3.4.33. As a consequence of decisions taken over a number of years to broadly promote the growth of diesel vehicles as a proportion of national fleets, combined with a divergence between regulatory and real environment outcomes in the testing of emissions from diesel vehicles, a number of European countries including the UK now experience issues with the achievement of NO_2 LV compliance. NSIP proposals giving rise to air emissions from combustion plant or significant changes to the volume or location of vehicle movements may have implications for the achievement of NO_2 LV compliance.

3.4.34. In response to litigation a revised draft Air Quality Plan for NO_2 was published by DEFRA on 26 July 2017[2] (AQP2017). This refers to Zone Plans for action in a large number of localities[3]. However, a High Court

[2] Air quality plan for nitrogen dioxide (NO2) in the UK, DEFRA (2017)
[3] Air Quality Plans for tackling roadside nitrogen dioxide concentrations in Tyneside (UK Zone Plans), DEFRA (2017)

Order was made on 21 February 2018[4] (ClientEarth No 3), providing that whilst the AQP2017 remains in force, it and its supporting Zone Plans are unlawful because they do not contain measures sufficient to ensure substantive compliance with the Air Quality Directive (AQD) in a number of local authority areas.

3.4.35. The remedy required was the production of a supplement to the 2017 plan ensuring necessary information and feasible compliance measures are in place. Following a consultation on possible measures to be included in this supplement in identified locations in May 2018[5], the Government published the final version of its Clean Air Strategy in January 2019[6].

The Water Framework Directive

3.4.36. Council Directive 2000/60/EC (as amended) establishing a framework for Community action in the field of water policy (the Water Framework Directive (WaterFD)) establishes a framework for water policy, managing the quality of receiving waters. Amongst other objectives, it seeks to prevent the deterioration of and to improve aquatic ecosystems by progressively reducing pollution and mitigating the effects of floods.

3.4.37. In implementing the WaterFD, NPS EN-1 states at paragraph 5.15.3 that an ES should describe existing physical characteristics of the water environment affected by the proposed project and any impact of physical modifications to these characteristics. It should also address any impacts of the proposed project on water bodies or protected areas under the WaterFD.

3.4.38. The WaterFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. This matter is addressed in the relevant sections of Chapter 4.

Environmental Permitting Regulations

3.4.39. The EP Regulations apply to all new installations and implement the EU Directive 2008/1/EC concerning Integrated Pollution Prevention and Control (the IPPC Directive). They define activities that require the operator to obtain an EP from the EA and transpose the requirements of the EU IED into UK legislation. As the Proposed Development falls within s1 Combustion Activity under the EP Regulations, an EP would be required before the Proposed Development commences operation.

3.4.40. The EP Regulations provide a regulatory system to ensure a high level of protection of environmental and health impacts, secured by

[4] R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers (ClientEarth No 3)
[5] Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations: a consultation, May 2018, DEFRA and DfT
[6] Clean Air Strategy, January 2019, BEIS, DEFRA, DfT, DoHSC, HM Treasury, MHCLG.

demonstrating that the proposed approach used adopts BAT to prevent or minimise the effects of the activity on the environment, taking account of relevant local factors. Generating stations exceeding 50MW are covered by the IED and the EP Regulations.

3.4.41. As set out in section 1.8 of this Report, the Applicant has confirmed that an amendment to the existing Environmental Permit (K3) would be required, as would an Environmental Permit (WKN); and MMO Licence amendment (WKN) to construct, operate and maintain the Proposed Development and would be sought separately. This matter is addressed further in Chapter 4

3.5. OTHER LEGAL PROVISIONS

United Nations Environment Programme (UNEP) Convention on Biological Diversity 1992

3.5.1. Responsibility for the UK contribution to the Convention on Biological Diversity lies with DEFRA who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.

3.5.2. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the UNEP Convention on Biological Diversity has to be taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The provisions on EIA and transboundary matters with regard to impacts on biodiversity referred to in this Chapter, satisfies the requirements of Article 14 of the Convention (Impact Assessment and Minimising Adverse Impacts).

The Wildlife and Countryside Act 1981

3.5.3. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation which protects certain habitats and species in the UK. It provides for and protects wildlife, nature conservation, countryside protection, National Parks, and Public Rights of Way (PRoWs) including for the notification, confirmation, protection and management of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is Natural England (NE).

3.5.4. WACA1981 contains provisions relevant to Ramsar sites, National Nature Reserves and Marine Nature Reserves. If a species protected under the Act is likely to be affected by the development, a protected species licence will be required from NE. Sites protected under the Act (including SSSIs) which are affected by the proposed development must also be considered. The effects of development on the PRoW network are also relevant.

3.5.5. WACA1981 is relevant to the application in view of the sites and species identified in relevant sections of the ES [APP-063, REP2-024, REP2-032]. Relevant considerations are discussed in Chapter 4 of this Report.

Natural Environment and Rural Communities Act 2006

3.5.6. The Natural Environment and Rural Communities Act 2006 (as amended) (the NERC Act) makes provision for bodies concerned with the natural environment and rural communities, including in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with the biodiversity duty, regard must be had to the UNEP Convention on Biological Diversity.

3.5.7. I have had regard to the NERC Act and the biodiversity duty in all relevant sections of Chapters 4 and 5 of this Report.

National Parks and Access to the Countryside Act 1949

3.5.8. The National Parks and Access to the Countryside Act 1949 provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty. It also establishes powers to declare National Nature Reserves and for local authorities to establish Local Nature Reserves (LNRs).

The Countryside and Rights of Way Act 2000

3.5.9. The Countryside and Rights of Way Act 2000 (as amended) includes provisions in respect of PRoW and access to land. The Act also improved provisions for the protection and management of SSSIs and other designations under the Wildlife and Countryside Act 1981.

The Planning (Listed Buildings and Conservation Areas) Act 1990

3.5.10. The Planning (Listed Buildings and Conservation Areas) Act 1990 empowers the SoS to maintain a list of built structures of historic or architectural importance and sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.

3.5.11. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses as set out in Chapter 4.

Ancient Monuments and Archaeological Areas Act 1979

3.5.12. The Ancient Monuments and Archaeological Areas Act provides for Scheduled Monuments to be protected and for the maintenance of a list of Scheduled Monuments. It also imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument. For non-designated archaeological assets, protection is afforded through the development management process as established both by the Town and Country Planning Act 1990 and the National Planning Policy Framework.

Marine and Coastal Access Act 2009

3.5.13. The Marine and Coastal Access Act 2009 (MCAA2009) introduced the production of marine plans and the designation of Marine Conservation Zones (MCZ) in United Kingdom waters. MCAA2009 provides for the preparation of the Marine Policy Statement (MPS) and Inshore and Offshore Marine Plans. PA2008 s104, subsection (2)(aa) requires the SoS to have regard to the appropriate marine policy documents (if any), determined in accordance with s59 of MCAA2009. The relevant policies for the purposes of s59 are the MPS and any marine plan adopted by the relevant SoS within the policy framework set by the MPS.

3.5.14. In 2013 the SoS for Environment, Food and Rural Affairs designated 27 MCZs, including The Swale Estuary MCZ. The implications of the Proposed Development on the MCZ are addressed in Chapters 4 and 5.

Environmental Protection Act 1990

3.5.15. Section 79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. Article 14 dDCO [REP7-003] contains provisions relating to proceedings in respect of statutory nuisance, discussed further in Chapter 7 of this Report.

Control of Pollution Act 1974

3.5.16. The Control of Pollution Act 1974 (CoPA) provides the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local planning authority with instructions to cease work until specific conditions to reduce noise have been adopted. Section 61 of the CoPA provides a means for applying for prior consent to carry out noise generating activities during construction. Once prior consent has been agreed under s61, a s60 notice cannot be served provided the agreed conditions are maintained on-site. The legislation requires Best Practicable Means to be adopted for construction noise on any given site.

Noise Policy Statement for England

3.5.17. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise.

3.5.18. The Explanatory Note within the NPSE provides further guidance on defining 'significant adverse effects' and 'adverse effects'. One such concept identifies 'Lowest Observable Adverse Effect Level (LOAEL)', which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur, and No Observed Effect Level (NOEL), which is the level below which no effect can be detected.

3.5.19. When assessing the effects of development on noise matters, the aim should firstly be to avoid noise levels above the SOAEL, and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

Water Resources Act 1991, Flood and Water Management Act 2010, Water Acts 2003 and 2014, Land Drainage Act 1991

3.5.20. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures, discharge and pollution, and for drainage management related to non-main rivers. The application is considered against such matters in Chapter 4 of this Report.

The UK Biodiversity Action Plan

3.5.21. Priority habitats and species are listed in the UK Biodiversity Action Plan. The plan is relevant to the application given the biodiversity and ecological matters discussed in Chapters 4 and 5 of this Report.

Climate Change

3.5.22. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. This duty has been addressed throughout Chapter 4 of this Report. The Climate Change Act 2008 (CCA2008) also establishes statutory climate change projections and carbon budgets.

The Public Sector Equality Duty

3.5.23. The Equalities Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share and who do not share a protected characteristic. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making.

3.6. MADE DEVELOPMENT CONSENT ORDERS

3.6.1. The Applicant responded to a written question ExQ3.6.8 [PD-014] by referring to and supplying copies of the following made DCOs to support their position:

- Ferrybridge Multifuel 2 (FM2) Recommendation Report to Secretary of State, D5 Submission - Applicant's Response to ExA's Further Written Questions (ExQ3) Appendix E – [REP5-016];
- Ferrybridge Multifuel 2 (FM2) Decision of Secretary of State, D5 Submission - Applicant's Response to ExA's Further Written Questions (ExQ3) Appendix E –[REP5-017];
- North London Heat and Power Project (NLHPP) Recommendation Report to Secretary of State, D5 Submission, Applicant's Response to the ExA's Further Written Questions (ExQ3) Appendix G [REP5-018]; and
- North London Heat and Power Project (NLHPP) Decision of Secretary of State, D5 Submission, Applicant's Response to the ExA's Further Written Questions (ExQ3) Appendix G [REP5-019].

3.6.2. In addition the Applicant [REP2-009] in reply to Q1.1.2. [PD-008] referred to other applications where a direction was made under s35 PA2008:

- Triton Knoll Electrical System (offshore wind farm connection);
- Nautilus Interconnector (submarine electricity cable); and
- Aquind Interconnector (submarine electricity cable).

3.7. TRANSBOUNDARY EFFECTS

3.7.1. Under Regulation 32 of the EIA Regulations and on the basis of the information available from the Applicant, the SoS is not of the view that the Proposed Development is likely to have significant effects on the environment in another European Economic Area (EEA) state.

3.7.2. In reaching this view the SoS has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 – Transboundary Impacts and Process). Transboundary issues consultation under Regulation 32 of the EIA Regulations was therefore not considered necessary. It is stated in paragraph 6.2.12 of the Scoping Report [APP-013] that it was not considered that there is any potential for significant transboundary effects to occur as a result of the project.

3.7.3. The Inspectorate's Scoping Opinion [APP-014], paragraph 3.3.18, noted that the Scoping Report [APP-013] did note that for some chapters "*the matter will be reviewed following the results of the modelling exercises, which is welcomed. The final position should be clearly stated in the ES*." The Response to PINS Scoping Opinion [APP-015] merely restated the views of the Inspectorate's Scoping Opinion. Although the final position does not appear to be clearly stated as requested, there is no evidence that the Proposed Development would be likely to have significant effects on another EEA State.

3.8. OTHER RELEVANT POLICY STATEMENTS

3.8.1. Other policies that give rise to important and relevant considerations for the SoS are referred to in Chapter 4 in the sections on policy considerations relevant to the particular issues examined.

3.9. THE NATIONAL PLANNING POLICY FRAMEWORK

3.9.1. The National Planning Policy Framework (NPPF) was originally published in 2012. A revised NPPF was published on 19 February 2019, which is an important and relevant matter. Paragraph 213 of the revised NPPF states that due weight should be given to existing policies according to their degree of consistency with the NPPF with the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

3.9.2. The NPPF, together with the accompanying Planning Practice Guidance (PPG), contains statements of planning policy and practice and how these are expected to be applied. Paragraph 5 of the NPPF notes that it is not a source of individual or project-specific policy for NSIP decision-making.

3.10. LOCAL IMPACT REPORTS

3.10.1. Section 104(2) of PA2008 states that in deciding an application for development consent where a NPS has effect the SoS must have regard to any LIR within the meaning of s60(3) submitted to the SoS before the deadline specified in a notice under s60(2). By s105 and for decisions in cases where no national policy has effect, a similar duty applies.

3.10.2. Under s60(2) of PA2008 there is a requirement to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given in the Rule 8 Letter [PD-007].

3.10.3. LIRs were submitted at D1 by SBC [REP1-012] and KCC [REP1-011]. Their contents are considered in Chapter 4 of this Report.

3.11. THE DEVELOPMENT PLAN

3.11.1. As outlined in the Applicant's Planning Statement [APP-057] and the LIR [REP2-036], for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004, the development plan for the area of the Application Site comprises the Kent Minerals and Waste Local Plan 2013-30 (July 2016) (KMWLP) and Bearing Fruits 2031: The Swale Borough Local Plan (July 2017) (Swale Local Plan).

3.11.2. Development plan polices relevant to the Proposed Development are referred to in the various planning matters dealt with under Chapter 4.

3.11.3. Policies from neighbouring development plans are touched upon in the context of the Waste Hierarchy, considered further in Chapter 4. Apart from these issues, I consider that the Proposed Development would not give rise to important and relevant impacts in neighbouring local authority areas.

3.11.4. Paragraph 4.1.5 of NPS EN-1 states that if there is any conflict between development plan documents and an NPS then the NPS prevails "*given the national significance of the infrastructure*". Where an NPS has effect in relation to development of the description to which the application relates, this precedence is given statutory effect in the PA2008.

3.11.5. However where an NPS does not have effect (in the case of the WKN Proposed Development) primacy should be accorded to the development plan as discussed further in Chapter 6 of this Report.

3.11.6. The SoCG between the Applicant and KCC [REP8-013] identified conflicts of views over compliance with development plan documents, and the draft SoCG between the Applicant and SBC [REP5-006] identify disputes related to air quality, traffic and transportation and climate change which potentially involve conflicts with development plan documents. These matters are considered further in Chapter 4.

3.11.7. Other non-statutory planning policy documents identified as relevant to the consideration of this application include:

- Memorandum of Understanding (SEWPAG) Appendix to [REP3-019]);
- Local Transport Plan 4: Delivering Growth without Gridlock (2016-2031) section 4.2.36, ES Chapter 4 [APP-056]; and
- SBC Climate and Ecological Emergency Action Plan (EEAAP) D4 Submission, Appendix 1 - Climate & Ecological Emergency Action Plan [REP4-026].

3.12. THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

3.12.1. Consideration as been given throughout the Examination of whether changes to the application have rendered it a different application and whether the SoS would have power under s114 of PA2008 to make a DCO having regard to the development consent applied for.

3.12.2. The document entitled '*Planning Act 2008: examination of applications for development consent'*, (March 2015) published by the former Department for Communities and Local Government, provides guidance at paragraphs 109 to 115 in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act, 2011 was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made.

3.12.3. Being mindful of this context during the Examination, I am satisfied that there are no resulting material changes to that which was applied for. I am therefore of the view that the SoS has the power to make a DCO as recommended in Chapter 7 to this report.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. As required by section s88 of PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EP Rules), as Examining Authority (ExA) I made an Initial Assessment of the Principal Issues (IAPI) arising from an initial assessment of the application and of the Relevant Representations (RRs) received. This was done within 21 days of the day after receipt of the s58 certificate of compliance with s56 of PA2008 provided by the Applicant [OD-002].

4.1.2. Annex B of the Rule 6 Letter published on 21 January 2020 [PD-006] set out the IAPI. The issues identified, which did not intend to imply an order of importance, were as follows:

- Environmental Impact Assessment
- Air Quality
- Archaeology and Cultural Heritage
- Ecology
- Habitats Regulations Assessment
- Greenhouse Gases and Climate Change
- Ground Conditions
- Landscape and Visual Impact
- Noise and Vibration
- Traffic and Transport
- Water Environment
- Draft Development Consent Order (dDCO)

4.1.3. On 26 February 2020 in the Rule 8 - notification of timetable for the examination [PD-007], following the request of KCC at the Preliminary Meeting I decided to treat as important and relevant issues for the Examination matters relating to:

- Waste recovery capacity, management of waste hierarchy and related policy matters.

4.1.4. In addition to the planning issues arising from the IAPI, the remainder of this Chapter addresses other relevant matters that arose during the Examination. For each issue, the effect of the Proposed Development on that particular issue and any mitigation measures proposed are summarised. Comments are made on matters raised in RR, Written Representations (WR), Statements of Common Ground (SoCGs) and the Local Impact Reports (LIRs) on the planning issues. Where relevant, the Applicant's response to those comments are reported and conclusions drawn.

4.1.5. Matters relating to the dDCO are addressed in this Chapter within the framework of the individual planning issues to which they relate. The DCO itself is reported on in Chapter 7 of this Report.

4.1.6. In addition to the planning issues, this Chapter also addresses the following topics arising from the conduct of the Examination:

- issues arising in written and oral submissions;
- issues arising in the LIR;
- conformity with NPSs;

- conformity with the development plan;
- the application of other policies;
- the principle of development;
- consideration of previously made DCOs;
- Environmental Impact Assessment (EIA);
- HRA; and
- Environmental Permitting Regime.

4.1.7. Having set out responses to these matters in broad terms between Sections 4.2 to 4.9 of this Chapter, the planning issues identified in paragraph 4.1.2-3 above and the matters of detail arising from them are considered in Sections 4.10 to 4.19.

4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

Introduction

4.2.1. The application resulted in community concern exemplified by the relevant representations of individuals noted below in this section, and the submissions of Minster-on-Sea Parish Council (MSPC) the closest elected tier of local government to the community representing the interests of approximately 17,000 residents [REP1-018, REP4-024].

4.2.2. MSPC objected to the application on grounds of impact on traffic flow, what it saw as the effective doubling of the current level of waste coming into the area and the knock on effect on the highway network, especially Grovehurst A249 Junction and M2 junction during peak periods. Concern was also raised as to the public health implications of associated vehicular exhaust emissions plus air-borne toxic flue gas emissions.

4.2.3. John C Twiselton CEng MIMechE, a former MSPC councillor lodged independently a written submission [REP1-017] supporting MSPC's concerns at what was alleged would be an increase in traffic congestion at the two major pinch points, the Grovehurst A249 Junction and M2 junction.

4.2.4. Representations were received from KCC and SEWPAG contending that the Proposed Development was inappropriate in policy terms and opposition to it was maintained throughout the Examination.

Relevant Representations (RRs)

4.2.5. RRs [RR-001 to RR-009] were submitted as follows.

- Environment Agency [RR-001]
- Health and Safety Executive [RR-002]
- Public Health England [RR-003]
- Highways England [RR-004]
- Historic England [RR-005]
- Natural England [RR-006]
- Surrey County Council (SCC) [RR-007]
- Michael Vick [RR-008]
- Donna Clarke [RR-009]

4.2.6. SCC commented that it and other planning authorities in the south east are planning for waste on the basis of net self-sufficiency and not on the basis that Surrey's requirements will be met by facilities in Kent. It was producing a new Surrey Waste Local Plan (SWLP) with its Examination in Public in September 2019 and would be consulting on Main Modifications in January 2020. At D3 the Applicant in its Response to the Examining Authority's Further Written Questions (ExQ1A) provided Appendix 1.6 – Surrey Waste Plan 2008 [REP3-007] and Appendix 1.5, the Surrey 2 Hour Drive Time Map [REP3-006].

4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORTS

4.3.1. Section 104(2) of PA2008 requires the SoS to consider the contents of an LIR when making a decision on an application.

4.3.2. SBC produced a LIR [REP2-036] which was submitted at D2. SBC had no adverse comments relating to the Proposed Development. However in referring to its LIR in further submissions made at D4 [REP4-025] SBC made further representations dated 5 May 2020, taking into account in particular the detailed submissions made by KCC. On the issues of highways impact and climate change, SBC therefore:

- supported KCC's objections relating to the highways impacts and the strategy for reviewing use of rail and water as alternative means for transportation; and
- in light of the SBC Climate and Ecological Emergency Action Plan (EEAAP) being approved by the Council's Cabinet on 22 April 2020 [REP4-026], is concerned that the Proposed Development would have significant adverse impacts upon carbon emissions within the Borough and is not required to meet waste requirements in the latest Waste Needs Assessment, which was based upon the policy of providing self-sufficiency for the disposal of waste in Kent;
- supported KCC's objection that the Proposed Development would not be compatible with its waste hierarchy and promotion of recycling; and
- is concerned HGV movements could increase through AQMAs and worsen air quality, contrary to Policy DM6 of the adopted Swale Local Plan.

4.3.3. In its LIR [REP1-011] KCC as the Local Highway Authority objected to the application, that:

- the Transport Assessment (TA) did not present a robust assessment of the traffic profile;
- the operation of the K3 Proposed Development and the construction and operation of WKN Proposed Development would not have a significant impact on the highway network and the lack of any mitigation proposed to redress the impacts
- therefore sought a requirement that no works to the WKN Proposed Development are commenced until both the M2 Junction 5 and A249/Grovehurst Road improvement works are completed.

4.3.4. In respect of mitigation of transport impacts as a government aim for sustainable development, KCC also noted the Applicant was in control of the contracts it accepts, and whilst waste would arrive from larger commercial waste operators, there should be greater collaboration with waste suppliers to provide local waste collection points to facilitate the sustainable transfer of waste.

4.3.5. As Waste Planning Authority (WPA) for the county of Kent, the Kent Minerals and Waste Local Plan (KMWLP) policy framework was predicated on a principle of 'net self-sufficiency' and the management of waste in accordance with the Waste Hierarchy, an approach found sound following independent examination by the Planning Inspectorate. The capacity gap identified in the adopted KMWLP was met with the implementation of planning permission SW/10/444 and the waste capacity to feed the K3 plant. The LIR looked forward to the Planning Inspector's report on the Early Partial Review) of the KMWLP (subsequently published and submitted by KCC at D4 [REP4-016].

4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS (NPSs)

Introduction

4.4.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with the relevant NPSs, identified in Chapter 3 above as being NPS EN-1 and NPS EN-3.

4.4.2. A distinction is drawn within the Proposed Development between Project K3 and Project WKN in terms of whether the application must be determined in accordance with any relevant NPSs. As I have set out in Chapter 3, whilst this is true of Project K3, there is no such obligation in relation to Project WKN.

4.4.3. Of relevance to the consideration of NPSs, and applicable to the Proposed Development, is the effect of s106 PA2008 by which the SoS has a discretion, if they consider that representations including evidence relate to the merits of a NPS, to disregard such representations or evidence.

4.4.4. In Section 3.2 of this Report I have set out the relationship between s104 and s105 PA2008 as they apply to the Proposed Development. In this section I assess whether in principle the Application conforms with the NPSs, however this is subject to the detailed considerations and weighing the balance of any adverse effects against benefits in Section 6 of this Report.

NPS EN-1 and NPS EN-3

4.4.5. The Applicant analysed the performance of the Proposed Development against relevant policies in NPS EN-1 and NPS EN-3 within its Planning Statement [APP-082]. These documents the principle of, and need for, the Proposed Development within the framework provided by NPSs.

4.4.6. NPS EN-1 makes clear that there is a need for the UK to move away from fossil fuels for electricity generation. Nevertheless, it recognises the urgent need for energy infrastructure to achieve energy security with substantial weight being given to the contribution which projects would make towards satisfying this need. Paragraphs 3.6.1 and 3.6.2 of NPS EN-1 state that there is also a need for a mix of energy sources including fossil fuels to meet demand in a flexible manner.

4.4.7. However and, as concluded in Chapter 7 of this Report, the assessment provided by the Applicant of conformity of the Proposed Development with the waste hierarchy is insufficiently robust, does not take into account Annual Monitoring Reports (AMRs) of relevant WPAs and consequently fails to demonstrate that it would not be contrary to the application of the waste hierarchy in Kent as required by NPS EN-3.

Conclusion on NPS Policy

4.4.8. The compliance of the Proposed Development has been examined against policy detail and tests applicable to individual planning issues as set out in relevant NPS paragraphs, and this analysis is carried out in sections 4.10 to 4.19 below.

4.4.9. Taking all relevant documents and policies into account, the need for the K3 Proposed Development is established through the NPSs. The WKN Proposed Development generally conforms to high-level policy in NPS EN-1 and NPS EN-3. In Sections 4.10 to 4.19 of this Report I analyse the generic impacts of the Proposed Development in light, amongst other things, of the NPS policies.

4.5. CONFORMITY WITH THE MARINE POLICY STATEMENT AND MARINE PLANS

4.5.1. Where a NPS has effect, the SoS in making their decision, must have regard to the appropriate marine policy documents (if any) determined in accordance with Section 59 of the Marine and Coastal Access Act 2009.

4.5.2. The MMO submission [REP3-017] pointed out that the South East Inshore Marine Plan (SEIMP) is now a material consideration following consultation with the SoS and the MMO expected a robust and comprehensive marine plan policy assessment to form part of this application. In ExQ2 [PD-012] I asked the Applicant to explain the extent to which and where in the application documents the Marine Plan had been addressed.

4.5.3. The Applicant responded [REP4-006], noting the status as a material consideration of the 'Draft for Consultation' version of the SEIMP which was released in January 2020. In its response the Applicant reviewed that accordingly in respect of the surface water outfall elements of the Proposed Development.

4.5.4. The review is set out at paragraphs 14.1.2 to 14.1.11 of [REP4-006], noting that the outfalls would not generate any significant impacts on

seascapes or the landscape under draft Policy SE-SCP-1, and draft Policy SE-CC-2 would be complied with in that the Proposed Development would be resilient to the impacts of climate change and coastal change. As the K3 and WKN outfalls would only discharge clean surface water draft Policy SE-WQ-1 would be complied with in that no deterioration of water quality would result, and would be controlled by any permit issued for WKN and amendment to the K3 permit.

4.5.5. Draft Policy SE-MPA-1 would be complied with as the Proposed Development was not considered to have the potential to impact on any element of the marine protected area, specifically the Swale Ramsar and Swale Estuary Marine Conservation Zone. Draft Policies SE-BIO-1, SE-BIO-2 and SE-BIO-3 were considered as to possible impacts on the distribution of priority habitats and priority species, on native species or habitat adaptation or connectivity or on coastal habitats/ecosystem functioning to demonstrate that they will follow the avoid, minimise, mitigate and compensation approach, however no such impacts were expected in the case of the outfalls.

4.5.6. Draft Policy SE-UWN-1 requires any proposal which would generate impulsive sound to contribute data to the UK Marine Noise Registry and SE-UWN-2 requires proposals which would result in the generation of impulsive or non-impulsive noise must demonstrate that they will follow the "avoid, minimise and mitigate" approach. There would be no noise effects arising from the operation of the outfalls but the construction of them using a vibro hammer technique does have the potential to create noise and a controlling condition requiring a soft start approach is therefore imposed within the Marine Licence. As such the proposals would accord with SE-UWN-1 and SE-UWN-2.

4.5.7. In respect of draft Policy SE-CE-1, there were no cumulative adverse effects identified with other proposals. It was concluded that the Proposed Development is not considered to conflict with any element of the emerging SEIMP.

4.5.8. In its D5 submission at point 2.30 [REP5-030] the MMO welcomed the Applicant's consideration of the SEIMP. Matters of detail concerning the outfall are considered in Chapters 4 and 7, however no issue was taken by the MMO or other IP on the conformity of the draft SEIMP policies. Insofar as they are to be considered under s59 MCAA2009 or otherwise, I am satisfied the Proposed Development would generally be in conformity therewith.

4.6. CONFORMITY WITH DEVELOPMENT PLAN

4.6.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with relevant development plan policies.

4.6.2. Sections 4.10 to 4.19 of this Report identify the development plan policies described by the Applicant in its Planning Statement [APP-082] and KCC and SBC in their LIRs [REP1-011, REP1-012] as relevant to the

assessment of the Proposed Development. The Examination was not referred to any relevant plan policies arising from Neighbourhood Plans.

4.6.3. I have reviewed the development plan policies thus identified. There are instances of policy support for the Proposed Development in relation to sustainable development and the drive towards a strong competitive economy. Furthermore, no instances of unaddressed policy conflict have been identified in respect of the relevant requirements of environmental protection, water quality, biodiversity conservation, landscape, transportation and archaeology policies which are met.

4.6.4. There are no issues arising from development plan policies that necessarily conflict with relevant policy directions arising from NPSs. Whilst NPSs are the primary source of policy for a decision on an NSIP under PA2008 such as Project K3, development plan policies take precedence for a decision on Project WKN. None of the development plan policies indicate against the directions set in NPS EN-1 or NPS EN-3 and it follows that effect can be given to all relevant development plan policies in a manner which reinforces and adds local context and detail to NPS compliance where the NPSs apply.

4.7. APPLICATION OF OTHER POLICIES

4.7.1. Other relevant sources of policy that give rise to important and relevant considerations for the SoS include policies raised and referred to by KCC and SBC in its LIRs [REP1-011, REP1-012], SEWPAG's Memorandum of Understanding(MoU) [REP2-043] and by the Applicant in its Planning Statement [APP-082].

4.7.2. Whilst NPSs are the primary source of policy for a decision on an NSIP under PA2008, such as Project K3 within the Proposed Development, other local policies are capable of being important and relevant considerations.

4.7.3. Project WKN within the Proposed Development is not an NSIP, so the NPSs are considered together with other policies. The Applicant's Planning Statement [APP-082] states at paragraph 13.1.2:

"In decisions made under Section 105, the presumption in favour of determining the application in accordance with the NPS is absent and the relevant NPS is considered to be important and relevant alongside other national and local policies."

4.7.4. However primacy is given to the statutorily adopted development plan in respect of the WKN Proposed Development.

4.7.5. Nothing arising from these or other relevant policies referred to that necessarily conflicts with relevant policy directions arising from NPSs and it follows that effect can be given to all relevant policies where they are applicable to the particular element of the Proposed Development.

4.8. ENVIRONMENTAL IMPACT ASSESSMENT

Introduction

4.8.1. This section addresses the documents comprising the ES. During the Examination the ES was amended and those changes that relate to the content of the ES are considered to constitute *'any other information'* as defined by the EIA Regulations. I have concluded that the amendments are relatively minor alterations, and that the overall environmental information submitted is sufficient for the SoS to take into consideration before making a decision in compliance with the EIA Regulations.

4.8.2. This section also records the environmental management documents proposed to be used by the Applicant in tandem with DCO provisions to secure the construction and operation of the Proposed Development and the application of mitigation within the worst-case parameters (the Rochdale Envelope) assessed in the ES.

The Submitted ES

4.8.3. An ES was provided as part of the application submission. The documents submitted are:

- Chapter 1 – Introduction;
- Chapter 2 – Site Description, Proposed Development and Alternatives;
- Chapter 3 – Methodology;
- Chapter 4 – Traffic and Transport;
- Chapter 5 – Air Quality;
- Chapter 6 – Climate Change;
- Chapter 7 – Human Health;
- Chapter 8 – Noise and Vibration;
- Chapter 9 – Ground Conditions;
- Chapter 10 – Water Environment;
- Chapter 11 – Ecology;
- Chapter 12 – Landscape and Visual Impact;
- Chapter 13 – Cultural Heritage;
- Chapter 14 – Summary Tables;
- Chapter 15 – Glossary;

4.8.4. The ES is accompanied by non-technical summaries [APP-068, APP-069] and appendices which supports the content and findings of the EIA:

- APP-020 Appendix 4.1 Transport Assessment Part 1
- APP-021 Appendix 4.2 Transport Assessment Part 2
- APP-022 Appendix 4.3 Transport Assessment Part 3
- APP-023 Appendix 4.2 Draft Construction Traffic Management Plan
- APP-024 Appendix 4.3 – Draft Travel Plan
- APP-025 Appendix 5.1 – Air Quality – Construction Assessment Methodology
- APP-026 Appendix 5.2 – Air Quality – Stack Height Determination
- APP-027 Appendix 5.3 – Air Quality – Baseline
- APP-028 Appendix 5.4 – Air Quality – Assessment of Impacts on Ecological Receptors
- APP-029 Appendix 5.5 – Air Quality – Traffic Impacts
- APP-030 Appendix 5.6 - Odour Assessment Methodology

- APP-031 Appendix 6.1 - Proposed Development Carbon Assessment
- APP-032 Appendix 6.2 - Proposed Development Carbon Assessment
- APP-033 Appendix 6.3 - Practical Effect Carbon Assessment
- APP-034 Appendix 7.1 - Noise Survey Results
- APP-035 Appendix 7.2 – Proposed Development Construction Noise Model Input Data
- APP-036 Appendix 7.3 - Proposed Development Construction Noise and Vibration Assessment
- APP-037 Appendix 7.4 - Operational Noise Model
- APP-038 Appendix 7.5 - Operational Noise Assessment
- APP-039 Appendix 8.1 – Human Health Baseline
- APP-040 Appendix 9.1 – Desk Study Ground Conditions Preliminary Risk Assessment
- APP-041 Appendix 10.1 – Flood Risk Assessment
- APP-042 Appendix 10.2 – Drainage Design Philosophy
- APP-043 Appendix 11.1 - Kemsley Ornithological Surveys
- APP-044 Appendix 11.2 – Habitats Regulation Assessment Report
- APP-045 Appendix 11.3 – Ecological Baseline Surveys 2007 - 2009
- APP-046 Appendix 11.4 – Ecological Mitigation and Management Plan
- APP-047 Appendix 11.5 – Ecological Mitigation Report
- APP-048 Appendix 11.6 – Natural England Discretionary Advice
- APP-049 Appendix 11.7 - Marine Licence Surface Water Outfall to Swale
- APP-050 Appendix 11.8 - External Lighting
- APP-051 Appendix 12.1 - LVIA Scoping Correspondence with KCC
- APP-052 Appendix 13.1 - Desk Based Heritage Assessment

4.8.5. Updated ES docs (which superseded the application versions) were submitted throughout the Examination; and Addendums [APP-069 to APP-078].

4.8.6. During the Examination there were no submissions raising concerns about the overall adequacy of the EIA process and the ES. Individual submissions raising subject-specific issues bearing on individual planning issues are addressed in 4.10 to 4.19 below as necessary.

4.8.7. The ES and associated information submitted by the Applicant during the Examination have provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of the EIA Regulations. The ES adequately describes the Rochdale envelope approach to the Proposed Development and secures its delivery within that envelope through the DCO. Full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoS.

4.9. HABITATS REGULATIONS ASSESSMENT

4.9.1. The Proposed Development is one that that has been identified as giving rise to the potential for likely significant effects on European sites and is therefore subject to HRA. It is a convention in ExA recommendation reports to inform SoS decisions prepared under the PA2008, with a separate record of considerations relevant to HRA to be provided. This has been set out in Chapter 5 of this Report below.

4.9.2. However it is appropriate here to record that I have considered all documentation relevant to HRA as required by Section 4.3.1 of NPS EN-1 and have taken it into account in the conclusions reached here and in the case for development consent (Chapter 6 below). There are no matters relevant to the HRA which require to be considered as part of the reasoning in respect of planning issues set out in this Chapter. Further, project design and mitigation proposals included in the ES and secured in the Recommended DCO and Alternative Recommended DCO have been fully considered for HRA purposes.

4.10. WASTE HIERARCHY AND FUEL AVAILABILITY

Policy Considerations

National Policy Statements

4.10.1. The NPS, both EN-1 and EN-3 identify energy from waste as a type of infrastructure that is needed. Paragraph 2.2.4 NPS EN-1 states that the:

4.10.2. "*role of the planning system is to provide a framework which permits the construction of whatever Government – and players in the market responding to rules, incentives or signals from Government – have identified as the type of infrastructure we need in the places where it is acceptable in planning terms*."

4.10.3. At paragraph 2.5.64, NPS EN-3 makes clear that waste combustion generating stations "*need not disadvantage reuse or recycling initiatives where the proposed development accords with the waste hierarchy*." NPS EN-3 makes clear that for waste combustion generating stations, there should be an "*assessment of the conformity with the waste hierarchy and the effect on relevant waste plans should be presented in a separate document to accompany the application*" (Paragraph 2.5.69).

4.10.4. The assessment should according to NPS EN-3 paragraphs 2.5.66-69.

- examine the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan or plans where a proposal is likely to involve more than one local authority.
- set out the extent to which the generating station and capacity proposed contributes to the recovery targets set out in relevant strategies and plans, taking into account existing capacity.
- The results of the assessment of the conformity with the waste hierarchy and the effect on relevant waste plans should be presented in a separate document to accompany the application

4.10.5. NPS EN-3 paragraph 2.5.70 requires that the ExA should be satisfied, with reference to the relevant waste strategies and plans, that:

4.10.6. "*the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England…Where there are concerns in terms of a possible conflict, evidence should be provided to the [ExA] by the applicant as to why this*

is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy."

4.10.7. Member States of the EU are required by Article 4(1) of the to apply the hierarchy in a priority order 'in waste prevention and management legislation and policy'. This requirement remains following EU-wide agreement on the Circular Economy Package (CEP), see 2.1.4 Waste Hierarchy and Fuel Availability Assessment (WHFAA) [APP-086].

Government review of waste policy in England 2011

4.10.8. This document published on 4 June 2011 contains actions and commitments which together set a clear direction towards a zero-waste economy. It acknowledges that:

4.10.9. *"…while energy from waste has the potential to deliver carbon and other environmental benefits over sending waste to landfill, energy recovery also produces some greenhouse gas emissions. It is important to consider the relative net carbon impact of these processes, and this will depend on the composition of feedstocks and technologies used"*

Waste and Resources Strategy 2018 (WRS)

4.10.10. The WRS and the Evidence Annex [REP3-010, REP3-011] set out "*how our stock of material resources by minimising waste, promoting resource efficiency and moving towards a circular economy*". It aims to maximise the value of resource use and minimise waste and its impact on the environment. There are five strategic ambitions (page 17) to:

- Work towards all plastic packaging placed on the market being recyclable, reusable or compostable by 2025;
- Work toward eliminating food waste to landfill by 2030;
- Eliminate avoidable plastic waste over the lifetime of the 25 Year Environmental Plan;
- Double resource productivity by 2050; and
- Eliminate avoidable waste of all kinds by 2050.

4.10.11. And it recognises that

"Energy from waste (EfW) technologies include the controlled combustion of municipal waste or products derived from municipal waste in specialised plant specifically to generate power and/or heat from waste feedstock. (fn21 p20)."

4.10.12. Among the aims to promote UK-based recycling and export less waste to be processed abroad, is to "*drive greater efficiency of Energy from Waste (EfW) plants*". This includes a commitment (p77) to ensure all future EfW plants achieve recovery status. 'R1' Recovery status acts as a proxy for the energy-generating efficiency of facilities. Facilities which achieve the status are classed as a recovery operation for the purposes of the waste hierarchy and so are a level up from the bottom rung of 'disposal'.

4.10.13. WRS welcomes further market investment in residual waste treatment infrastructure" (p79). The "food surplus and waste hierarchy" (p103) places EfW as second bottom in preferences for treating food waste which are: redistribution for people to eat; production of animal feed or bio-material processing; or recycling by anaerobic digestion or composting.

4.10.14. Specific and relevant examples are eliminating biodegradable waste to landfill, recognising that "*growth in energy from waste (EfW) and alternative residual waste treatment infrastructure will divert further waste from landfill*." (WRS p20)

4.10.15. "Recycling makes the *material* content of products that can no longer be repaired or reused available to be used in new products. It spares the environment the carbon impacts of extracting and processing virgin materials, and of managing wastes through energy recovery or landfill." *(WRS p68)*

4.10.16. The WRS at paragraph 8.1.6, p137 states:

"*Ensuring data on the composition of residual waste is regularly updated Residual waste is the mixed material that is typically incinerated for energy recovery or landfilled. Much of the products and materials contained in this waste could have been prevented, reused or recycled. This is inefficient not only because materials that hold value are being lost, but also incineration and landfill are the most expensive ways to treat waste*."

Waste Management Plan for England

4.10.17. The Waste Management Plan for England ('WMPE') December 2013 supports efficient energy recovery from residual waste of materials which cannot be reused or recycled ("*to get the most energy out of waste, not to get the most waste into energy recovery*"). Particular attention should be given to the location of the plant to maximise opportunities for heat use, and landfill or incineration without energy recovery should be the last resort for waste, particularly biodegradable waste.

EfW Debate Guide

4.10.18. Energy from Waste, A Guide to the Debate, 2014 (EfW Debate Guide) reflects that EfW needs to support, not compete with diversion from landfill and increased recycling, whilst not compromising waste reduction and reuse. Paragraph 150 states that in considering whether EfW is to be part of a waste strategy a key question is whether this would require new infrastructure or if sufficient capacity exists elsewhere. In relation to the "proximity principle" paragraph 152 states:

"The proximity principle arises from Article 16, "Principles of self sufficiency and proximity", of the revised Waste Framework Directive (2008/98/EC), the EU legislation that governs waste management. The principle is often over-interpreted to mean that all waste has to be managed as close to its source as possible to the exclusion of other considerations, and that local authorities individually need the

infrastructure required to do so. This is not the case. Indeed the final part of the Article itself states, "The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State". Clearly if not even the entire country needs to have the full range of facilities, a specific local authority does not have to. While there is an underlying principle of waste being managed close to its source, there is no implication of local authorities needing to be self-sufficient in handling waste from their own area."

4.10.19. The EfW Debate Guide notes that "typical conversion efficiency of waste fuel into usable electricity is 25% compared to >70% for natural gas to electricity in CCGT" (fn 80).

4.10.20. The 2014 revisions to the EfW Debate Guide stated principles that are likely to continue as key considerations for both government and the sector in the future. The first principle is "Energy from waste must support the management of waste in line with the waste hierarchy" so EfW should at least constitute recovery not disposal, and to be classed as recovery, EfW facilities must meet requirements set out in WFD, for example through attainment of R1 status such that an incineration plant taking mixed waste needs to be accredited to R1 status to not be regarded as "disposal". Further, the need to maintain economic energy from waste operation should not impede continuing improvements in prevention, reuse and recycling of the host community.

4.10.21. The National Planning Policy for Waste October 2014 highlights that positive planning plays a pivotal role in among other things, driving waste management up the waste hierarchy, and encourages co-location of waste management facilities utilisation of the heat produced as an energy source in close proximity to suitable potential heat customers.

4.10.22. Planning Practice Guidance (PPG) on Waste, October 2015, states (paragraph: 007 Reference ID: 28-007-20141016) that the aim of the self-sufficiency and proximity principles is for each WPA to manage all of its own waste, although there is no expectation that each local authority should deal solely with its own waste to meet these principles. Each WPA should manage its own waste, recognising that the ability to source waste from a range of locations/organisations:

"..helps ensure existing capacity is used effectively and efficiently, and importantly helps maintain local flexibility to increase recycling without resulting in local overcapacity."

4.10.23. Information on the available waste management capacity in the relevant area informs forward planning in local plans of waste infrastructure required to meet the future needs of the area. This requires an assessment of future requirements for additional waste management infrastructure, with reference to forecasts for future waste arisings.

Kent Minerals and Waste Local Plan (KMWLP)

4.10.24. The potential for waste management proposals to contribute towards local energy supply is expressly acknowledged in the KMWLP and specific policies address this:

- Policy CSW6 applies to all proposals for built waste management facilities and expects: " *g. for energy producing facilities - sites are in proximity to potential heat users*.";
- Policy CSW7, relating to the provision of additional capacity, expects: "*3. energy recovery is maximised (utilising both heat and power)*"; and
- Policy CSW8, relating to provision of additional energy recovery capacity, states:
    - *"Facilities using waste as a fuel will only be permitted if they qualify as recovery operations as defined by the Revised Waste Framework Directive. When an application for a combined heat and power facility has no proposals for use of the heat when electricity production is commenced, the development will only be granted planning permission if: 1. the applicant and landowner enter into a planning agreement to market the heat and to produce an annual public report on the progress being made toward finding users for the heat."*

4.10.25. The above policies ensure any additional capacity that produces energy maximises the calorific value (CV) of the waste, harnessing as much of the energy produced as possible, as soon as possible. They remain unchanged by the Early Partial Review (EPR) of MWLP.

4.10.26. Policy CSW4 is proposed to be updated to incorporate revised recycling targets. The proposed revised policy states:

"The strategy for waste management capacity in Kent is to provide sufficient waste management capacity to manage at least the equivalent of the waste arising in Kent plus some residual non-hazardous waste from London. As a minimum it is to achieve the targets set out below for recycling and composting and other forms of recovery."

4.10.27. Other relevant policy extracts are set out in EPR of the KMWLP - Pre-Submission Draft 2018 [REP2-046]. In particular paragraph 6.3.1 of the EPR is proposed to be redrafted to state:

"Kent currently achieves net self-sufficiency in waste management capacity. I.e. the annual capacity of the waste management facilities (excluding transfer) in Kent is sufficient to manage the equivalent quantity of waste to that predicted to arise in Kent. The continued achievement of net self-sufficiency and the management of waste close to its source are key Strategic Objectives of the Kent MWLP, because it shows that Kent is not placing any unnecessary burden on other WPAs to manage its waste. Net self-sufficiency recognises that existing (and future) waste management capacity within Kent may not necessarily be for the exclusive management of Kent's waste. Proposals that would result in more waste being managed in Kent than is produced may be acceptable if it is demonstrated that these would result in waste

produced in Kent being managed at a higher level of the waste hierarchy. Achievement of net self-sufficiency can be monitored on an annual basis and will provide an indicator as to whether the policies in the Plan need to be reviewed."

4.10.28. The waste hierarchy is addressed at Policies CSW2 and CSW4. Policy CSW2 in the EPR is unchanged from the adopted KMWLP. It states that in order to deliver sustainable waste management solutions for Kent, proposals for waste management must demonstrate how waste is being driven to ascend the waste hierarchy. Policy CSW4 is revised to incorporate targets for management of waste in Kent.

4.10.29. The Kent Joint Municipal Waste Management Strategy (KJMWMS) identifies a requirement to reduce the amount of untreated waste in order to meet ever stricter EU Directives, Government targets and Best Value Performance Indicators. The KJMWMS also promotes the use of waste as a resource.

4.10.30. NPPF at paragraph 27 advises that in order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these.

The Applicant's case

4.10.31. The Applicant's position is that the Proposed Development is wholly in accordance with the waste hierarchy, and not prejudicial to the achievement of national or local waste management targets.

4.10.32. In the WHFAA [APP-086] a travel time of about two hours for residual wastes is assumed in order to maintain viability of transport costs. This is applied to the Proposed Development to identify a study area (Study Area) for the purposes of the assessment.

4.10.33. In its WHFAA [APP-086] the Applicant sets out that operation of the Proposed Development would accord with the waste hierarchy in that it would move the management of residual wastes, predominantly arising in the south of England, away from landfill and up to recovery category. Further, it would address the lost opportunity to use refuse derived fuel (RDF) exported from the Study Area to generate renewable/low carbon energy within the UK.

4.10.34. Level of availability is identified by considering the shortlisted waste types disposed of to landfill in the Study Area (over 1.5m tonnes) and adding to it all the RDF removed from facilities in the Study Area that is exported overseas (over 1m tonnes), as shown in Table 3.7 WHFAA [APP-086]. Thus there is in the region of 2.5 million tonnes of fuel available to the Proposed Development and if the local authority collected waste (LACW) were discounted, there would still remain c.2 million tonnes of residual wastes and RDF available "as a renewable/low carbon fuel source" (WHFAA, Table ES1, paragraph 1.3.4). However the Applicant states (paragraph 3.4.2) that these wastes are suitable for

combustion in energy generating stations comprising the Proposed Development.

4.10.35. With 992,500 to 1.98 million tonnes of fuel available to the Proposed Development, the latter would not prejudice delivery of the waste hierarchy, or the future circular economy. (WHFAA [APP-086] paragraph 5.3.4, Table ES2, Summary of Fuel Availability Assessment and sensitivities).

4.10.36. Applying all the sensitivities (focussing on specific waste types, assuming very high additional recycling, and relying on non-operational facilities) there would still remain 495,500 tonnes of fuel available beyond that sought for the Proposed Development. It is unlikely that all of these variables would occur to the extent considered in the WHFAA so this outcome is considered to be very conservative (paragraph 3.5.5). However, it demonstrates there is substantial fuel availability to be sourced from wastes that would otherwise be disposed of to landfill or exported overseas. The Proposed Development would not prejudice options preferred in the waste hierarchy, and would play an important and appropriate role in delivering sustainable waste management.

4.10.37. New municipal waste recycling targets form a key element of the CEP up to 2030 that seek to achieve: 55% by 2025; 60% by 2030; and 65% by 2035. (paragraph 3.4.13). Household waste recycling data over the past seven years show that for all authorities significant improvement would need to be made to reach 65% recycling by 2035 (paragraph 3.4.16) and would need (paragraph 3.4.19) defined performance targets and substantial funding from central government. A conservative sensitivity test is applied, assuming the current recycling rate achieved for municipal waste in the Study Area is 38% (the commonest household recycling rate achieved within the Study Area). To reach 65% would require an additional 27% of wastes to be recycled, which (paragraph 3.4.21) would take some 682,500 tonnes out of the available fuel (Table 3.7) at 2017, thus reducing availability to over 1.8 million tonnes. However as much of the Commercial and Industrial (C&I) waste stream falls within the CEP description for municipal waste, the overall increase in recycling required to meet the CEP 2035 target of 65% across municipal wastes, is unlikely to be as great as 27%.

4.10.38. New treatment capacity potentially able to become operational in the Study Area could reduce the availability of fuels to the Proposed Development. The Environment Agency's (EA's) Waste Management 2017 in England Data Tables identify recovery facilities with an Environmental Permit, but not yet operational. Table 3.9 WHFAA [APP-086] shows those located in the Study Area, a total new capacity pipeline of over 2m tonnes.

4.10.39. Table 3.9 takes account of those facilities with a "reasonable prospect to become operational", namely the Consented K3 Facility and Beddington Energy Recovery Facility (Beddington ERF). Other facilities cannot "credibly be considered as likely to be delivered" (paragraph 3.4.26). Phase 1 Tilbury Green Power Ltd, noted at Annex D [APP-086] is an EfW

facility but permitted to receive 270,000 tonnes of waste wood, not a comparable project as a substantial amount of waste wood available for it can be gained from waste types not considered in assessing the fuel availability for the Proposed Development.

4.10.40. Assuming this new capacity takes wastes from the Study Area this would reduce the availability of fuels to nearly 1m tonnes (paragraph 3.4.21 [APP-086]) leaving 1,845,040 tonnes in 2017 after applying the CEP sensitivity. Subtracting 852,500 tonnes would leave 992,540 tonnes. Thus the "worst case scenario" is that there would still be 992,540 tonnes of fuel available to the Proposed Development (paragraph 3.4.33). This is illustrated in Tables 3.10 and ES2. With some 992,500 (row h) to 1.98m (row a) tonnes of fuel available to it, the Proposed Development, would not prejudice delivery of the waste hierarchy or the future circular economy.

4.10.41. The Proposed Development is appropriately located at the Application Site, making optimal use of a site already in use for waste management. The supply of steam to the Kemsley Paper Mill is a clear advantage in locating it at the Application Site and bringing waste to it. WHFAA at paragraph 4.2.14 states

"there is a demonstrated heat demand located adjacent to the Application Site. K3 will provide steam to the Kemsley Paper Mill, and WKN could provide back up and contingency energy as required, for example during maintenance. Further heat demands are being explored to expand WKN's role in the future."

4.10.42. The Study Area used in the WHFAA [APP-086] paragraph 3.1.5 comprises the following authority areas:

- East London, comprising Barking and Dagenham, Havering, Newham and Redbridge;
- East Sussex, including Brighton and Hove;
- Essex, including Southend-on-Sea and Thurrock;
- Kent, including Medway;
- South East London, comprising Bexley, Greenwich, Lewisham and Southwark;
- South London, comprising Bromley, Croydon, Merton, Kingston-upon-Thames and Sutton; and
- West Sussex.

4.10.43. The Carbon Assessment Reports [APP-031, APP-032, APP-033, APP-149, REP5-015] conclude that the carbon burden associated with the transport of fuel to the facilities is small compared to the overall benefits of diverting waste from landfill. In any event, transport related carbon burdens would be generated whichever final destination the fuels take. The Transport Assessment in ES Chapter 4.1 [APP-020, APP-021, APP-022], shows there is no unacceptable adverse impact caused by transporting waste to the Proposed Development from further afield than the county of Kent, as the transport routes are considered appropriate for the transport of fuel to the Application Site. Consequently there could

be no reasonable objection importing fuel to the Application Site from outside Kent (WHFAA, paragraphs 5.4.5-6).

4.10.44. In summary the Proposed Development would deliver key objectives of national and local policy through delivering the waste hierarchy; contributing to self-sufficiency (in terms of both energy recovery and sustainable waste management) at the national level; and being part of a network of facilities from which value would be recovered from appropriate residual wastes.

Examination

4.10.45. The ExA posed a number of questions mainly to the Applicant, KCC and SEWPAG, but with an opportunity for all IPs to comment thereon and on the respective responses, concerning waste recovery capacity and management of the waste hierarchy, including whether or not the Proposed Development could be regarded as compliant with national and/or local policies.

4.10.46. KCC and SEWPAG provided the principal objections to the Proposed Development.

4.10.47. SEWPAG's objections are set out in its initial submission [REP1-016], which was added to at D2 by its responses [REP2-043, REP3-019, REP4-032, REP7-036] to questions posed at ExQ1, ExQ1a ExQ2 and ExQ4 [PD-008, PD-010, PD-012, PD-015] in which it had an interest. In addition it made further comments [REP5-035] on the Applicant's response [REP4-008] to its own reply to ExQ1A [REP3-019].

4.10.48. SEWPAG seeks to co-ordinate the planning of waste management within the south east and includes the following WPA members:

- Bracknell Forest Council
- Brighton & Hove City Council
- Buckinghamshire County Council
- East Sussex County Council
- Hampshire County Council (incorporating Southampton City, Portsmouth City and New Forest National Park Waste Planning Authorities)
- Isle of Wight Council
- KCC
- Medway Council
- Milton Keynes Council
- Oxfordshire County Council
- Reading Borough Council
- Royal Borough of Windsor and Maidenhead
- Slough Borough Council
- South Downs National Park Authority
- Surrey County Council
- West Berkshire Council
- West Sussex County Council
- Wokingham Borough Council

4.10.49. SEWPAG's objection to the Proposed Development, based on its submissions as noted above can be summarised:

- WHFAA [APP-086] does not consider the local policy on waste management in any of the areas of its members, whereas each has its own local waste planning policy concerned with arranging for an equivalent amount of waste arising in its area, and follows the MoU that includes the expectation that each WPA in the south east will plan for the management of waste on the basis of 'net self-sufficiency'.
- Waste Local Plan (WLP) policies allocate suitable sites and the need for additional facilities in each WLP takes account of the need to manage waste in accordance with the Waste Hierarchy. AMRs provide the latest information on arisings and waste management capacity in each area. The WHFAA does not consider the WLPs of the areas from where waste will be sourced and does not meet the requirements of NPS EN-3 by adequately assessing "*that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England*."
- Without any assessment in accordance with EN-3 it is unclear whether the facility would result in excessive recovery capacity that would prejudice the achievement of recycling as planned for in WLPs. The WHFAA should clarify the source of the waste and assess impacts on affected WPA areas and the related WLP requirements for new waste infrastructure (including that needed to meet minimum recycling targets).
- Member WPAs should be specifically consulted on the eventual detailed assessment which should show this proposal is consistent with their adopted and emerging WLPs.

4.10.50. KCC in its additional submission dated 4 December 2019 [AS-010] objected that there was a conflict of the Proposed Development with the Council's strategy for the management of waste in its KMWLP. It considered the proposal is not supported by robust evidence that justifies the development of increased waste recovery capacity in Kent, and undermines the adopted KMWLP strategy of net self-sufficiency and managing waste as far up the waste hierarchy as practical.

4.10.51. KCC further noted two conflicting waste needs assessments in the public domain, that supporting the Council's local plan strategy to support the EPR and another prepared for the Applicant (WHFAA [APP-086]), both of which were before the Inspector independently examining the EPR.

4.10.52. The term Other Recovery is commonly used to cover operations within the recovery class other than recycling or composting. For residual non-hazardous waste Other Recovery normally means thermal treatment with energy recovery i.e. EfW.

4.10.53. KCC noted that the WHFAA [APP-086] sought to justify up to 1.3m tonnes of additional Other Recovery waste capacity and that even with the Proposed Development capacity, there would be a further unmet requirement for capacity of up to 840ktpa, suggesting a need for

additional energy from waste facilities within Kent over and above this proposal, not supported by national or local waste planning policy. The Applicant's assessment of need for further capacity appeared inflated, even allowing for the Applicant's wider approach to fuel availability assessment, since using the EA's Waste Data Interrogator (WDI) 2018 data and the Applicant's methodology, this would result in fuel availability of between 123,500tpa and 420,000tpa. As the proposal was for 490,000tpa tonnes, the analysis of the data shows that there is no justification for the proposal at the proposed scale. (WHFAA [APP-086] and Appendix 1, [AS-010]).

4.10.54. Further, KCC state the Proposed Development would encourage more waste to be managed contrary to the waste hierarchy, which places Other Recovery at one level above landfill, resulting in a longer commitment to Other Recovery, diverting resources from more sustainable solutions such as preparation for re-use and recycling.

4.10.55. In addition, the diversion of waste into the County had the potential to undermine the wider local plan making principles of other WPAs in the South East, part of SEWPAG whose MoU commits the WPAs to regional net self-sufficiency to be achieved and maintained as part of each authority's waste planning strategy.

4.10.56. KCC is also a waste disposal authority (WDA) with a statutory duty to seek provision for dealing with domestic waste disposal arisings in Kent. The WKN Proposed Development offered greater disposal capacity but this was not required by KCC nor did it expect there to be a need for this beyond current arrangements and existing long-term contracts. Kent household waste tonnages were running at 730,000 tonnes per annum, with some 50% being handled and converted to energy through the EfW at Allington, and the Council did not expect capacity demand to change by more than current predictions. Therefore, additional waste capacity is not required, or expected, during the existing contract period.

4.10.57. Written questions were put to the Applicant and other IPs in ExQ1, ExQ1A, ExQ2, ExQ3 and ExQ4 on various matters related to the waste hierarchy and relevant national and local planning policies eliciting points as follows.

4.10.58. Other DCO applications cited by the Applicant (Section 3.6 of this Report) noted that although the SoS had directed those projects were to be treated as development for which development consent is required, s104 does not apply and therefore there is not a designated NPS that has effect in relation to development of those descriptions.

4.10.59. Although not an adopted local plan document the SEWPAG MoU Appendix to [REP3-019]) is in effect a Statement of Common Ground envisaged by Paragraph 27 of the NPPF, dealing with waste management as a cross-boundary matter addressed through cooperation between WPAs in the South East. It recognises that waste crosses administrative boundaries for management and, to ensure its management is adequately provided

for, the principle of net self-sufficiency should be applied when WPAs are planning for its management.

4.10.60. The Applicant's Study Area is analysed by KCC [REP2-044] showing each waste planning area's commitment to net self-sufficiency, including the county of Surrey, not included in the Study Area but in the Applicant's indicative catchment for the facility (ie within two hours travel time). By extending its scope well beyond Kent boundaries to source mixed municipal waste, waste would be drawn in from up to two hours travelling time from the facility, which being located at the northern extremity of Kent would result in processing waste from out of county, contrary to the application of the proximity principle for mixed municipal waste arising from the source authorities.

4.10.61. The Applicant disputes this would be contrary to SEWPAG objectives as it states there is no policy that restricts waste from any one area going to another. It concludes (Appendix 1, [REP2-009]):

"as a regional facility K3/WKN may well draw waste in from beyond Kent and beyond the SEWPAG area. This is a positive strategy, designed to deliver the waste hierarchy within the south east and to provide for the sustainable recovery of residual wastes, enabling their diversion from landfill."

4.10.62. Additional capacity in the area is provided for by an appeal decision granting planning permission for an EfW plant in West Sussex, reducing the potential feedstock supply by c180,000 tpa (27 February 2020 APP/P3800/W/18/3218965, Brookhurst Wood EfW plant [REP5-039]).

4.10.63. SCC in its RR [RR-007] states that it and other authorities in the south east plan for waste on the basis of net self-sufficiency, not that its requirements will be met by facilities in Kent. I asked the Applicant about the implications of this policy for the Applicant's strategy to take in a significant proportion of waste fuel from the south-east region who replied (Appendix 2, Response to ExQ1.1.6 [REP2-009]) that essentially there was no policy requiring all planning authorities to provide all waste management needs within its area, so nothing to prevent facilities such as those proposed to be provided within other administrative areas.

4.10.64. ExQ1A.1.10 [PD-010] queried the WHFAA [APP-086] where it stated at paragraph 1.1.5 that there was no sensible reason to consider the waste hierarchy separately for each of Project K3 and Project WKN. The Applicant [REP3-004] stated both facilities would recover energy from residual wastes, operate at the same level of the waste hierarchy, are subject to similar policies and can be considered together or separately. If just one of the projects were granted consent, the remaining fuel would, it assumed, continue to be managed in the same way. The WHFAA [APP-086] assumes recycling will increase to meet 65% across the Study Area, demonstrating a need for the capacity of both projects to divert the residual wastes from landfill or make domestic use of the RDF. If just one project were granted consent, the fuel that would have otherwise been recovered in the other would remain to be disposed of to landfill or exported as RDF.

4.10.65. KCC responded [REP5-038] that whilst Project K3 would increase the power output of a waste fired power generation unit forming part of a combined heat and power (CHP) plant with a direct technical link to supply heat to the adjacent paper mill, and increase throughput to that plant, Project WKN is a waste fired power generation plant with no direct relationship to the adjacent paper mill. Both may be classed as Other Recovery, subject to confirmation of their R1 status, but there is sufficient difference between the proposals for each to be considered as occupying different places within the tier of Other Recovery. The expansion of input to the Consented K3 Facility merited a higher position being CHP, to WKN, reflecting guidance on applying the waste hierarchy June 2011, as set out in reply to ExQ1.1.1 [REP2-044].

SEWPAG

4.10.66. At D3 in responding to EXQ1A [PD-010] SEWPAG [REP3-019] considered the Applicant had not answered the issues posed at ExQ1.1.4 [REP2-009] namely how the approach in paragraphs 7.1 and 7.2 of the MoU [REP2-043] could be said not to be undermined by the Proposed Development without assessing the local policy on waste management in each (or save for KCC, any) of the local policies on waste management. In the final sentence of paragraph 1.25 the Applicant stated: "An assessment appropriate to understand the impact on waste management strategies across the Study Area has been undertaken." However no reference is provided to this assessment and SEWPAG was not aware of the submission of such an assessment.

4.10.67. At D7 SEWPAG provided figures for comparable additional recovery capacity in the south east (other than in KCC's area) permitted since 2017, relating to some areas not included in the Study Area but within a two-hour travel time:

- Hampshire: 4,300 tpa
- Milton Keynes: MK Waste Recovery Park, Wolverton Application 13/00861/FULEIS approved on 12.07.2013 and operational since March 2018;
- Oxfordshire: Cassington/Worton Farm, Anaerobic Digestion (AD) Kitchen/Green Waste 22,500tpa (now 48,500tpa) Permanent; Wallingford, AD Kitchen / Green Waste 20,000tpa (now 45000tpa) Permanent; and Ardley Energy Recovery Facility EFW incinerator, Residual Waste 26,300tpa (now 326,300tpa) end date 2049;
- Surrey: Charlton Lane EcoPark – 55,000tpa – currently being commissioned; and
- West Sussex: 320,000 tonnes of permitted recovery EfW capacity at Ford (not yet constructed) with an application being considered (WSCC/036/20) which, if permitted, would increase recovery capacity by an additional 135,000 tonnes.

4.10.68. The WHFAA did not seek to specify an exact level of need for the Proposed Development as "*this is not required by policy and would be a level of spurious precision that cannot be achieved, not least as the data (except for local authority collected waste, or 'LACW')*", but uses publicly available data to identify the availability of fuels appropriate for

combustion in the Proposed Development, considering wastes disposed to landfill and exported from the UK.

4.10.69. The WRS refers (fn 112) to the Evidence Annex and the UK Residual Waste: 2030 Market Review Final November 2017 (Tolvik Review) [REP3-012] which (p78 evidence annexe) advises that significant additional residual waste energy recovery capacity "*would not necessarily be needed*" and that the Tolvik Review concluded that there would not be a gap in incineration capacity by 2030. The Applicant points (WHFAA, paragraph 4.2.18 [APP-086]) to uncertainty in forecasting future events, and states the views are consistent with NPS EN-1 in that that energy projects that have gained consent but not yet started construction cannot be relied upon and "*government policy consequently seeks to deliver a minimum level (of 59 GW) of new electricity capacity".*

4.10.70. I note that the focus of Tolvik Review 2017 [REP3-012] is upon the UK market as a whole and detailed modelling of regional differences was beyond the scope of the review. Section 7.3 states that as larger scale EfW plants are developed and regional variations in landfill capacity arise, quality data on the geographical source of waste accepted at locations to which waste is removed is key to analysing the geographical need for all forms of additional waste treatment capacity, including EfW. In general the review highlights the sensitivity of the Residual Waste market to recycling assumptions and that future recycling levels will depend upon a complex range of factors.

4.10.71. The Applicant's responded at D3 [REP3-004] to the ExA's questions ExQ1A [PD-010] supplying Appendix 1.13a – UK Statistics on Waste, 19 March 2020 [REP3-008]. Key findings were:

- UK recycling rate for waste from households (WfH) including incinerator bottom ash (IBA) metal was 45.0% in 2018, decreasing from 45.5% in 2017. There is an EU target for the UK to recycle at least 50% of household waste by 2020;
- The recycling rate for WfH decreased in all UK countries save Northern Ireland in 2018. The recycling rate for England was 44.7%, compared with 47.7% in Northern Ireland, 42.8% in Scotland, and 54.1% in Wales. The reduction for England was driven primarily by a reduction in 'other organics' such as green garden waste sent for recycling, linked to adverse weather conditions for plant growth;
- UK biodegradable municipal waste (BMW) sent to landfill has fallen from approximately 7.4 million tonnes in 2017 (21% of the baseline 1995 value) to around 7.2 million tonnes in 2018 (20% of the baseline 1995 value). The UK was therefore still on track to meet the EU target to restrict BMW landfilled to 35% of the 1995 baseline by 2020;
- Figures for 2017 show that 70.0% of UK packaging waste was either recycled or recovered compared to 71.4% in 2016. This exceeds the EU target to recycle or recover at least 60% of packaging waste;
- Estimated generation of C&I waste in 2016 was 41.1m tonnes, of which 33.1m tonnes (around four fifths) was generated in England. The latest estimates for England only indicate that C&I waste

generation was around 36.1 million tonnes in 2017 and 37.2 million tonnes in 2018; and
- UK generated 221.0 million tonnes of total waste in 2016, with England responsible for 85% of the UK total.

4.10.72. Also, (p12 [REP3-008]), "*energy recovery showed the largest percentage change in tonnage, with the 2016 figure of 7.3 million tonnes being almost four times the 1.9 million tonnes treated in 2014. Larger tonnages of waste are now treated at energy recovery facilities than at incineration without energy recovery, coinciding with policies to divert waste away from landfill. While overall waste to landfill has not shown a corresponding decrease, the underlying Environment Agency (EA) data shows that increases in landfilled waste have largely come from materials such as soil and stone waste. However, local authority managed municipal waste to landfill has declined as more waste is diverted to other treatments higher up the waste hierarchy*".

4.10.73. The WRS at p20 states:

"*we have increased our rates of recovery and recycling and generated much more energy from waste. We want to shift away from waste towards resource efficiency, and will do this by focusing not just on managing waste, but, on managing the resources which become waste".*

Matters outstanding at close of Examination

SoCG with KCC

4.10.74. The Applicant submitted at D8 a completed SoCG with KCC [REP8-013] dealing with several matters as follows.

Local Policy Principles

4.10.75. The Applicant notes a change between the KMWLP and EPR in removing references in Policy CSW7 to specific waste management capacity needs (including that for additional recovery capacity), and the commitment to prepare a Waste Sites Plan identifying the preferred locations for delivery of this infrastructure. Accordingly the EPR remains in support of proposals for recovery of energy from residual waste where they divert waste from landfill; and as part of helping Kent to move its waste management up the waste hierarchy, the EPR does not restrict the movement of waste into or out of the county.

4.10.76. KCC point to a key change between the KMWLP and the EPR to introduce management targets in revised Policy CSW4, for the different waste streams for the Plan period, in preference to set tonnages for identified waste management capacity needs (including that for additional recovery capacity) set out in MWLP policy CSW 7. Removal of the commitment to prepare a Waste Sites Plan identifying the preferred locations for delivery of this infrastructure flows from this. Revised targets are incorporated into EPR Policy CSW4 to aid annual monitoring of the Plan (the Annual Monitoring Report (AMR)) so to identify shortfalls and provide clear guidance to developers and the WPA on the need for proposals for

additional capacity where it involves management through methods that fall below recycling, composting or reuse in the Waste Hierarchy. To avoid overprovision of Other Recovery capacity which may discourage the development of recycling and composting capacity further up the waste hierarchy, MWLP Policies CSW 7 and CSW 8 are to be modified to eliminate the stated waste recovery requirement to be planned for.

4.10.77. The EPR remains in support of proposals for the development of facilities for the recovery of energy from residual waste where they demonstrably divert Kent waste from landfill and/or move Kent waste up the hierarchy, maximise recovery of by-products and residues (in accordance with the Waste Hierarchy), maximise energy recovery including heat and power, and meet an identified need indicated by monitoring against the targets proposed for inclusion in EPR policy CSW 4. It does not restrict the movement of waste into or out of the county provided the overall objective of net self-sufficiency is being achieved. EPR at paragraph 6.3.1 states:

"Proposals that would result in more waste being managed in Kent than is produced may be acceptable if it was demonstrated that these would result in waste produced in Kent being managed at a higher level of the waste hierarchy."

Waste hierarchy

4.10.78. The Applicant states there is a financial imperative for wastes to be recovered via other material recovery facilities rather than be treated at energy recovery facilities or disposed of via landfill. Each party involved in waste management has a duty to implement the waste hierarchy; compliance lies with each holder of waste in the chain; and a mix of facility type and sizes are required to deliver the waste hierarchy, recognised at paragraph 6.5.1 of the KMWLP (adopted and emerging). Consequently, energy recovery facilities are just one element of a network of facilities necessary to ensure the sustainable management of wastes.

4.10.79. KCC emphasises compliance as a legal obligation that should be considered from the top down, rather than the bottom up, asking in effect why waste cannot be reused or recycled, rather than how can it be diverted from landfill. Therefore the burden is on the promoter of a waste incineration facility to demonstrate that use of the proposed feedstock waste as a fuel is preferable to recycling it, or that such use is not technically or economically feasible.

4.10.80. It also notes that given that the latest Waste Needs Assessment (WNA) demonstrates provision of Other Recovery capacity within the county in the form of the Allington EfW plant and the Consented K3 Facility, and that recycling/composting capacity should be sufficient to meet the proposed targets, there is no identified need for new Other Recovery capacity. However, given the need to apply the waste hierarchy in priority order, as stated in p11 [REP8-013], the EPR supports the provision of new capacity for management of waste through recycling or

preparation of waste for reuse or recycling, or for the provision of additional capacity for green and/or kitchen waste treatment.

Energy Production

4.10.81. The Applicant regards NPS EN-1 as directly applicable to Project K3 it being an NSIP due to its proposed generating capacity. EN-1 makes clear the urgent need within the UK for all types of energy infrastructure, which includes generating stations using waste to generate energy. Therefore the ability of Project K3 to generate additional electricity without any change to its design and without any increase in waste throughput is a significant benefit of the K3 proposed scheme

4.10.82. The Applicant accepts Project WKN is not an NSIP by virtue of its generating capacity, but needs development consent due to the s35 Direction. Therefore the Applicant says it is still nationally significant, EN-1 remains a key material consideration in its determination, and within that context the 42MW of electricity which would be generated by WKN is a significant benefit.

4.10.83. KCC accepts NPS EN-1 makes clear the urgent need within the UK for energy infrastructure to speed the transition to a low carbon economy. This includes generating stations that use waste only where the waste cannot be re-used or recycled with less environmental impact and would otherwise go to landfill (paragraph 3.4.3 [REP8-013]). However it also states:

"The energy produced from the biomass fraction of waste is renewable" and therefore that portion of the energy output attributed to non-biomass based waste input cannot be considered renewable. This means such plants may only be considered partially renewable at best. It should be noted that as the composition of waste changes, and biodegradable food waste extracted for separate collection in accordance with Government Plans by 2023, the composition of residual waste can be expected to change with the biomass content potentially reducing further still."

4.10.84. With regard to generating additional electricity without changes to the design of the Consented K3 facility and without any increase in waste throughput, KCC regards this as clarification that such a proposed change is independent to the stated intention to increase throughput. Given that the increase in generating capacity triggered the application as an NSIP, KCC considers that only this aspect of the application ought to be examined against EN-1, such that the increase in throughput ought to be considered in the same way as for Project WKN.

4.10.85. As to Project WKN it is not a NSIP and so KCC considers it ought to be determined against the development plan with EN-1 as a material consideration if appropriate. Seen in that context, the power produced by Project WKN would be a benefit to be considered in the overall planning balance, which would include consideration of harm to KCC's strategy underpinning its WLP.

Relevance of NPSs to WKN Proposed Development

4.10.86. The Applicant states EN-1 and EN-3 are both important and relevant to the SoS's decision since Project WKN is the construction of a generating station and were it to have 8MW more capacity, there would be no question that EN-1 and EN-3 would have effect. Secondly, the function, scale and nature of impacts of the WKN development are similar to that of Project K3, and it has been accepted by the SoS as nationally significant through the s35 direction, and to be treated as development for which development consent is required. Therefore EN-1 and EN-3 and the matters they address remain equally important and relevant considerations in any assessment of the WKN Proposed Development as they do to the K3 project, and that the WKN Proposed Development should be decided as such by the SoS.

4.10.87. KCC maintains that as part of the Proposed Development is not an NSIP, that part ought to be determined in accordance with the relevant development plan, as should the proposed expansion of throughput at the Consented K3 Facility, it being independent of the expansion of its generating capacity and independent of the construction of Project WKN which is essentially a waste incinerator with power generation.

Kent Minerals and Waste Local Plan Policy CSW4 and need and capacity issues

4.10.88. The Applicant asserts that the Proposed Development would deliver KMWLP Policies CSW2 and CSW4 (both as set out in the adopted KMWLP and the EPR) as demonstrated through the WHFAA [APP-086] which shows that, even assuming 65% recycling is achieved (a higher target than that set out in either KMWLP or EPR) there remains a need for the WKN Proposed Development and K3 Proposed Development. Both projects enable more of Kent's waste to move up the hierarchy, out of landfill and into recovery.

4.10.89. KCC states that, considering the targets of modified Policy CSW4 against the most current capacity assessment in the supporting WNA, there is a surplus of capacity already consented as Other Recovery in Kent. Given the quantities of waste produced in Kent identified in the WNA, and the practical limitations on diversion of all waste from landfill by virtue of its unsuitability for use as feedstock, the Other Recovery targets in modified Policy CSW4 have already been exceeded. Any additional waste management capacity developed in Kent that is intended to target waste going to landfill ought therefore to be positioned in the recycling/composting tier (or above) reflecting the application of the hierarchy in priority order, as set out in Policy CSW2.

4.10.90. KCC objected that the Proposed Development as summarised in its closing statement at D8 [REP8-016]:

- is for the wrong type of capacity being incineration that doesn't qualify as Good Quality CHP;
- is in the wrong place, with no guaranteed heat offtake and in a county with more than ample EfW capacity provision;

- is brought forward at the wrong time in light of:
    - the WRS warning that a substantial amount of material is going into residual waste when it should be handled higher up the waste hierarchy;
    - release of the standing Committee of Climate Change's latest advice warning against further development of waste incineration capacity without Carbon Capture and Storage (CCS); and
    - imminent adoption of the EPR.

4.10.91. The Applicant maintained its position that there was a need for both the K3 Proposed Development and WKN Proposed Development that would deliver the waste hierarchy and contribute to self-sufficiency at the national level. Its evidence was that there remained 300,000 to 700,000 tonnes of fuel even after considering the combined capacity proposed for K3/WKN7 (Appendix A to the Applicant's comments [REP3-003] on responses to D2 Submissions).

4.10.92. In particular in the Applicant made comments [REP5-022] on Responses to D4 submissions, with regard to KCC's reply [REP4-015 and Appendices 1 to 7 [REP4-016, REP4-017, REP4-018, REP4-019, REP4-020, REP4-021, REP4-022], to ExQ1A.1.4 [PD-010] as to whether an assessment in accordance with NPS EN-3 is needed of local as well as national waste management targets and what information was available. In essence the Applicant criticised KCC's reliance on the Inspector's Report of the EPR [REP4-016] and that the need for new residual waste management capacity was taken at face value. The Applicant said that the Inspector "*working at the plan making level…did not need to consider the detail in the numbers*".

4.10.93. The Applicant's and KCC's analyses are presented alongside each other, by the Applicant in [REP3-003] at: Document 11.2 - Appendix A - Summary of WHFAR July 2019, BPP Sensitivity and WDI 2018 update. The Applicant notes a discrepancy in applying the correct recycling tonnage to the BPP Sensitivity tonnages such that KCC's analysis results in an excessive deduction but in any event states an additional 24% of wastes to be recycled should be substituted for the 27% calculated at paragraph 3.4.20 WHFAR [APP-086]. However the key divergence between the BPP Sensitivity and the Applicant's review of the 2018 WDI data is in rows a and b, leading to a difference of some 520,000 to 590,000 tonnes.

Conclusion

Introductory matters

4.10.94. Primacy is given to the statutorily adopted development plan in respect of the WKN Proposed Development. This matter is discussed further in Section 6.6 of this Report.

4.10.95. PPG on Waste, October 2015 (see paragraph 4.10.22 of this Report) implicitly recognises as an aim of that policy, to encourage local flexibility to increase recycling "*without resulting in local overcapacity*".

4.10.96. In terms of the core decision-making section of NPS EN-3 (paragraph 2.5.70) it must be clear, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station would be in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England. I am not satisfied that this is the case with reference to the WKN Proposed Development because the increase in capacity which it would bring about would significantly increase the capacity gap already identified by KCC. For such provision to be made at this time for an additional 390,000 tonnes of waste per annum over the 50-year lifetime of the development would present a significant risk to meeting the waste hierarchy objectives set out in KMWLP as revised by the EPR, by pulling Kent waste that might otherwise be recycled down the hierarchy.

4.10.97. The EPR of the KMWLP has been found sound and the supporting Waste Needs Assessment is taken to be robust, and the arisings and forecasts are now reflected in the most recent Authority Monitoring Report released by KCC. Applying an assessment based on these values to the Proposed Development, the ExA is satisfied that the need for the additional capacity proposed to maintain net self-sufficiency in Kent throughout the Plan period while making reduced provision for London's waste, does not exist

4.10.98. The Applicant has not accepted that there is a possible conflict and therefore does not provide evidence as to why this would not be the case or why a deviation from the waste strategy and plans examined would nonetheless appropriate and in accordance with the waste hierarchy. However in reply [REP4-006] to ExQ4.13.1 [PD-015] the Applicant stated that if the view were taken that Proposed Development provides too much waste capacity in conflict with the waste hierarchy as set out in local plan policy, that is not a conflict which would result in either Project K3 or Project WKN being in conflict with the development plan as a whole, any adverse impacts arising from such a conflict would not outweigh the clear benefits of the facilities under NPS EN-1 and NPS-3.

4.10.99. Such a risk is recognised in national policy which refers to the need when determining planning applications for planning authorities to expect applicants to:

"…demonstrate that waste disposal facilities not in line with the Local Plan, will not undermine the objectives of the Local Plan through prejudicing movement up the waste hierarchy." (National Planning Policy for Waste, para 7 bullet 2).

4.10.100. In the context of a non-NSIP proposal such as the WKN Proposed Development where the NPSs do not apply as such, this more recent national policy that sets out detailed waste planning policies is at least as important and relevant to consider than the NPSs.

Relevance of NPSs to Project WKN and the increased throughput proposed in Project K3

4.10.101. In my view the WKN Proposed Development is not subject to NPS EN-1 and EN-3 in the same way as the K3 Proposed Development. Neither NPS directly relates to Project WKN, as it is not a development with generating capacity of 50MW or above. That it is 8MW short of this threshold cannot make the NPSs apply in the same way as they do to those projects that meet or surpass the threshold. The effect of this as far as concerns the WKN Proposed Development must be considered firstly in relation to NPS EN-1 and then NPS EN-3.

4.10.102. Also, since the NPSs, a significant change in circumstances has been the UK's ratification of the Paris Agreement seeking stronger controls on the increase in global average temperature than agreed at the 2010 UN Climate Change Conference, as is the UK Parliament's declaration of an environment and climate emergency in May 2019 and changes to CCA2008 ensuring the UK carbon account for 2050 will be net zero.

4.10.103. NPS EN-1 does not set out any definitional, presumed need for EfW projects as such, which might otherwise override relevant development plan policies but does set out a presumption that there is a significant need for new major energy infrastructure generally which is undisputed.

4.10.104. However NPS EN-3 at paragraph 2.1.2 requires the decision-maker to act on the basis that the need for infrastructure covered by EN-3 has been demonstrated. Clearly this cannot apply to the WKN Proposed Development except in a generalised way. Further, paragraph 2.5.10 would remove from the decision-maker the ability to consider what if any proportion of biodegradable waste to be used, may be classed as "renewable" for the purposes of Renewable Obligation Certificates (ROCs). Although such matters are important and relevant to consider, in my view the prescriptive and presumptive elements of these policies must yield, where circumstances merit, to the matters listed in s105 PA2008, including where important and relevant, other national or local policies.

4.10.105. In this connection I note that at paragraph 2.5.65 of NPS EN-3 national, local and municipal strategies provide policy expectations for waste management at geographical levels and local authorities "will be responsible for providing an informative framework for the amount of waste management capacity sought". This informative function does not in my view preclude consideration of adopted development plan policies pertaining to the acceptability of EfW proposals in light of capacity and related issues.

4.10.106. Turning to the proposed increase in throughput to the Consented K3 Facility, I note that EN-3 at paragraph 2.5.13 states that throughput volumes are not, in themselves, a factor in decision-making as there are no specific throughput limits for different technologies or levels of electricity generation. This is a matter for the Applicant although the adverse impacts of increases in throughput should be considered and balanced against the net benefits of the combustion of waste and biomass.

4.10.107. Therefore, whilst it is true in a sense that expansion of throughput at the Consented K3 Facility would not in itself constitute a trigger for classification as an NSIP, the context of the Application so far as it concerns Project K3, clearly takes account of throughput. Any adverse impacts can be considered without qualifying the application of NPSs, but also taking account of other matters listed in s105 PA2008 such as LIRs, and other important and relevant matters including specific local policies germane to the issues.

Local Policy Principles

4.10.108. The 2018 WNA [REP4-020] recognised that for the K3 Proposed Development it was intended that the majority of the waste would be sourced from within Kent, with the balance from the South East and elsewhere in the UK including London. The EPR Report [REP4-016] at paragraph 18 recognises that part of the strategy for waste management capacity in the KMWLP is to maintain net self-sufficiency so sufficient facilities are provided in Kent to manage the equivalent quantity of waste as is produced in Kent with some provision for a reducing amount of London's waste. This recognises that in reality waste does cross county boundaries in accordance with the operation of the market. However the net self-sufficiency policy ensures that any outward flow of waste is offset by an inward flow so that each WPA manages an equivalent amount to that produced in its area. This is illustrated in KCC's reply to ExQ1A.1.1 [PD-010] whereby waste may travel from Surrey to Kent for management, as it does for EfW yet SCC is still expected to make provision for management of an equivalent waste in its WLP.

4.10.109. The adverse effects are likely to be drawing waste in from much further afield than indicated in the Applicant's WHFAA, the locking in of waste that may otherwise be recycled into several years supply contrary to the waste hierarchy, and the undermining of investment plans for the development of local facilities, by drawing away waste so that a critical mass cannot be guaranteed to justify the business case for building a smaller plant to serve a more local catchment (contrary to the proximity principle).

4.10.110. Q1A.1.7 In response to this question, at paragraph 1.7.1, the Applicant asserts that the "..Proposed Developments are not located in Surrey, and consequently the development plan policy for that administrative area is not relevant to consider further" However, this fails to recognise that by potentially drawing in waste from Surrey or any other WPA area, this could adversely affect the other WPAs own underlying strategy (to maximise recycling), and undermine the viability of more locally based solutions which would accord with the proximity principle (See KCC Response to Q1A.1.7 of the Examining Authority's Further Written Questions [REP4- 015].

4.10.111. Thus the creation of such a significant point of demand would undermine the plans, strategies and markets across the Applicant's Study Area and the South East generally, undermining the net self-sufficiency and proximity principles set out in the development plan.

4.10.112. The strategy for provision of waste facilities in the EPR seeks to meet the area's objectively assessed needs. It is informed by agreements with other authorities and is positively prepared. A key question is, assuming there is surplus capacity, what would be the effects of permitting other recovery facilities to be developed where there is no demonstrable need arising within Kent and after making allowance for the need for other recovery capacity as described in the development plan? And what would be the effect on the wider strategic process adopted by the WPAs of whom, in the Inspector's words it is said:

"there has been active engagement on waste matters through the South East Waste Planning Advisory Group (SEWPAG). This has informed the EPR process through a greater understanding of cross-boundary movements of waste in the south-east" (paragraph 10 [REP4-016])

4.10.113. I find that the whilst the EPR version of the KMWLP would not specifically restrict movement of waste across county areas, it would support proposals for recovery of energy from residual waste where they divert waste from landfill and move waste management in the area up the waste hierarchy by maximising recovery of by-products and residues and maximise energy recovery including by CHP, and meet an identified need indicated by monitoring against the targets proposed for inclusion in EPR policy CSW4. It is an important consideration that the EPR would dispense with the preparation of a Waste Sites Plan. This has been accepted by the EPR Examining Inspector and is a consequence of new management targets in Policy CSW4 for different waste streams for the Plan period, in preference to set tonnages for identified waste management capacity needs. The purpose is clearly to avoid overprovision of Other Recovery capacity that could discourage development of recycling and composting capacity further up the waste hierarchy.

4.10.114. The revised targets are included in Policy CSW4 and AMRs are used to identify shortfalls. Thus clear guidance is given on the need for proposals for additional capacity where it involves management through methods that fall below recycling, composting or reuse in the Waste Hierarchy.

Energy production

4.10.115. NPS EN-1 directly applies to Project K3 due to its proposed generating capacity and makes clear the urgent need within the UK for all types of energy infrastructure, which includes EfW generating stations. The ability of Project K3 to generate additional electricity without change to its design or increase in waste throughput would be a significant benefit of the K3 proposed scheme.

4.10.116. Further, the generation of 42MW of electricity which the WKN Proposed Development would bring about, would be a significant benefit in itself having regard to the emphasis placed on the need for all types of energy infrastructure by NSP EN-1. That said, NPS EN-1 also highlights the urgent need to speed the transition to a low carbon economy and that (paragraph 3.4.3) only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be

used for energy recovery. It is not disputed that the portion of energy output attributed to non-biomass based waste input in either Project K3 or Project WKN cannot be considered renewable and therefore the plants would be partially renewable at best.

4.10.117. Clearly with the greater emphasis placed on changing the composition of waste for separate collection in accordance with policies that post-date the NPSs, the biomass content potentially reduces further. Particularly important in my view are the aims of the WRS to commit to ensure future EfW plants achieve 'R1' recovery status and to eliminate biodegradable waste to landfill. Residual waste is the mixed material typically incinerated for energy recovery but is inefficient as materials that hold value are being lost, and it is an expensive way to treat waste.

4.10.118. Assuming both projects in the Proposed Development achieve R1 status they would be classed as a recovery operation in the waste hierarchy and so be one level up from the bottom rung of 'disposal'. If not they would not be permitted as contrary to KMWLP Policy CSW 8 (and EPR) which requires that facilities using waste as fuel will only be permitted if they qualify as recovery operations defined by rWFD.

4.10.119. The Applicant in reply to ExQ4.1.3 [PD-015] said that R1 accreditation could not be gained at this time. As is clear from the Government's guidance on applications for R1 status, an application can be made based on design data, and before the plant is commissioned including before planning approval is sought or an Environmental Permit (EP) is applied for. I asked (Q1A.1.42 [PD-010]) whether the K3 and WKN projects, would meet this energy recovery performance threshold (R1). KCC noted the EA listing of qualified plants showed that the Consented K3 Facility currently undergoing commissioning trials was not included. The Applicant stated it has not operated long enough and, as a CHP plant delivering steam to the DS Smith facility, it would achieve R1 status. The response to ExQ4 [PD-015] Appendix A - K3 CHP R1 Supporting Information April 2019 [REP7-017] was based on assumptions on its design and performance used for the purposes of the R1 calculation which indicated energy recovery efficiency value was over 0.65.

4.10.120. Generally the power produced by both projects would be a benefit to be considered in the overall planning balance.

4.10.121. However in the case of the WKN Proposed Development, the electricity generation is allied to the sourcing of some 390,000 tpa of waste fuel which is a significant amount in itself, the composition of which should be scrutinised to see whether overall the proposed generation is justified by reference to such matters as the biogenic to fossil carbon ratio and its energy content, the confidence that can be placed on the assumed biogenic content, comparisons with other methods of electricity generation, and whether avoided emissions from landfill would actually materialise. Within that process, consideration of harm to KCC's strategy that underpins its WLP is not excluded.

KMWLP Policy CSW4 and need and local capacity issues

4.10.122. I am not persuaded that even assuming 65% recycling is achieved (which is acknowledged to be a higher target than is set out in the KMWLP or EPR) there remains a need for the Proposed Developments in particular Project WKN. The WHFAA [APP-086] sets out in Table ES2 Summary of Fuel Availability Assessment and sensitivities, a projected surplus in the remaining fuel available in the Study Area compared to future capacity likely to be delivered, including taking account of both projects within the Proposed Development.

4.10.123. There is an obvious difference between the lower and upper estimates. This is predominantly due to the substitution of shortlisted waste types disposed to landfill rather than all Household/Industrial/Commercial (HIC) waste disposed to landfill. Clearly in my view the use of the former category is more appropriate since, as is clarified in the WHFAA, the HIC category in the WDI contains certain waste types that would be inappropriate for combustion in the Proposed Development, the use of which would result in an over-estimation of available fuel. Thus, under the WHFAA one arrives at a remaining level of fuel availability to the tune of 992,540 tpa, which would be taken up by the Proposed Development leaving a shortfall in capacity of facilities equivalent to processing the remaining figure of 495,540 tpa.

4.10.124. However KCC's alternative calculation, based on the same methodology, including an allowance of 27% recycling to achieve the CEP 2035 target, and using the EA's WDI 2018 data as set out in [AS-010] would result in fuel availability of between 420,000tpa and 123,500tpa, which latter figure takes account of shortlisted waste types disposed to landfill within Study Area. Applying the proposed capacity of both projects within the Proposed Development, one arrives at negative figures whether shortlisted waste types or HIC waste disposed of to landfill are applied, indicating a surplus capacity of facilities in the Study Area. I find it significant that KCC's waste needs assessment has underpinned the EPR under which the development of increased waste recovery capacity follows a sustainable pattern of waste management to achieve overall net self-sufficiency, an approach found to be sound in the Examination of the EPR [REP4-016].

4.10.125. Moreover when account is taken of KCC's Appendix 4 KMWLP EPR Sensitivity on Recovery Requirement 08 10 2019 v5 [REP4-019] it is clear that KCC's strategic approach would withstand substantially lesser achievement in recycling without compromising the net self-sufficient management capacity for the equivalent tonnage of Kent residual waste. This is primarily attributable to the Other Recovery capacity operating in Kent in the form of Allington EfW (500ktpa) and (during 2020) at the Consented K3 Facility (525ktpa). I also note that (WHFAA [APP-086] Table 4), in the South East region 60 per cent of all local authorities increased their household recycling rate, which is significantly more than all other regions save for the south west.

4.10.126. Turning to the Applicant's criticism of the Inspector's EPR Report [REP4-016] there is no reason to suppose that the Inspector did not properly examine the evidence on the capacity requirement for non-hazardous

waste. The Applicant made several representations against the proposed changes in the EPR based on the evidence and appeared at the examination hearings to convey these objections to the Inspector. I asked for these representations which were supplied in full [REP5-040]. They clearly show that the Applicant was critical of the evidence base underpinning the EPR, however the Applicant accepted (p2 [REP5-040], that its own representations were:

"not submitted as in-depth need assessments for waste management in Kent; this is a task for KCC in preparing its development plan policy."

4.10.127. The Inspector's reference to Table 9 is to the table that can be found on p17 the WNA 2018 Residual NHW Management Needs Sept 2018 Update v1.4 [REP4-020]. If it were assumed that the projected management requirements for London Residual Waste Imports (Table 8) were also to be managed at EfW facilities rather than disposed of to landfill, then it could still be accommodated at consented EfW capacity, as illustrated in Table 10 [REP4-020]. The report states at paragraph 21:

"21. The CRRNH considers the capacities of existing consented facilities and the extent to which they would satisfy identified need. A permitted facility at Barge Way has not been built. Irrespective of whether there is any uncertainty as to whether that facility will be provided, the strategy for waste management capacity does not depend on its provision."

4.10.128. Paragraph 23 of the Inspector's Report [REP4-016] accepts that the "CRRNH" (Capacity Requirement for the Management of Residual Non-Hazardous Waste) shows that there is no gap in capacity for other recovery treatment of residual non-hazardous waste throughout the Plan period and demonstrates that the "Kemsley facility" (ie the Consented K3 Facility") together with the existing Allington facility will provide a surplus of other recovery capacity. Paragraph 23 ends:

4.10.129. *"Policies CSW6 and CSW7 provide flexibility in that they are permissive policies that would allow for other recovery facilities to be developed should they be required".* (My emphasis).

4.10.130. I also note that the BPP report, Waste Topic Report 8 concluded the following on the need for Energy from Waste (EfW) capacity: "…sufficient sites should be identified such that new capacity in EfW could be provided for an additional 562,000 tpa. However, only 437,500 tpa new EfW capacity should be permitted until monitoring indicates that the provision of only this amount of EfW capacity would result in non-hazardous landfill capacity in Kent being used up before the end of the plan period. This will need one site to be identified in Kent that would not need to be developed until the long term, if at all." This conclusion underpins Policies CSW 7 and CSW 8 of KWMLP.

4.10.131. KCC's analysis and data are also more focussed on the particular geographical source of waste accepted at locations to which waste is removed, as well as a more localised approach to investigating capacity, which in my view is important to analysing the geographical need for EfW

additional waste treatment capacity. It was found to sound by the EPR Inspector.

4.10.132. On balance I prefer KCC's assessment in KCC WNA 2018, Capacity Requirement for the Management of Residual Non Hazardous Waste [REP4-020] of fuel availability and future capacity likely to be delivered, to that of the Applicant. This does not imply that in general future treatment capacity would no longer be necessary, however in the case of the WKN Proposed Development to grant consent for an additional 390,000 tpa throughput would in my judgement seriously undermine the local and regional strategy for managing waste development in Kent and the south east region. This would be contrary to KMWLP Policies CSW2, CSW4, CSW6, CSW7 and CSW8.

4.10.133. By sourcing mixed municipal waste well beyond Kent boundaries and up to two hours travelling time from the facility, would also be contrary to the proximity principle and SEWPAG objective for mixed municipal waste arising from the source authorities.

Waste hierarchy

4.10.134. The Applicant has made it clear throughout the Examination that its view is that the waste hierarchy is delivered both through good intentions and market forces. In my view this approach fails sufficiently to recognise that compliance with the waste hierarchy is a legal obligation under the rWFD, as well as set out in NPS EN-3, notably in paragraph 2.5.66 (Section 4.10.4 of this Report) requiring an assessment of conformity of the scheme with the hierarchy and its effect on relevant waste plan or plans. Compliance is also a requirement of local policy and addressed in KMWLP Policies, including in Policy CSW2, unchanged in the EPR, requiring the proposal to demonstrate how it will help drive waste to ascend the Waste Hierarchy whenever possible.

4.10.135. As with other parties involved in waste management the Applicant has a duty to implement the waste hierarchy. The Proposed Development would be two projects among a mix of facility type and sizes required to deliver the waste hierarchy, as recognised in the KMWLP, and energy recovery facilities are among a network of other facilities that ensure sustainable management of wastes.

4.10.136. The Applicant's Response to Submissions at D7 [REP8-015] at paragraph 3.3.1 et seq, makes a case that KCC's assertion that "most" waste going to landfill by definition is not suitable for use as a feedstock in the proposed plants, is untenable. However there are several uncertainties in coming to any firm conclusion as to the exact proportion of waste that might be diverted from landfill. In the first place clearly there are some waste types unsuitable for combustion, this is amply demonstrated by the Applicant's WHFAA [APP-086]. Then there are uncertainties over what future proportion of waste arising could be expected to be recycled. And the future status of either the K3 Proposed Development or WKN Proposed Development is not guaranteed. There is no reliable information about the particular composition of feedstock used in the Consented K3 Facility in terms of post-recycled solid recovered fuel

waste, commercial and industrial waste and pre-treated municipal solid waste. The Applicant is unwilling to carry over into a DCO from the K3 Planning Permission as varied, a requirement for a minimum amount of annual waste throughput to be pre-treated.

4.10.137. With uncertainties come risks which in this case are twofold, namely the risk of underestimating the future capacity requirements to treat waste arisings necessary and desirable to be treated by EfW facilities, and the risk that by over providing facilities a more sustainable management of waste would be prejudiced for many years to come. The waste hierarchy has to be applied from the top down. The evidence does not lead me to conclude that there is a capacity gap clearly sufficient to justify assuming the risk of prejudicing a successful outcome to the implementation of the key development plan policies. Therefore the Proposed Development would be in conflict with KMWLP Policy CSW6 which requires it to be: "demonstrated that waste will be dealt with further up the hierarchy… and where such uses are compatible with the development plan" and Policy CSW7 "provided that: 1. it moves up the Waste Hierarchy".

4.10.138. Given that the latest WNA demonstrates provision of Other Recovery capacity within the county in the form of Allington EfW and the Kemsley Consented K3 Facility and recycling/composting capacity should be sufficient to meet the proposed targets, there is no identified need for new capacity. However, given the need to apply the waste hierarchy in priority order, as stated in paragraph 3.3.7, the EPR is supportive in principle of the provision of new capacity for management of waste through recycling or preparation of waste for reuse or recycling, or for the provision of additional capacity for green and/or kitchen waste treatment.

Overall conclusion as to waste hierarchy related matters: K3

4.10.139. The evidence underpinning KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be contrary to the Waste Needs Assessment produced by KCC to support the EPR which has now been found sound by the examining Inspector. This evidence base found no need exists in Kent for additional capacity for the Plan period.

4.10.140. However, although the Applicant's position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance. Therefore whilst the benefits of co-location of both facilities

to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.

4.10.141. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.

Overall conclusion as to waste hierarchy related matters: WKN

4.10.142. The generation of 42MW electricity would be a significant benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.

4.10.143. However the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP. Therefore in this respect I find the WKN Proposed Development inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed "in the places where it is acceptable in planning terms (paragraph 2.2.4)."

4.10.144. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste.

4.11. AIR QUALITY

Policy Considerations

4.11.1. NPS EN-1 at paragraph 5.2.1, states that infrastructure development can have adverse effects on air quality. The construction, operation and decommissioning phases can involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside. Air emissions include particulate matter (for example dust) up to a diameter of ten microns (PM10) as well as gases such as sulphur dioxide, carbon monoxide and nitrogen oxides (NOx). Levels for pollutants in ambient air are set out in the Air Quality Strategy which in

turn embodies EU legal requirements. The SoS for the Environment Food and Rural Affairs is required to make available up to date information on air quality to any relevant interested party.

4.11.2. NPS EN-1 notes that emissions from combustion plants are generally released through exhaust stacks. Therefore the design of stacks, particularly height, is the primary driver in achieving optimal dispersion of emissions. It is assumed that the relevant pollution controls will be applied for and enforced and the NPS does not seek to duplicate those regimes in the decision making process.

4.11.3. Paragraph 5.2.10 of NPS EN-1 advises that account must be taken of any relevant statutory air quality limits. Air quality considerations are to be given substantial weight where a project would lead to a deterioration in air quality in an area, new breaches of national air quality limits or substantial changes in air quality levels even where no breaches occur.

4.11.4. NPS EN-3 provides details on the potential impacts that are specific to energy from waste generating stations, including air quality and emissions.

4.11.5. NPS EN-3 states that CO2 will be assessed against the requirements of NPS EN-1. Compliance with the Waste Incineration Directive (WID) (subsequently replaced by the Industrial Emissions Directive) and the Large Combustion Plant Directive (LCPD) is controlled through the environmental permitting regime by the EA. Paragraph 2.5.43 states that where a waste combustion facility meets the requirements of the WID and will not exceed local air quality standards the SoS should not regard the proposed waste generating station as having adverse impacts on health.

4.11.6. Paragraph 181 of NPPF states that planning decisions should sustain and contribute to compliance with relevant limit values or national objectives for pollutants and the cumulative impacts from individual sites in local areas.

4.11.7. Policy ST1 of the Swale Local Plan seeks to achieve sustainable development, addressing the challenge of climate change through a range of measures including the management of emissions and efficient use of natural resources.

The Applicant's Case

4.11.8. Chapter 5 of the ES [REP2-020] provides a detailed assessment of the anticipated air quality impacts arising from the Proposed Development.

The 'practical effect' of the K3 Proposed Development

4.11.9. The 'practical effect' of the K3 Proposed Development would simply be K3, as constructed under its existing permission, being capable of generating an additional 25.1MW and processing an additional 107,000 tonnes of waste per annum. Granting development consent would not result in any additional external physical changes to K3 as consented and

the layout and appearance of the facility would remain as per its consented design.

WKN Proposed Development – Construction

4.11.10. The potential emissions of construction traffic in relation to the annual-mean NO2, PM10 and PM2.5 concentrations are assessed with the conclusion that the impacts from construction traffic were negligible and the impacts arising from dust emissions being low. A Construction Environmental Management Plan (CEMP) would contain best practices, including guidance provided by Institute of Air Quality Management (IAQM), to be followed and a Dust Mitigation Plan would be produced as part thereof. Whilst the impacts of dust emissions are low without mitigation, a number of mitigation measures would be included in the CEMP to ensure impacts remain low.

WKN Proposed Development – Operation

4.11.11. The WKN Proposed Development would operate in accordance with the Industrial Emissions Directive (IED) which sets limits for a range of pollutants. A Stack Height Determination (SHD) assessment [REP2-030] was undertaken as part of the ES to determine the minimum height of the stack which balances the need to achieve acceptable environmental performance against the costs and benefits of implementing it. It confirmed that a 90m stack would be required to ensure pollutant concentrations would be adequately dispersed before reaching ground level. Consequently air quality impacts as a result of the WKN Proposed Development would not be significant.

4.11.12. Dispersion modelling assumes that the higher the stack the less impact there is on air quality but the stack height is considered against the cost of building a taller stack and other environmental issues such as landscape and visual impact. Detailed design stage and appointment of an engineering, procurement and construction (EPC) contractor has not been reached. To enable flexibility in the DCO, a 9m buffer has been settled upon of between 90m and 99m. The ES assessments are based on a stack height of 90m and thus any changes in stack height would mean reassessing the environmental issues that it affects such as air quality and landscape and visual impact.

4.11.13. The exhaust emissions would be monitored by a Continuous Emissions Monitoring System (CEMS) strictly controlled and regulated by the EA under an Environmental Permit. An Operations and Management Team would ensure both facilities adhere to the regulations and would establish a planned preventative maintenance programme.

4.11.14. Operational traffic has been assessed as having a negligible impact.

4.11.15. Dust generating activities would include the delivery, sorting and handling of waste. Waste is deposited into the tipping hall where it is sorted, stored and handled within the building. The accepted best practice approach for the primary control of dust releases is containment within the building. Any potential dust would be drawn into the

combustion process along with the air in the building. Dust levels in the building would be in accordance with health and safety regulations.

4.11.16. The nearest high sensitivity receptor comprises residential properties on Swale Way, 770m to the south west of the site and upwind, therefore the risk of dust impacts is considered low.

4.11.17. R9 of the Preferred dDCO [REP7-003] would ensure details of the K3 Planning Permission are carried over into the dDCO and apply as approved. For the WKN Proposed Development R14 would secure the parameters of the stack between 90m and 99m until the final design is submitted for approval. R21 and R24 would require respectively the submission of a CEMP and a Construction Management Plan (CTMP).

Examination

4.11.18. Written questions were put to the Applicant and other IPs at ExQ1.3.1 to 1.3.24; and ExQ2.3.1 to 2.3.2. Key areas examined in this way were:

- agreement as to no sensitive ecological receptors within 50m of the Application Site boundary or the site traffic routes;
- the potential for air quality effects on the Swale Marine Conservation Zone (MCZ) arising from the WKN Proposed Development;
- use of the UK Air Pollution Information System (APIS) and potential increases in concentrations resulting from other plans or projects that have become operational since the last APIS update;
- implications of assessment findings in relation to the tern population in the Medway Estuary & Marshes Special Protection Area (SPA);
- categories of effect considered to constitute a significant effect for all construction dust and traffic-related emissions;
- agreement as to interpretation of modelling results rendering effects as not significant for:
    - arsenic concentration Environmental Assessment Level (EAL) predicted to be exceeded in respect of the K3 Proposed Development, the K3 Practical Effect and WKN;
    - nickel concentration EAL predicted to be exceeded due to the K3 Practical Effect; and
    - IED short-term emission limit values (ELVs) in respect of stack emissions from WKN during operation, Table 5.38 [APP-057] indicating that the 15-minute averaging period SO2 PC would equate to 10% of the relevant EAL which would be considered to represent a significant effect unless the 15-minute mean SO2 is added to the 'future AC' of 56.5 µg.m-3, then the PEC would be 82.3µg.m-3, which is below the relevant EAL of 266 µg.m-3;
- methodology applied to determine the level of pollutants emitted during operation;
- why impacts associated with wet acid deposition are not assessed in Appendix 5.4 [APP-028];
- need for further assessment given NOx concentrations at the Medway Estuary and Marshes SPA and Ramsar site, the K3 and WKN PC

equate to 1% of the Critical Level (CL) and the PEC equates to 83% of the CL (Table 5.4.1 [APP-028]);

- the extent of any change in location of the maximum impact of the plume due to parameters set for the location of buildings and stack (that could vary by 5m);
- reconciliation of differences in the number of developments considered in the cumulative air quality and traffic assessments; and
- the need to provide a draft Dust Management Plan for consultation with IPs as part of the stated air quality mitigatory measures.

4.11.19. In its SoCG with the Applicant completed and submitted at D7 [REP7-014] Natural England (NE) agreed that the principal potential pathways for effects resulting from the K3 and WKN Proposed Developments are air quality from the stacks and vehicles, noise, water quality, recreation, visual disturbance and light spill during the construction, operational and decommissioning phases of the developments.

4.11.20. The SoCG [REP7-014] also agreed no likely significant effects from the construction of the K3 facility given its advanced stage of construction and that it was subject to its own assessment as part of the 2010 ES and consented with conditions, including an Ecological Mitigation and Management Plan (EMMP) and Construction Method Statement to protect adjacent habitats. It is agreed that "all relevant conditions of the extant planning permission have been discharged and complied with".

4.11.21. Subject to best practice construction methods to minimise dust, secured through R22 Preferred DCO, and in light of air quality modelling with regard to traffic emissions, NE further agreed the WKN Proposed Development would be unlikely to cause an adverse effect on the integrity of the Swale designations during construction.

4.11.22. As to the operation of K3 and WKN Proposed Developments, the issues raised by NE in their RR have been addressed as noted in the SoCG with the Applicant [REP7-014].

4.11.23. It is stated in para 4.4.1 of the SoCG with KCC [REP8-013] that KCC considered the Proposed Development might have a significant impact on users of the Saxon Shore Way Public Right of Way (PRoW) due to deteriorating air quality.

4.11.24. Further, the draft SoCG between the Applicant and SBC [REP5-006] was not completed by the end of the Examination. SBC highlighted its concern with the potential for operational traffic to pass through surrounding AQMAs, as set out in paragraph 3.1.6 [REP5-006]. In particular SBC was concerned as to the effect on AQMAs on the A2, fearing a worsening of air quality conditions in these areas which included the Newington, East Street, and Ospringe AQMA's, and a new AQMA currently under consideration at Keycol Hill, to the west of the junction with the A249 (Key Street).

4.11.25. However there was no evidence put forward that the WKN Proposed Development or the K3 Proposed Development would result in exceedances in local Air Quality Objectives in accordance with the Air

Quality Standards (England) Regulations 2010 alone or in-combination with other relevant proposed development. NPS EN-3 (paragraph 2.5.43) states that where a proposed waste combustion generating station would meet the requirements of WID and would not exceed the local air quality standards, the proposed waste generating station should not be regarded as having adverse impacts on health.

Conclusion

4.11.26. I am satisfied that, in terms of air quality, there would be no significant effects caused by the construction or decommissioning of the Proposed Development and a CEMP, secured through R22 of the Preferred DCO, would provide appropriate mitigation for the WKN Proposed Development to manage the dust impacts during construction. CO2 emissions are dealt with separately in Section 4.14 of this Report.

4.11.27. Emissions from the Proposed Development would be controlled by the EP regime, and would not be expected to exceed objectives or standards even when based on the worst-case assumptions within the assessment model. I am satisfied with the Applicant's determination of and reasoning for the height of the stack as set out in ES Appendix 5.2, Stack Height Determination [REP2-030].

4.11.28. Therefore ES Chapter 5 [REP2-020] and its Appendices [APP-025, REP2-030, APP-027, REP2-032, APP-029, APP-030] have robustly assessed the air quality as a result of the K3 and WKN Proposed Developments and appropriately concluded there would be no significant impacts arising. The IAQM guidance would be followed with regard to dust management and the dispersion modelling for the stack emissions of both K3 and WKN Proposed Developments demonstrate that the predicted contributions and environmental contributions of all pollutants would be negligible.

4.11.29. The ES assessed the impacts of the K3 and WKN Proposed Developments cumulatively with other developments both together and alone, concluded there would be no significant effects on air quality. Therefore, both the K3 and WKN Proposed Developments accord with both national and local policies with regard to air quality.

4.12. ARCHAEOLOGY AND CULTURAL HERITAGE

Policy Considerations

4.12.1. Paragraph 5.8.2 of NPS EN-1 describes the historic environment as including all aspects of the environment resulting from the interaction between people and places through time. It recognises that heritage assets are those elements of the historic environment that hold value through their historic, archaeological, architectural or artistic interest which may be any building, monument, site, place, area or landscape. The sum of an asset's heritage interest is referred to as its significance.

4.12.2. Paragraphs 5.8.8 to 5.8.10 require the applicant to assess the significance of the heritage assets affected by the proposed development.

The applicant should also ensure that the extent of the impact can be adequately understood from the application and supporting documents.

4.12.3. The NPS sets out a presumption in favour of conservation of designated heritage assets commensurate with the level of their significance. As set out in paragraph 5.8.18, where a proposed development may affect the setting of a heritage asset applications which preserve those elements of the setting that make a positive contribution to the significance of the asset, should be treated favourably.

4.12.4. Where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest NPS EN-1 states that the applicant should carry out appropriate desk-based assessments and if necessary, a field evaluation. Consideration should also be given to requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

4.12.5. The NPPF describes the setting of a heritage asset as the surroundings in which a heritage asset is experienced. A core planning principle in the NPPF is to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (paragraph 184). When considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater should be that weight (paragraph 193). Any harm or loss of designated heritage assets requires clear and convincing justification (paragraph 194). An application should demonstrate all less harmful alternatives have been considered. If a proposal cannot be amended to avoid all harm, and the harm is less than substantial, this can be weighed against the public benefits of the proposal (paragraph 196).

4.12.6. Policies ST1, CP7, CP8 and DM14 of the Swale Local Plan seek to conserve and enhance the historic environment, whilst Policy DM34 seeks to prevent development which would adversely affect a Scheduled Monument and / or its setting.

The Applicant's case

4.12.7. Chapter 13 of the ES [APP-065] examines the effect of the Proposed Development on archaeology and cultural heritage. The assessment methodology identifies the study area and the effect on such heritage assets from the construction, operation and decommissioning of the Proposed Development.

4.12.8. The ES states that there are no designated heritage assets within the Application Site itself. The assessment, for the purpose of buried archaeology, focused on a study area of 1km around the Proposed Development Site and for the purpose of the setting of heritage assets a study area of 3km from the Site.

4.12.9. The ES identified no listed buildings or conservation areas within 1km of the Site and 15 listed buildings located between 1km and 2km of the DCO boundary, of these, 13 are listed at Grade II and two, the Church of the Holy Trinity and the Church of all Saints are listed at Grade I. Milton Regis High Street conservation area is located some 2.3 km south west of the DCO boundary.

4.12.10. There is one Scheduled Monument (SM) located within 1km of the DCO boundary, this is the Castle Rough medieval moated site, and one SM (Murston Old Church) between 1km and 2km of the DCO boundary.

4.12.11. The Site lies within a landscape which generally has a high potential to contain archaeological remains although the potential is low for the survival of significant coherent archaeological remains. The ES states that any buried remains are at most likely to be of low significance and the impact magnitude on any surviving remains is assessed as being high. As a result, the effect of the Proposed Development on buried remains would be minor adverse and not significant.

4.12.12. Castle Rough is some 500m south west of the DCO boundary and assessed as being of highest significance. It derives its significance from the rectangular earthwork island surrounded on four sides by a moat, and buried remains of the SM. There would be no physical impact on the SM from the Proposed Development and any impact would be on the setting.

4.12.13. Castle Rough is low lying and not readily visible from any distance away, although trees growing on it are seen, notably from the south-west against the background of the K3 built development and Paper Mill complex. The ES notes perception of the operational noise from the WKN Proposed Development is unlikely significantly to change existing ambient noise levels from Kemsley Paper Mill at the SM. Any additional lighting would be experienced in the context of an industrial site with external lighting.

4.12.14. Therefore, given the location and scale of the existing paper mill buildings, the impact magnitude on the SM is assessed as negligible. The significance of effect of the WKN Proposed Development on the SM would be minor adverse in the long term.

4.12.15. Of the two other SMs within 3km of the DCO boundary, High Street Old Church is some 1.6 km south of the DCO boundary and a WW2 anti-aircraft gun site (Thames South 2) is 3km north-west of the DCO boundary. The significance of effect of the WKN Proposed Development and Works No. 3 - 7 on the SM would be no change. In both cases, the impact magnitude is assessed as being no change and significance of effect of the WKN Proposed Development and Works No. 3 – 7 would be no change (paragraphs 13.8.17 and 13.8.46 [APP-065].

4.12.16. In terms of the effects of the Proposed Development on listed buildings the ES indicates that no listed buildings within 3km of the Site would experience any greater than a minor adverse impact. Similarly, the ES

assesses the impact magnitude of the Proposed Development on Milton Regis High Street conservation area as negligible with the effect being minor adverse resulting in an effect that is not significant (paragraph 13.8.62 [APP-065]).

4.12.17. The ES [APP-065] states that the location, nature and design of the Proposed Development would help to mitigate any effects on the setting of designated heritage assets and accordingly no specific mitigation measures are required. In respect of the archaeological resource of the Site being unknown although unlikely to be significant, a programme of archaeological fieldwork to investigate and record any surviving archaeological remains is proposed by way of mitigation for construction effects. The ES envisages that there would be no significant adverse effects as a result of the Proposed Development following the implementation of the mitigation measures proposed.

4.12.18. The ES also assessed seriatim, the cumulative effects of the K3 Proposed Development, the WKN Proposed Development and both projects considered together with other relevant developments, concluding that whilst there may be some cumulative impacts on heritage assets as a result of the interaction of the proposed developments with other development schemes, these are not considered to be significant (paragraph 13.12.6 [APP-065]).

Examination

4.12.19. No significant matters of concern were raised by IPs in RRs and WRs in respect to archaeology and cultural heritage matters.

4.12.20. Through initial Written Questions (ExQ1) [PD-008] clarification was sought about Requirement 20 of the dDCO and whether the definition of "permitted preliminary works" (apart from the archaeologically related works described therein) which can be undertaken in advance of commencement of the authorised development, is compatible with the approval of the Written Statement of Investigation (WSI) which under Requirement 20 may be later in time.

4.12.21. In reply [REP2-009] the Applicant stated that largescale ground disturbance associated with permitted preliminary works would be contained substantially within modern made ground of no archaeological interest. The permitted preliminary works therefore had minimal potential to affect hitherto unrecorded archaeology. Nevertheless, an overarching WSI would be agreed with KCC before any permitted preliminary works took place, allowing archaeological fieldwork to be integrated with other preliminary works and for the potential effects of such work to be offset as far as reasonably practicable, in line with the mitigation proposed in ES Chapter 13 [APP-065].

4.12.22. In its RR [RR-005] Historic England (HistE) noted that the development was likely to be visible across a large area and could, as result, affect the significance of heritage assets at some distance. It previously identified that insufficient information had been submitted to assess the impacts of

the development on heritage assets, and with its particular remit of advising on designated heritage assets, it advised that further assessment of significance and impact would be required. Having reviewed the supporting information provided with the application HistE stated that ES chapters 12 (Landscape and Visual) and 13 (Archaeology and Cultural Heritage) [APP-064,APP-065], provide an appropriate assessment of the significance of designated heritage assets within the study areas with supporting baseline information and descriptions; and that an appraisal of the Proposed Development on the setting of heritage assets has been undertaken in accordance with HistE's guidelines on setting (GPA3 - The setting of heritage assets 2nd edition 2017).

4.12.23. The ES indicates that some impacts to designated heritage assets will occur, and although the new development would be visible from a number of designated heritage assets, HistE agreed with the ES that the impact would constitute a low level of harm to their intrinsic heritage significance. There would be some harm to designated heritage assets from construction of the Proposed Development through development within their setting, this impact would be of a low level and might therefore be found to be outweighed by the public benefit of the development scheme.

4.12.24. In their RR [AS-010] KCC confirmed its agreement with the proposal in paragraph 13.9.2 of Chapter 12 ES [APP-064] that archaeological mitigation could be addressed through a programme of archaeological work secured by an appropriate requirement in the DCO. KCC suggested that a Written Scheme of Investigation should be agreed with the KCC archaeological team.

4.12.25. A Requirement relating to archaeology was included in the submission version of the dDCO [APP-005]. The ExMemo [REP2-004] explained that the Requirement provided for a WSI to be submitted to and approved by the Relevant Planning Authority (RPA) prior to commencement of any part of the authorised development.

ExA Conclusion

4.12.26. This section has had regard to the likely significant effects resulting from the Proposed Development on heritage assets including buried archaeological sites, historic buildings and areas, and historic landscapes. It has considered the effects in terms of the potential for direct physical disturbance and indirect effects on settings in terms of the overall effect and the significance of the predicted effects.

4.12.27. Matters raised in HistE's comments prior to the submission of the application and by KCC in their RR and WR, as well as HistE's RRs, have been investigated.

4.12.28. The consent sought in respect of Project K3 would not result in any external changes to the facility currently permitted and I am satisfied that the 2010 ES which concluded that no significant effects would result from the completed K3 Proposed Development, remains valid. The

locality in which the Site lies has recognised potential to contain archaeological remains, although the specific characteristics of the Site suggest that potential for significant archaeological remains is unlikely. However, and in light of the submissions made by Highways England (HE) and KCC, it is appropriate to make provision for a suitable programme of archaeological works to take place to ensure that potentially significant adverse effects would be comprehensively mitigated. This would be effectively secured through R20 of the Applicant's Preferred DCO [REP7-003] as it relates to the WKN Proposed Development.

4.12.29. There would be no significant archaeological or cultural heritage related effects from the construction, operation or decommissioning of the Proposed Development either physically or on the setting of any SM, listed building or other designated heritage asset in the surrounding area. Consequently, there would be no harm to the significance of heritage assets. Similarly, there would be no significant cumulative archaeological or cultural heritage effects as a result of the Proposed Development.

4.12.30. On the basis of the evidence and the proposed mitigation as secured via the Preferred DCO [REP7-003], all impacts have been addressed in a manner that complies with the Historic Environment elements of NPS EN-1 and the development plan.

4.13. ECOLOGY

Introduction

4.13.1. This section considers the effect of the Proposed Development on biodiversity, ecology and the natural environment.

4.13.2. The effects on European sites in the context of the Habitats Regulations are considered in Chapter 5 of this Report. This section examines other potential biodiversity effects of the Proposed Development and the effects on European sites insofar as they relate to the EIA, including the effects of lighting on ecology.

Policy Considerations

4.13.3. NPS EN-1 sets out in paragraph 5.3.3 that where the development is subject to EIA the Applicant should ensure the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The SoS should ensure that appropriate weight is attached to these matters.

4.13.4. Paragraph 5.3.7 of NPS EN-1 recognises that development should aim to avoid significant harm to biodiversity interests including through mitigation and consideration of reasonable alternatives. The Applicant is also required to show how the project has taken advantage of opportunities to conserve and enhance biodiversity interests.

4.13.5. NPS EN-1 recognises that the most important sites for biodiversity are those identified through international conventions and European Directives with the Habitats Regulations providing statutory protection for them and with Ramsar sites receiving the same protection.

4.13.6. MCZs introduced under the Marine and Coastal Access Act 2009 are areas designated to conserve marine flora or fauna and marine habitats. Protected features are set out in the designation order which provides statutory protection, and duties in relation to MCZs need to be addressed as noted in NPS EN-1.

4.13.7. Paragraph 5.3.18 of NPS EN-1 indicates that the applicant should include appropriate mitigation measures as an integral part of the proposed development. It should ensure that construction activities are confined to the minimal area required and that best practice is followed to minimise the risks of disturbance or damage to species or habitats.

4.13.8. Section 5.6 of NPS-EN-1 deals with a range of emissions arising from energy infrastructure including artificial light indicating that the aim should be to keep impacts to a minimum and at a level that is acceptable.

4.13.9. The NPPF advises that the planning system should contribute to and enhance the natural and local environment including by minimising impacts on biodiversity. Paragraph 180 aims to ensure that new development is appropriate for its location taking into account the effects on the natural environment. The impact of light pollution from artificial light on nature conservation should be limited.

4.13.10. The KMWLP 2011-2031, Policy DM 2 sets out the protection for sites of international, national and local importance with waste developments required to ensure that there are no unacceptable adverse impacts on biodiversity interests.

4.13.11. Policy ST 1.11 of the Swale Local Plan seeks to achieve sustainable development through conserving and enhancing the natural environment. Policy CP7 seeks to ensure that there are no adverse effects from development on the integrity of Special Areas of Conservation (SACs), SPAs or Ramsar sites either alone or in combination. Policy DM28 requires proposals to conserve, enhance and extend biodiversity. The policies underpin the Swale Landscape Character and Biodiversity Appraisal published in 2011 as a Supplementary Planning Document.

The Applicant's case

4.13.12. The Applicant's case was set out principally in ES Chapter 11 – Ecology [APP-063] and has been updated at D2 in clean and tracked versions [REP2-024, REP2-025]. This is supplemented by ES Appendix 5.4: Assessment of Ecological Impacts [REP2-032, REP2-033].

4.13.13. The Application Site is some 0.16km east from The Swale SPA and Ramsar internationally designated ecological sites. There are a further six internationally designated sites with 10km of the Site as follows:

- Medway Estuary and Marshes SPA and Ramsar site;
- Thames Estuary and Marshes SPA and Ramsar site;
- Outer Thames Estuary SPA; and
- Queendown Warren Special Area of Conservation.

4.13.14. The nearest nationally designated sites are: Swale Estuary Marine Conservation Zone (MCZ) some 0.02km to the south east, Swale Site of Special Scientific Interest (SSSI) approximately 0.13km south east, and Elmley National Nature Reserve (NNR) some 0.4km to the north east.

4.13.15. SSSI sites within 1km of the Site are:

- Medway Estuary and Marshes SSSI;
- South Thames Estuary and Marshes SSSI;
- Sheppey Cliffs and Foreshore SSSI; and
- Queendown Warren SSSI.

4.13.16. The Milton Creek Local Wildlife Site (LWS) is a non-statutorily designated site within 2km of the Site.

4.13.17. The Proposed Development would not be within any designated sites and therefore there would be no direct impacts arising therefrom in terms of loss of habitat.

4.13.18. A Phase 1 Habitat Survey of the Site and its surrounds was undertaken and the results are presented in Figure 11.3.2 of ES Appendix 11.3 – Ecological Baseline Surveys 2007 - 2009 [APP-045] with the habitat types and descriptions recorded. As the Consented K3 Facility is operational this and its consented landscaping scheme (yet to be implemented) is taken as the baseline for the assessment.

4.13.19. For the WKN Proposed Development, the site is occupied by the K3 laydown area. In the absence of any consent for WKN that laydown area would be restored to its previous condition. Therefore, the ES is informed by previous surveys undertaken in 2007 and 2009 as part of the initial K3 application which assesses the worst-case scenario prior to the loss of habitat as part of the original site clearance for the WKN site.

The practical effect of the K3 Proposed Development

4.13.20. The practical effect of the K3 Proposed Development would be to generate additional electricity and process additional waste. The increase in emissions due to the increased tonnage throughput and vehicle movements is assessed as not resulting in any adverse impacts on designated sites or ecology in non-designated areas. The practical effect of the K3 Proposed Development would therefore not have any ecological impacts.

Effects of WKN construction

4.13.21. For the effects of construction of the WKN Proposed Development the ES assesses the likely effects on international sites within 10km from the Site. The ES concludes that at this distance there would not be any likely significant effects on the Medway Estuary and Marshes SPA and Ramsar

site, the Thames Estuary and Marshes SPA and Ramsar site and the Outer Thames Estuary SPA and Queendown Warren SAC. Therefore, the ES assesses the effects arising from the construction of WKN on The Swale SPA and Ramsar site.

4.13.22. The construction of the WKN development would not cause any direct impact on The Swale SPA and Ramsar site via habitat loss, given no part of either designated site falls within the site boundary.

4.13.23. Once construction commences, all hardstanding areas would drain eastward into a storage pond. Activities or items that may contaminate water entering The Swale SPA would be located more than 20m from the Site boundary and a strict waste management system would be established to avoid leachates. These measures, to be secured through the CEMP, would ensure there would be no adverse impacts on the SPA in relation to drainage and surface water.

4.13.24. A lighting scheme would be submitted as part of the CEMP that would follow best practice and ensure no direct lighting of any designated areas, use flood defences to prevent light spill, use low directional lighting where possible, and ensure construction compounds are appropriately located.

4.13.25. The Saxon Shore Way footpath is close to the Site. It is not anticipated that construction staff would access The Swale SPA/Ramsar site for recreational purposes, therefore, no impacts would be expected from recreational disturbance during construction.

4.13.26. Noise generated from piling, HGV movements and other construction activities would potentially disturb birds wintering in The Swale SPA/Ramsar site. The ES models noise impacts from the loudest activities (impact piling) which would be received by birds in the SPA/Ramsar site as 61.5 dB L_{Amax}, covering an area of some 9.6 ha within the 6,514 ha designated site. This is below the max 80 dBL L_{Amax} threshold associated with the greatest disturbance to birds but above the screening threshold of 55 dB L_{Amax}. To mitigate this impact R28 and R29 Preferred dDCO [REP7-003] stipulates a piling risk assessment approved by the RPA consulting the EA, and prevents impact piling in January, February, or between April and August inclusive, with no more than 10 days of impact piling during November and December. Works for a new outfall into The Swale (Work No. 7) would follow methods and timing restrictions set out in the original Marine Licence to avoid disturbance impacts. No noise and vibration impacts which would have a significant effect on the designated sites are expected to arise from construction vehicles.

Disturbance from people and plant movements

4.13.27. Movement of people and plant in the construction phase may be visible to a small part of The Swale SPA/Ramsar site. However, the ES concludes that any disturbance would be limited as bird species are likely to be habituated to people due to the Knauf Jetty to the north of the Site,

the public footpath along the sea wall and the other industrial sites that are located in proximity to The Swale SPA/Ramsar site.

4.13.28. The Marsh Harrier is considered to be susceptible to disturbance, especially during breeding season. The ES states the population of the Marsh Harrier has increased in north Kent and they now occupy sites previously considered as unsuitable, such as the reedbed to the north of the Site. 2009 and 2016 surveys noted the Marsh Harrier used this reedbed despite the operation of the Knauf Jetty and during the construction of the K3 facility and the DS Smith AD Plant. The s106 agreement at the time of the K3 Planning Permission required the creation of a new reedbed at Harty Fen on the Isle of Sheppey to provide alternative habitat for the Marsh Harrier, completed in October 2018. Further, a 2.4m closed-board wooden fence would be erected around the laydown area as part of the mitigation in the original K3 application. Therefore the impacts from disturbance from people and/or plant are considered to have a slight effect that is not significant.

4.13.29. Overall, no likely significant effects on biodiversity in internationally designated sites would be expected during the construction of Project WKN.

4.13.30. The Swale MCZ is located approximately 15m to the east of the Application Site with the laydown area being the closest point, therefore the impacts on the MCZ would be similar as for The Swale SPA/Ramsar site.

4.13.31. The Swale SSSI covers the same area as The Swale SPA/ Ramsar site whilst the Elmley NNR occupies a smaller area within The Swale SPA/Ramsar site on the Isle of Sheppey. Given the conclusions made on The Swale SPA/Ramsar site there are no significant impacts identified on these sites.

4.13.32. The Milton Creek LWS, over 400m to the south east of the Application Site is the only regional or local site in proximity thereto. It comprises a mix of habitat types and could be considered an informal extension of The Swale SPA. The ES has concluded no likely significant impacts on the LWS as a result of construction of Project WKN.

4.13.33. The WKN Proposed Development would not affect any ancient woodland or protected trees.

Breeding Birds

4.13.34. Surveys undertaken for the original K3 application show no evidence of breeding birds on the WKN site. Its development would result in the loss of some landscaping proposed by the original K3 application that was to replace breeding bird habitat on the K3 site. In addition, some vegetation would be cleared to make way for the WKN laydown area and construction access road although this would be temporary.

4.13.35. The reedbed north of the WKN site has no international, national or local designation but supports three Schedule 1 breeding birds – Marsh

Harrier, Bearded Tit and Cetti's Warbler. The following impacts on this reedbed are considered:

- Drainage – to avoid any accidental release of pollutants to the reedbed all activities/items involving refuelling and maintenance of machines, oil storage tanks, chemical or fuel storage and on-site concrete batching plants would be located more than 20m from the site boundary;
- Light Spill – The construction lighting scheme submitted as part of the CEMP would minimise the lighting of the reedbed. The key reedbed is 50m from the WKN Proposed Development boundary at its nearest point so the impact of appropriately designed lighting would be low;
- Disturbance from people and plant movements – the disturbance to nesting birds is considered negligible given they generally nest towards the middle of the reedbed; and
- Noise – The loudest noise activity, impact piling, is restricted to certain times of the year by R29 to avoid the nesting bird season. The ES demonstrates that noise associated with HGV movements would be below the level where NE suggest further investigation is required.

Reptiles

4.13.36. The WKN Proposed Development site originally comprised a mix of habitats that may have supported reptiles cleared from the site prior to construction of the Consented K3 Facility. This habitat was due to be restored and therefore, to mitigate the habitat loss by the WKN Proposed Development new habitat will be created at the eastern end of the WKN site.

4.13.37. Reptile-proof fencing would be erected during the entire construction phase after which reptiles would colonise the new habitat. Therefore, it is considered that impacts on reptiles are temporary with enhanced habitat being created to replace the habitat that has been lost.

Operational impacts of WKN

4.13.38. For the operational effects of the WKN Proposed Development the ES assesses the likely effects on international sites up to 10km away. The ES concludes that due to the distance between the WKN Proposed Development and the designated sites there would not be any likely significant effects on the Medway Estuary and Marshes SPA and Ramsar site, the Thames Estuary and Marshes SPA and Ramsar site and the Outer Thames Estuary SPA and Queendown Warren SAC. Therefore, the ES only assesses the WKN operational effects on The Swale SPA and Ramsar site.

Operational Impacts: Drainage

4.13.39. The WKN Proposed Development would have two separate drainage systems. The first would collect clean surface water runoff, eg from building roof areas, storing it in the lagoon. The second would collect 'dirty' runoff, eg from the Flue Gas Treatment Plant (FGT) area, storing it in the 'dirty' water tank to be used as required, eg for ash quenching. The clean water in the lagoon would top up the 'dirty' water tank. If the

lagoon reaches the maximum acceptable capacity it would be discharged at a controlled rate into The Swale, as for K3. These measures would ensure that no adverse impacts in relation to drainage and surface water would affect the SPA.

4.13.40. Other operational impacts assessed are:

- Light Spill – an operational lighting scheme secured by R22 dDCO would ensure an ecologically sensitive lighting scheme is installed;
- Disturbance from people and plant movements would be of limited impact as bird species feeding on the intertidal areas of the SPA/Ramsar site are habituated to people using the public footpath and the existing industrial activity, screened by the sea wall, buildings and topographical features;
- Recreational disturbance would not be likely to be significant given a maximum of 50 operational staff at any one time and due to the Site's industrial nature access to the Saxon Shore Way and Swale Estuary would be restricted; and
- Noise and vibration – Operational noise would have a minimal impact on birds in the SPA/Ramsar site as operational noise levels would not be expected to exceed the 55 dB threshold.

4.13.41. Overall, no likely significant effects on biodiversity in internationally designated sites are expected at the operational stage of WKN.

4.13.42. For the reasons given in assessing the construction related impacts of the WKN Proposed Development, there would not be any likely significant effects arising from that development on The Swale MCZ, The Swale SSSI and the Elmley NNR, when operational. Similar conclusions are reached regarding the LWS and any ancient woodland or protected trees.

WKN Operational effects: Species

4.13.43. Without mitigation the operation of the WKN Proposed Development has the potential to impact breeding birds due to light spillage, disturbance, operational noise and mismanagement.

4.13.44. Although the 24 hour operating times means there is potential for light spill to impact nesting birds, the lighting scheme for the operational phase would ensure lighting on the site boundary would be appropriately sensitive to ecological receptors. The level of disturbance arising from people and plant movements would not be expected to be sufficient to disturb breeding birds, given they typically nest in the centre of the reedbed. The ES concludes that the operational noise would not have a significant impact on breeding birds within the reedbed. Therefore the ES assesses the impacts on Schedule 1 breeding birds to be negligible.

4.13.45. The main harm to reptiles would be from vehicle movements. Whilst reptiles may move across the site foraging and basking, the low speed of the vehicles and vibrations would enable reptiles to avoid vehicles. Therefore, operational impacts on reptiles would be low.

Biodiversity enhancement

4.13.46. The parameter plan [REP2-039] demarcates an area to be used to provide a surface water attenuation pond, hard and soft landscaping and biodiversity enhancement measures.

4.13.47. The approved landscaping plan for the Consented K3 Facility includes the planting of some 5,000 trees and shrubs. In addition, pursuant to the s106 obligation for the K3 Planning Permission a new bird nesting habitat on the Isle of Sheppey has been created, managed by the Royal Society for the Protection of Birds (RSPB); and creation of reptile translocation areas adjacent to the K3 site has taken place. The WKN site is smaller than the K3 site but would provide an element of landscaping in the eastern part of the site. R21 dDCO [REP7-003] would require a written ecological management and enhancement plan (EMEP) to be approved for the WKN site. (This has been retitled "Ecological Mitigation and Management Plan" (EMMP) in recommended changes to the DCO, see Section 7.3.50 of this Report).

dDCO Requirements

4.13.48. R9 dDCO would ensure details of the K3 Planning Permission are carried over into the DCO and apply as approved, including the K3 EMMP and Landscape Masterplan. R10 would provide for maintenance of the K3 landscaping and R21 would require the EMEP to be approved for the WKN site. (This has been retitled "Ecological Mitigation and Management Plan" (EMMP) in recommended changes to the DCO, see Section 7.3.50 of this Report). R15 provides for landscaping on the WKN site and R16 stipulates its retention and maintenance. Other Requirements deal with elements of WKN that could have effects on ecology such as R22, on the CEMP, R23 on external lighting and R29 on the timing of piling. R5 controls the storage of fuel on the K3 and WKN sites and R18 deals with surface water drainage.

4.13.49. Overall, therefore the ES has not identified any significant effects on designated sites, protected species and habitats or other species considered to be of principal importance for the conservation of biodiversity as a result of the K3 or WKN Proposed Developments.

Examination

4.13.50. In ExQ3.5 I requested the Applicant to provide a draft EMMP for the WKN Proposed Development due to concern that lack of such provision would affect the confidence with which it could be asserted that the required mitigation would be adequately secured and it appeared the Applicant would only prepare a draft if NE or KCC required it.

4.13.51. In ExQ4.5.1 I requested NE's view on the dEMMP [REP5-005]. NE responded [REP7-034]:

"The draft WKN Ecological Management and Mitigation Plan provides sufficient information on the measures that will be undertaken to avoid and mitigate impacts on relevant protected species. In particular, the document is helpful in setting out the mitigation measures to minimise impacts on breeding marsh harriers and wintering birds, which are

features of the nearby European sites. These measures accord with advice that Natural England has previously given in relation to the Habitats Regulations assessment of the proposals."

4.13.52. In its SoCG with the Applicant [REP7-014] NE agreed that the Proposed Development would not compromise the conservation objectives of the identified Natura 2000 sites and would not result in adverse effects on the respective sites' integrity.

4.13.53. NE agreed further that subject to best practice construction methods to minimise noise, secured by R4 dDCO and in the absence of impact piling (required for construction only), no adverse effect on the integrity of the Swale designations would occur during decommissioning of the facilities.

4.13.54. KCC in its SoCG with the Applicant [REP8-013] agreed with the position set out by the Applicant related to the status of the ecological elements of the original s106, thus:

"Reedbed habitat creation – in accordance with the S106 an area of reedbed was created within the Harty Fen on the Isle of Sheppey. The site is now the responsibility of the RSPB, who under the terms of the S106 is to maintain the land in accordance with the Maintenance Scheme set out within the S106. The Applicant's position is that this element of the S106 has been satisfied and does not need to be transferred through to the DCO; and

The relocation scheme element of the S106 provides for measures including habitat creation and management to secure mitigation relating to reptiles, nesting and foraging birds, protection of bird breeding habitats, habitat creation for invertebrates and mitigation for Beard Grass. The latest version of the Ecological Mitigation and Management Plan, subjected pursuant to application SW/10/444/R is included as an approved document within the DCO and the Applicant's position is that it will ensure the necessary mitigation measures are included within the DCO."

Conclusion

4.13.55. In considering ecology the ES did not identify any significant effects on designated sites, protected species and habitats or other species of principal importance for the conservation of biodiversity.

4.13.56. Various construction phase mitigation measures have been proposed which would be secured by Requirements set out within the Recommended DCO which in respect of Project K3 are carried forward from the K3 Planning Permission and approved variations.

4.13.57. The effect of the proposed mitigation measures would be that no residual likely significant effects are anticipated on any of the ecological receptors identified. Accordingly, both the K3 Proposed Development and the WKN Proposed Development would not result in significant harm to biodiversity conservation interests and would meet the aims of NPS EN-1, the NPPF and relevant development plan policies.

4.14. GREENHOUSE GASES AND CLIMATE CHANGE

Policy Considerations

4.14.1. The CCA2008 (as amended) commits the UK government to reducing greenhouse gas emissions by at least 100% of 1990 levels by 2050 (a net zero carbon target for the UK).

4.14.2. The 2011 Carbon Plan (Carbon Plan) is the UK's national strategy under CCA2008 for delivering emissions reductions through Carbon Budgets (2023-27) and preparing for further reductions to 2050. The Third, Fourth and Fifth Carbon Budgets, set through the Carbon Budget Orders 2009, 2011 and 2016, are set out in paragraph 6.2.2 of ES Chapter 6 [APP-058].

4.14.3. The Carbon Plan, pp93-99 describes a three-pronged strategy of: preventing waste arising; reducing methane emissions from landfill; and efficient energy recovery from residual waste. Paragraphs 2.130-2.132 describe energy from waste as a sustainable biomass source and low carbon heat source for large-scale CHP opportunities. Paragraph 2.224 states that "*efficient energy recovery from waste prevents some of the negative greenhouse gas impacts of waste in landfill and helps to offset fossil fuel power generation*".

4.14.4. The Waste Management Plan for England, December 2013 (WMPE) states that the Government prioritises efforts to manage waste in line with the waste hierarchy and reduce the carbon impact of waste, and supports efficient energy recovery from residual waste – of materials which cannot be reused or recycled – to deliver environmental benefits, reduce carbon impact and provide economic opportunities.

4.14.5. The Clean Growth Strategy for the UK, 2017 (CGS) notes significant progress made in decreasing Greenhouse Gas (GHG) emissions from waste going to landfill and adopts goals of being a 'zero avoidable waste economy' by 2050 and diverting all food waste from landfill by 2030.

4.14.6. Although not adopted national policy the National Infrastructure Assessment, 2018 (NIA) recommends that more use of alternative treatment for food waste and plastic in particular is encouraged to reduce GHG emissions. On page 34 it states:

"The successful delivery of a low cost, low carbon energy and waste system requires… encouraging more recycling, and less waste incineration."

4.14.7. The UK Committee on Climate Change (UK CCC) has a statutory role to advise government under CCA2008. The Committee's 2017 and 2018

reports to Parliament[7] identify significant policy gaps for meeting carbon budgets. On page 8 in the 2017 report, the Committee stated that:

4.14.8. *"New policies are needed across the economy. By 2030, current plans would at best deliver around half of the required reduction in emissions, 100-170 MtCO2e per year short of what is required by the carbon budgets."*

4.14.9. The latest advice to Government regarding necessary actions for the UK to achieve the carbon emission reductions enshrined in law via the CCA2008 is the UK CCC's report: Reducing UK emissions: Progress Report to Parliament, was laid before Parliament on 25 June 2020 (June 2020 CCC Progress Report) [REP7-030]. It identifies for the first time the need to address emissions from waste incineration, warning against the continued 'dash for incineration' as it competes with recycling, and expressly advises:

"New plants (and plant expansions) above a certain scale should only be constructed in areas confirmed to soon have CO_2 infrastructure available and should be built "CCS1 ready' [Carbon Capture and Storage] or with CCS".

4.14.10. Chapter 7 of the sectoral scenarios report from the UK CCC, p201 lists "incineration with energy recovery" among technology options for landfill waste diversion, as noted in [ES Chapter 6 [APP-058] paragraph 6.2.16.

4.14.11. The UK CCC's 2019 report states that electricity generation needs to be almost fully decarbonised by 2050 and that industry will require greater deployment of carbon capture, utilisation and storage (CCUS), use of hydrogen, and electrification. As to waste management it suggests that no biodegradable waste should be landfilled after 2025 and that recycling rates of 70% should be targeted, further reducing residual waste.

4.14.12. NPS EN-1 states that while:

"the UK economy is reliant on fossil fuels, and they are likely to play a significant role for some time to come… the UK needs to wean itself off such a high-carbon energy mix: to reduce greenhouse gas emissions s, and to improve the security, availability and affordability of energy through diversification" (paragraphs 2.2.5 and 2.2.6)".

4.14.13. Paragraph 2.2.4 states that not all aspects of Government energy and climate change policy will be relevant to NSIP decisions or planning decisions by local authorities, and the planning system is only one of several vehicles that helps to deliver Government energy and climate change policy.

[7] Committee on Climate Change (2017): Meeting Carbon Budgets: Closing the policy gap. 2017 Report to Parliament, London: Committee on Climate Change. Committee on Climate Change (2018): Reducing UK emissions. 2018 Progress Report to Parliament, London: Committee on Climate Change.

4.14.14. Paragraph 3.4.3 notes only that the energy produced in EfW facilities "*from the biomass fraction"* of residual waste is regarded as renewable. Section 4.6 supports CHP for thermal generating stations including (paragraph 4.6.8) on the grounds of the efficiency of displacing conventional fossil-fuelled separate heat and electricity generation.

4.14.15. Paragraph 5.2 states that:

"CO2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). However, given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies aimed at decarbonising electricity generation such as EU ETS (see Section 2.2 above), Government has determined that CO2 emissions are not reasons to prohibit the consenting of projects which use these technologies or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR and, for coal, CCS requirements). Any ES on air emissions will include an assessment of CO2 emissions, but the policies set out in Section 2, including the EU ETS, apply to these emissions. The [decision making body] *does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does not address CO2 emissions or any Emissions Performance Standard that may apply to plant."*

4.14.16. The EU emissions trading scheme (ETS) does not apply to waste combustion installations and paragraph 3.51 of the Budget 2018 states "*In the unlikely event no mutually satisfactory agreement can be reached and the UK departs from the EU ETS in 2019, the government would introduce a Carbon Emissions Tax to help meet the UK's legally binding carbon reduction commitments under the Climate Change Act. The tax would apply to all stationary installations currently participating in the EU ETS from 1 April 2019*".

4.14.17. Low-carbon technologies are defined in the NPPF as "…those that can help reduce emissions (compared to conventional use of fossil fuels)." A core planning principle of the NPPF is that the planning system should "*…support the transition to a low carbon future in a changing climate*". Paragraph 154 states that in determining planning applications for renewable and low carbon development:

"local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions."

4.14.18. KCC's MWLP states in its spatial vision at paragraph 3.0.2 that it aims to drive waste up the Waste Hierarchy and "*ensure that requirements such as a Low Carbon Economy (LCE) and climate change issues are incorporated into new development*." A strategic objective is to:

"Ensure minerals and waste developments contribute towards the minimisation of, and adaptation to, the effects of climate change. This

includes helping to shape places to secure radical reductions in greenhouse gas emissions and supporting the delivery of renewable and low carbon energy and associated infrastructure."

4.14.19. Policy DM 1 requires design proposals for waste development to minimise greenhouse gas emissions and other emissions. In addition the notes to Policy DM 12 state that climate change should be considered in the evaluation of significant cumulative effects on the environment.

4.14.20. SBC's Local Plan at paragraph 4.1.50 indicates the need to move beyond adaptation to the impacts of climate change, reducing greenhouse gas emissions where possible, by among other things:

"Encouraging the use of renewables and energy efficiency improvements (inc. micro-renewable energy and free-standing projects), identifying the potential for decentralised, renewable or low carbon energy supplies and for co-locating heat customers and suppliers."

4.14.21. Policy DM20 is generally permissive of development of renewable and low carbon energy sources subject to various environmental, planning and social criteria. Policy CP4 seeks to maximise opportunities for including sustainable design and construction techniques including the use of recycled and recyclable materials, sustainable drainage systems, carbon reduction and minimising waste.

4.14.22. Policy DM19.2 promotes waste reduction, re-use, recycling and composting, where appropriate, during both construction and the lifetime of the development and the location and design of development:

"to take advantage of opportunities for decentralised, low and zero carbon energy, including passive solar design, and, connect to existing or planned decentralised heat and/or power schemes".

4.14.23. Policy DM19 encourages measures to address and adapt to climate change, including:

"c. Recognition that retaining and upgrading existing structures may be more sustainable than building new whilst making the most of opportunities to improve water and energy efficiency in the existing stock."

The Applicant's case

4.14.24. ES Chapter 6 [APP-058] assesses the likely significant effects resulting from the K3 and WKN Proposed Developments as a consequence of GHG emissions and the resultant impact on climate change. It is supported by ES Appendices 6.1, 6.2 and 6.3 containing details of the GHG emissions calculations for respectively, the K3 Proposed Development, WKN Proposed Development and Practical Effect of K3 Proposed Development [APP-031, APP-032, APP-033].

4.14.25. The likely significant effects of GHG emissions from the K3 and WKN Proposed Developments have been assessed in ES Chapter 6 [APP-058]. The global atmospheric mass of relevant GHGs and consequent warming

potential, expressed in CO2-equivalents, is considered a high sensitivity receptor affected by each of the K3 and WKN Proposed Developments.

4.14.26. Net total GHG emissions from operation of the K3 and WKN Proposed Developments have been calculated based on their waste throughput, combustion processes and treatment of residues. A particular feature of the assessment of these emissions is a comparison to baseline GHG emissions from landfill disposal of waste and from conventional electricity and heat generation.

4.14.27. Construction and decommissioning stage impacts have also been evaluated and are considered not to be material to the total GHG emissions over the K3 and WKN Proposed Developments' lifetimes, which are dominated by the combustion of waste and generation of energy. The K3 Proposed Development is in any case already largely constructed.

4.14.28. The significance of the impact of "net" GHG emissions from the K3 and WKN Proposed Developments has been evaluated with regard to change from the baseline and in the context of climate change and waste policy.

4.14.29. All calculations of GHG emissions were undertaken with the waste sector life-cycle analysis software tool 'WRATE'. The WRATE calculations are found in ES Appendices 6.1, 6.2 and 6.3. [APP-031, APP-032, APP-033]

4.14.30. Key uncertainties and limitations to the assessment concern the estimate of GHG emissions from landfill in the baseline scenario, the carbon intensity of marginal electricity generation in the baseline that is displaced, and the characteristics of the waste managed (its biogenic to fossil carbon ratio and its energy content), which affect both the baseline and the K3 and WKN Proposed Development scenarios.

4.14.31. The K3 Proposed Development is predicted by the WRATE analysis to cause total emissions of approximately 255 thousand tonnes of fossil carbon-dioxide equivalent (ktCO2e) per year of operation. However, compared to the baseline of impacts from landfill waste disposal and electricity generation that it would avoid, the net effect of the K3 Proposed Development as a whole is predicted to be a reduction in GHG emissions of 232 ktCO2e/annum, which would be a beneficial effect that is considered significant.

4.14.32. The practical effect of the K3 Proposed Development, increasing the energy output of the Consented K3 Facility and also increasing its waste throughput by 130,000 tonnes per annum, is predicted by the WRATE analysis to cause a net total GHG emissions reduction of approximately 60 ktCO2e per year of operation. This is the balance of process emissions from waste combustion, transport and facility operation compared to the baseline of impacts from landfill waste disposal and electricity generation that it would avoid. The predicted 60 ktCO2e per annum net GHG emission reduction would be a beneficial effect that is considered significant.

4.14.33. Although unavoidable uncertainties in the estimation of baseline waste management and displaced electricity generation emissions, limit the

certainty with which the net benefits of the K3 Proposed Development's practical effect (increases to the Consented K3 Facility waste throughput and electricity generation) can be predicted, the K3 Proposed Development as a whole can be said with higher confidence to perform well in GHG emission terms, due to its efficiency as CHP facility.

4.14.34. The WKN Proposed Development is predicted by the WRATE analysis to cause a total of approximately 163 ktCO2e per year of operation.

4.14.35. However, compared to the baseline of landfill waste disposal and electricity generation that it would avoid, the net effect of the WKN Proposed Development is predicted by WRATE be a GHG emissions reduction of approximately 64 ktCO2e per annum. This predicted 64 ktCO2e per annum net GHG emission reduction would be a beneficial effect of the WKN Proposed Development that is considered significant.

4.14.36. There are unavoidable uncertainties in the estimation of baseline waste management and displaced electricity generation emissions which could affect the net GHG balance predicted for the WKN Proposed Development. Based on the WRATE analysis, a net GHG emissions reduction is considered more probable than a net emissions increase compared to the baseline, but the amount can only be stated with limited confidence as it is highly sensitive to the assumptions applied.

4.14.37. In the case of both the K3 and WKN Proposed Developments, potential further mitigation measures have been considered, but no additional mitigation for the operational phase, within the Applicant's control at the development site, has been proposed or is considered to be required.

4.14.38. Although construction-and-decommissioning stage emissions would be limited, good-practice measures to reduce GHG emissions are recommended for the WKN Proposed Development, consistent with guidance from the Institute of Environmental Management and Assessment (IEMA)

4.14.39. As GHG impacts are global, all cumulative sources are relevant: this is taken into account in the defined 'high' sensitivity of the receptor and statement that any additional GHG emissions may be considered significant. Additional cumulative effects of greater significance than reported, due to other specific local development projects or the combination of the K3 and WKN Proposed Developments, are not predicted.

Examination

4.14.40. In its ExQ3 questions [PD-014] and replies from the Applicant [REP5-011] KCC [REP5-036] and SBC [REP5-027] the ExA clarified the following matters. KCC also replied [REP7-027] to the Applicant's Response to ExAQ3 [REP5-011].

4.14.41. KCC states in its reply to ExQ1A.1.3 [REP4-015] that without knowing how much of the feedstock is anticipated to come from landfill as opposed to exported RDF, it is not possible to determine whether the

claimed carbon benefits of the WKN Proposed Development - in particular, those based upon avoided emissions from landfill - would actually materialise.

4.14.42. The table in the Appendix to KCC D5 Submission [REP5-042] suggests that the available feedstock going to landfill is substantially less than the RDF currently exported. This is said to be supported by the analysis set out by KCC in its D5 Comments [REP5-038] on the Applicants Response to ExQ1A.1.3 and D5 Response [REP5-036] to ExQ3, demonstrating for example that tonnages of waste types unsuitable for input to EfW are included in the generic category HIC, confirming that waste types are captured that would not be suitable for incineration with energy recovery, inflating the tonnage of waste that might be available for the proposed plants. Corrections to the starting dataset presented by the Applicant reduces the available waste to 0.65 Mt. (pages 3-6 [REP5-038]). Thus it was argued that the claimed carbon benefit for diversion from landfill would in fact be very limited, and the majority of material likely to be sourced would be RDF currently offshored.

4.14.43. As to whether there had been any circumstances related to climate change that had changed since publication in 2011 of NPS EN-01 or NPS EN-03 and the consequences thereof, the Applicant acknowledged the UK's ratification of the Paris Agreement in November 2016, seeking a more stringent control on the increase in the global average temperature than was agreed at the 2010 UN Climate Change Conference. The UK Parliament's declaration of an environment and climate emergency in May 2019 and amendment of the CCA2008 to ensure the net UK carbon account for 2050 is at least 100% lower than the 1990 baseline ("net zero").

4.14.44. In addition, the Applicant noted the Riverside Energy Park DCO (EN010093) granted on 9 April 2020 [REP5-013] showed that a development that accorded with the NPSs did not lead to the UK being in breach of its international obligations. Further, that *R (Client Earth) v The Secretary of State for Business, Energy and Industrial Strategy [2020] EWHC 1303 (Admin)* [REP5-014] confirms that the SoS is entitled to grant development consent for major energy projects, notwithstanding that they might have significant impacts in terms of greenhouse gas emissions.

4.14.45. SBC requested that a Requirement be included in the DCO to ensure the use of low or zero emission HGVs to negate air quality impacts. The Applicant and SBC then agreed that an appropriate number and specification of electric charging points should be provided to serve the WKN Proposed Development, to be reflected via an alteration to the dDCO. Further modelling of the carbon burden from the transportation of waste to the site [REP5-015] prompted the Applicant to reply that a significant adverse impact on carbon emissions in SBC's area was not considered likely, and so a requirement for the use of low or zero emission HGVs would not be necessary or reasonable and in any event there would be no direct control over vehicles used by transporters of the

waste fuel who had to comply with current EU HGV Emissions Standards which incentivise the use of zero and low emission vehicles.

4.14.46. KCC in its D2 Submission of 23 March 2020 [REP2-044] drew attention to the Brookhurst Wood appeal decision [REP5-039] in contrast to which the Proposed Development is being promoted as an energy scheme through the DCO process, rather than a waste management facility through the established local waste planning process. The appeal decision noted the precise mix of feedstock the scheme would handle could not be known, there was significant uncertainty around the credentials of the facility in terms of a low carbon technology. Electricity generated by a Combined Cycle Gas Turbine (CCGT) in baseload mode would represent a lower carbon source of electricity than the proposal and the low carbon credentials of the proposal were of little weight as the scheme was a waste management facility not an energy generating scheme, therefore NPSs were given little weight. The Inspector also noted that if not handled at the proposed facility, residual waste would likely be exported for recovery, not sent to landfill. Thus, KCC argues that as the WKN Proposed Development is not an NSIP, compliance with NPSs ought only to be given greater weight with respect to consideration of Project K3.

4.14.47. SBC in its LIR [REP1-012] supported objections by KCC that the Proposed Development was not necessary to meet waste requirements for Kent, and conflicted with policies of self-sufficiency and promotion of recycling. SBC is concerned that the development would result in significant carbon impacts and draw substantial HGV traffic into the borough with negative effects on climate change.

4.14.48. SBC in its D4 Submission dated 5 May 2020 and Appendix 1 - Climate & Ecological Emergency Action Plan [REP4-025, REP4-026], commented on climate change and potential air quality impacts arising from lorry routeing. SBC declared a climate and ecological emergency in June 2019 and the Climate and Ecological Emergency Action Plan was approved by Cabinet on 22 April 2020, containing short and long term actions to achieve carbon reduction and borough-wide net zero carbon by 2030. SBC accepts the Proposed Development is a form of renewable energy under NPS EN-3, however states that it would have "significant adverse impacts upon carbon emissions" within the Borough, citing KCC's view as WPA that the development on the scale proposed is not required to meet waste requirements in the latest WNA, based on the policy of providing self-sufficiency for the disposal of waste in Kent. SBC supports KCC's objections and submits that the Proposed Development would result in unnecessary HGV movements into the borough and the wider Kent area on a significant scale, with subsequent negative effects on climate change. It supports KCC concerns relating to the carbon impacts arising from the development that the development is not compatible with its waste hierarchy and promotion of recycling.

4.14.49. Other outstanding matters at the close of the Examination appear from the Applicant's SoCG with KCC [REP8-013], primarily that the level of carbon benefit impact relating to the proposal is disputed and the

reliability of any claimed benefit in terms of reduced carbon emissions is disputed.

4.14.50. As to carbon balance the Applicant notes that the Consented K3 Facility in its operational state is a Good Quality CHP and would continue as such, at the increased generating capacity and tonnage throughput. Changes to efficiency criteria in the latest CHPQA guidance mean that the WKN Proposed Development would not be considered as Good Quality CHP. However, the Applicant's Carbon Assessment conservatively models an electricity only facility and the Applicant states that positive weight should be given to Project WKN given it would be CHP ready and located where there remains a good prospect of identifying customers for the heat produced. The Applicant states its carbon assessments adopt a conservative approach in assuming a biodegradable content of 45% and maintains that a far greater proportion of fuel for the Proposed Development would be derived from residual wastes currently disposed to landfill than from RDF.

4.14.51. KCC's position is that the carbon assessments are overoptimistic in terms of assumed biogenic content which skews the results, making the plant performance appear more favourable in terms of avoided carbon. The absence of a sensitivity analysis that takes a more conservative view in light of forthcoming changes in waste management practice flaws the assessment.

4.14.52. Further, the lack of guaranteed heat utilisation in Project WKN shows that the combined projects would not represent Good Quality CHP and therefore to grant consent would be contrary to national energy policy. The absence of evidence to indicate that the additional throughput to the Consented K3 Facility would contribute any additional heat over and above what could be supplied by that facility as permitted, means the same could be said of that proposal if taken as a stand-alone matter. The majority of waste is likely to come from onshoring RDF currently exported to CHP plants that would be classed as Good Quality. The Applicant's own Carbon Assessment demonstrates that this management route is preferable to burning the waste in a plant in the UK (in this case Kent) that will not be operating as Good Quality CHP as demonstrated by the Applicant's own evidence/CHP assessment.

4.14.53. Finally, the carbon contribution of waste incineration plants is identified as a focus of action by the statutory Climate Change Committee's most recent report to Parliament. From the above, and the lack of any carbon capture or storage proposals, the County Council considers that consenting the proposals would be contrary to the most current standing advice to national government on meeting the statutory carbon emission reduction targets of the CCA2008. It would also be contrary to the Government Resources and Waste Strategy that includes a specific action to improve the efficiency of EfW plants by encouraging use of the heat the plants produce.

4.14.54. The June 2020 CCC Progress Report identifies for the first time the need to address emissions from waste incineration, warning against the

continued 'dash for incineration' as it competes with recycling, and expressly advises that "New plants (and plant expansions) above a certain scale should only be constructed in areas confirmed to soon have CO_2 infrastructure available and should be built "CCS1 ready' or with CCS". It also confirms that the Government Contract for Difference support scheme to renewables is only available to Waste to Energy plants with CHP indicating that plants without should not be regarded as supplying renewable energy.

4.14.55. The Applicant also maintains there is no planning policy requirement to attain R1 status; it is a measure within the WFD to ensure energy recovery facilities achieve an appropriate level of efficiency and an industry standard that the Applicant meets and exceeds. The fuel for the Proposed Developments incorporates residual wastes currently sent to landfill and using these wastes instead to recover energy (even before the facilities achieve R1 status) would deliver the waste hierarchy.

4.14.56. KCC argues that management of waste at a plant simply able to recover some energy from waste does not automatically qualify as Other Recovery rather than disposal. For example landfills can recover energy via landfill gas engines yet are always defined as disposal facilities. The key test is that an incineration plant taking mixed waste needs to be accredited to R1 status to not be regarded as "disposal". That was the purpose of introducing the R1 formula, therefore, until a plant achieves R1 status, it ought to be regarded as a disposal facility. The EPR leaves unchanged MWLP Policy CSW8 which states "*Facilities using waste as a fuel will only be permitted if they qualify as recovery operations as defined by the Revised Waste Framework Directive*" which by virtue of the footnote refers to the need for such plants to achieve R1 status (Annex II of WFD).

4.14.57. KCC also cited in its closing submissions [REP8-016] the Court of Appeal judgement on Heathrow expansion *R (Friends of the Earth) v Secretary of State for Transport and Others [2020]* EWCA Civ 214, concerned with the formulation of the 'Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England'. KCC considered it relevant in the context of the impact of carbon emissions that would result from the Proposed Development. However in that case it was held:

"We have not found that a national policy statement supporting this project is necessarily incompatible with the United Kingdom's commitment to reducing carbon emissions and mitigating climate change under the Paris Agreement, or with any other policy the Government may adopt or international obligation it may undertake"

Conclusion

4.14.58. Considering SBC's request for a new Requirement in the DCO to ensure the use of low or zero emission HGVs, I am persuaded by the Applicant's arguments that given the difficulty in enforcing such a requirement against third party contractors and the existing standards of emissions to which HGV operators are held, this would not be necessary or

reasonable. Otherwise, the Applicant has included in its Preferred DCO that an appropriate number and specification of electric charging points should be provided to serve the WKN Proposed Development which is suitable for the purpose

4.14.59. It is not in dispute that Project K3 and Project WKN are both facilities proposed for the incineration of waste with energy recovery, which if they achieved R1 status, would represent Other Recovery facilities for the purposes of the waste hierarchy which sit above 'disposal'. The decision whether R1 status is achieved or not, is a matter for the EA. I cannot with a high level of confidence assume that either project within the Proposed Development would achieve R1 status.

4.14.60. As noted elsewhere and in particular Section 3.11 and Section 6.6 of this Report, in relation to the WKN Proposed Development neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations but primacy is given to the development plan.

Level of carbon benefit

4.14.61. The conclusions of the Applicant's modelling of the practical effects of the K3 Proposed development claim that treatment of an additional 130ktpa of waste would:

- deliver carbon benefits over the current management methods due to increased diversion from landfill and improved energy efficiency performance of the facility;
- avoid a net burden of between c59.5 and 63.3ktCO2e in 2020 (depending on the composition and CV of the waste diverted from Landfill);
- transporting process residues has a carbon burden but a small impact on the overall carbon benefits of diverting waste from landfill; and
- Treatment of 657kt of waste would help minimise waste to landfill and generate additional renewable energy in heat for the DS Smith Kemsley Paper Mill and electricity for export to the national grid.

4.14.62. However it is inappropriate to take into account the full 657kt of waste in respect of the K3 Proposed Development since it is only the additional 130ktpa that would be processed as a result of an eventual successful application. An avoided carbon burden of 17.7ktCO2e (or 26.9ktCO2e applying the sensitivity analysis) associated with the processing of 527kt of waste at the Facility is presented as a net benefit but in reality this is an existing impact that is associated with the already Consented K3 Facility. Nevertheless there would, in the Applicant's terms be a net benefit to be derived from the additional 130ktpa that would result from the approval of the application.

4.14.63. Similar conclusions are found by the Applicant for the WKN Proposed Development in respect of the proposed treatment of an additional 390ktpa of waste at the Facility, save that the net avoided carbon burden is said to be between c63.8 and 98.3ktCO2e in 2020. However it appears from the relevant carbon assessment [APP-032] that the more relevant figures to be taken forward for overall assessment of the WKN Proposed

Development are the burden of between 31.6ktCO2e to 50.1ktCO2e (paragraphs 4.1.2 and 3.2.1) associated with the processing of 390kt of waste at the Facility, itself a significant carbon burden, to which is added emissions from onward transportation of process residues from the facility, making an overall carbon burden of between c33.7ktCO2e and c52.8ktCO2e. For the K3 Proposed Development the practical effect of consent would be a carbon burden including an onward transportation burden, of between c15.6ktCO2e and c24.4ktCO2e.

4.14.64. The netting off of a proportion of GHG is not an unreasonable approach where there is a clear baseline alternative from which like can be compared with like with a high degree of confidence. However the levels of carbon benefit impact relating to the Proposed Development, as the Applicant accepts, is subject to several key uncertainties and limitations, such as the estimate of GHG emissions from landfill, the carbon intensity of marginal electricity generation and the proportions of waste types to be managed. All the available evidence casts considerable doubt on whether the "net benefit" can be ascertained with any great certainty, given it is highly sensitive to the assumptions applied.

4.14.65. It should also be borne in mind that (notwithstanding any definitional need for the facilities found in NPSs) if the Proposed Development is not necessary to meet waste requirements for Kent or the area covered by SEWPAG, the carbon burden resulting from the proposed facilities would needlessly increase that burden to no particular purpose. Yet at the same time it would contribute to an increased risk of failure to meet international commitments. This is obviously more so in the case of the WKN Proposed Development than in the case of Project K3, which on the Applicant's own analysis would be predicted to cause a total of approximately 163 ktCO2e each year of operation from waste combustion and transport. This would be a considerably significant regular discharge of greenhouse gas in its own right over the lifetime of the development, expected to have an operating life of up to 50 years.

4.14.66. CO2 emissions can be a significant adverse impact of waste combustion. Overall I conclude that given the level of uncertainty as to whether and if so what level of "net carbon benefit" would obtain in respect of the Proposed Development this should be accorded little weight. However there are material differences between the effects of the WKN Proposed Development and the practical effect of the K3 Proposed Development such that whilst the combined proposal would be inherently energy inefficient, the significant weight that should be given to the environmental burden of the WKN Proposed Development should not apply to the K3 Proposed Development.

Limited nature of diversion from landfill

4.14.67. The comparative scenario relating to landfilling of all waste that would otherwise be managed through the proposed facilities is also concerning, as KCC point out. The waste would arise in Kent where a significant proportion would be diverted from recycling rather than landfill, or further afield where it will have been planned for through Local Plan making processes. It is also commonly understood that emissions from

fossil sources would not occur with plastic waste stored in landfill which would not break down and result in GHG emissions for a considerable time, whereas recycling would ensure the carbon stored in fossil sources is not immediately emitted.

4.14.68. The RDF export scenario modelled as a sensitivity found that *"…carbon impacts could be up to circa 13ktCO2e lower than the Proposal. This is predominately associated with the fact that the European WtE is modelled as CHP, whereas the Facility is conservatively modelled as electricity only."* (page 15 ES Appendix 6.2 – WKN Proposed Development Carbon Assessment [APP-032])". Reviewing the available evidence I see no good reason why the Proposed Development would necessarily have a significantly lesser carbon impact than if the waste were managed via the European RDF export route or supplied to domestic EfW plants with CHP. By the same token it seems to me just as likely that without the Proposed Development, rather than waste being landfilled, it would compete with management through other routes, including other EfW plants and export as RDF.

Level of guaranteed heat utilisation: WKN Proposed Development

4.14.69. The Brookhurst Wood appeal decision [REP5-039] is significant because although consent was granted for an EfW plant with 230,000 tpa of C&I and/or Municipal Solid Waste (MSW) of which 50,000 tpa would be recycled, and 180,000 tpa residual waste being combusted to generate electricity and potentially heat, the Inspector found that as an electricity production scheme fired by fuel that is primarily fossil-derived material, it had poor carbon credentials, compared with other energy generators such as CCGT, and as a waste management scheme it had poor carbon credentials compared with export of RDF, the accepted alternative waste management solution for the proposed feedstock. This would suggest that the Proposed Development would struggle to demonstrate compliance with NPS commitments on carbon emission reduction or WLP objectives of securing low carbon solutions.

4.14.70. In turn this would make it difficult to adhere to the views concerning climate change adaptation expressed in NPS EN-1 (paragraph 4.8.1) and EN-3 (paragraph 2.3.1) that if new energy infrastructure is not sufficiently resilient against the possible impacts of climate change, it will not be able to satisfy the energy needs as outlined in the NPS.

4.14.71. Some matters of climate change adaptation overlap with other principal issues, and in Section 6.19 of this Report I have considered flood risk including in the context of climate change.

4.14.72. Neither facility is certain to meet the R1 energy efficiency test. However KMWLP policy, unchanged by the EPR, aims to secure that any additional capacity that produces energy maximises the CV of the waste, harnessing as much of the energy produced as possible, as soon as possible. Taking together both projects within the Proposed Development the proposal would be inherently energy inefficient, not meeting the test of Good Quality CHP, and not making best use of the CV of the proposed feedstock.

4.14.73. The need for the UK to continue to transition to a low-carbon electricity market is underlined by the 2015 United Nations Framework Convention on Climate Change ("UNFCCC") Paris Agreement and the importance of this cannot be overestimated. The June 2020 Progress Report, in confirming that the Government Contract for Difference support scheme to renewables is only available to EfW plants with CHP, is also a significant indicator that plants without CHP should not be regarded as supplying renewable energy.

4.14.74. However despite the uncertainties inherent in calculating the net carbon benefit of the K3 Proposed Development's practical effect, I recognise that the K3 Proposed Development as a whole could be said with higher confidence to perform better in GHG emission terms, due to its greater efficiency as a CHP facility. This is a positive benefit.

4.14.75. It would also comply with Swale Local Plan Policy DM19.c, concerned with adaptation to climate change, by retaining and upgrading an existing structure rather than building new.

4.15. GROUND CONDITIONS

Policy Considerations

4.15.1. In addressing land use matters Section 5.10 of NPS EN-1 notes that the reuse of previously developed land for new development can make a major contribution to sustainable development. It also advises that for developments on previously developed land applicants should ensure that they have considered the risk posed by land contamination.

4.15.2. Paragraph 178 of the revised NPPF states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities. The Framework also encourages the use of previously developed land. At the local level Swale Local Plan Policy ST1 applies national policy in respect of contaminated, unstable and previously developed land.

The Applicant's Case

4.15.3. Chapter 9 of the ES [APP-061] assessed the effect of the Proposed Development on ground conditions. The assessment was based on information relating to the history, geology, hydrology and hydrogeology of the Site as well as ground investigations previously undertaken in the vicinity of the Site.

4.15.4. No significant issues were raised by the key consultees as a result of the scoping exercise in relation to ground conditions. No specific ground investigation supported the WKN Proposed Development; the information used to determine the significance of potential effects of the Proposed Development focused on ES Appendix 9.1, Desk Study Ground Conditions

Preliminary Risk Assessment [APP-040], the 2010 EIA for the TCPA1990 K3 application and previous ground investigation data for the WKN and K3 Site [APP-073].

4.15.5. The ground conditions in relation to the construction of K3 were assessed as part of the EIA completed for the original TCPA application for the facility. No likely significant effects were identified in relation to ground conditions. All works pursuant to construction of the K3 and planning conditions in relation to ground conditions have been completed and discharged, including adherence to a CEMP. No further external construction work is required by way of consequence of the Practical Effect of the K3 Proposed Development. In the absence of any change in built form associated with the K3 Proposed Development, it is anticipated that there is no potential for further ground condition related effects.

Examination

4.15.6. No RRs or WRs received during the Examination raised concerns about ground conditions or land contamination issues. The EA's RRs [RR-001] included that baseline ground conditions have been addressed for the site previously under earlier permissions from KCC and under the relevant IED permit for energy plant; that additional assessment of ground conditions would be undertaken before, during and after operational activities under a new permit if/when issued; that the site geological setting is on strata that is not of significant sensitivity for groundwater protection and provided surface management and materials handling are undertaken in accordance with permit requirements, ground quality and associated controlled waters should not be at significant risk.

4.15.7. In the SoCG between the Applicant and EA, supplied at D7 [REP7-012], it was agreed that the K3 Proposed Development would not pose a risk to groundwater. K3 as consented was the subject of its own desk study and preliminary risk assessment and consented with conditions pursuant to the protection of groundwater from any existing land contamination. It was further agreed that all planning conditions of relevance to ground conditions have been discharged. Baseline ground conditions were also addressed for the K3 Site under the IED permit issued (permit no. EPR/JP3135DK). Additional assessment of ground conditions would be undertaken after operational activities under the environmental permit (or as amended by way of consequence of the K3 Proposed Development).

4.15.8. For the WKN Proposed Development it was agreed that the ES used an appropriate methodology with an appropriate baseline and makes an appropriate judgement as to the likely significant residual impacts in terms of contamination. The WKN Site's geological setting is on strata that is not of significant sensitivity for groundwater protection.

4.15.9. It is also agreed that R28 (piling risk assessment) and 19 (contaminated land and groundwater) of the Applicant's Preferred dDCO [REP7-003] would ensure the appropriate ongoing management of any contamination that might be present and that the risk of consequential environmental

impact is adequately mitigated and any risk as low as reasonably practical.

4.15.10. All demolition/decommissioning works for the Proposed Development would be undertaken in accordance with a Decommissioning Environmental Management Plan (DEMP) secured under R4 dDCO [REP7-003].

4.15.11. The dDCO as submitted with the application [APP-005] provided in R19 that ground investigations and other preliminary works may not take place until details of capping layer and ground gas protection measures have been submitted and approved by the RPA. R19 also makes provision for any contaminated land not previously identified to be dealt with appropriately.

4.15.12. In addition to R19 of the dDCO [REP7-003] dealing with land contamination and groundwater, other requirements of relevance to ground conditions comprise R22 which provides for a CEMP and R28 and R29 which relate to piling.

ExA Conclusion

4.15.13. I am satisfied that the Proposed Development accords with all relevant legislation and policy requirements and that ground condition matters are adequately provided for and secured in the DCO.

4.16. LANDSCAPE AND VISUAL IMPACT

Policy Considerations

4.16.1. Paragraph 5.9.1 of NPS EN-1 notes that the landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development. Exhaust stacks and their plumes are described as having the most obvious impact on landscape and visual amenity for thermal combustion generating stations. Paragraph 5.9.5 requires the applicant to carry out a landscape and visual assessment.

4.16.2. NPS EN-1 notes that virtually all nationally significant energy infrastructure projects will have effects on the landscape, and that projects need to take account of the potential impact. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm, providing reasonable mitigation where possible and appropriate.

4.16.3. Paragraph 5.9.18 of NPS EN-1 recognises that all proposed energy infrastructure is likely to have visual effects for many visual receptors around proposed sites and therefore it is necessary to judge whether the effects outweigh the benefits of the project.

4.16.4. Section 5.9 states:

"The landscape and visual assessment should include reference to any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the proposed project. The applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales. The applicant's assessment should include the effects during construction of the project and the effects of the completed development and its operation on landscape components and landscape character. The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include light pollution effects, including on local amenity, and nature conservation (Department of Energy and Climate Change (DECC), 2011a)."

4.16.5. Section 10(3)(b) PA2008 requires the SoS to have regard, in designating an NPS, to the desirability of good design. Section 4.5 of EN-1 sets out the principles of good design that should be applied to all energy infrastructure.

4.16.6. NPS EN-3 states at paragraph 2.4.2: "*Proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity, and in the design of the project to mitigate impacts such as noise and effects on ecology.*"

4.16.7. NPS EN-3 states at paragraph 2.5.52: *"The IPC should expect applicants to seek to landscape waste/biomass combustion generating station sites to visually enclose them at low level as seen from surrounding external viewpoints. This makes the scale of the generating station less apparent, and helps conceal its lower level, smaller scale features. Earth bunds and mounds, tree planting or both may be used for softening the visual intrusion and may also help to attenuate noise from site activities (DECC, 2011b)."*

4.16.8. The KMWLP 2013 – 2030 was adopted in July 2016. Policy DM1, concerned with sustainable development, states that proposals should demonstrate that they have been designed to 'protect and enhance the character and quality of the Site's setting'.

4.16.9. The Swale Local Plan was adopted in July 2017. Policy ST1, 9e seeks to maintain the individual character, integrity, identities and settings of settlements, and 11b envisages using landscape character assessments to protect, and where possible, enhance, the intrinsic character, beauty and tranquillity of the countryside, with emphasis on the estuarine, woodland, dry valley, down-land and horticultural landscapes that define the landscape character of Swale.

4.16.10. SBC Local Plan Policy ST1 seeks to achieve sustainable development in Swale including protecting and where possible enhancing the intrinsic character and beauty and tranquillity of the countryside. Policy ST5 sets a strategy for Sittingbourne aiming to improve the quality of landscapes and ensure that development is appropriate to landscape character and

quality whilst Policy CP4 requires good design and Policy DM24 requires valued landscapes to be conserved.

The Applicant's Case

4.16.11. An assessment of the likely significant landscape, townscape and visual resource effects of K3 as consented was undertaken as part of the ES completed in 2010 pursuant to the K3 Planning Permission (2010 ES Non-Technical Summary, ES Chapter 8, and Appendices for ES Chapters 1 - 8 [APP-069, APP-070, APP-072]). This determined that there would be no significant impacts on landscape or townscape character or views. The effect of the completed development was considered to be minor adverse and not significant on both landscape and townscape character. Views of the K3 facility were considered to be prominent in near views, becoming barely discernible within the existing industrial context in mid to long distance views. The overall visual effect of the completed development was considered to be moderate/minor adverse and not significant.

4.16.12. Non-material amendments made since the K3 Planning Permission was granted included changes to the site layout, removal of the Incinerator Bottom Ash (IBA) facility and repositioning of surface water ponds, together with applications to form and improved access road and discharge planning conditions which did not change the overall conclusions of the assessment of effects on landscape, townscape and visual resources as found in the 2010 ES [APP-069, APP-070, APP-072]. The 2010 design and access statement for K3 as consented [APP-148] was also submitted

4.16.13. No structural modifications to the K3 facility are required pursuant to the practical effect of the K3 Proposed Development and therefore no additional effects are anticipated on landscape, townscape and visual resources beyond that identified previously. The effects from the K3 Proposed Development are not assessed further, however a cumulative scenario including the K3 Proposed Development is assessed.

4.16.14. ES Chapter 12 - Landscape and Visual Effects [APP-064] assesses the likely significant landscape and visual effects resulting from the WKN Proposed Development. Also of relevance in this context is the submitted Landscape Masterplan - Rev M [APP-124] and Site Photographs and Drone footage [REP5-021] and Drone videos [REP5-024, REP5-025 REP5-026]. See also the Design and Access Statement [APP-083].

4.16.15. ES Chapter 12 [APP-064] sets out the principal objectives of the assessment:

- to describe, classify and evaluate the existing landscape and townscape likely to be affected by the WKN Proposed Development during its construction, operational and future decommissioning development phases;

- to identify visual receptors with views of the WKN Proposed Development; and
- to identify the likely significant effects on landscape, townscape and views, considering measures proposed to reduce or avoid any effects.

4.16.16. The WKN Site currently comprises hardstanding and forms the K3 Site compound and storage area for the construction phase of K3. Large scale industrial buildings, energy infrastructure and chimneys form the southern and western site boundaries, separating the location from the residential districts of Sittingbourne to the west. This urban area is defined as the Sittingbourne Industrial/Commercial townscape character area. The urban character area has a poor quality and condition due to the extensive industrial buildings and infrastructure and the presence of disused and derelict land resulting in a low value.

4.16.17. There are no designated landscapes lying within the WKN Site. The North Kent Marshes Special Landscape Area (Area of High Landscape Value) (AHLV) (Kent Level) extends over the Swale and neighbouring coastal landscape. This area includes the Chetney and Greenborough Marshes which lie next to the WKN Site and extend along Milton Creek. This area is valued for the open character of its landscape. A further AHLV (Swale Level) lies inland of the marshes and includes the Teynham Fruit Belt.

4.16.18. The WKN Site is currently not visible in views from the majority of the settlement of Sittingbourne due to industrial development on the edge of the town and the restored landfill mound to the east on the banks of the Swale. To the east and north-east of the WKN Site the channel of the Swale and low-lying landscape of the Isle of Sheppey allow more open, longer distance views. Key visual receptors of high sensitivity and susceptibility to change in view as a result of the WKN Proposed Development include walkers using the Saxon Shore Way long distance footpath (ZU1/2) beside the Swale and Milton Creek. People using this path form the closest high sensitivity receptors and will ultimately form part of a national route, the England Coast Path. The greatest number of visual receptors with views towards the WKN Site would be occupiers of vehicles travelling on Swale Way.

Effects on Landscape and Townscape Character

4.16.19. In terms of effects on landscape and townscape character, the new buildings and infrastructure which form the WKN Proposed Development, although large in scale, would form an extension of the existing character of neighbouring development at Kemsley Paper Mill and the K3 development as consented. The townscape character of the WKN Site would be of low sensitivity to change through redevelopment. There would be no significant adverse, direct effects on townscape character during construction or when completed, either during the day or at night.

4.16.20. The surrounding rural landscape character areas of the Swale and the Isle of Sheppey are generally in good condition and have an intrinsically high value. There would be no direct effects on these rural and wild landscapes and their sensitivity to change through the indirect influence of the WKN Proposed Development would be medium or low. There

would be no significant adverse, indirect effects on landscape character during construction or operation during the day or at night.

Effects on Visual Receptors

4.16.21. Walkers using the Saxon Shore Way would experience a sequence of views that would include a more heavily developed cluster of energy infrastructure at Kemsley Paper Mill within a journey between Milton Creek and Ridham Docks. The assessment of individual viewpoints concludes that there would be either a moderate, slight or negligible effect on receptors at each individual location, which is not significant. The magnitude of change in view for receptors is reduced by the existing context of large-scale industrial development, particularly the neighbouring K3 which will obscure views of the WKN Proposed Development in many views. The expectation of a receptor using the Saxon Shore Way is that large scale industrial buildings will be encountered near the route, defining the character and nature of view towards Sittingbourne. Moderate adverse effects would be experienced by walkers using a relatively short section of the Saxon Shore Way located to the north of the WKN Site where K3 is likely to form a slightly larger group of buildings and infrastructure as a backdrop to the proposals.

4.16.22. As a result, the combined sequential effects on walkers is not considered sufficiently adverse to constitute a significant sequential visual effect. Plans to establish the England Coast Path by 2020 on the alignment of the Saxon Shore Way in the vicinity of the WKN Site, whilst not leading to an increase in the level of effect, could lead to an increase in numbers of walkers experiencing these effects in the future. There would also be no significant adverse effects on any other visual receptors within the study area during construction or when development is completed, during the day or at night.

Mitigation

4.16.23. The mitigation of effects on landscape, townscape and visual resources is generally achieved as set out in ES Ch 12, paragraph 12.7.1 [APP-064] through:

- provision of hard and soft landscape proposals to enhance the scheme and to screen it in views from neighbouring areas and the wider landscape; and
- the design of the built environment and infrastructure to minimise the scale and massing of development, the appropriate use of form, surface materials and colours and the use of an appropriate lighting strategy.

4.16.24. Landscape proposals would form an integral part of the WKN Proposed Development to provide treatments for the perimeter and internal green spaces. A detailed landscape proposal scheme does not form part of the DCO application but will be secured by way of a Requirement attached to the DCO.

4.16.25. The architectural form of the WKN Proposed Development is largely dictated by its function. The stack height and diameter, the buildings scale and mass and the arrangement of infrastructure to achieve the energy generation process are determined through an iterative engineer lead design process. Maximum parameters have been identified for all elements of infrastructure. A lighting assessment has been undertaken to determine the likely type, number and location of luminaires. Detailed design of the WKN Proposed Development will take place following the DCO process.

Cumulative Effects on Landscape and Townscape Character

4.16.26. The proposed WKN Proposed Development and many of the relevant cumulative developments lie within the same urban character type comprising the Sittingbourne Industrial/Commercial townscape character area. The existing Kemsley Paper Mill site, neighbouring K3 and nearby industrial developments together with nine cumulative schemes would form a more developed context into which the WKN Proposed Development would be placed. The industrial and commercial characteristics of the northern part of Sittingbourne adjoining the Swale would be intensified within this townscape character area as a result of the addition of the 12 cumulative schemes and the WKN Proposed Development however, the intrinsic character and qualities of the area would remain the same. There would be a medium magnitude of change, leading to a slight adverse level of cumulative townscape effect in the day and at night. The WKN Proposed Development would make a negligible contribution to this cumulative effect.

4.16.27. The large cumulative business developments south of Kemsley Mill would lie predominantly within the neighbouring Chetney and Greenborough Marshes character area, considerably changing this landscape character area to that of urban Sittingbourne Industrial/Commercial. The direct cumulative effects of the business park and the indirect effects of the WKN Proposed Development would result in substantial adverse and significant cumulative effects during the day. The large residential schemes east and south of Iwade and west of Sittingbourne would change the rural character of the Iwade Arable Farmlands to an urban townscape of Sittingbourne Residential. The direct cumulative effects of the residential schemes and the indirect effects of the WKN Proposed Development would result in substantial adverse and significant cumulative effects during the day. The WKN Proposed Development would make a negligible contribution to these significant cumulative effects, which would occur even in the absence of the WKN Proposed Development.

4.16.28. When considered in combination the K3 and WKN Proposed Developments and the relevant cumulative developments within the Sittingbourne Industrial/Commercial townscape character area would result in a slight adverse level of cumulative townscape effects in the day and at night. The K3 and WKN Proposed Developments, due to their greater combined scale, would make a slight contribution to this cumulative effect. The indirect effects that the combined K3 and WKN

Proposed Developments would make to other landscape and townscape character areas within the study area would not be significant.

Cumulative Effects on Visual Receptors

4.16.29. Visual receptors within the study area would generally gain views of a more intensively developed industrial/commercial townscape within the same angle of view as the WKN Proposed Development. The scale and nature of the cumulative schemes would change the nature and character of some views, resulting in a more developed context at Kemsley for walkers using the Saxon Shore Way near Sittingbourne. Walkers using the Saxon Shore Way are receptors of high sensitivity. The magnitude of change in view in some locations would be medium and long term in nature, leading to a substantial adverse level of cumulative effect, which is significant. However, the WKN Proposed Development would make a slight or negligible adverse contribution to this cumulative effect.

4.16.30. The anaerobic digester facility and the wind farm on the ridge of high land within the centre of the Isle of Sheppey would be visible as distant, although prominent features on the skyline in successive cumulative views. These viewpoint locations are likely to coincide with the Saxon Shore Way (England Coast Path) and public rights of way within the marshes and the Swale bridge crossings. The cumulative schemes would also be prominent foreground features in views from the central high point on the Isle of Sheppey when looking towards the WKN Proposed Development. Many of these receptors would be of high sensitivity and would experience a negligible to large magnitude of change in view, depending on their proximity to the cumulative developments, resulting in a negligible to substantial adverse cumulative effect during the day and negligible to slight effect at night, which is significant. The WKN Proposed Development would make a negligible to slight adverse contribution to these cumulative effects.

4.16.31. When considered in combination the K3 and WKN Proposed Developments and the relevant cumulative developments would create a more intensively developed industrial/commercial townscape leading to substantial adverse levels of cumulative effect for high sensitivity walkers using the Saxon Shore Way, which is significant. However, the K3 and WKN Proposed Developments would make a moderate or slight adverse contribution to this cumulative visual effect.

Examination

4.16.32. No significant matters of concern were raised by IPs in RRs and WRs in respect to landscape or visual impact matters.

4.16.33. Through initial Written Questions (ExQ1) [PD-008] the following matters were examined:

- design specifications used to inform the assessment of likely significant effects;

- assumptions applied in assessment of visual impacts with regard to building materials and aesthetics; and in relation to the design, and with reference to relevant measures, how these assumptions will be secured in the DCO;
- clarification on construction activities, lighting and plumes and how potential effects resulting from these impacts have been assessed.
- seasonal variations in the visibility of the WKN Proposed Development, and visual representation thereof in the ES;
- conflict between no identification of significant landscape and visual residual effects in ES Chapter 12 with information contained in Table 14.7 in ES Chapter 14 [APP-066], where significant residual cumulative effects are identified;
- how visible plumes have been assessed and the potential for interaction with air quality, considered in ES Chapter 5 [APP-057]. considering the industrial nature of the surrounding developments, how have combined visual effects on receptors from plumes been considered within the assessment, and if they have not, please justify their omission from such assessment;
- lighting could have an effect on ecology, considered in ES Chapter 11 Ecology [APP-063];
- how the final operational lighting scheme would be secured in the DCO and how mitigation for effects of the lighting scenarios required throughout each of the different phases of the development would be secured in the DCO;
- confirmation that the LVIA is based on the parameters and dimensions in ES Chapter 2 [APP-054] and that this is reflected in the dDCO;
- clarity on discrepancies and omissions in the list of cumulative developments;
- how the proposed landscaping would mitigate the effects on landscape and visual receptors, and how if at all the landscaping proposals would serve other purposes such as biodiversity improvements, how these effects would change as the proposed planting matures, clarity on agreement on the planting specification/species mix with the relevant consultation bodies;
- need for summary of effects for Viewpoint 11;
- information on proposed maintenance of trees and shrubs for a period of 5 years under R11 dDCO, and proposed monitoring and remedial measures;
- in ES Appendix 12.1, LVIA Scoping Correspondence with KCC [APP-051], Viewpoints 13, 14 and 15 were agreed to be omitted from the assessment as unlikely to provide clear visibility of the proposals when the K3 Facility was completed. Please explain the reference to a view from Conyer which KCC considered more relevant and whether this has been included in the viewpoints and if not why not.

4.16.34. In ExQ2 the following issues were addressed:

- absence from the dDCO of architectural treatments or surface finishes; and

- how the maximum design parameters for the WKN Proposed Development, modelled as simple grey forms, fit with the good design principles set out in MHCLG's National Design Guide (2019).

4.16.35. In ExQ3 the following issues were addressed:

- how the Design Principles for National Infrastructure, February 2020, considered to be an important and relevant matter to take into account in the Examination, have been met by the Applicant;
- how opportunities have been taken to demonstrate good design of the WKN Proposed Development in terms of siting relative to existing landscape character, landform and vegetation as described in NPS ENS-1; and
- the approach in the WKN Design and Access Statement [APP-083] to have the building appear as a linked set of individual buildings, rather than elements located in an overall 'shell', and whether a similar design approach to that taken for K3, and R22 dDCO adequately secures the design objectives.

LIRs

4.16.36. As noted by SBC in its LIR [REP1-012] the external appearance of the K3 Proposed Development would be unchanged, its stack height is 90m and other elements of the building extend to just over 50m in height.

4.16.37. SBC's LIR [REP1-012] also states the Application Site is wholly in the Sittingbourne urban area and outside any landscape character area and therefore has no landscape character status. It is immediately surrounded by large scale buildings and stacks which sometimes have visible emissions. The open landscapes of the marsh and mudflats are sensitive to vertical built elements such as the proposed generating station and associated stack. As the Application Site is also within flat open ground, any middle or distant views towards the development from farm land and fruitbelt landscapes could render the building and stack visible. Sensitive receptors include users of the Saxon Shore Way and of other rights of way within Elmley National Nature Reserve and occupiers of some residential properties. The Proposed Development would be likely to be highly visible to these sensitive receptors, however (paragraph 6.1.10) the existing five stacks and existing large-scale buildings would render the Proposed Development as a part of the existing industrial scene.

4.16.38. No changes to scale, mass or external appearance are required pursuant to the practical effect of K3 Proposed Development. The approved plans denoting the form and appearance of the Consented K3 Facility are certified documents in the dDCO for the K3 Proposed Development. Any amendments to the approved plans would require consent from KCC under R7, dDCO.

4.16.39. The final height of the stack of the WKN Proposed Development is not determined. Table 1 of Requirement 14 of the dDCO provides a minimum height parameter of 90m and a maximum height parameter of 99m for Work No 2 (f) Stack. The intention is to provide some design flexibility

for its height whilst ensuring clarity for the purposes of the EIA by defining a lower limit for air quality modelling and an upper limit for assessing landscape and visual impacts.

4.16.40. The draft SoCG between the Applicant and SBC [REP5-006] submitted at D5, is not signed or dated by either party. It is clearly drafted by the Applicant. It states that the Applicant and SBC are in discussions regarding the application of Building Research Establishment Environmental Assessment Method (BREEAM) standards as an appropriate Requirement of the dDCO. Under Matters in Dispute, it states "Currently a number of matters remain under discussion between the parties. There are no matters which have not been agreed."

4.16.41. However SBC noted in its D4 submission [REP4-025] that it does not disagree with the conclusions in ES Chapter 12 [APP-064] that the development would be unlikely to result in significant adverse visual or landscape character effects.

Lighting

4.16.42. ES Chapter 12 [APP-064] paragraph 12.6.32, states lighting proposals are likely to include approximately 30 luminaires mounted on 6 or 8m high columns and 13 building mounted luminaires. This would extend existing well-lit conditions provided by lighting columns on adjacent industrial land at Kemsley Paper Mill into an unlit site but within the wider context of the existing building and tower mounted lights and lighting columns in industrial areas north of Sittingbourne and high-level mast mounted lights at Ridham Docks.

4.16.43. The lighting at the WKN Site would not change the existing character of the area, particularly given the measures adopted to ensure lighting is directional and that spillage is therefore controlled as far as practicable. There would be a negligible magnitude of change on a low sensitivity receptor. The significance of night-time effects on the existing and future baseline situation of the Sittingbourne Industrial/Commercial Area character area would be negligible adverse in the long term.

4.16.44. In respect of the K3 Proposed Development a lighting scheme for K3 as consented was approved under Condition 21 of the K3 Planning Permission, no changes are proposed, and the scheme forms a certified document in the dDCO. Amendments would require consent from KCC under R7, dDCO.

4.16.45. The large scale of the WKN Proposed Development and the lighting at night would be apparent as an intensification of baseline conditions in the context of similar infrastructure at the existing CHP facility (K1) and Consented K3 Facility.

Conclusion

4.16.46. An assessment of the likely significant landscape, townscape and visual resource effects of the Consented K3 Facility was undertaken as part of the ES completed in 2010 pursuant to the K3 Planning Permission

(Document 3.3 submitted with the Application [APP-070]). I am satisfied that there would be no significant impacts on landscape or townscape character or views. The effect of the completed development was considered to be minor adverse and not significant on both landscape and townscape character. Views of the K3 plant were considered to be prominent in near views, becoming barely discernible within the existing industrial context in mid to long distance views. The overall visual effect of the completed development was considered to be moderate/minor adverse and not significant.

4.16.47. Non-material amendments since the original consent have changed the site layout, removed the IBA facility and relocated the surface water ponds, which did not change the overall conclusions of the assessment of effects on landscape, townscape and visual resources originally stated in the 2010 ES. No structural modifications to the Consented K3 Facility are required and therefore no additional effects are anticipated on landscape, townscape and visual resources beyond those identified previously.

4.16.48. The assessment of the effect of the WKN Proposed Development on landscape character and visual receptors uses an appropriate methodology as set out in the Guidelines for Landscape and Visual Impact Assessment (GLVIA3) 2013 and accurately represents the potential effects of the WKN Proposed Development.

4.16.49. The proposed buildings and structures would only be visible in the context of being in front of or in the backdrop of existing large-scale industrial buildings at Kemsley Paper Mill and therefore the significance of any effect will be seen in that context.

4.16.50. Accordingly I consider that the conclusions of the landscape and visual assessment presented in ES Chapter 12 [APP-064] are an accurate reflection of the likely significant effects of the WKN Proposed Development both alone and in combination with the K3 Proposed Development and other developments taken into account.

4.16.51. For the WKN Proposed Development subject to the implementation of R23 dDCO (external lighting) the WKN Proposed Development will not have a detrimental visual effect pursuant to external lighting.

4.16.52. Moderate (not significant) adverse effects would be experienced by walkers using a relatively short section of the Saxon Shore Way located to the north of the WKN Site. I conclude there would be no significant landscape effects that would arise as a result of the WKN Proposed Development during the construction, operational or decommissioning phases.

4.16.53. Detailed design approval of the WKN Proposed Development would be effectively secured through R14 dDCO, [REP7-003]: *"No part of Work No 2 may commence until written details of: (a) the siting, layout, scale and external appearance (including colours, materials, and surface finishes) of all permanent buildings and structures have been submitted to and approved by the relevant planning authority"*

4.17. NOISE AND VIBRATION

Policy Considerations

4.17.1. Section 5.11 of NPS EN-1 refers to the Government's policy on noise as set out in the Noise Policy Statement for England (NPSE), recognising that excessive noise can have impacts on the quality of human life, health, and the use and enjoyment of areas of value and areas with high landscape quality. Noise resulting from a proposed development can also have adverse impacts on wildlife and biodiversity.

4.17.2. Factors which will determine noise impact include the operational noise from a development and its characteristics, the proximity of the development to noise sensitive premises and the proximity to quiet places and to designated biodiversity sites.

4.17.3. Paragraph 5.11.8 of NPS EN-1 requires projects to demonstrate good design through the selection of the quietest cost-effective plant available; containment of noise within buildings wherever possible; optimisation of plant layout to minimise noise emissions; and, where possible, utilise landscaping, or noise barriers to reduce noise transmission.

4.17.4. NPS EN-3 advises in addition, specific considerations to apply to biomass and EfW generating stations. Sources of noise and vibration may include:

- delivery and movement of fuel and materials;
- processing waste for fuel at EfW generating stations;
- the gas and steam turbines that operate continuously during normal operation; and
- external noise sources such as externally-sited air-cooled condensers that operate continuously during normal operation.

4.17.5. NPS EN-3 also advises that the Applicant's ES should include a noise assessment of the impacts on amenity in case of excessive noise from the project as described in Section 5.11 in NPS EN-1.

4.17.6. Paragraph 180 of the revised NPPF advises that new development should take account of the likely effects of pollution on health, living conditions and the natural environment and in doing so should mitigate and reduce to a minimum adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.

4.17.7. Planning Practice Guidance (PPG) – Noise, which reiterates guidance on noise policy and assessment methods, notes that:

"the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation". Paragraph: 006 Reference ID: 30-006-20190722

The Applicant's Case

4.17.8. ES Chapter 7 - Noise and Vibration [APP-059] provides an assessment for the noise and vibration emissions from the construction and operation of the K3 Proposed Development; the practical effect of the K3 Proposed Development; and the WKN Proposed Development. The assessment is supported by:

- Appendix 7.1 - Noise Survey Results [APP-034];
- Appendix 7.2 – Proposed Development Construction Noise Model Input Data [APP-035];
- Appendix 7.3 - Proposed Development Construction Noise and Vibration Assessment [APP-036];
- Appendix 7.4 - Operational Noise Model [APP-037]; and
- Appendix 7.5 - Operational Noise Assessment [APP-038].

4.17.9. Table 7.10 [APP-059] indicated representative baseline sound levels determined from the 2016 survey to provide levels indicative of the quieter times during the survey period. This is considered to be a robust approach. The minimum representative daytime and night-time levels are used: for background sound levels: 39 dB $L_{A90,day}$ and 35 dB $L_{A90,night}$; and for the ambient sound levels: 47 db $L_{Aeq,day}$ and 45 dB $L_{Aeq,night}$.

4.17.10. No significant vibration is transmitted beyond the footprint of the neighbouring industrial buildings, so existing vibration levels across the site and wider area are considered to be negligible. Assessment of vibration effects are compared against the absolute thresholds provided in Table 7.4 [APP-059], rather than vibration level change. Therefore, no measurement of baseline vibration is required.

4.17.11. Assumed traffic growth for the area, and traffic flow data for the existing measured baseline (2016) and assessment baseline year (2021) scenarios, predict sound levels to increase by less than 0.5 dB due to the natural increase in traffic flows on the local road network. This is not considered a significant change to the assessment procedure or representative baseline sound levels.

Examination

4.17.12. In ExQ1.5.4 clarification was sought on correct references and document locations in relation to modelling of HGV noise during construction, see Figures 11.5 and 11.5a (paras 11.6.10 and 11.7.21 ES Chapter 11 [APP-063]).

4.17.13. In ExQ1.8.14 clarity was sought on the means of securing mitigation measures for potential adverse effects from noise and/or visual disturbance on the integrity of features of The Swale SPA and Ramsar site.

4.17.14. In ExQ1.14.1 the ExA sought to clarify what if any potential negative impacts of the Proposed Development would be on Public Footpath ZU1/The Saxon Shore Way.

4.17.15. In ExQ2.5.9 the ExA sought to clarify the method of piling to be used for construction of the 2nd outfall.

4.17.16. The draft SoCG between the Applicant and SBC [REP5-006] addressed noise and disturbance effects during construction, operation and decommissioning.

4.17.17. For the K3 Proposed Development it states that it is agreed that no further construction is required pursuant to the practical effect of the K3 Proposed Development and therefore no further effects will occur. The practical effect of the K3 Proposed Development would not have any effect on the operational noise levels of the facility except for road noise which has been demonstrated to be negligible.

4.17.18. For the WKN Proposed Development it states that it is agreed that a draft CEMP [APP-012] (updated at D4 [REP4-013]) incorporates mitigation measures required to safeguard the noise environment during the construction period as set out in ES Chapter 7 [APP-059]. The CEMP would be finalised on appointment of the construction contractor and submitted to the RPA prior to commencement of development in accordance with R22 dDCO. Accordingly pursuant to the implementation of the CEMP no likely significant effects on the noise environment would occur.

4.17.19. The dSoCG also agrees the cumulative effect of the Proposed Development with other local development would not be significant pursuant to this mitigation, and the risk of significant noise effects during decommissioning will be as low as reasonably practical and will not be significant for the K3 and WKN Proposed Developments individually or in the unlikely event that decommissioning occurred concurrently.

4.17.20. Although the dSoCG was not completed in its response at D4 [REP4-025] SBC noted the content in ES Chapter 12 [APP-064] and stated it "*raised no objection, subject to the control measures relating to construction as set out in the draft DCO*".

4.17.21. In its LIR [REP1-012] SBC noted the Local Plan policy DM 14 included a requirement (8) to cause no significant harm to amenity or to other sensitive uses or areas, and stated that "*the assessment of noise and vibration impacts in the applicant's submission is noted, and the Council has no adverse comments on it*."

Conclusion

4.17.22. I find that the assessment methodology for noise is acceptable [APP-059] and the residential noise sensitive receptors identified as representative of the wider area are appropriate.

4.17.23. No specific mitigation was identified in the ES as required to reduce the effects of construction noise or vibration. However the adoption of best practicable means and adherence to the CEMP would be secured through R22 Preferred DCO. I am satisfied that noise and vibration emissions would be minimised as far as reasonably practicable. R24 of the Preferred DCO requires the CTMP to be approved to manage the impact of construction traffic on the surrounding area.

4.17.24. R14(2) Preferred dDCO [REP7-003] requires detailed design to be approved and to be in accordance with the noise mitigation measures in ES Chapter 7 [APP-059] and R22(2)(e) [REP7-003] requires the CEMP to include a scheme for handling complaints from local residents, business and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.

4.17.25. In addition R27 Preferred dDCO [REP7-003] specifies the hours for the construction of the WKN authorised development with exceptions for work associated with concrete laying and internal process works relating to mechanical and/or electrical equipment installation.

4.17.26. I find that noise and vibration arising from on-site construction activities, construction vehicle movements or decommissioning works are not expected to give rise to any significant effects for sensitive receptors.

4.17.27. No significant effects are predicted from vibration at any time or from noise during normal operating conditions. I conclude that a requirement for post construction noise and vibration monitoring is not necessary and has not been requested by any IP. The proposed controls regarding construction, secured through Requirements in the DCO would comply with NPS EN-1, NPS EN-2 and the NPPF in respect of noise and vibration.

4.18. TRAFFIC AND TRANSPORT

Policy Considerations

4.18.1. NPS EN-1 states that the transport of materials, goods and personnel to and from a project, during all project phases can have a variety of impacts on the surrounding transport infrastructure. At paragraph 5.13.2, it states that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development. Paragraphs 5.13.3 and 5.13.4 state that the Applicant should undertake a TA for any project likely to have a significant transport implication, and where appropriate the Applicant should prepare a Travel Plan (TP).

4.18.2. Where proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels requirements should be considered to mitigate the adverse impacts. Paragraph 5.13.8 advises that where mitigation is needed, possible demand management measures must be considered if feasible and operationally reasonable as a first measure. Water-borne or rail transport is also preferred over road transport at all stages of the project where cost-effective.

4.18.3. Paragraph 5.13.11 indicates that requirements may be attached to a consent including to control numbers of HGVs movements to and from the site in a specified period during its construction.

4.18.4. NPS EN-3 states at paragraph 2.5.13 that throughput volumes are not, in themselves, a factor in decision-making as there are no specific minimum

or maximum fuel throughput limits for different technologies or levels of electricity generation. However:

"the increase in traffic volumes, any change in air quality, and any other adverse impacts as a result of the increase in throughput should be considered by the IPC in accordance with this NPS and balanced against the net benefits of the combustion of waste….".

4.18.5. NPPF at paragraph 109 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

4.18.6. KCC's fourth Local Transport Plan (LTP4) covering the period 2016 to 2031 states that the A249 provides a primary north, south route for Kent. Capacity issues at M2 Junction 5 (M2J5), where the A249 meets, is a major barrier to growth in the Borough. HE is evaluating options to improve the M2J5 and consultation with the wider public on final proposed options was proposed for early 2017. A corridor study of the A249 was needed to define what improvements to the principal junctions (Grovehurst, Key Street and Bobbing) would be required to support the new allocations in the Swale Local Plan, with the A249/Grovehurst Road Junction already identified.

4.18.7. Swale Local Plan Policy CP2 promotes sustainable transport and Policy DM6 seeks to manage transport demand and impact. Local Transport Plan 4 aims to ensure that Swale delivers growth in a sustainable way.

4.18.8. The draft Swale Transportation Strategy 2014 – 2031 (dSTS) identifies key transport challenges for Swale relevant to the Application Site as:

- Congestion at M2 Junction 5 (M2J5) as a barrier to development;
- Capacity improvements required at A49 Key Street and Grovehurst interchanges;
- Public transport tends to be inaccessible for the mobility impaired;
- Traffic congestion with school / employment commuting into Sittingbourne, causing rural rat runs in the south of town, and air quality issues;
- Transport interchange between cycle routes, bus services, and train services is poor, therefore encouraging the use of cars to rail stations, which add to problems with parking and congestion; and
- Constrained viability of new development to provide significant infrastructure contributions.

4.18.9. Target 1 of the dSTS states that Grovehurst Road traffic flows should be maintained at 15,400 vehicles per day.

The Applicant's Case

4.18.10. ES Chapter 4 Transport [APP-056] was updated at D2 [REP2-018]. It assesses the likely significant traffic and transport effects of each of the K3 Proposed Development, the practical effects of the K3 Proposed Development and the WKN Proposed Development, in terms of their

construction, operation and decommissioning, together with effects during their operation plus other cumulative sites.

4.18.11. The local policy documents refer to mitigation and in this sense a draft Travel Plan (dTP) ES Appendix 4.3 [APP-024] supported the Application and a draft Construction Traffic Management Plan (dCTMP) for the WKN Proposed Development was submitted as ES Appendix 4.2 [APP-023] and updated at D5 [REP5-003] and D8 [REP8-005].

4.18.12. Guidelines of the Institute of Environmental Assessment (IEA) (now IEMA) state the assessment of development traffic impacts should include 1: highway links where traffic flows will increase by more than 30% (or the number of HGVs will increase by more than 30%); and 2: other sensitive areas where total traffic flows have increased by 10% or more. These thresholds are referred to as Rule 1 and Rule 2.

4.18.13. Some roads are typically at or near capacity during the weekday AM (07:30 to 08:30) and PM (16:30 to 17:30) peak hours. These and other sources of driver delay for non-development traffic are considered and the magnitude of impact identified using professional judgement and the advice provided in IEMA guidance.

4.18.14. The traffic surveys, Department for Transport (DfT) and HE data for 2015, 2016 and 2017 are considered representative of current conditions. The route to be used by the Proposed Development (Barge Way, Swale Way, A249, M2) is an established HGV route. Construction details are informed by construction contractors and thus there is low uncertainty about some of the construction parameters adopted. The highway networks are described in paragraphs 4.4.2 to 4.4.8 of [APP-056] and Figure 4.1.

4.18.15. There is a good network of footways allowing pedestrians access between the Application Site and surrounding residential areas. The Saxon Shore Way is a long-distance footpath which follows the shore of the Swale to the east of the Kemsley Paper Mill and north to Chertney Marshes and Gillingham. To the south it links into Sittingbourne and continues east towards Faversham. The route is not lit and is not generally surfaced.

4.18.16. The Site is close to on and off-road cycle routes linking to the wider Kemsley and Sittingbourne area. The National Cycle Network Route 1 is a long-distance cycle route passing along the B2005 Grovehurst Road between Sittingbourne and Kemsley. National Cycle Network Route 174 links Route 1 to the Isle of Sheppey. Combined footway / cycleways on Barge Way and Swale Way provide cycle routes to surrounding areas.

4.18.17. Bus services near the Site are summarised in Table 4.5 [APP-056], the nearest stops are located on Ridham Avenue, c1km away, providing a direct link to Sittingbourne town centre. The journey time from Kemsley to Sittingbourne is approximately 20 minutes and the service operates 4 buses per hour throughout the day and 3 buses per hour on a Saturday. More bus stops are on Grovehurst Road some 2km from the Site.

4.18.18. Kemsley Railway Station is c 2km west of the Application Site on Grovehurst Road, having direct services to London with a journey time of approximately 1 ½ hour. Additional services to London require a change at Sittingbourne Railway Station with frequent train services to London Victoria, London St Pancras International, Ramsgate and Dover Priory.

4.18.19. Traffic flows were assessed along eleven links described in paragraph 4.4.28 and in Figure 4.1. The HGV route to the Application Site would be from the A249 to Swale Way and then Barge Way. No HGVs would route directly from the A2 using Castle Road and Swale Way south of the Barge Way roundabout; therefore, no assessment of the links on Castle Road has been undertaken. The complete traffic flow data is included within the Transport Assessment [APP-020, APP-021, APP-022].

4.18.20. Sections 7 - 13 TA Part 1 set out assessments of junction performance and impact at the following junctions:

- Swale Way / Barge Way Roundabout;
- Fleet End / Barge Way Roundabout;
- Barge Way / Site Access Roundabout; and
- A249 / Grovehurst Road / Swale Way / B2005 Grade Separated Dumbbell Junction.

4.18.21. The assessments show that the Fleet End / Barge Way Roundabout and the Barge Way / Site Access Roundabout both currently operate within their design capacity and would do so in all assessment scenarios, so there are no concerns with the operation of these roundabouts. However the Swale Way / Barge Way roundabout and the A249 / Grovehurst Road / Swale Way / B2005 Grade Separated Dumbbell junction are predicted to operate in excess of their design capacity in some scenarios.

4.18.22. All road links are assessed against the Rule 1 threshold. The baseline for the K3 Proposed Development is 2021 when it is operational, and for the WKN Proposed Development it is 2021 for the construction phase and 2024 when the facility would become operational.

4.18.23. A future year baseline traffic scenario of 2021 / 2024 / 2031 for the K3 Proposed Development and WKN Proposed Development considers committed traffic only i.e. developments with planning permission but not yet generating traffic on the network. These developments and their highway and transport schemes are treated as committed within any future year scenarios. Other developments emerging at the same time are assessed against the baseline scenario for their cumulative impact and their cumulative highway and transport mitigation requirements.

4.18.24. Growth rates allow for background traffic growth and development growth and, in some cases, the application of growth rates and the addition of traffic flows from committed developments plus cumulative developments. The DfT Trip End Model Presentation Program (TEMPRO) is applied to understand the assumptions used for household and employment growth. As committed development is greater than the assumptions within TEMPRO, growth rates have not been applied to the surveyed traffic flows.

4.18.25. Table 4.7 [APP-056] shows local committed developments with planning permission (operational, or likely to be operational in the timescales of the Proposed Development) to see whether traffic generated by the developments would already be present in the surveys undertaken for each of Project K3 and Project WKN, or whether they should be added as committed developments in future baseline assessments.

4.18.26. The traffic flows generated by the committed developments are taken from their own TAs and set out in the TA at ES Chapter Appendix 4.1. The committed development traffic flows are added to the 2021 and 2024 base traffic and the resultant 2021 and 2024 baseline scenarios are at ES Appendix 4.1 [APP-020, APP-021, APP-022].

4.18.27. The assessments predict that the K3 Proposed Development, the practical effect of the K3 Proposed Development or the WKN Proposed Development would result in effects that are not significant, as would be the case with these elements combined, or if taken cumulatively with other emerging developments.

4.18.28. The combined Practical Effects of the K3 Proposed Development plus WKN Proposed Development are summarised in terms of their total two-way AM and PM peak hour traffic flow movements, by link, in Table 6.6 of Appendix 4.1 [APP-020]. It shows on Barge Way between Swale Way and Fleet End and Barge Way east of Fleet End:

- for the K3 Proposed Development the highest two-way vehicle movements would be 42 during each of the peak hours;
- For the Practical Effects of the K3 Proposed Development the increase in two-way vehicle movements would be an additional 5 in the peak hours; and
- For the WKN Proposed Development the highest two-way vehicle movements are predicted at 19 vehicle movements in the AM peak hour and 25 vehicle movements in the PM peak hour.

Effects of the construction and operation traffic flows generated by K3 Proposed Development

4.18.29. Condition 3 of the K3 Planning Permission was varied on 11 October 2018, Ref SW/18/503317 increasing HGV movements to 348. An ES Addendum included with that application assessed transport and air quality implications of the change [APP-078]. Flexibility was required in the size/type of vehicles importing the waste under "waste contracts secured to accommodate local refuse". There were no proposed changes to the throughput tonnage or operating capacity of the plant.

4.18.30. As to the effects of the operational traffic flows generated by the Practical Effects of the K3 Proposed Development, the modelling indicates that there would be only a small effect on the capacity of the roundabout and that the committed development traffic is having the greatest effect.

Construction and operational traffic flows from WKN Proposed Development

4.18.31. The modelling results indicate that the WKN Proposed Development has a minimal effect on the capacity of the roundabout and that the committed development traffic is having the greatest effect.

Operational traffic flows from K3 Proposed Development in conjunction with the construction and operational traffic flows from WKN Proposed Development

4.18.32. ES Appendix 4.1 - Transport Assessment Part 1 [APP-020] at Section 10 finds that the addition of the K3 Proposed Development operational traffic flows to the WKN Proposed Development construction traffic flows, leads to only a minor increase in the total vehicle traffic flow and thus the combined traffic flows would also not affect the operation of the roads of junctions along the access route.

Practical Effects of K3 Proposed Development and construction and operational traffic flows from WKN Proposed Development

4.18.33. To consider the effects of the traffic generated an assessment of traffic flow increases was undertaken to provide a context and an assessment of junction performance on the local junctions between the northern access and the A249 (Section 11 [APP-020]). The number of HGVs and the number of total vehicles associated with both the Practical Effects of the K3 Proposed Development operational and WKN Proposed Development construction traffic flows are shown to have a minimal impact on Swale Way. The addition of the Practical Effects of the K3 Proposed Development operational traffic flows to the WKN Proposed Development construction traffic flows leads to only a minor increase in the total vehicle traffic flow and thus the combined traffic flows would not affect the operation of the roads of junctions along the access route.

4.18.34. Table 11.7 [APP-020] shows further the predicted HGV movements generated by the K4 peak construction, K3 Proposed Development and WKN Proposed Development. Although all three are or would be accessed from Barge Way, K4 will have a different internal access road to the K3 Proposed Development and the WKN Proposed Development. Facilities are designed to be as efficient as possible so as to minimise vehicular queuing and delay. Tipping halls have sufficient bays to accommodate multiple waste vehicles simultaneously, whilst weighbridge layouts and procedures are designed to minimise processing time. Therefore operational queuing of the combined K3 Proposed Development, WKN Proposed Development and K4 within the site would not overspill onto Barge Way

K3 Proposed Development, Practical Effects, WKN Proposed Development and all identified cumulative developments

4.18.35. Section 12 [APP-020] assesses operational traffic flows generated by the K3 Proposed Development and the Practical Effects and the operational traffic flows generated by WKN Proposed Development and all cumulative developments identified above. KCC and SBC are completing a Housing Infrastructure Fund bid for the Grovehurst junction which will directly

enable delivery of some 6,341 homes phased for 2022-31 (paragraph 12.53 [APP-020].

4.18.36. Overall, therefore the TA at Appendix 4.1 [APP-020] undertakes operational assessments of key junctions on the highway network. It concludes that the impact of the increased traffic flows as a result of any combination of the Practical Effects of the K3 Proposed Development, K3 Proposed Development and WKN Proposed Development are negligible upon junction performance and driver delay. However, when cumulative development traffic flows are added into the A249 Grovehurst roundabouts, whether on the 2024 or 2031 baseline scenarios, the performance of the junctions deteriorate and there is an increase in driver delay. The shift away from a negligible change is solely as a result of the cumulative development. The Swale Local Plan sets out improvements required to the A249 Grovehurst roundabouts to accommodate the cumulative developments, which would reduce driver delay to at best minimal amounts or to levels that are similar to those currently experienced. This is characterised as no change, ie negligible adverse.

4.18.37. Consequently, the analysis of the traffic volumes and impact demonstrates that the K3 Proposed Development and / or the WKN Proposed Development would not result in an unacceptable or severe impact on the operation of the transport network.

Examination

4.18.38. HE in its RR [RR-004] noted the potential for the Proposed Development to impact the safe and efficient operation of the strategic road network (SRN), particularly the A249 and the M2 in the vicinity of Sittingbourne.

4.18.39. Written questions were put to the Applicant and other parties at ExQ1 [PD-008], ExQ1a [PD-010], ExQ2 [PD-012], ExQ3 [PD-014], and ExQ4 [PD-015]. The Applicant's responses were supplied at D2, D3, D4 D5 and D7 respectively: [REP2-009, REP3-004, REP4-006, REP5-011, REP7-016].

4.18.40. ExQ1 questions explored the sensitivity testing for impacts on the Grovehurst/A249 junction as KCC noted in its Additional Submissions [AS-010]. The Future Year Junction Assessments for Swale Way/Barge Way showed this junction was operating beyond capacity in all future scenarios tested, with no mitigation being proposed and over capacity of the surrounding highway network was being experienced at J5 of the M2 and the Grovehurst junction. Details were sought of current movements and arrival/departure times for the current construction of the K3 plant as well as movements associated with the Applicant's operational Ferrybridge EfW facility, and the assumptions applied for assessing HGV trip generation.

4.18.41. ExQ1A questions explored: Trip End Model Presentation Program (TEMPRO). Including the additional traffic from committed developments but not additional growth from TEMPRO avoids double counting and the

methodology is agreed by KCC as set out in paragraph 7.4 of its LIR. Further, exchange of vehicle movement data with KCC was requested, as to the Applicant's site at Ferrybridge and the EfW facility in Allington

4.18.42. It emerged from the Applicant's reply to ExQ1A.11.7 that a contract has been entered with Fortis to manage and process IBA from the Consented K3 Facility and an application was being made for permission to develop a new IBA facility at Ridham Docks, 2km from the site. In the meantime they will be processing the IBA via their existing facility at the A303 Enviropark near Andover. The proposed new facility would have sufficient capacity to manage any IBA also produced from Project WKN.

4.18.43. Regarding the IBA facility application KCC [REP2-048] sought information from the Applicant on the consented number of IBA export movements and tonnage from K3, assumed to cater for 165,000 tonnes and how they were accounted for in that application, the expected IBA export movements and tonnage from the proposed K3 expansion and how they were accounted for in the application, the expected IBA export movements and tonnage from the WKN Proposed Development and how they were accounted for in the application, and the net expectation of export movements from all above sites that would now be assumed to come to this application as imports.

4.18.44. The Applicant in its reply to ExQ1A.11.5 declined to provide that information as it was not in the public domain but when so available it "*would review it and provide the relevant information at the next available deadline*". However it considered the proposed IBA facility would not alter numbers of vehicle movements proposed for the K3 Proposed Development and WKN Proposed Development.

4.18.45. KCC had also pointed out that the applicant for the new IBA facility would use the Ridham Dock to export 50,000 tonnes of incinerator bottom ash aggregate (IBAA) metals which was welcomed but conflicted with paragraph 7.4 of the rail and water transportation strategy (RWTS) which stated an upgrade of facilities at the dock was needed "*to accommodate the additional freight necessary to make this a viable option and this would require significant investment*."

4.18.46. The Applicant stated there were no contracts in place making alternative means of transportation feasible or viable so regular reviews of the RWTS is appropriate and was used in the Ferrybridge Multifuel 2 (FM2) and North London Heat and Power (NLHPP) DCOs. "*Should a waste contract become available or be secured*" that allowed for waste transport by barge the use of Ridham Dock would "*need to be assessed and any upgrading of the existing facilities considered in respect of…viability*".

4.18.47. ExQ2 and ExQ3 questions explored possible locations for my USI in relation to traffic and transport effects and possible provision of photographic and/or other video evidence to support IP's submissions. Other ExQ3 questions explored how HGV travel patterns could be monitored and enforced to ensure the A2 is not used by HGVs, and what

enforcement powers prevented an increase in HGV movements through AQMAs necessary in the interests of air quality.

4.18.48. The WKN RWTS [APP-089] notes land is potentially available in or around Ridham Dock from which a rail freight terminal might serve the EfW generating station at K3 and the WKN site, subject to viability. In ExQ3.6.9 and ExQ3.6.10 I enquired how an upgrade of the facilities might be progressed through requirements in a DCO. The Applicant said it should not be required to fund infrastructure, as the commercial sensitivities in waste contracts made it inappropriate to make information publicly available on any review of costs in providing such infrastructure. The Applicant also stated in reply to ExQ3.6.7 that the time to progress transport of waste via Ridham Dock would not be until "*a waste contract becomes available or secured which would allow for the transportation of waste using alternative means of transport to be feasible*."

4.18.49. ExQ4 questions explored how completion of any necessary highway improvement works before commencement, commissioning or as the case may be, operation of any part of the authorised development could be secured in the DCO. This related to possible restrictions on the WKN Proposed Development as to traffic flows generated during weekday peak hours or specified hours around peak hours, in advance of completion of (i) the M2/J5 and (ii) A249 Grovehurst improvement works.

4.18.50. In reply to ExQ3.6.8 the Applicant supplied the reports to and decisions of the Secretary of State in respect of the made DCOs (see Section 3.6 of this Report) for Ferrybridge Multifuel 2 (FM2) [REP5-016, REP5-017] and North London Heat and Power Project (NLHPP) [REP5-018, REP5-019]. They supported the Applicant's position in that they contained no requirement for transportation of waste fuel or ash by non-road modes.

Timing and volume of waste movements

4.18.51. KCC accepted that the explanations as to assumptions made within the baseline assessment have been clarified by the Applicant and now accepts the evidence presented. However it does not agree with the trip generation data submitted in the Applicant's TA ES Appendix 4.1 - Transport Assessment Part 1 [APP-020], as it has not been demonstrated that it represents a realistic profile of vehicle movements.

4.18.52. Time evidence reviewed from the existing EfW plants at Allington and Ferrybridge suggests that movements are generally between 07:00AM to 18:00PM with an evident larger proportion of movements in the AM and reducing in the PM. This was demonstrated by the Applicant in its Additional Submission - Ferrybridge HGV Movements dated 2 July 2020 [AS-019] in a graph showing the profile of HGV movements throughout the day, in particular that entitled Weekday Average. The profile of movements is not flat, as presented in the TA, therefore the impact on the morning peak would be expected to be significantly greater than has been presented.

4.18.53. The weight of waste arrivals is dependent on the contracts in place at any point in time. The data reviewed from the existing operations

suggests this could range from anywhere between 3 and 27 tonnes. The TA uses the expected trip generation from estimations and assumptions, even though there are similar operational facilities that could have been used to provide justification of loads. Detailed calculations demonstrating the average "assumed" loads used to calculate the expected movements remained outstanding.

HE's position

4.18.54. HE in its RR [RR-004] points out the SRN is a critical national asset and, is concerned with proposals that could impact its safe and efficient operation, particularly the A249 and the M2 near Sittingbourne. HE's position was to continue to engage with the Applicant to be satisfied either that there were no severe impacts (as per DfT C2/13 and NPPF) or that mitigation was agreed.

4.18.55. An "offline" dialogue between the Applicant and HE ensued towards the end of the Examination, HE's position being reflected in its D7 submission in response [REP7-032] to questions at ExQ4 [PD-015] and the Applicant's AS dated 2 July 2020 [AS-018]:

- The K3 Proposed Development would generate 550ktpa waste and 348 HGV movements per day when operational. The consented K3 traffic flows were factored into HEs modelling and HE do not seek restrictions to be applied to these (the existing consent restricts these movements to 348 HGV movements per day);
- The K3 Proposed Development would generate increased tonnage of +107ktpa and 68 HGV movements per day. HE seeks peak hour and 'shoulder' restrictions to these HGVs until the M2J5 and Grovehurst improvements are complete;
- WKN construction would generate up to 90 HGV movements per day with construction staff working hours outside of peak hours. HE seeks peak hour and 'shoulder' restrictions to these HGVs until the M2J5 and Grovehurst improvements are complete; and
- WKN 390ktpa would generate 250 HGV movements per day plus up to 11 staff car movements during the peak hours. HE seeks peak hour and 'shoulder' restrictions to these vehicle movements until the M2J5 and Grovehurst improvements are complete.

4.18.56. The Applicant sees the mechanism to secure such restrictions as inherent in the WKN CTMP and TPs for the K3 and WKN projects within the Proposed Development submitted and agreed with the Highway Authorities, and secured by R24 (CTMP) and R10 and R26 (TPs) in its Preferred dDCO [REP7-003]. Such restrictions would be inserted to the outline CTMP and outline TPs during the Examination.

4.18.57. The Applicant also stated in [AS-018] journey time and/or traffic flow data could show that a half hour 'shoulder' on each side of the peak hours is sufficient to avoid the peak hour, and would accept such a restriction as opposed to an hourly 'shoulder'.

4.18.58. In reply [REP4-029] to ExQ 2.14.2 asking again for a SoCG, HE referred to an email trail covering discussions with the Applicant and KCC and that

"the matter is now with the applicant". The email trail is within HE's Summary of on-going discussions involving applicant, Highways England and Kent County Highways [REP4-030], submitted at D4 and dated 20 May 2020 but the most recent of the email exchanges with the Applicant was 22 and 23 April 2020. (HE met with the Applicant on 28 January 2020 and promised a response to the issues discussed, not given until 24 March 2020). It reveals the following outstanding points:

- Some large allocations outwith the Swale Local Plan have been granted consent at appeal so HE needed to be satisfied that the figures used in the modelling are robust. All relevant sites that would impact the A249 needed to be considered;
- To clarify paragraph 6.53 of the TA [APP-020] stating "*a reasonable estimate of construction activity at the WKN Proposed Development will be 75% of that of the K3 construction*" and how vehicular trips relate to the construction of both facilities;
- HE agrees with KCC's response re WKN Construction that "*The TA demonstrates that a peak of 482 staff would be on site during months 24-40 of construction. 45 HGV deliveries or 90 movements. We request evidence from the existing K3 construction programme to evaluate that the level of HGV movements for that application are robust. Further to that, we request that the hourly number of deliveries is demonstrated through traffic count evidence for one week. The information will provide evidence that the assumptions that have been made are justifiable*".
- As to KCC's view that the submitted operational hourly movements averaged across the day had no justification, HE stated the SRN (particularly at the A249 Grovehurst and M2J5) is particularly sensitive to even small traffic increases so it is vital that the worst case situation is fully understood and evidenced. Given the potential peak hour impact of this proposal on the SRN, HE could not understand the potential peak hour impact without a fully evidenced breakdown of annual and daily inputs and outputs making it difficult to sense check the trip generation figures. Without this further evidence HE would concur with KCC conclusions and "*would potentially require a cap related to peak hour traffic generation*".

4.18.59. Subsequently HE's D5 submission Response to ExQ3.6.5 [REP5-029] confirms that from discussions with the Applicant, it is likely that the majority of site traffic will use the SRN ie M2 and then A249 to Grovehurst. However, traffic normally uses the most convenient route so some traffic could potentially use the KCC A2 between Medway and Sittingbourne to join HE A249 at Key Street and then leave at A249 Grovehurst. Equally if the M2 or A249 are congested or closed, traffic is likely to divert to other routes such as the A2. HE considers the final TP should include routing and monitoring details.

4.18.60. In reply to ExQ3.11.5 HE awaited data/analysis of exchange of vehicle movement data from the Applicant's site at Ferrybridge and the EfW site in Allington, to assist in assessing the application and agreement as to any required mitigation. At a telecon on 18 June, the Applicant indicated

that they had their information and were awaiting to exchange theirs with that being provided by KCC in the very near future.

4.18.61. In its reply to ExQ3.13.7 HE stated it had been working with the Applicant and KCC but there was still no agreed TA for the application. Therefore it was unable to determine whether the application with or without any requirements/ mitigation is capable of demonstrating that it complies with national policy and standards set out in DfT Circular 02/2013 (C2/13) and MHCLG NPS/NPPF. Our telecon on 18/6 provided a general update and agreed way forward to provide the up-to-date and hopefully complete TA via which mitigation and requirements can be agreed.

4.18.62. Pressed in ExQ3.13.9 to address precisely how HE wished to see its concerns secured in the DCO, it stated in its reply at D5 on 19 June 2020 [REP5-029] that given the M2J5 and A249 Grovehurst junctions have exceeded the limits of their practical capacity HE had had to recommend Grampian Conditions precluding occupation of sites until the planned improvements are open to traffic, as it was during AM and PM peaks that safety and congestion concerns most apply.

4.18.63. HE noted operational traffic for the Consented K3 Facility was accounted for in local traffic models but needed to understand the final figures for the WKN Proposed Development and K3 DCO uplift traffic and how the AM/PM SRN peaks could be protected until the M2/J5 and Grovehurst improvements were in place. It also noted the Applicant was considering if they could agree to prohibiting entry/exit from their sites during peak hours and a period either side so it could be guaranteed that site associated traffic would not be on the SRN during peak hours. It would "*look to agree requirements to be added to the DCO*" and awaited the updated TA and SoCG from the Applicant to cover all these matters.

4.18.64. ExQ4 questions requested any new requirement desired by HE to be inserted into the DCO, to secure the completion of highway improvement works before commencement, commissioning or operation of any part of the authorised development, to be precisely formulated and preferably agreed. In its D7 submission [REP7-032] HE proposed wording, considered further in Chapter 7.

4.18.65. HE was clear that the safety and congestion issues justifying the RIS1 improvement remain and the construction and operational phases of the Proposed Development if not mitigated, would impact on the safety, reliability and/or operation of the M2/J5. Together with SBC and KCC it applies a "Grampian approach" to applications to prevent occupation prior to the opening of the M2/J5 improvement to traffic. It added:

"Without a prohibition that is agreeable to Highways England ie one that protects the peak periods/shoulders on a daily basis, it will be necessary for the applicant to demonstrate an absence of harm to the SRN in accordance with DfT C2/13 and MHCLG NPPF2019 policy. Currently, although the submitted and addended TA is fulsome in length and highly detailed, much of the detail is not relevant, key aspects of evidence such

as assessing the impacts of the development on M2J5 are missing, and many elements that are relevant are not agreed. Hence the TA is not, as at 5/8/2020, agreed by Highways England. In contrast, our own assessment and experience tells us that if the prohibitions as proposed by Highways England are put in place, the SRN safety, reliability and operational efficiency will be secured, and the absence of an agreed TA will not be an issue for us."

4.18.66. HE states in its response at D7, 5 August 2020 [REP7-032], to ExQ4 [PD-015], that the transport evidence demonstrated (Inspector's Report paras 97-98) that the Local Plan would require mitigation of, inter alia, the A249 Key Street and Grovehurst junctions. The viability of development generally in the Borough cast doubt on any mitigation being fully funded through development contributions/ Community Infrastructure Levy (CIL). A successful bid led by SBC/KCC and supported by HE was made to the Housing Infrastructure Fund (HIF). Works at Key Street Phase 1 have commenced while Phase 2 is in design and expected to be agreed shortly. Grovehurst is in design, with it likely to be agreed in the next few months. All HIF funded improvements are required to be in place by 2024 ie prior to the forecast completion/ start of full operation of the WKN/K3 sites.

KCC's Position

4.18.67. KCC as Local Highway Authority maintained its objection to the Proposed Development including the expansion of capacity at the Consented K3 Facility, on grounds including that it would have an unnecessary, significant and severe impact upon the highway network with inadequate consideration of mitigation impacts, contrary to policy and the objective of sustainable development.

4.18.68. KCC's position at the end of the Examination [REP8-016] was that the practical effects of the Proposed Development would be to increase the levels of waste delivery by road by 497,000 tonnes of waste per year, additional to the 550,000 tonnes already consented. With a highway network already operating over capacity without the full impact of the consented 348 daily HGV movements, it is inconceivable that a near doubling of that level of required daily HGVs would not have a significant and severe impact upon the network. It disputed the conclusions drawn in paragraphs 6.47, 6.69 and 6.94 of the TA that suggest the operation of K3 Proposed Development and the construction and operation of WKN Proposed Development would not have a severe impact on the highway network. Traffic modelling to assess the junction capacity for nodes along the local highway network shows that some junctions are predicted to operate in exceedance of their capacity in future years 2024 and 2031 baseline scenarios with committed development.

4.18.69. KCC therefore considered that mitigation was required at the Swale Way/Barge Way roundabout and A249/Grovehurst interchange. It considered that in the case of the A249/Grovehurst Road interchange, sensitivity testing of the Future Year Junction Assessments for the committed upgrade to the A249/Grovehurst Road interchange is required so as not to jeopardise the delivery of housing allocated in the Swale

Local Plan. The upgrade is possible due to the successful Housing Infrastructure Fund bid, which is targeted at enabling the delivery of this housing.

4.18.70. The TA shows that the existing junction is exceeding its capacity on five of the seven arms of the junction in the AM peak and three in the PM peak. Queues in the PM peak are of such severity that they extend for over 362 vehicles. In the AM peak, the South A249 slip has queues of 23 vehicles introducing significant safety concern (for example Table 13.4 TA Part 1 [APP-020]). KCC therefore state that any development adding traffic to the junction should not proceed prior to guaranteed delivery of the improvements. KCC was unaware at the date of its closing submissions of any mitigation or restrictions on HGV movements proposed by the Applicant. As such its position was largely overtaken by the "offline" dialogue taking place between HE and the Applicant.

USI

4.18.71. I carried out a tour of the strategic and local road networks during the AM and PM peaks to get a first-hand experience of the scale and type of congestion prevalent. My inspection [EV-005] was undertaken by car and on foot. Visits to the highways network at locations the subject of representations from interested parties, were made during the peak hours period in the evening of 30 June and in the morning of 1 July. My observations can only be a general impression of conditions at the relevant locations visited, which was that there was a great deal of congestion at M2/J5, A249 Key Street and A249 Grovehurst junctions. Nothing in what I observed caused me to question the findings from the data that the junctions are all at or nearing their respective safety led capacities.

Matters outstanding at close of Examination

4.18.72. The Applicant and HE failed to agree a SoCG. The matters outstanding between them at the end of the Examination were however highlighted in their own clean and (where submitted) tracked versions of draft travel and construction management plans submitted at D8 as follows:

- WKN Draft Construction Traffic Management Plan - Applicant [REP8-003, REP8-004]
- WKN Draft Construction Traffic Management Plan - HE [REP8-005, REP8-006]
- Draft Travel Plan - K3 - Applicant [REP8-007]
- Draft Travel Plan - K3 - HE [REP8-008]
- WKN Draft Travel Plan - Applicant [REP8-009, REP8-010]
- WKN Draft Travel Plan - HE [REP8-011, REP8-012].

4.18.73. HE's position as set out in its D7 submissions was that without mitigation the operation of Project K3 and the construction and operation of Project WKN would adversely affect the safety, reliability and/or operation of the M2 Junction 5 and the A249 Grovehurst Roundabout. The Applicant, as accepted by HE considers it possible to monitor and manage the access and egress of HGV traffic for both projects within the Proposed

Development so that the operation of those junctions would not be detrimentally affected.

4.18.74. The mitigation proposed by the Applicant would be to prohibit entry or egress of HGVs at peak hours on the additional K3 movements, and the WKN movements with a half hour 'shoulder' either side of the peak hours. This would result in a restriction of such movements between 07:30 to 09:30 and 16:30 to 18:30. It can be seen from the Applicant's and HE's respective versions of the dCTMP and dTP listed above, that it is disputed whether such restrictions should operate daily, as HE request, or on weekdays only as the Applicant maintains.

4.18.75. The methods of monitoring and managing vehicle movements in the management and travel plans would permit weekday and weekend movements to be differentiated and the Applicant considers the capacity issues identified on the M2J5 and A249 Grovehurst junctions occur during weekdays so it would be inappropriate to apply peak hour restrictions at weekends.

4.18.76. HE in its D7 submissions predict that both junctions would be upgraded prior to 2025, when Project WKN would become operational. The Applicant therefore states that on completion of the upgrades, peak hour restrictions should be removed, whereas HE state the restrictions should remain in place following the upgrading of those junctions, until any residual capacity and the impact of the operation of the Proposed Development on those junctions can be reviewed.

4.18.77. HE then state that Project K3's increased tonnage of +107ktpa which would generate 68 HGV movements per day should be the subject of peak hour and 'shoulder' restrictions such time as the M2J5 and Grovehurst improvements are complete. In response the Applicant revised Requirement 10 in its Preferred DCO [REP7-003] so that approval of the operational routing and travel plans is required before the additional 68 K3 movements can commence. However the need for restrictions on HGV movements generated by the Practical Effects of the K3 Proposed Development is disputed.

4.18.78. Finally HE appeared to maintain a request for specific wording in the DCO to secure the peak hour restrictions on HGV movements whereas the Applicant considered this was unnecessary in light of the content of the revised dCTMP and dTPs.

Conclusion

4.18.79. The primary outputs of the junction modelling suite used in the TA the Ratio of Flow to Capacity (RFC) and queue. The former measures demand traffic flow against predicted capacity, whereby a value of 1.0 means that traffic demand is equal to capacity. The results clearly show significant increases over RFC of 1.0, for example with the cumulative 2031 traffic added to the K3 Proposed Development, WKN Proposed Development and K3 Proposed Development plus WKN Proposed Development operational flows the Swale Way West arm reports

respective RFCs of 1.20, 1.20, 1.21, 1.22 and 1.22 in the AM peak hour and in the PM peak hour maximum RFC's were reported on the Swale Way South arm of 0.90, 0.90, 0.91, 0.91 and 0.91.

4.18.80. The Applicant's defence of the impact is that the junction modelling is unreliable due to the junction being over capacity. That may be so, however the junction is clearly unable to facilitate additional traffic without severe impacts to congestion and safety.

4.18.81. The prohibition approach advocated by HE and partially agreed by the Applicant would protect the safety, reliability and operational efficiency of the M2/J5 and A249 Grovehurst junctions in perpetuity regardless of the contracts entered into or the origin or destination of any imports or exports from the WKN/K3 sites. The 'shoulders' proposed would ensure there would be no associated vehicle movements leaving / arriving on site outside of the peak hours, but travelling through the M2J5 or Grovehurst during the peak hour. The junction improvements are aimed solely at providing capacity to aid housing delivery, so they cannot be relied upon by the Applicant and as HE point out, a new Swale Local Plan is due to be adopted in 2022 with the possibility that there would be a further uplift in housing delivery (p22 of HE's reply to ExQ4 [REP7-032]).

4.18.82. With the prohibition applying until the Roads Investment Strategy M2/J5 improvement and Housing Infrastructure Fund A249 Grovehurst improvement are open to traffic, I am satisfied that the Proposed Development would not give rise to severe or unacceptable effects on the SRN.

4.18.83. With regard to the days on which HGV movements should be restricted at and around peak hours as discussed, it is generally accepted that background traffic levels are lower at weekends than on a typical weekday. Therefore the greatest percentage impact on the junctions under scrutiny has been assessed as on a Sunday, which increase is primarily related to the cumulative development taken into account. Whilst the capacity issues highlighted can be confidently predicted during weekdays, the overall effects outside these days is less clear. The Future Year Junction Assessments for Swale Way/Barge Way is that this junction is operating beyond capacity in all future scenarios tested, with no mitigation being proposed. This is unacceptable and due to the high volume of HGVs is a safety and capacity concern. In light of all the evidence I consider it is reasonable and proportionate to impose a daily restriction on HGV movements as requested by HE at least until the position can be effectively reviewed in accordance with the TP and CTMPs for the Proposed Development.

4.18.84. Secondly, for mitigation to apply effectively I agree that the prohibitions should continue to apply unless or until the Applicant demonstrates an absence of unacceptable impact on the SRN. This can only be tested and demonstrated once the SRN improvements have been open to traffic and the Proposed Development is operational for a sufficient period for any evidence to be robust. I agree that a minimum 12 months period would allow for seasonal or other variations and traffic flows to become

apparent. Residential development relies on the Trip Rate Information Computer System (TRICs) data and so forth to provide robust supporting evidence regarding trip rates and impacts, but the waste industry has no equivalent, making it sensible and appropriate in my view to have 12 months of actual evidence before making any decision regarding whether the prohibition should apply in perpetuity.

4.18.85. Thirdly, as to the Practical Effects of the K3 Proposed Development HE appeared to be in agreement that HGV movements associated with the implemented and operational 550,000 tonnes annual throughput of K3 would not be subject to any peak hour restrictions (HE's D7 submission). Moreover the IBA facility was permitted to have a total of 84 HGV movements per day without further restrictions. The permitted increase in HGV movements relating to the Consented K3 Facility, from 258 to 348 per day, was not objected to by HE, and it has now been commissioned and is operational from 16 July 2020. In the circumstances it would not be reasonable to impose a further restriction in these HGV movements.

4.18.86. However as for the K3 increased tonnage of +107k tpa which would generate 68 HGV movements per day, HE seeks daily peak hour and 'shoulder' restrictions until the M2J5 and Grovehurst improvements are complete, which appears to me a reasonable approach. Therefore the HE version of the K3 dTP [REP8-008] is to be preferred.

4.18.87. Fourthly, Requirements 10, 24, 25 and 26 of the Applicant's Preferred dDCO [REP7-003] taken together with the detailed content of the revised dTPs and dCTMP, would in my view effectively support the prohibition approach, and with the monitor and manage regime set out in the latter documents, the final form of which must be approved by the RPA, would constitute an effective and enforceable package of controls.

4.18.88. Otherwise the provision for the submission and approval of an Operational Traffic Routing and Management Plan and Travel Plan for Project K3 and a CTMP and Travel Plan for Project WKN is appropriate in relation to matters such as the movement of staff, visitors and waste vehicle movements during the operational phases, including minimising single occupancy vehicle movements by staff, seeking to avoid HGV movements during the peak hours and seeking to utilise existing HGV routes.

4.18.89. The CTMP appropriately deals with the main concerns of construction traffic, dust and dirt migrating onto the highway, wheel cleaning facilities, a regular programme of road cleaning and inspection of the site entrance and highway in the vicinity of the site.

4.18.90. With these measures and DCO Requirements in place, I am satisfied that the Proposed Development would accord with the requirements of NPSs, the development plan and other policies, and traffic management issues.

4.19. WATER ENVIRONMENT

Introduction

4.19.1. This section addresses the water environment effects of the Proposed Development in terms of flood risk and water quality and resources.

Policy Considerations

4.19.2. Section 5.7 of NPS EN-1 states that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. All applications for energy projects of 1 ha or greater in Flood Zone 1 (FZ1) and all proposals for energy projects located in FZs 2 and 3 in England should be accompanied by a flood risk assessment (FRA).

4.19.3. Paragraphs 5.7.13 to 5.7.16 of NPS EN-1 set out the need for development to pass a Sequential Test, then an Exception Test if development is to be considered permissible in a high-risk Flood Zone area.

4.19.4. Section 5.15 of NPS EN-1 addresses water quality and resources recognising that infrastructure development can have adverse effects on groundwater, inland surface water, transitional waters and coastal waters. The possibility of adverse impacts on health or on protected species and habitats could arise and result in a failure to meet environmental objectives established under the Water Framework Directive (WaterFD). Activities that discharge to the water environment are subject to pollution control whilst the abstraction licensing regime regulates activities that take water from the water environment.

4.19.5. Where the project is likely to have effects on the water environment applicants should undertake an assessment addressing water quality, water resources and physical characteristics of the water environment according to paragraph 5.15.2 of NPS EN-1.

4.19.6. NPS EN-2 specifically refers to the need for the assessment referenced in paragraph 5.15.2 of NPS EN-1 to demonstrate that appropriate measures will be put in place to avoid or minimise adverse impacts of abstraction and discharge of cooling water.

4.19.7. Paragraphs 148 to 165 of the NPPF outline the development requirements in terms of climate change and flood risk confirming the requirement for a site-specific FRA. Paragraph 155 confirms that inappropriate development should be avoided in areas at the highest risk of flooding and where development is necessary in those areas it should be made safe without increasing flood risk elsewhere. These principles are also set out in Policy DM1 of the Swale Local Plan.

The Applicant's Case

4.19.8. Chapter 10 of the ES addressed the water environment and included an assessment of flood risk [APP-062]. A separate FRA was provided as Appendix 10.1 of the ES [APP-041] in respect of the WKN Proposed

Development. The FRA in respect of the Consented K3 Facility was also provided to the Examination [APP-153].

4.19.9. The ES noted that the majority of the WKN Proposed Development lies within FZ2, assessed as having between a 1 in 100 and 1 in 1,000 annual probability of river flooding (1% – 0.1%), or between a 1 in 200 and 1 in 1,000 annual probability of sea flooding (0.5% – 0.1%) in any year. A small area in the eastern extent of the WKN Site is within FZ3 ('High Probability'). The area around the western extent of the WKN Site is in FZ1, having a 'low probability' (less than 1 in 1,000 years) annually of flooding.

4.19.10. However, subsequent to the publication of the EA flood maps a ground profiling exercise of the Site was undertaken, raising the ground level to 6.30m Above Ordnance Datum (AOD), c.0.30m above the worst-case flood event. This results in the land being equivalent to FZ1 and therefore sequentially appropriate.

4.19.11. The construction access road and laydown area are located within FZ3 and have a 'high' probability of tidal flooding. The southern extent of the access road is located within FZ1 with less than 1 in 1,000 annual probability of flooding from river or sea in any year. The WKN Site access roads and laydown area are assessed to remain flood free for a present day 0.5% (1 in 200 year event) and 0.5% event occurring in 2070. The area is assessed to be at risk of residual flooding from the overtopping of flood defences, which are assumed to remain at current crest levels, in 2115. The laydown area and construction access is only required up to 2024 from which point the land will be restored.

4.19.12. The ES assessed the likely effects on water resources taking account of the impacts of the Proposed Development on the prevailing hydrological, surface water drainage, flooding and water quality environments.

4.19.13. Climate change: Since the K3 Planning Permission was granted the EIA Regulations were updated in 2017 emphasising the need for EIAs to consider potential future impacts of climate change. The EA have assessed the K3 Site as being situated in FZs 1, 2 and 3, however due to land elevation the K3 Site now identifies as FZ1, and therefore considered to be at low risk of flooding from all sources. This would remain the case for the EA modelled period 2115.

4.19.14. The construction access road is shown to be situated within Flood Zone 1, 2 and 3 and therefore at 'low to high' risk of flooding from The Swale. The existing Kemsley access road has its own surface water drainage system with two retention ponds which treats the surface water before discharging to local watercourses.

4.19.15. In the absence of the WKN Proposed Development, the current K3 Proposed Development construction laydown area would be restored to grassland and/or scrubland similar to that prior to use as a laydown area.

4.19.16. The WKN Site was assessed as being in FZ2, however due to land elevation it now identifies as FZ1, and therefore considered to be at low

risk of flooding from all sources. This would remain the case for the EA modelled period 2115 (see Drainage Design Philosophy, ES Appendix 10.2 [APP-042].

4.19.17. The potential environmental impacts arising from the construction of the Proposed Development were identified in the ES [APP-062] at paragraph 10.6.3. These were temporary in nature as follows:

- impacts which may affect temporary (construction) flood risk;
- impacts of construction on surface water resources; and
- impacts of construction on on-site drainage network.

4.19.18. In each case the significance of impacts upon hydrology and flood risk receptors was assessed.

4.19.19. Standard construction mitigation measures to be adopted during the construction of the WKN Proposed Development would include drainage works to be constructed to relevant statutory guidance and approved via the Lead Local Flood Authority (LLFA) prior to the commencement of construction; and consultation with the EA to be ongoing throughout the construction period to promote best practice and implement proposed mitigation measures.

4.19.20. The overall significance of the effect of construction on flood risk, surface water resources and on-site drainage network based on the situation which includes the integration of construction measures adopted in Table 10.14 and Table 10.15 [APP-062] is assessed as minor adverse, which is not significant.

4.19.21. The effects of the operation and maintenance of the WKN Proposed Development in relation to hydrology and flood risk were identified in the ES. The longer-term impacts assessed were the impact of operation on flood risk; impact of operation on surface watercourses; and impact on water resources.

4.19.22. Standard mitigation measures to be adopted as part of the WKN Proposed Development for operation and maintenance would incorporate measures to prevent pollution and increased flood risk:

- Emergency spill response procedures;
- Clean up and remediation of contaminated water run-off;
- Operational drainage gullies to prevent run-off from site;
- Drainage strategy including surface water management plan, maintenance and/or monitoring procedures of drains and gullies; and
- Operational management plan (including site storage procedures)

4.19.23. Applying the standard mitigation measures the significance of effects of the WKN Proposed Development on flood risk and surface water quality is assessed as minor adverse and not significant.

4.19.24. Decommissioning impacts which would occur due to the decommissioning of the WKN Proposed Development and associated infrastructure were assessed in relation to flood risk and surface watercourses. The

decommissioning impacts have been determined to be similar and no worse than construction impacts in relation to hydrology and flood risk, and therefore are at worse minor adverse and unlikely to be significant subject to implementation of standard construction practice and the DEMP as set out in Table 10.14 [APP-062].

Examination

4.19.25. No concerns were raised during the Examination about the approach to or findings of the FRA.

4.19.26. In their RR [RR-001] the EA stated it had no objection to the FRA, flood mitigation in the form of land raising had been maintained as per the previous application, considered appropriate here for the type of development, and the flood levels used in the FRA remain the same in the updated modelling. It noted the permit application for Project K3 submitted to increase waste input from 550 000 Tpa to 657 000 Tpa as a substantial variation and that the modelling assessments would be done during the permitting process. The WKN Proposed Development would require an environmental permit.

4.19.27. The EA added [RR-001] that groundwater and contaminated land baseline conditions were addressed for this site previously under earlier permissions from KCC and under the IED permit. Additional assessment of ground conditions would be undertaken before, during and after operational activities under any new permit issued. The site's geological setting is on strata that is not of significant sensitivity for groundwater protection and provided surface management and materials handling are undertaken in accordance with permit requirements, ground quality and associated controlled waters should not be at significant risk.

4.19.28. In the SoCG between the EA and the Applicant [REP7-012] it is noted the tidally dominated Swale to the east of the Application Site presents the greatest flood risk and it is agreed there is no discernible flood risk associated with the Site from other sources. It is also agreed that the ES and FRA have used an appropriate methodology, are based on an appropriate baseline and make an appropriate judgement regarding the likely significant residual impacts in terms of the flood risk relating to the proposed schemes. The Consented K3 Facility as constructed and the WKN Proposed Development would be set above the predicted flood levels for the area taking into account climate change and raised above the 1 in 200-year (2115) flood level. Flood risk associated with the construction accesses and laydown areas is considered acceptable and it is agreed that the Proposed Developments would be compatible with the flood risk of the locality.

4.19.29. The SoCG [REP7-012] also agrees that the Proposed Development does not pose a risk to surface water quality and the River Swale subject to the controls set out in the mitigation measures, the dCEMP and secured through R18 of the DCO.

4.19.30. With respect to land contamination and groundwater it is agreed within the SoCG [REP7-012] that the K3 Proposed Development would not pose a risk to groundwater. Regarding the WKN Proposed Development it is agreed that R28 (piling risk assessment) and R19 (contaminated land and groundwater) of the dDCO would ensure the appropriate ongoing management of any contamination that might be present and that the risk of consequential environmental impact is adequately mitigated and any risk would be as low as reasonably practical.

Questions

4.19.31. Written questions relating to the water environment were addressed to the Applicant and KCC, namely ExQ1.12.1 to ExQ1.12.4; and ExQ3.12.1 to ExQ3.12.3.

4.19.32. ExQ1.12.1 asked how the specifications in the Surface Water Management and Foul Drainage Design Philosophy Statement [APP-152] would be captured in the DCO and it was noted this is included as a certified document and as such addressed by R9 dDCO which states that the K3 authorised development must be carried out in accordance with the approved plans and documents in Schedule 3.

4.19.33. In response to ExQ1.12.3 concerning R18(4) dDCO [AS-002] the Applicant considered that the Requirement appropriately ensured that commissioning would not take place until the surface and foul water drainage systems had been constructed in accordance with details which had to be approved by the RPA under R18(1).

4.19.34. ExQ1.12.4 sought to clarify Options A and B for the surface water outfalls, in ES Appendix 11.7: Marine Licence Surface Water Outfall to Swale [APP-049]. The Applicant responded that Option A reflected the original option to discharge clean surface water from K3 and Option B was the amended approach now allowing for discharge of clean surface water from both Project K3 and Project WKN, a benefit over the previous position that would have allowed discharge from K3 and the previously consented IBA facility. If consent were granted for Project WKN Option B would be implemented. The ES did not consider the outfall, given consent has been granted for that by the MMO.

4.19.35. In reply to ExQ3.12.1 the Applicant confirmed the WKN EP application was submitted on 13 June 2020. However it declined the ExA's request to supply a copy to the Examination, on the basis that amended information might be requested by the EA which would then amend or replace the original information made public through this Examination.

4.19.36. In reply to ExQ1.2.8 it was clarified that the Surface Water and Foul Drainage Philosophy [APP-152] included in Appendix B drawings: 16315/A1/P/0100 Rev U (Proposed Site Layout), 16315/A0/0250 Rev J (Site Sections) and 16315/A0/0301 Rev J (Proposed Drainage Layout), match the references for those plans at Schedule 3 dDCO.

4.19.37. The intertidal area of the Swale where the second surface water outfall would be located was surveyed in 2017. This is referred to in ES

Appendix 11.7 [APP-049] where full details of the intertidal habitats can be found. However this referred to the 2017 Marine Licence, which was varied on 10 May 2019 to allow for construction and operation of a second outfall. Asked (ExQ1.5.2) to clarify the correct location of the information, the Applicant then supplied the full marine licence application documents [REP2-036] which contains a full assessment of effects on marine interest features.

4.19.38. ExQ1.8.12 sought clarity over whether the marine licences authorised both construction and operation. MMO responded [REP2-041] that under the MCAA2009 a marine licence is required for specific activities in the UK marine area such as construction activity, but MMO does not licence the operation of activities such as outfalls. Consent required for the discharge of water from infrastructure constructed via a marine licence, ie a discharge permit, would be obtained from the relevant authority (e.g. EA). Marine licence L/2017/00482/2 consents the construction of two outfalls, one to serve the Kemsley Generating Station and one to serve the WKN Proposed Development. The licence does not consent the operation, maintenance or decommissioning of such structures.

4.19.39. 'Work No 1E' and 'Work No 7' in Schedule 1 (authorised development) dDCO refer to those activities consented under this existing marine licence. MMO queried whether matters arising from the works in the marine area should be dealt with by requirements in the dDCO or conditions on the marine licence. It considered that matters in the scope of the 2009 Act could be regulated by such conditions or through a Deemed Marine Licence (DML) within a DCO.

4.19.40. ExQ2.5.3 explored the reference to outfall pipes and operation in MMO's D2 submission [REP3-017] concerning ES Chapter 11, paragraph 11.9.73 [REP2-024], and any maintenance works needed for the outfall pipes, to either incorporate this into a DML or request a variation to the existing ML.

4.19.41. ExQ2.5.4. asked the MMO and EA whether a DCO Requirement or environmental permit is needed in respect of operation as only clean surface water will be discharged from the outfalls.

4.19.42. ExQ2.5.5 sought information about the rate and volume of the discharge from the outfalls.

4.19.43. The Applicant's response [REP4-006] to ExQ2.14 gave information on the scope and conclusions of the assessment in respect of the SEIMP relating to the surface water outfall elements of the Proposed Development. The outfalls for Project K3 and Project WKN would not generate significant impacts on seascapes or the landscape and would only discharge clean surface water so that no deterioration of water quality would result. The process would be controlled by any permit or amended permit issued for the Proposed Development which was not considered to have the potential to impact on any element of the marine protected areas, specifically the Swale Ramsar site and Swale Estuary Marine Conservation Zone. There would be no noise effects arising from the

operation of the outfalls but their construction using a vibro hammer would have the potential to create noise. Therefore a controlling condition requiring a soft start approach would be imposed within the Marine Licence. No cumulative adverse effects were identified with other proposals. It was concluded that the Proposed Development was not considered to conflict with any element of the emerging SEIMP.

Conclusion

4.19.44. Although having both options of conditions on a current marine licence and a DML risks inconsistency, and duplication of conditions, I agree with MMO's view that it is open to an applicant to apply for a variation to their existing licence to incorporate all licensable activities in the UK marine area in which case the DCO contains no licensable activities. Alternatively an applicant might incorporate a DML in their DCO including all licensable activities within the UK marine area. I see nothing wrong in the approach adopted by the Applicant in pursuing the marine licence option.

4.19.45. I conclude that in terms of flood risk, the Proposed Development would be acceptable, compatible with the flood risk of the area and would comply with NPS EN-1, the NPPF, and development plan policies. The Applicant has demonstrated compliance with the WaterFD and that there would be no impact upon The Swale Estuary MCZ or other designated sites.

4.19.46. In respect of the WKN Proposed Development and hydrology and flood risk, potential impacts to the water environment would be avoided where practicable through implementation of a number of industry standard mitigation measures, and careful consideration of the drainage design, construction techniques and operational best practice of the WKN Proposed Development. The construction mitigation measures are included in the dCEMP [REP4-013].

4.19.47. Subject to the controls provided through R12 Preferred dDCO [REP7-003] in respect of the K3 Proposed Development, or R18 in respect of the WKN Proposed Development, surface water run-off would be securely managed during construction, operation and decommissioning, as the case may be, of the Proposed Development, and there would not be any detrimental impact on water quality. As a result, I find that in respect of water quality and resources the Proposed Development would be in accordance with NPS EN-1, NPS EN-2, the NPPF and the development plan and emerging SEIMP policies.

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION

5.1.1. This chapter of the Report sets out my analysis and conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the SoSBEIS,

as the competent authority, in performing their duties under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) ('the Habitats Directive') and Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

5.1.2. Regulation 63 of the Habitats Regulations states that if a plan or project is likely to have a significant effect on a European site designated under the Habitats Regulations (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment (AA) of the implications for that site in view of its conservation objectives. As a matter of policy, the Government applies the same procedures to a number of other internationally designated sites, including Ramsar sites; these are all referred to in this report hereafter as European sites. Consent can only be granted if the AA concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).

5.1.3. Evidence has been sought during the Examination from the Applicant and the relevant Interested Persons (IPs) through written questions and Issue Specific Hearings (ISHs), with the aim of ensuring that the SoS has such information as may reasonably be required to carry out their duties as the competent authority.

5.1.4. In accordance with the process set out in Planning Inspectorate Advice Note 10 (AN10), submitted evidence in respect of HRA matters was drawn together during the Examination into a Report on the Implications for European Sites (RIES) [PD-018]. The purpose of the RIES was to compile, document and signpost information provided in the application and submitted by the Applicant and IPs during the Examination (up to and including D6) in relation to potential effects on European sites. The RIES was published on the Planning Inspectorate's website on 15 July 2020. IPs, including Natural England (NE), were notified and consultation was undertaken between 15 July and 5 August 2020.

5.1.5. The RIES was issued to ensure that IPs, including NE as the statutory nature conservation body, had been consulted formally on Habitats Regulations matters. This process may be relied upon by the SoS for the purposes of Regulation 63(3) of the Habitats Regulations. The consultation raised no new relevant or important issues or concerns. The Applicant confirmed at D7 [REP7-001] that they had no comments on the RIES. NE stated at D7 that it reflected an accurate representation of their advice throughout the Examination [REP7-035] and the MMO stated at D8 that they agreed with NE's conclusion on the content of the RIES [REP8-018].

5.1.6. The Applicant submitted a final version of their HRA Report (HRAR) at D7 [REP7-010], after the RIES had been published. Having reviewed it I find that the change does not affect the content of the RIES.

5.2. PROJECT LOCATION

K3 PROPOSED DEVELOPMENT

5.2.1. As described in Chapter 2 above, the Proposed Development comprises, firstly, the construction and operation of Wheelabrator Kemsley Generating Station (K3), a waste to energy facility with a generating capacity of up to 75 megawatts (MW) (49.9MW previously consented plus a 25.1MW upgrade) and a total waste throughput of up to 657,000 tonnes per annum (550,000 tonnes previously consented plus a 107,000 tonnage increase). K3 would combust post-recycled solid recovered fuel waste, commercial and industrial waste and pre-treated municipal solid waste to produce electricity which is exported to the national grid and steam which is supplied to the adjacent paper mill. The grid connection would be via the existing substation located within the DS Smith paper mill site located to the immediate west of the Application Site.

5.2.2. The K3 waste facility consented under the Town and Country Planning Act 1990 (TCPA1990) has been constructed and was commissioned with effect from 16 July 2020.

WKN PROPOSED DEVELOPMENT

5.2.3. The Proposed Development also comprises the construction and operation of Wheelabrator Kemsley North (WKN), a new waste-to-energy facility with a generating capacity of 42MW and capable of processing 390,000 tonnes of waste per annum. The electricity produced would be exported to the national grid. The grid connection would be via the existing substation located within the DS Smith paper mill site located to the immediate west of the Application Site.

K3 and WKN

5.2.4. As both K3 and WKN would be located within the Application Site the same European sites were identified and considered by the Applicant in respect of each of the Proposed Developments, consequently the commentary below equally applies to both K3 and WKN unless indicated otherwise.

5.2.5. The Order Limits of K3 and WKN do not overlap with any European site. The nearest European sites, The Swale Special Protection Area (SPA) and Swale Ramsar site, are located approximately 160m away from the Application Site at their closest point.

5.2.6. The Applicant identified European sites within 10km of the Application Site boundary, and accordingly considered the following eight European sites (and features), for which the UK is responsible, for inclusion within the HRA:

- Swale SPA;
- Swale Ramsar site;
- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;

- Thames Estuary and Marshes Ramsar site;
- Queendown Warren Special Area of Conservation (SAC); and
- Outer Thames Estuary SPA.

5.2.7. No other European sites or features were identified by NE or any other IP.

5.2.8. The Applicant did not identify any potential significant effects on European sites in any other European Economic Area State.

5.2.9. I am satisfied that the Applicant has correctly identified all the relevant European sites and qualifying features/interests for consideration within the HRA.

5.3. HRA IMPLICATIONS OF THE PROJECT

5.3.1. The Proposed Developments are not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.

5.3.2. The Applicant concluded that there was potential for likely significant effects from the Proposed Developments on eight European sites. Therefore a HRAR was provided with the application entitled 'Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO: Habitats Regulations Assessment Report' [APP-044], together with screening and integrity matrices ('the 2019 HRAR'). This provides an assessment of the operational and decommissioning effects arising from the K3 Proposed Development and the construction, operational and decommissioning effects arising from WKN.

5.3.3. The construction effects of the K3 Proposed Development are assessed in the 2010 HRAR for K3 as consented under the TCPA1990. This assessment is included in the Development Consent Order (DCO) application documents, contained within the 2010 Environmental Statement (ES) Appendix 9.6: Information for an Appropriate Assessment [APP-073] ('the 2010 HRAR').

5.3.4. In response to ExA questions and representations made by IPs during the Examination, the Applicant provided an updated 2019 HRAR incorporating updated screening and integrity matrices at D2 [REP2-034] and D4 [REP4-010]. In response to comments made by the Marine Management Organisation (MMO) at D5 the Applicant provided an updated 2019 HRAR at D6 [REP6-008]. In response to ExQ4.8.1 [PD-015] the Applicant provided an updated 2019 HRAR at D7 [REP7-010] to incorporate text that had been omitted from Evidence Note c to the Integrity Matrices in Appendix 2. All subsequent references to the 2019 HRAR in this report are to the D7 version unless otherwise stated.

5.3.5. The study area for the assessment of effects on European sites is not identified in the 2019 HRAR. It was clarified in the Applicant's response [REP2-009] to ExQ1.5.3 [PD-008] as being 10km from the Application Site boundary. Paragraph 2.12 of the 2019 HRAR states that the eight

European sites considered in the HRAR were selected on the basis of the nature of the Proposed Developments and the findings of the technical chapters of the ES.

5.3.6. In their response to ExQ1.8.22 [PD-010] NE did not identify any other UK European site or European site features that could be affected by the Proposed Developments and confirmed that they agreed that the correct sites and features had been considered in the 2019 HRAR [REP2-042].

5.3.7. I sought clarification from the Applicant in ExQ1A [PD-008] and ExQ2 [PD-012] on a number of apparent discrepancies and omissions in the 2019 HRAR (Q1.8.1 – Q1.8.22 and Q2.8.1 – Q2.8.6, respectively). The questions included in ExQ1 related to the features of the European sites, the Applicant's approach to the in-combination assessment, the securing of the proposed mitigation and discrepancies in the matrices. I also asked NE to confirm whether they agreed that the correct sites and features were considered in the HRA and whether they agreed with its conclusions (ExQ1.8.22). The HRA-related questions included in ExQ2 related to the in-combination assessment, the mitigation contained within the Draft Construction Environmental Management Plan (dCEMP), changes made to the preamble to the matrices in the updated 2019 HRAR and the MMO's comment in their D3 submission [REP3-017] that saltmarsh habitats and locations were not identified in the 2019 HRAR. A number of these questions were also directed at NE, the Environment Agency (EA) and Swale District Council (SDC).

5.3.8. The Applicant responded to ExQ1 and ExQ2 at D2 and D4 [REP2-009 and REP4-006] and submitted updated versions of the 2019 HRAR at D2 and D4 [REP2-034 and REP4-010]. The Applicant's approach to the in-combination assessment was clarified in the D4 version of the 2019 HRAR. The revised text in Section 7 confirmed that it had been concluded that the K3 and WKN Proposed Developments would not give rise to likely significant effects on any European sites in combination with other plans and projects. The matrices in Appendices 1 and 2 were revised to reflect this by the inclusion of in-combination effects in the screening matrices and their removal from the integrity matrices. This was subsequently reversed in the screening and integrity matrices contained in the D7 version of the HRAR [REP7-016]. Evidence Note h to the integrity matrices states that the in-combination assessment concluded that there would be no adverse effects on the integrity (AEoI) of designated sites either because there were no ecological pathways or because the in-combination modelling results did not exceed the (relevant) maximum thresholds.

5.3.9. NE requested in their Relevant Representation (RR) [RR-006] that the Swale Local Plan was included in the in-combination effects assessment of other plans or projects. The updated 2019 HRAR [REP2-034] submitted for D2 included an assessment of the potential in-combination effects of the Swale LP together with K3 and WKN and concluded no likely significant effects. NE subsequently confirmed [REP3-018] that the updated text addressed their comments and that they had no further comments on the updated HRAR. The final Statement of Common

Ground (SoCG) between the Applicant and NE [REP5-008], submitted at D5, confirmed that all matters, including those related to HRA, were agreed.

5.3.10. Following a request by the ExA in ExQ3 (Q3.5.1) [PD-014] the Applicant submitted a 'Draft WKN Ecological Mitigation and Management Plan' (dEMMP) [REP5-005] that contained details of the measures proposed to address potential ecological impacts on species. This includes species that are also features of European sites considered in the HRA such as the Swale SPA, Swale Ramsar site, Medway Estuary and Marshes SPA and Medway Estuary and Marshes Ramsar site.

5.3.11. The MMO, in their D3 submission [REP3-017], commented that saltmarsh habitats and locations had not been identified in the 2019 HRAR despite being considered in the marine licence application [REP2-036]. ExQ2.8.6 [PD-012] contained a request to the Applicant and NE to provide their comments on this point for D4. The Applicant responded [REP4-006] that saltmarsh is a supporting habitat of the various SPA/Ramsar site interest features and is identified in the HRAR in Table 4.7. NE responded [REP4-031] that "..*whilst saltmarsh habitats and locations are not explicitly identified in the HRAR [REP2-034], saltmarsh is considered as a supporting habitat of the SPAs in the vicinity. The Swale Ramsar site is also included and the saltmarsh plants that form part of the designated interest are noted.".* NE also commented that the HRA for the marine licence application for the outfall considered implications for intertidal habitats, including any required mitigation measures, and those conclusions are referred to in the 2019 HRAR.

5.3.12. In their D4 response [REP4-028] the MMO referred to ExQ1A.11.6 [PD-010]. They encouraged a review of the potential environmental impacts of the Proposed Developments using water transport and commented that it must include an assessment of the potential impacts on adjacent designated sites and that this should be considered within the HRA.

5.3.13. In their D5 response [REP5-011] the Applicant confirmed that a direct response had been provided to the MMO setting out their position. They were of the view that it would not be appropriate or possible at this stage to provide a review of the potential impacts of using water transport without knowing the quantum of waste being transported using water, the source of that waste, the method of transportation and any associated infrastructure required. They stated that this information would only become available when a waste contract which allowed for transportation by water was being sought and acknowledged the MMO's point in its D4 submission that an assessment would need to be undertaken of the environmental impacts of using water transportation. The MMO's D5 submission [REP5-030] welcomed the Applicant's engagement and reiterated that they encouraged a robust assessment of the potential impacts of transporting material by barge, including emissions and noise from the additional marine traffic passing through protected areas.

5.3.14. The MMO also raised concerns in their D5 submission about potential impacts of the discharge of water from the outfall on mussel beds and/or saltmarsh. They considered that it could lead to changes in salinity and turbidity which, depending on the location of the mussel beds in relation to the location of the outfall, could have significant effects, and requested further elaboration from the Applicant as to why there would be no significant effects resulting from the discharge.

5.3.15. The Applicant submitted an updated version of the 2019 HRAR [REP6-008] at D6, which contained minor revisions to address points raised by the MMO in their D5 submission. They responded to the MMO's points about salinity changes and water transportation in their D6 response to the D5 submissions [REP6-010], as set out below.

5.3.16. In respect of salinity, the Applicant commented that the original application for a marine licence was accompanied by a full ES. The ES dealt with the potential impacts of both construction and operation of up to two outfalls and the issue of localised changes to salinity due to discharge of 'pure' water from the outfalls. They explained that the assessment scope was determined in consultation with the MMO, it was concluded that there would be no likely significant effects on any interest feature/supporting habitat of any of the designated sites within the Swale, and that was accepted by the MMO in their granting of the marine licence. They stated that the scope of the Environmental Appraisal that accompanied the request to vary the original marine licence to allow for the construction of a second outfall to serve WKN was also determined in discussion with the MMO (set out in Section 1.2 of the Environmental Appraisal [REP2-036]). They explained that the MMO agreed that the assessment should focus on impacts related to the construction of the second outfall only, with no further assessment necessary of other activities on the basis that they had all been assessed in the original licence application, including the issue of changes to salinity. They considered that this was subsequently confirmed by the granting by the MMO of the licence variation in May 2019.

5.3.17. In their D7 response [REP7-016] to ExQ4.8.2 [PD-015] the Applicant stated that they had asked the MMO on 31 July 2020 if they had any questions about the impacts of the Proposed Developments on the mussel beds and that the MMO had not raised any issues with them to date. The MMO, in their D7 response [REP7-033], acknowledged the inclusion of water quality impacts in relation to appropriate assessment in the 2019 HRAR and that all existing discharges were regulated by the EA and the consents subject to their own HRA.

5.3.18. NE, in their D7 submission [REP7-035], stated that in relation to the MMO's comments about potential effects on the Swale SPA and Ramsar site arising from water quality impacts they considered that the mitigation measures described in Chapter 10 of the ES (Water Environment) [APP-062] were sufficient to avoid adverse effects on the sites' integrity. They were of the view that the sustainable drainage systems as illustrated on the Drainage Layout plan [APP-127] would allow any silt in the surface water run-off to settle out and would treat

any other pollutants before discharge to The Swale. They considered that discharging freshwater to the site at no greater than greenfield run-off rates was not likely to significantly affect the features of the site as a gradient in salinity was appropriate in an estuarine system. NE concluded that, as set out in the agreed SoCG [REP7-014] submitted at D7, the evidence before the SoS was sufficient to support a conclusion of no AEoI of the Swale SPA and Ramsar site.

5.3.19. In respect of the MMO's comments about water transportation, the Applicant stated in their D6 submission [REP6-010] that they would review the D6 responses from IPs and provide responses to those and any questions in ExQ4 which addressed this issue at D7. In their D6 response [REP6-012] the MMO acknowledged the Applicant's D5 response [REP5-011] to ExQ3.8.1 about water transportation and referred back to their D5 submission [REP5-030] but did not comment further in relation to HRA specifically.

5.3.20. In their D7 response the Applicant stated that their position on water transportation remained the same as set out in their response [REP5-011] to the questions contained in ExQ3 [PD-014] in respect of that matter.

5.3.21. In the MMO's D7 submission [REP7-033] they acknowledged the Applicant's statement in their ExQ3 response [REP5-011] that transport by water was not feasible. They highlighted that points 1.1, 1.3 & 1.5 of their D6 response [REP6-012] contained information about the requirement to consider any activities which may be licensable under s66 of the Marine and Coastal Access Act 2009 and the requirement to consider operational impacts if transport by water is required. No further comments were made on this matter by any party at D8.

5.3.22. In their D7 response to ExQ4.5.1 [PD-015] the MMO set out their view that if impact piling was required during construction soft start measures should be implemented and suggested wording that could be inserted in Requirement 28 (R28) of the dDCO. They reiterated this point in their D8 submission [REP8-018].

5.3.23. In their D8 submission [REP8-015] the Applicant stated that dDCO R28 provided timing restrictions across a calendar year on impact piling, which they considered sufficient to avoid impacts on bird species; the SoCG with NE confirmed that NE were satisfied that those measures were sufficient; and NE confirmed at D7 in their comments on the RIES [REP7-035] that the evidence was sufficient to support a conclusion of no AEoI for the Swale SPA and Ramsar site. They confirmed that any impact piling undertaken to construct the WKN outfall would be done under the control of the marine licence [APP-049], Section 5.2.7 of which requires a soft start to be made for any impact piling. They expressed their view that it was not necessary for that provision to be replicated within the Ecological and Mitigation Management Plan (EMMP) [REP5-005] or DCO.

5.3.24. In their D7 response [REP7-033] the MMO stated that they had no further comments to make on the 2019 HRAR and deferred to NE for all further comments.

5.3.25. No other IPs raised any concerns about the Applicant's approach to undertaking the HRA or its conclusions.

5.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

CONSENTED K3 FACILITY

5.4.1. The Applicant's screening assessment of K3 as consented, contained in the 2010 HRAR [APP-073], concluded that it would have no likely significant effects during construction, operation and decommissioning, either alone or in-combination with other plans or projects, on the qualifying features of the Outer Thames Estuary SPA. It was concluded that K3 as consented was likely to give rise to significant effects during construction, operation and decommissioning, either alone or in-combination with other plans or projects, from urbanisation, operational air quality, hydrological changes and noise and lighting disturbance on qualifying features of the seven European sites listed below:

- Swale Special SPA;
- Swale Ramsar site;
- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar site; and
- Queendown Warren Special Area of Conservation.

K3 PROPOSED DEVELOPMENT AND WKN PROPOSED DEVELOPMENT

5.4.2. The Applicant's assessment of likely significant effects of K3 and WKN on the eight European sites considered in the HRA is contained in Section 5 of the 2019 HRAR and reflected in the screening matrices in Appendix 1. The evidence notes to the matrices cross-reference to the relevant information contained in the HRAR.

5.4.3. The Applicant has addressed potential in-combination effects of K3 and WKN within Section 7 of the 2019 HRAR. Paragraph 7.3 identifies 10 projects considered in the in-combination assessment carried out by the Applicant. A discrete assessment of the in-combination effects of emissions to air is provided in the 2019 HRAR paragraphs 7.7 – 7.15. All other potential in-combination effects are considered in HRAR paragraphs 7.16 – 7.38. NE, in their RR [RR-006], suggested that traffic movements generated by proposals in the Swale Local Plan should additionally be included in the in-combination effects (ICE) assessment. The Applicant provided this assessment in the updated 2019 HRAR submitted for D2. It concluded that only one road would carry traffic associated with both the Proposed Developments and proposals within the Swale LP (the A249) and that the habitats in that location were not sensitive to changes in air

quality. NE confirmed in their D3 submission [REP3-018] that the updated assessment addressed their comments and that they had no further comments on the HRAR. The scope of the ICE assessment was not disputed by any other IP.

K3 PROPOSED DEVELOPMENT

5.4.4. The Applicant's screening assessment contained in the updated 2019 HRAR (Section 5) considered that the environmental pathways through which there was the potential for K3 to have LSEs on the European sites were air quality and disturbance due to increased traffic noise. All other pathways were excluded on the basis that there were no construction activities required for the Proposed Development and no changes proposed to its physical form. Potential air quality and disturbance effects are assessed in the HRAR. In relation to air quality, regard was had to the information available on the Air Pollution Information System (APIS) website. Cross-reference is made to the air quality modelling results contained in ES Appendix 5.4 [REP2-032], from which it was concluded that the relevant maximum pollutant thresholds were not exceeded and therefore not significant. In respect of disturbance it was concluded that the potential for disturbance due to traffic noise was highly limited as a result of the distance between the traffic and the designated sites (about 100m from the grazing marsh habitats of the nearest European sites) and because the absolute increase in average annual daily traffic would be extremely small (<2%) with a correspondingly small increase in absolute noise.

5.4.5. It was concluded that the operation and decommissioning of the K3 Proposed Development would have no likely significant effect, either alone or in-combination with other plans or projects, on the qualifying features of any of the eight European sites.

5.4.6. The IPs did not dispute the Applicant's conclusion of no likely significant effects on these European sites and their qualifying features during the Examination. I am satisfied that the screening conclusions are appropriate.

WKN PROPOSED DEVELOPMENT

5.4.7. The Applicant's screening assessment in respect of WKN is set out in Section 5 of the HRAR. Paragraph 5.20 identifies the environmental pathways through which it was considered WKN could have a significant effect on the European sites. These are as follows:

- direct loss or damage of habitats within a designated site or nearby areas used by interest species;
- change in management regimes of habitats within a designated site or nearby areas used by interest species;
- loss of future space to allow for managed realignment to avoid coastal squeeze;
- urbanisation that results in over shadowing, reduction of sight lines or which hinders flight paths;
- air quality;

- water quality;
- hydrological changes, including in the balance of saline and non-saline conditions;
- disturbance (activity, recreation, noise and lighting); and
- introduction or spread of non-native invasive species.

5.4.8. An assessment of the potential effects of each of these pathways is provided in paragraphs 5.21 – 5.73 of the HRAR. It was concluded that WKN would have no likely significant effects during construction, operation and decommissioning, either alone or in-combination with other plans or projects, on the qualifying features of the six European sites listed below:

- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar site;
- Queendown Warren Special Area of Conservation; and
  Outer Thames Estuary SPA.

5.4.9. The IPs did not dispute the Applicant's conclusion of no likely significant effects on these European sites and their qualifying features during the Examination.

5.4.10. It was concluded that WKN was likely to give rise to significant effects on the qualifying features of the Swale SPA and Swale Ramsar site as a result of impacts on air and water quality and through recreational, lighting, noise and visual disturbance. The MMO raised a number of questions during the Examination about the Applicant's assessment of effects on these sites and their qualifying features (see Section 6.3 above).

5.4.11. I am satisfied that the screening conclusions are appropriate.

5.5. CONSERVATION OBJECTIVES

5.5.1. The conservation objectives for all of the European sites taken forward for an assessment of effects on integrity and discussed in this section of the report were provided by the Applicant in Section 4 of the 2019 HRAR.

5.6. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

CONSENTED K3 FACILITY

5.6.1. Paragraphs 9.311 – 9.323 of the 2010 HRAR [APP-073] contain information on proposed measures to mitigate the potential effects of K3 as consented, including industry standard and good practice measures. These include:

- provision of areas within the Application Site to support qualifying plant species that may be present on land beyond the site boundary that will be lost;
- minimisation of construction dust;

- treatment and pollution prevention measures;
- surface water drainage incorporating sustainable urban drainage system features to provide attenuation and storage;
- a 'soft start' to the piling operation and limited night-time construction or operational activity that could produce 'startling' noise; and
- directional lighting.

5.6.2. The Applicant concluded in the 2010 HRAR that K3 as consented would not adversely affect the integrity of the seven European sites, and their features, that were taken forward for assessment.

WKN PROPOSED DEVELOPMENT

5.6.3. Section 6 of the 2019 HRAR contains the Applicant's assessment of the potential effects of WKN on the integrity and features of the eight European sites considered in the HRA, which is reflected in the integrity matrices contained in Appendix 2. The potential effects arising from visual disturbance during construction, operation and demolition and noise disturbance during construction and demolition are considered for each bird species that are a feature of the Swale SPA and Swale Ramsar site.

5.6.4. Information on proposed measures to mitigate the potential effects of WKN, including industry standard and good practice measures, is contained in Section 6 of the 2019 HRAR and the Evidence Notes to the Integrity Matrices in Appendix 2. Cross-reference is made from Section 6 to proposed measures contained in other DCO application documents, such as the 2019 ES Chapter 10: Water [APP-062], the WKN Construction Environmental Management Plan (CEMP) [REP4-013], the varied Marine Licence [REP2-036], and the WKN external lighting strategy set out in the 2019 ES Appendix 11.8 [APP-050]. The Evidence Notes to the matrices describe the proposed mitigation and cross-reference to the relevant information in the main text of the HRAR. The dEMMP [REP5-005] submitted by the Applicant at D5 also describes measures to protect species which could be affected by WKN, some of which are also features of European sites considered in the HRA.

5.6.5. Proposed measures in respect of WKN include:

- those contained within the CEMP in relation to construction dust, including damping down, vehicle wheel and body washing, and sheeting of vehicles carrying material;
- a site-wide surface water pollution prevention system to prevent the discharge of any contaminated surface water from the site;
- a palisade fence, a minimum of 2m high, around much of the WKN site boundary to avoid disturbance effects. This is in addition to a 2.4m fence that was erected along part of the K3 site boundary for the K3 construction works that has been retained and is located on the northern boundary of the WKN site;
- restrictions on impact piling to avoid disturbance effects; and
- lighting to be designed according to best practice standards to ensure that no additional light spill would occur.

5.6.6. The dDCO includes Requirements that secure the implementation of the proposed measures, such as R17 (fencing), R18 (drainage), R21 (dEMMP), R22 (CEMP), R23 (lighting) and R28 (piling).

5.6.7. The Applicant concluded in the 2019 HRAR that following the implementation of the proposed mitigation measures WKN would not adversely affect the integrity of the Swale SPA and Swale Ramsar site. I am satisfied that this conclusion is appropriate.

5.6.8. The Applicant's conclusions in relation to the effects on the integrity of the European sites that were taken forward for assessment were not disputed by NE [REP3-018] [REP4-031] [REP5-008] or any other IPs.

5.7. HRA CONCLUSIONS

5.7.1. My understanding of HRA matters in relation to the Proposed Development is drawn from the information provided in the application, with reference to the 2010 and 2019 HRARs and the ES, and taking full account of the responses to relevant questions that I raised.

5.7.2. On the basis of the information before me I consider that the Proposed Development would have no adverse effect, subject to the controls set out in the dDCO, either alone or in-combination with other plans or projects, on the integrity of any European site and its features.

5.7.3. I am also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment and discharge his obligations under the Habitats Regulations.

6. CONCLUSIONS ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

6.1.1. The ExA has considered the issues that were raised by all Interested Parties (IPs) in their various representations. They were examined during the Hearing and through the ExA's written questions. The Principal Issues are set out at Section 4.1 of this Report and I have made findings in relation to these matters. The policy context and the ExA's findings on individual matters are set out in the preceding Chapters 4 and 5. The overall planning balance is summarised in Section 6.3 below.

6.2. CONSIDERATIONS IN THE OVERALL PLANING BALANCE

Application of NPSs and development plan to the Proposed Development

6.2.1. The designated National Policy Statements (NPSs) NPS EN-1 and NPS EN-3 provide the primary basis for the Secretary of State (SoS) to make decisions on development consent applications for energy based Nationally Significant Infrastructure Projects (NSIPs) in England, which includes the K3 Proposed Development.

6.2.2. In terms of Project WKN the NPSs may be considered "alongside" other national and local policies, however as the adopted local plan for waste matters, I consider the development plan and in particular the Kent Minerals and Waste Local Plan (KMWLP) to be the primary policy against which this element of the Proposed Development should be determined. The presumption in favour of determining the application in accordance with the NPS is absent here although the relevant NPSs are important and relevant matters to be considered.

6.2.3. I disagree with the Applicant's response [REP5-011] to ExQ3.6.2 [PD-014] that EN-1 and EN-3 are so germane to the assessment of the WKN Proposed Development that it would be irrational not to give them primacy for the reasons they give. As to the reasons given for this proposition, the NPPF is not dispositive of the issue, and the s35 direction does not override s105(2)(c) PA2008. S105 PA2008 does not stipulate that the NPSs take precedence viz a viz local plan policies (although as *The Queen (oao David Gate on behalf of Transport Solutions Fop Lancaster and Morecambe) v The Secretary of State for Transport v Lancashire County Council [2013] EWHC 2937 (Admin)* would suggest they are capable of being important and relevant matters).

6.2.4. The Applicant suggested further in its reply [REP5-011] to ExQ3.6.2 [PD-014], that local plan policies would otherwise take precedence by default. Indeed, whatever the reason behind the lack of definitive statutory or judicial clarity over the issue, it would be sensible in my view to apply the statutorily adopted development plan as the primary consideration to

a project that, but for the s35 Direction, would have fallen to be considered on that basis.

6.2.5. That said, conclusions on the case for development consent set out in the application are reached in the context of the policies contained in the NPSs, according to how important and relevant are the matters contained therein.

Issues arising in the Local Impact Reports (LIRs)

6.2.6. KCC's LIR [REP1-011] deferred to Swale Borough Council (SBC) on matters concerning economic development, landscape and visual impact, noise, air quality, ground contamination and cultural heritage. It deferred to Natural England (NE) on matters concerning biodiversity and to Historic England (HistE) on the impacts the Proposed Development may have on the Scheduled Monument - Castle Rough. As Lead Local Flood Authority KCC found acceptable the Flood Risk Assessment and Surface Water Management Design and Foul Drainage Design Philosophy Statement submitted by the Applicant, noting details of surface water drainage would require approval by the relevant planning authority (RPA) before commencement of development.

6.2.7. KCC considered the Proposed Development may have a significant impact on path users along Public Footpath ZU1 due to air quality and noise effects arising from the development. Given the potential for its increased use, KCC requested the Applicant to contribute to the improvement of the Public Right of Way (PRoW) surrounding the Application Site.

6.2.8. Otherwise, KCC's LIR made two fundamental objections to the Proposed Development respectively as Waste Planning Authority (WPA) and as Local Highway Authority. These are detailed in the relevant sections of Chapter 4.

6.2.9. SBC's LIR [REP1-012], whilst deferring to the views of other IPs or statutory authorities on certain specific issues, raised no fundamental objection to the Proposed Development. It emphasised that its LIR was not intended to repeat or contradict KCC's views on matters relating to ecology, flood risk / sustainable urban drainage, highway safety, cultural heritage, archaeology, public rights of way, public health, or minerals and waste planning. Taking into account mitigation factors, SBC's LIR concluded there would be no significant adverse impacts from the Proposed Development on landscape character and visual impacts, residential amenity, noise and vibration, air quality, and land contamination.

6.2.10. On economic impacts, SBC welcomed the anticipated job creation of "up to 482 staff" during the construction period and "35 to 49 staff" once the WKN plant would be operational. It deferred to HistE in respect of cultural heritage impacts.

Need for and benefits of the Proposed Development

Project K3

6.2.11. In relation to NPS EN-1 and NPS EN-3 which apply to the K3 Proposed Development I find that the need for infrastructure covered by these national policies is assumed and must be accorded significant weight. The recovery of energy from the combustion of waste forms an important element of waste management strategies in England. Furthermore, the ability to generate an increased amount of electricity without change to the design of the Consented K3 Facility is an additional benefit, as is the potential to generate that amount without necessarily increasing the throughput of waste feedstock. The adverse impacts as a result of increase in throughput are considered separately.

6.2.12. Although there are marked uncertainties as to what if any net carbon benefit would be achieved by comparison to other forms of waste management, it is reasonable to assume that it would perform better in Greenhouse Gas (GHG) emission terms than had it not been linked to an integrated CHP facility to serve the adjoining DS Smith Paper Mill. This is a further positive benefit that would align with the aspirations of NPS EN-1 and EN-3.

Project WKN

6.2.13. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be a benefit as such. As a fossil fuel generated supply it could be brought on line quickly when demand is high and shut down when demand is low, but the supply generated is not significantly high and the benefits would therefore be limited.

6.2.14. The economic impacts of the Proposed Development would be an additional acknowledged benefit, principally in the form of the anticipated job creation of up to 482 staff during the construction period and between 35 to 49 staff once the WKN Proposed Development is operational and would be a positive factor in support of the WKN Proposed Development.

6.2.15. Achievement of R1 recovery status is not guaranteed and would only be a positive factor insofar as the SoS considers it likely that R1 status would be achieved. The energy produced from the biomass fraction of waste is regarded as renewable under EN-3 although there is uncertainty as to the proportion of waste fuel that would be derived from this component.

6.2.16. However, recognising that EfW facilities have an important role to play in waste management, the key important and relevant matter contained in the relevant NPSs as far as concerns the WKN Proposed Development, is under EN-3: whether, with reference to the relevant waste strategies and plans, the proposed waste combustion generating station would be in accordance with the waste hierarchy and of an appropriate type and

scale so as not to prejudice the achievement of local or national waste management targets in England.

6.2.17. I find on this issue that, as described in Chapter 4 and summarised further below, it has not been demonstrated that there is a need for the Proposed Development having regard to the WPA's Need Assessments and other evidence that has underpinned the formulation of KCC's revised development plan. The statutorily adopted development plan and relevant policies discussed, form part of the overall planning system adverted to in NPS EN-3, the role of which is to identify the types of infrastructure needed in the places where it is acceptable in planning terms.

Conformity with the Development Plan

6.2.18. As a preliminary matter it should be noted that it is likely that a final decision on adoption of the changes proposed by the EPR will have been taken by KCC at some point after the close of the Examination (see p2 KCC Closing Statement [REP8-016] which referred to its proposed meeting on 10 September 2020). Therefore the SoS may wish to consider whether to confirm with KCC whether the changes discussed in this Report have been incorporated into the development plan and have now attained the same status as other development plan policies.

6.2.19. Both the K3 and the WKN Proposed Development would be in conflict with fundamental policies of the development plan, namely KMWLP Policy CSW6 which requires it to be: "*demonstrated that waste will be dealt with further up the hierarchy… and where such uses are compatible with the development plan*" and Policy CSW7 which would be permissive of new capacity to manage waste "*provided that: 1. it moves up the Waste Hierarchy*".

6.2.20. In addition, KMWLP Policy CSW4 as revised through the EPR, incorporates revised targets for management of waste in Kent, however waste recovery capacity is sufficiently met by the Consented K3 Facility and the EfW facility at Allington, and there is no proven need for the plant to be located in Kent. This presents a serious risk of prejudice to the principles of proximity and net self-sufficiency which underpin Policy CSW4, and the wider regional strategy in SEWPAG's Memorandum of Understanding (MoU)/"Statement of Common Ground" would clearly be undermined through any significant increase in the capacity gap located in Kent.

6.2.21. The weight attached to the harm thereby caused is however assessed in light of the specific circumstances pertaining to each of the two projects. The increased capacity provided by the K3 Proposed Development would be markedly less than that of Project WKN.

Environmental Impact Assessment

6.2.22. No submissions were made which raised concerns about the overall adequacy of the Environmental Impact Assessment (EIA) or the Environmental Statement (ES). The ES and associated information

submitted by the Applicant during the Examination provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of The Infrastructure Planning (EIA) Regulations 2017 (the EIA Regulations). It is sufficient to describe the Rochdale Envelope for it and to secure its delivery within that envelope through the DCO.

Habitat Regulations Assessment (HRA) considerations

6.2.23. Information on HRA matters in relation to the Proposed Development is drawn from the application, with reference to the 2010 and 2019 Habitat Regulations Assessment Reports (HRARs) and the ES, taking full account of the responses to relevant questions that I raised. On the basis of the information before me I consider that the Proposed Development would have no adverse effect, subject to the controls set out in the dDCO, either alone or in-combination with other plans or projects, on the integrity of any European site and its features.

6.2.24. I am also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment and discharge his obligations under the Habitats Regulations.

Waste Hierarchy

6.2.25. The evidence underpinning KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be contrary to the Waste Needs Assessment produced by KCC to support the EPR which has now been found sound by the examining Inspector. This evidence base found no need exists in Kent for additional capacity for the Plan period.

6.2.26. Therefore the Proposed Development would be in conflict with KMWLP Policy CSW6 which requires it to be: "demonstrated that waste will be dealt with further up the hierarchy… and where such uses are compatible with the development plan" and Policy CSW7 "provided that: 1. it moves up the Waste Hierarchy".

6.2.27. However, although the Applicant's position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance.

6.2.28. Therefore whilst the benefits of co-location of both facilities to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.

6.2.29. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.

6.2.30. As to the WKN Proposed Development, the generation of 42MW electricity would be a benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.

6.2.31. However the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP.

6.2.32. Therefore I find that the WKN Proposed Development would be inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed "in the places where it is acceptable in planning terms (paragraph 2.2.4)."

6.2.33. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would justifiably put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste.

Air Quality

6.2.34. There would be no significant effects on air quality caused by the construction or decommissioning of the Proposed Development and a Construction Environment Management Plan (CEMP), secured through R22 of the Preferred DCO would provide appropriate mitigation for the WKN Proposed Development to manage the dust impacts during construction.

6.2.35. Emissions from the Proposed Development would be controlled by the Environmental Permitting (EP) regime, and would not be expected to exceed objectives or standards even when based on the worst-case assumptions within the assessment model. I am satisfied with the Applicant's determination of and reasoning for the height of the stack as set out in ES Appendix 5.2, Stack Height Determination [APP-026].

6.2.36. ES Chapter 5 [APP-057] robustly assessed air quality impacts as a result of the K3 and WKN Proposed Developments and appropriately concluded there would be no significant impacts arising. The IAQM guidance would be followed with regard to dust management and the dispersion modelling for the stack emissions of both K3 and WKN Proposed Developments demonstrate that the predicted contributions and environmental contributions of all pollutants would be negligible.

6.2.37. The ES assessment of impacts of the K3 and WKN Proposed Developments cumulatively with other developments both together and alone, concluded there would be no significant effects on air quality. Therefore, both the K3 and WKN Proposed Developments accord with both national and local policies with regard to air quality.

Archaeology and cultural heritage

6.2.38. Matters raised in HistE's Relevant Representation (RR) and in KCC's RR and WR have been examined. I have concluded that there would be no significant archaeological or cultural heritage related effects from the construction, operation or decommissioning of the Proposed Development either physically or on the setting of any Scheduled Monument (SM), listed building or other designated heritage asset in the surrounding area. Consequently, there would be no harm to the significance of heritage assets. Similarly, there would be no significant cumulative archaeological or cultural heritage effects as a result of the Proposed Development.

6.2.39. The locality in which the Site lies has recognised potential to contain archaeological remains and it is appropriate to make provision for a programme of archaeological works to ensure that potentially significant adverse effects would be comprehensively mitigated. This would be effectively secured through R20 of the Applicant's Preferred dDCO [REP7-003].

6.2.40. On the basis of the evidence and the proposed mitigation secured as above, all impacts have been addressed in a manner that would comply with the Historic Environment elements of NPS EN-1 and the development plan.

Ecology

6.2.41. The ES has not identified any significant effects on designated sites, protected species and habitats or other species of principal importance for the conservation of biodiversity. Various construction phase mitigation measures are proposed by the Applicant to be secured by Requirements set out within the Recommended DCO. In respect of

Project K3 these are carried forward from the K3 Planning Permission and approved variations thereto.

6.2.42. The effect of the proposed mitigation measures would be that no residual likely significant effects are anticipated on any of the ecological receptors identified. Accordingly, both the K3 Proposed Development and the WKN Proposed Development would not result in significant harm to biodiversity conservation interests and would meet the aims of NPS EN-1, the NPPF and relevant development plan policies.

Greenhouse Gases and Climate Change

6.2.43. Project K3 and Project WKN are both facilities proposed for the incineration of waste with energy recovery, which if they achieved R1 status, would represent Other Recovery facilities for the purposes of the waste hierarchy which sit above 'disposal'. However this is a matter for the EA. I cannot with a high level of confidence assume that either project within the Proposed Development would achieve R1 status.

6.2.44. In relation to the WKN Proposed Development neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations, but primacy is given to the development plan.

6.2.45. The levels of carbon benefit impact relating to the Proposed Development is subject to many fundamental uncertainties and limitations, for example the estimate of GHG emissions from landfill, the carbon intensity of marginal electricity generation and the proportions of waste types to be managed. The available evidence casts considerable doubt on whether a net benefit can be ascertained, given it is highly sensitive to the assumptions applied.

6.2.46. Further, if the Proposed Development is not necessary to meet waste requirements for Kent, the carbon burden resulting from the proposed facilities would needlessly increase to no particular purpose but at the same time contribute to an increased risk of failure to meet international commitments. This would be particularly concerning for the WKN Proposed Development, which would result in some 163 ktCO2e each year of operation from waste combustion and transport. This would be a considerably significant regular discharge of greenhouse gas in its own right over the lifetime of the development, expected to have an operating life of up to 50 years.

6.2.47. In that scenario, the Proposed Development would risk being insufficiently resilient against the impacts of climate change and not be able to satisfy the energy needs in such a way that the NPSs contemplate. This concern is accentuated in light of the June 2020 CCC Progress Report identifying for the first time the need to address emissions from waste incineration, and the warning against the continued 'dash for incineration'.

6.2.48. The comparative scenario related to landfill has limitations as an alternative baseline scenario. From the available evidence I see no good reason why without the Proposed Development, the landfill option would

not compete with management through other routes such as through other EfW plants with CHP or export as RDF.

6.2.49. The claimed "net carbon benefit" of the Proposed Development is not proven given the lack of robustness of the Applicant's baseline alternative scenarios. Assessing the degree of GHG emissions that would actually be produced as a factor in its own right, the degree of harm clearly varies such that under Project K3 the practical effect would result in a lesser degree of GHG emissions. The harm thereby caused falls to be assessed against the benefits of and the assumed need for the increase in capacity of the Consented K3 Facility.

6.2.50. Indeed, despite the uncertainties inherent in calculating the net carbon benefit of the K3 Proposed Development's practical effect, I recognise that as a whole it could be said with higher confidence to perform better in GHG emission terms, due to its greater efficiency as a CHP facility. This would be a positive benefit.

Ground Conditions

6.2.51. I have concluded that the Proposed Development accords with all relevant legislation and policy requirements and that ground condition matters are adequately provided for and secured in the Recommended DCO and Alternative Recommended DCO.

Landscape and Visual Impact

6.2.52. The assessment of the effect of the WKN Proposed Development on landscape character and visual receptors uses an appropriate methodology and accurately represents the potential effects of the proposal in this regard. The proposed buildings and structures would only be visible in front of or against the backdrop of existing large-scale industrial buildings at Kemsley Paper Mill and therefore the significance of any effect would be seen in that context.

6.2.53. I have concluded that the landscape and visual assessment presented in ES Chapter 12 [APP-064] presents an accurate reflection of the likely significant effects of the WKN Proposed development both alone and in combination with the Consented K3 Facility and with other developments taken into account. Subject to the implementation of R23 dDCO the WKN Proposed Development would not have a detrimental visual effect pursuant to external lighting. Detailed design approval of the WKN Proposed Development would be effectively secured through R14 dDCO.

6.2.54. I conclude there would be no significant landscape effects that would arise as a result of the Proposed Development during the construction, operational or decommissioning phases. Moderate adverse construction effects would be experienced by walkers using a relatively short section of the Saxon Shore Way located to the north of the WKN Site.

Noise and Vibration

6.2.55. I find that the assessment methodology for noise is acceptable [APP-059] and the residential noise sensitive receptors assessed are representative

of the wider area. No specific mitigation was identified in the ES as required to reduce the effects of construction noise or vibration. However the adoption of best practicable means and adherence to the CEMP would be secured through R22 Preferred dDCO [REP7-003]. I am satisfied that noise and vibration emissions would be minimised as far as reasonably practicable. R24 Preferred dDCO [REP7-003] provides for a Construction Traffic Management Plan (CTMP) to manage the impact of construction traffic on the surrounding area.

6.2.56. R14(2) dDCO requires detailed design to be approved and to be in accordance with the noise mitigation measures in ES Chapter 7 [APP-059] and R22(2)(e) requires the CEMP to address complaints relating to emissions of noise, odour or dust construction of Project WKN, including remedial action relating to emissions of noise. In addition R27 specifies the hours for the construction of the WKN Proposed Development with exceptions for work associated with concrete laying and internal process works relating to mechanical and/or electrical equipment installation.

6.2.57. Noise and vibration arising from on-site construction activities, construction vehicle movements or decommissioning works are not expected to give rise to any significant effects for sensitive receptors. No significant effects are predicted from vibration at any time or from noise during normal operating conditions. A requirement for post construction noise monitoring is not necessary and has not been requested by any IP. The proposed controls regarding construction, secured through Requirements in the DCO would comply with NPS EN-1, NPS EN-2 and the NPPF in respect of noise and vibration.

Traffic and Transport

6.2.58. Junction modelling results clearly show significant increases of RFC over 1.0, for example with the cumulative 2031 traffic added to the K3 Proposed Development, WKN Proposed Development and K3 Proposed Development plus WKN Proposed Development operational flows the Swale Way West arm reports respective RFC's of 1.20, 1.20, 1.21, 1.22 and 1.22 in the AM peak hour and in the PM peak hour maximum RFCs were reported on the Swale Way South arm of 0.90, 0.90, 0.91, 0.91 and 0.91. The junction is clearly unable to facilitate additional traffic without severe impacts to congestion and safety.

6.2.59. The prohibition approach advocated by Highways England (HE) and partially agreed by the Applicant would protect the safety, reliability and operational efficiency of the M2/J5 and A249 Grovehurst junctions in perpetuity regardless of the contracts entered into or the origin or destination of any imports or exports from the WKN/K3 sites. The 'shoulders' proposed would ensure there would be no associated vehicle movements leaving / arriving on site outside of the peak hours, but travelling through the M2J5 or Grovehurst during the peak hour. The junction improvements are aimed solely at providing capacity to aid housing delivery, so they cannot be relied upon by the Applicant and as HE point out, a new Swale Local Plan is due to be adopted in 2022 with the possibility that there would be a further uplift in housing delivery (p22 of its reply to ExQ4 [REP7-032]).

6.2.60. With the prohibition applying until the Roads Investment Strategy M2/J5 improvement and Housing Infrastructure Fund A249 Grovehurst improvement are open to traffic, I am satisfied that the Proposed Development would not give rise to severe or unacceptable effects on the strategic road network (SRN).

6.2.61. The capacity issues highlighted can be confidently predicted during weekdays, but whilst effects outside these days is less clear, in light of all the evidence I consider it is reasonable and proportionate to recommend a daily restriction be placed on HGV movements as requested by HE, until the position can be effectively reviewed in accordance with the Travel Plan (TP) and Construction Travel Management Plans (CTMPs) for the Proposed Development. I also recommend that the prohibitions should continue to apply unless or until the Applicant demonstrates an absence of unacceptable impact on the SRN. This can only be tested and demonstrated once the SRN improvements have been open to traffic and the Proposed Development is operational for a minimum 12 months period.

6.2.62. As to the Practical Effects of the K3 Proposed Development the permitted increase in HGV movements relating to the Consented K3 Facility, from 258 to 348 per day, was not objected to by HE, and it has now been commissioned and is operational from 16 July 2020. In the circumstances it would not be reasonable to impose a further restriction in these HGV movements.

6.2.63. Requirements 10, 24, 25 and 26 of the Applicant's Preferred dDCO [REP7-003] taken together with the detailed content of the revised draft TPs (dTPs) and draft CTMP (dCTMP), would in my view effectively support the prohibition approach, with the monitor and manage regime set out in the latter documents, without the need for additional drafting to be adopted in the DCO.

6.2.64. Overall adequate mitigating provision would be made via the Operational Traffic Routing and Management Plan and Travel Plan for Project K3 and a CTMP and Travel Plan for Project WKN such as the movement of staff, visitors and waste vehicle movements, minimising single occupancy movements by staff, restricting HGV movements during and around peak hours and seeking to utilise existing HGV routes. Similarly, the CTMP would appropriately deal with the main concerns of construction traffic, dust and dirt migrating onto the highway, wheel cleaning facilities, a regular programme of road cleaning and inspection of the site entrance and highway in the vicinity of the site.

6.2.65. With these measures and DCO Requirements in place, I am satisfied that the Proposed Development would accord with the requirements of NPSs, the development plan and other policies, and traffic management issues.

Water Environment

6.2.66. In terms of flood risk, the Proposed Development would be acceptable, compatible with the flood risk of the area and would comply with NPS EN-1, the NPPF and development plan policies. The Applicant has

demonstrated compliance with the WaterFD and that there would be no adverse impact on The Swale Estuary MCZ or other designated sites.

6.2.67. In respect of the WKN Proposed Development and hydrology and flood risk, potential impacts to the water environment would be avoided where practicable through implementation of a number of industry standard mitigation measures, and careful consideration of the drainage design, construction techniques and operational best practice. Adequate construction mitigation measures are included in the draft Construction and Environmental Management Plan (dCEMP) [REP4-013].

6.2.68. Subject to the controls provided through R12 Preferred dDCO [REP7-003] in respect of the K3 Proposed Development, or R18 in respect of Project WKN, surface water run-off would be securely managed during construction, operation and decommissioning, as the case may be, of the Proposed Development, and there would not be any detrimental impact on water quality. As a result, I find that in respect of water quality and resources the Proposed Development would be in accordance with NPS EN-1, NPS EN-2, the NPPF and the development plan.

Other considerations

6.2.69. Taking all other relevant documents and policies drawn to my attention into account, no other matters have arisen which affect the identification in Sections 4.1 – 4.19 above, of the planning matters that are required to be balanced by the SoS or taken into account in the DCO decision.

6.3. OVERALL CONCLUSIONS ON THE PLANNING BALANCE

6.3.1. In reaching conclusions on the case for the Proposed Development, I have had regard to NPS EN-1 and NPS EN-3 as the relevant NPSs, the Development Plan, the NPPF, the LIRs and all other matters which I consider are both important and relevant to the SoS's decision.

6.3.2. My conclusions on the case for Project K3 and for Project WKN are considered separately.

6.3.3. I have further considered whether the determination of this application in accordance with the relevant NPSs would lead the UK to be in breach of any of its international obligations where relevant. I conclude that this would be unlikely in the case of the K3 Proposed Development or the WKN Proposed Development.

Project K3

6.3.4. The public benefits of the Proposed Development can be identified in the context of NPS EN-1's recognition of the need for energy generating infrastructure and the presumption in favour of granting consent for energy NSIPs whilst recognising that Energy from Waste (EfW) facilities play a vital role in providing reliable energy supplies.

6.3.5. The potentially adverse impacts of Project K3 and the concerns raised in submissions on the application have been considered. The ES identifies that the practical effect of the K3 Proposed Development would have no significant effects from construction, operation and decommissioning activities on the environment, or that the potentially significant effects identified can be mitigated as far as practicable by the package of controls that are appropriately secured in the Recommended DCO.

6.3.6. I have found that, as with the WKN Proposed Development the Applicant has not provided a sufficiently robust assessment of fuel availability in relation to assessed capacity in facilities for its treatment. Nevertheless, taking account of the positive benefits of Project K3 as described above, and mindful of the limited harms identified, I find that it would generally accord with the waste hierarchy and would be of an appropriate type and scale so as not to significantly prejudice the achievement of local or national waste management targets. Therefore, all harmful effects would be within the scope envisaged in the relevant NPSs as policy compliant.

6.3.7. In conclusion, I find that the identified harms in relation to the K3 Proposed Development would be outweighed by the benefits from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised above.

6.3.8. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.

6.3.9. For the reasons set out in the preceding chapters and summarised above, I conclude that the K3 Proposed Development is acceptable, and that development consent should be granted therefor. This conclusion is taken forward in light of identified minor changes required to the DCO, described in Chapter 7 below.

Project WKN

6.3.10. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be of some benefit. In addition there would be some positive economic advantages through job creation during the construction and operational phases of the facility.

6.3.11. However the prospect of Project WKN becoming a viable CHP facility is uncertain. The lack of a clear and immediate sustainable source of steam/heat to local customers contrasts unfavourably with Project K3. With no guaranteed heat offtake the proposed incineration would not qualify as Good Quality CHP. In my view this is an important and relevant factor to weigh in the balance, not least having regard to the need to transition to a low-carbon electricity market, as underlined by the UNFCCC Paris Agreement and the June 2020 Progress Report which indicates that plants without CHP should not be regarded as supplying renewable energy.

6.3.12. Moreover, the Applicant's assessment of fuel availability in relation to assessed capacity for its treatment, compares unfavourably with the Waste Planning Authority's own assessments of need and capacity that underpin its strategy in revising targets within the KMWLP which aim to ensure that new facilities demonstrate that waste will be dealt in a manner that clearly moves its management further up the waste hierarchy. Therefore the WKN Proposed Development would be in conflict with key policies of KMWLP including Policy CSW4, Policy CSW6 and Policy CSW7.

6.3.13. I have had regard to the other benefits of the WKN Proposed Development set out by the Applicant that may comply with other provisions of the development plan including both the Swale Local Plan and KMWLP. However my conclusion is that the provision of too much waste capacity in conflict with the waste hierarchy, represented by the WKN Proposed Development, is a serious conflict that would result in conflict with the development plan as a whole, the adverse impacts arising from which in my view would clearly outweigh the benefits of the facility.

6.3.14. It would also be in conflict with National Planning Policy for Waste (NPPW) which expects applicants to demonstrate that waste disposal facilities not in line with the Local Plan, would not undermine its objectives through prejudicing movement up the waste hierarchy. The WKN Proposed Development is a non-NSIP proposal and where the NPSs do not apply as such, the more recent NPPW that sets out detailed waste planning policies should in my view carry considerable weight.

6.3.15. I have had regard to NPS EN-1 at paragraph 5.2, that CO2 emissions are not reasons to place more restrictions on projects in the planning policy framework than are set out in the energy NPSs. However as I have found that there is no need for the WKN Proposed Development, the GHG emissions would be an additional harm that would result, whether or not a conclusion could have been reached as to any net carbon benefit that would result.

6.3.16. To conclude, I find that the identified harms in relation to the WKN Proposed Development would outweigh its benefits from the provision of energy and by the other benefits of the application as summarised above.

6.3.17. For the reasons set out in the preceding chapters and summarised above, I therefore conclude that the WKN Proposed Development should not proceed at this time, and that development consent should not be granted therefore.

6.3.18. However, should the SoS consider that the advantages of Project WKN outweigh the harm caused by the adverse effects as I have described, and is minded to grant consent, then consideration should be given to the Alternative Recommended DCO set out at Appendix E, which is the subject of minor changes required to the Applicant's Preferred DCO, and as described in Chapter 7 below.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. A draft Development Consent Order (dDCO) [APP-005] and Explanatory Memorandum (ExMemo) [APP-006] were submitted by the Applicant as part of the application for development consent. The ExMemo describes the purpose of the dDCO as originally submitted, with each of its articles and schedules.

7.1.2. The submission version dDCO [APP-005] was broadly based on the Model Provisions (MPs) (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) (Model Provisions Order) adapted to draw on drafting used in made DCOs for energy development under the PA2008. MPs provide a starting point for the consideration of the DCO, whilst the use of successive precedents is also generally apposite. The submission version dDCO [APP-005] and subsequent iterations are in the form of a statutory instrument as required by section s117(4) PA2008.

7.1.3. This Chapter provides an overview of the changes made to the dDCO during the Examination process, between the submission version dDCO and the Applicant's Preferred dDCO submitted at D7 [REP7-003] (Preferred DCO). It then considers changes made to the Preferred dDCO in order to arrive at my Recommended DCO in Appendix D to this Report (Recommended DCO).

7.1.4. The Recommended DCO is based on my recommendation that only the K3 Proposed Development should be granted consent. Should the Secretary of State nevertheless consider that the Proposed Development should be granted consent as applied for, that is to say for both the K3 Proposed Development and the WKN Proposed Development, Appendix E sets out the recommended form of DCO.

7.1.5. The following sections of this Chapter:

- report on the structure and functions of the dDCO;
- report on the processes used to examine the dDCO and its progress through the Examination;
- summarise changes made to the dDCO during the Examination;
- set out final changes proposed, consequent on the Examining Authority's (ExA's) consideration of the evidence and to address matters of drafting convention;
- address the relationship between the DCO and other consents; and
- address the provision of a defence against nuisance in the DCO.

7.2. THE DCO AS APPLIED FOR

7.2.1. This section records the structure of the dDCO which is based on the Applicant's preferred dDCO [REP7-003] at D7 and is as follows:

- Part 1: Article 1 sets out how the Order may be cited and when it comes into force; Article 2 sets out the meaning of various terms used in the Order;
- Part 2: Articles 3 to 6 provide for the grant of development consent for the Proposed Development, and allow it to be carried out, maintained and operated; Article 7 sets out who has the benefit of the powers of the Order and how those powers can be transferred.
- Part 3: Articles 8 to 12 provide for supplementary powers, consisting of access to works, discharge of water, authority to survey and investigate the land, Removal of Human Remains, and felling or lopping of trees;
- Part 4: Articles 13 to 18 make miscellaneous provisions, for a defence to proceedings in respect of statutory nuisance; application of landlord and tenant law, treatment of operational land for the purposes of TCPA1990, certification of plans, arbitration and the procedure for approvals under the DCO and discharge and variation of Requirements.

7.2.2. There are 3 Schedules to the Order providing for: the description of the Authorised Development (Schedule 1); the Requirements applying to Project K3 and Project WKN, the K3 Generating Station approved plans and documents (Schedule 2); and the procedure for discharge of Requirements (Schedule 3).

7.2.3. I find that the structure of the DCO is fit for purpose and no changes to the structure as outlined above are recommended.

THE EXAMINATION OF THE DCO

7.2.4. My review of the application versions of the dDCO [APP-005] and the ExMemo [APP-006] commenced before the Preliminary Meeting (PM). There were a number of technical and drafting matters which were desirable to address early in the Examination. These were matters which did not particularly relate to the interests of Interested Parties (IPs) and therefore it was appropriate to address them before the relationship between IP issues, planning merits and the dDCO was examined in any detail.

7.2.5. In addition, and subsequent to the application being accepted for Examination on 8 October 2019, the Applicant amended various documents to address the advice under s51 PA2008 [PD-002] and submitted them to the Planning Inspectorate on 18 October 2019, ahead of the period during which Relevant Representations (RR) could be made.

7.2.6. The s51 advice [PD-002] in relation to the DCO was for the Applicant to:

- undertake a full check of the draft DCO and other application documents, in particular the Land Plan and those plans the Applicant considers to be Works Plans submitted under Reg 5(2)(j) of the APFP Regulations, to ensure consistency; and
- also review Article 16 (Certification of Plans) of their draft DCO and ensure consistency when referencing application documents

associated to the Proposed Development, to avoid any uncertainty during the Examination.

7.2.7. These matters were addressed in the "S51 DCO" [AS-002].

7.2.8. Matters arising from the application versions of the dDCO and ExMemo were documented during the pre-examination period, as part of preparation for the PM. Consequently, the first (and only) hearing (described in Chapter 1 above) related to the dDCO. The Rule 6 Letter of 21 January 2019 [PD-006] was accompanied by notice of Issue Specific Hearing (ISH) 1 on the DCO (Annex F). An Agenda and a Schedule of the ExA's Issues and Questions relating to the dDCO was issued on 10 February [EV-003]. This provided adequate notice to the Applicant and IPs before the start of the Examination that it was intended to hold an early ISH into the DCO giving them notice of the matters that would be raised.

7.2.9. As a consequence of the initial Procedural Decisions, ISH1 into the dDCO was held on 19 February 2020 on the same day as the PM. An audio recording of the hearing was subsequently put on the project website [EV-004].

7.2.10. In Table 1 annexed to the Agenda issued for ISH1 [EV-003] a number of questions were posed principally in respect to the wording and provisions within the s51 dDCO [AS-002]. The Applicant responded to these questions with a Written Submission of Oral Case made by the Applicant at ISH1 dDCO at D1 [REP1-007]. It then produced a further dDCO [REP2-006] (clean copy) and [REP2-007] (tracked changes) which included changes which the Applicant agreed were necessary, as well as resulting from discussions with IPs, and the correction of typographical errors it had found.

7.2.11. In the Agenda I set out that the Applicant would be invited to explain the effect of changes to the dDCO in response to advice received under s51 PA2008 [PD-002]. The Applicant had summarised the changes in its covering letter [AS-009] accompanying submission of amended documents to address the points raised in the S51 advice. I also invited the Applicant to state any further changes proposed to the dDCO. I invited submissions from IPs who wished to speak in relation to these matters and the Applicant had a right of reply.

7.2.12. In my initial Written Questions (ExQ1) [PD-008] issued on 26 January 2020 I requested responses to matters addressed in Table 1 annexed to the Agenda issued for ISH1 [EV-003] by D1 (2 March 2020) and comments on any matters raised in those submissions by D2 (18 March 2020).

7.2.13. In ExQ1 I set out that IPs who participated in ISH1 and consider that their issues have already been drawn to the ExA's attention did not need to reiterate their issues in responses to the questions. IPs were requested to review the D1 written submissions arising from ISH1 before responding to the questions. I advised that matters set out in the D1 written submissions arising from ISH1 were best responded to in D2

comments rather than in responses to the questions, which aimed to capture matters not raised at ISH1.

7.2.14. Matters for examination arising from the DCO and progress on them were tracked throughout the Examination with further written questions. Owing to the onset of Covid 19 no further hearings were held (see the notice of variation to the Timetable, 22 May 2020 [PD-013]) and the written process was used to complete the Examination.

7.2.15. Accordingly, further written questions were made relating to the dDCOs, and the Applicant updated the dDCO several times during the Examination, responding to issues raised in questions, to WRs and additional submissions. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes from the previous clean copy version. The versions of the dDCO submitted by the Applicant were as follows:

- Submission version [APP-005] and DCO Validation Report [APP-007];
- Section 51 version [AS-002] and DCO Validation Report [AS-003];
- D2 version: (Clean) [REP2-006] (Tracked) [REP2-007]
- D4 version: (Clean) [REP4-003] (Tracked) [REP4-004]
- D6 version: (Clean) [REP6-003] (Tracked) [REP6-004]
- D7 version: (Clean)[REP7-003] (Tracked) [REP7-004]

7.2.16. The ExA's preferred changes to the DCO in the event consent were given for both K3 and WKN Projects within the Proposed Development, was published on 15 July 2020 (Schedule of Examining Authority's preferred changes to the Applicant's Development Consent Order) [PD-017] (The Preferred Changes). The Preferred Changes were to the most recent version submitted at D6 [REP6-003].

ExA's Draft K3 DCO

7.2.17. As set out in ExQ4.13.1 the ExA considered there were benefits to the K3 and WKN Proposed Developments being assessed comprehensively, however given the two proposals are in effect separate projects, the possible outcomes of the Application had to be clear to all, which were: consent or refusal in respect of both projects, consent for the K3 Proposed Development only, or consent for the WKN Proposed Development only.

7.2.18. It was thus important that the dDCO separated out the two projects so that any eventual recommendation or decision to consent one only of the Proposed Developments was clearly set out in terms of a recommended DCO or DCOs. It followed that alternative sets of plans and drawings that show items and boundaries applicable only to K3 and its associated development, and an amended Book of Reference (BoR) should also be available to the Secretary of State. This request, made to the Applicant for the amended documents for the K3 Project only, was for them to be submitted in the alternative without prejudice to further consideration of both Projects within the Examination.

7.2.19. Accordingly, I issued an alternative proposed version of the dDCO (the "K3 DCO") [PD-016] on 15 July 2020 based on an eventual consent for the K3 Proposed Development only. I also issued a Schedule of Preferred Changes to the Applicant's DCO [PD-017] which highlighted in a separate table the changes to reflect the dDCO (K3) [PD-016]. I emphasised that no conclusions had been reached on the desirability of one alternative outcome over another at that stage of the Examination and requested IPs to consider and comment as appropriate on both alternatives.

7.2.20. I also made clear my view in ExQ4.13.1 that it would be unlikely on the evidence then available, that any recommendation to grant consent for the WKN Proposed Development would not also justify consent for the K3 Proposed Development, but if any IP considered consent should be granted for the WKN Proposed Development only they were requested to clarify their position and explain their reasoning.

7.2.21. In relation to the K3 dDCO [PD-017] I requested the Applicant to consider:

- which if any of the requirements 14 to 30 (proposed to be deleted in the K3 DCO [PD-017] should nevertheless apply to the K3 Proposed Development, and if so why;
- which if any of the detailed items of associated development for Works Nos. 1, 2, 3, 4, 5, 6, and 7 described in Schedule 1 should be included in the K3 authorised development and if so why; and
- how some of the documents listed in Article 16 K3 dDCO [PD-017], would need to change to new ones not yet submitted into the examination, namely alternative versions of the BoR, the Land Plan and the Works Plan.

Response to the ExA's K3 dDCO

7.2.22. Responses to the ExA's K3 dDCO [PD-016] were sought by D7, 5 August 2020. In response the Applicant produced at D7:

- ExA's K3 Alternative DCO K3 Works Plan [REP7-024];
- ExA's K3 Alternative DCO Land Plan [REP7-025]; and
- K3 Book of Reference [REP7-009].

7.2.23. In reply to ExQ4.13.2 the Applicant confirmed that the Consented K3 Facility became fully operational on 16 July 2020. However since a K3 DCO would make provision for the construction and operation of the K3 Proposed Development in its entirety, the Applicant considers it appropriate that the following elements of Associated Development be retained within a K3 DCO:

- Work No1C; Alteration of existing private access road to construct, use and maintain Work No 1;
- Work No1D; Creation of a temporary construction compound and laydown area for the construction of Work No 1;
- Work No1E; Construction and operation of a surface water outfall for Work No 1; and
- Further Associated Development items (a) to (n).

7.2.24. The Applicant considers that none of Requirements 14 to 30 should apply to a K3 Proposed Development.

Response to ExA's Preferred Changes

7.2.25. Responses to the EXA's Preferred Changes [PD-017] as they related to an eventual DCO granted for both Project K3 and Project WKN were also sought by D7, 5 August 2020. At D7 [REP7-008] the Applicant provided its Comments on the ExA's "preferred DCO" (ie on the ExA's preferred changes to the Applicant's DCO) [REP7-023]. An updated Table of Amendments to the DCO was also produced at D7 [REP7-008].

7.3. CHANGES DURING EXAMINATION

7.3.1. In this section I do not comment on every change made to the dDCO in the updated versions, as many were as a result of typographical errors, or slight revisions of the wording following dialogue between the Applicant and relevant IPs or from their WRs, or as a result of written questions (ExQ1) [PD-008], ExQ1A [PD-010], (ExQ2) [PD-012], ExQ3 [PD-014] and ExQ4 [PD-015]. I do however comment on those changes made during the Examination which I consider to be significant because of their effect or because they were subject to further consideration after ISH1. Numbers for Articles and Requirements are based on the submission version unless otherwise referenced.

Matters outstanding at Close of Examination

7.3.2. The Applicant acknowledged in its D7 Response to Examining Authority's Further Written Questions (ExQ4) [REP7-016] the possible outcomes of the Application as set out within Q4.13.1. It agreed there was unlikely to be a situation where there is justification to grant consent for the WKN Proposed Development but not the K3 Proposed Development "*given the existing K3 is now an established operational facility under its own planning permission*".

7.3.3. The Applicant stated that both elements would deliver priorities for energy recovery, diverting waste from landfill and contribute to meeting the urgent need for all types of electricity generation in the UK, in an appropriate location where significant environmental impacts would be avoided or mitigated. It added that even if the ExA considered that the Proposed Development would provide too much waste capacity in conflict with the waste hierarchy in local plan policy, there was no conflict with the development plan as a whole. Any adverse impacts from such a conflict would not outweigh the clear benefits of the facilities under NPS EN-1 and EN-3. No matters justified consent to be granted for one of the facilities in the absence of the other.

7.3.4. However for the reasons set out in my conclusions on the case for development consent in Chapter 6 of this Report I have found that the WKN Proposed Development should not be granted.

7.3.5. KCC made further suggested changes to the Applicant's Preferred DCO in its submissions at D7 [REP7-038] as follows.

Part 1 – Preliminary - 3. Interpretation - Relevant planning authority (RPA)

7.3.6. Due to different planning functions of KCC and SBC it was suggested that definitions should be provided for each and the "RPA" is specifically referenced in the relevant sections of the DCO.

7.3.7. However, it is not usual for DCOs to identify which authority is meant by the RPA which is the terminology used in the Model Provisions Order. Areas of jurisdiction may change over time, the more appropriate recourse in the event of a dispute would be to invoke the procedure for discharge of Requirements set out in Schedule 3. Accordingly, it is unnecessary to amend Article 4 or other provisions in this connection, as requested by KCC.

Schedule 1 - Article 3 - Authorised Development Work No 3 – Installation of grid connection for Work No 2

7.3.8. KCC questioned whether this article should be referenced as Work No 2a, given its association with Work No 2. However, the description of Work No. 3 is self-explanatory and used throughout the application, documents and plans within the Application, therefore no change is recommended.

Schedule 2 - Article 3 - Requirements – Project WKN Requirement 14 (b) electric vehicle charging points

7.3.9. KCC questioned why the provision for electric car charging would only be provided at WKN and not K3. The Applicant confirmed in the draft SoCG with SBC [REP5-006] that Project K3 has 2 electric charging points fitted and 4 passive electric charging spaces where charging points could be fitted. The ExA is satisfied that is a sufficient level of provision given the Consented K3 Facility is now operational.

Explanatory Note

7.3.10. Given the restrictions currently in place KCC stated to the Planning Inspectorate that it could not currently commit to holding the various documents referred to in the Order at its offices for public inspection. KCC suggested a pragmatic approach be taken in respect of this requirement should public inspection not be possible.

7.3.11. The current restrictions due to the state of emergency that exists arising from the outbreak of Covid-19 may change, including at short notice, from time to time. The ExA understands the need for a pragmatic approach to the public inspection of documents but defers to the SoS as to what changes if any might be required to address the situation as it obtains at the time of the SoS's decision.

Peak hour and 'shoulder' restrictions requested by Highways England (HE)

7.3.12. Despite the Applicant's Response to Submissions at D7 [REP8-015] to the effect that peak hour and 'shoulder' restrictions requested by HE had been agreed, no consequential amendment had been made to the

Applicant's Preferred DCO. In Section 4.20 of this Report, I concluded that it was necessary for such restrictions to be placed on HGV movements to achieve the objective of protecting the M2 Junction 5 and the A249 Grovehurst junctions during the peak hours before their improvement schemes are completed.

7.3.13. In its reply to ExQ4 questions HE set out at its D7 submission [REP7-032] justification and a precise form of wording to be inserted into the DCO as follows:

- *"No part of the authorised development shall commence (including site clearance or preparation) until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Construction Management Plans for the WKN and K3 (additional development) sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The prohibition will apply throughout the construction period, and any subsequent period until the authorised development is occupied"; and*
- *"No part of the authorised development shall be occupied until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Travel Plans for the WKN and K3 sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The Travel Plans shall also include such details as are necessary to set out the agreed means by which, should they choose to do so, the applicant/operator of an authorised development may seek to end the prohibition. Any application to end the prohibition may only be submitted once the SRN improvements have been open to traffic and the WKN/K3 authorised developments have been operational for a sufficient period for any evidence to be robust. The "sufficient period" shall be a minimum 12 months."*

7.3.14. These matters were considered in some detail in Section 4.18 of this Report. The wording is imprecise to achieve the purpose for which it was drafted. However, Requirements 10, 24, 25 and 26 of the Applicant's Preferred dDCO [REP7-003] taken together with the detailed content of the revised draft Travel Plans (dTPs) and draft Construction Traffic Management Plan (dCTMP), would in my view effectively support the prohibition approach, with the monitor and manage regime set out in the latter documents. Although the wording suggested by HE could be redrafted so as to make the proposed new requirements precise and enforceable, I consider that to be unnecessary, as taken together the

existing package of controls would have a sufficient degree of precision to render them enforceable and would achieve the desired objective.

KCC Comments on the Applicant's K3 Conditions Tracker

7.3.15. Several matters were raised by KCC in relation to the updated Conditions Tracker [REP7-039]. These revolved around the extent to which, if at all, specific conditions should be carried forward into Requirements within the DCO in addition to the Approved Plans and Documents listed in Part 4 of Schedule 2 in accordance with which the Project K3 authorised development must be carried out.

7.3.16. The "Access Road - Proposed Internal Access Layout Plan" is included in the Approved Plans and Documents. No condition relating to SW/12/1001 or SW/13/1257 needs to be transposed as they relate to construction or land outside the K3/WKN DCO boundary.

Condition 3 – maximum number of HGVs

7.3.17. R10(5) stipulates a maximum number of HGV movements to and from the K3 Generating Station not to exceed 416 movements per day. KCC considers this would undermine the previous condition and be unacceptable in highway terms. No increase should be permitted other than those to and from the Ridham Dock to encourage the Applicant to pursue more sustainable options in accordance with national and local policy.

7.3.18. The Applicant set out its position on this matter in its SoCG with KCC and generally during the Examination. KCC's response to ExQ4.13.8 discuss an increase to the number of HGV movements associated with Project K3 and the Applicant responded at D8 [REP8-015] (Paragraphs 3.3.41 et seq).

7.3.19. In response to Q4.13.8, KCC's D5 Submission - Highways Response to dDCO R10 – HGVs [REP5-037], disputes the figure of 416 movements per day. KCC proposes:

7.3.20. *"K3 movements should be conditioned to be split equally between the day and night, with further restrictions on the peak hour and shoulders. A suggestion could be to restrict to 400 per day with a minimum of 200 movements to be at night between 19:00 and 07:00 and no arrivals between 07:00 and 09:00 and 16:00 and 18:00*."

7.3.21. There is merit in the Applicant's response [REP8-015] that evidentially it is difficult to justify this approach, the figure of 400 movements per day may result in operational issues with waste delivery associated with the tonnage throughput and affect the overall performance of the facility.

7.3.22. The ExA notes however that the comments from KCC and HE on junction performance relate to protecting the peak hours and the agreed peak hour and 'shoulder' restrictions with HE would achieve the objective of protecting the M2 Junction 5 and the A249 Grovehurst junctions during the peak hours before their respective improvement schemes are

completed. The ExA prefers this approach, therefore the condition/ requirement proposed by KCC is not accepted.

R6 - K3 Rail and Water Transportation Strategy (K3 RWTS)

7.3.23. The rail strategy approved by the WPA under planning reference SW/10/444/RVAR on 27 June 2017 has to be implemented as approved unless otherwise approved beforehand in writing by the WPA. However, R6 would now require the K3 facility to be operated in accordance with the K3 RWTS. KCC objects that the current strategy is not effective since the Applicant has repeatedly requested increases in HGV movements from the original K3 Planning Permission. KCC proposes that the original condition be replicated with a requirement for a new strategy to be written and approved by the Highway Authority that includes penalties unless increasing levels of waste delivery through sustainable means is evidenced.

7.3.24. The Applicant responded on the subject of the RWTS for Project K3 and Project WKN. In particular, its responses to ExQ3.6.9 and ExQ3.11.4 [REP5-011] were that to require the provision of infrastructure as part of the RWTS would not result in waste being transported by rail or water unless contracts were secured which allowed those methods of transport to be used and without knowing the quantum and form of delivery it was impossible to assess what infrastructure would be required. Commercial sensitivities on the value of waste contracts would prevent information on the viability of providing infrastructure for rail and water transportation.

7.3.25. I accept there are commercial sensitivities involved, as demonstrated by the rail strategy in respect of the Consented K3 Facility, predicated on a separate permission (SW/12/167) to upgrade rail infrastructure in the vicinity and at the Ridham Dock, prior to the North London Fuel Use Contract being withdrawn and the strategy being revised. The RWTS for Project K3 and Project WKN as contained in the Applicant's Preferred DCO replicate the wording which was acceptable to KCC in mid-2017. Therefore, I see no compelling justification for a requirement to rewrite the strategy as now suggested by KCC.

The Surface Water Management and Foul Drainage Philosophy (SWMFDP)

7.3.26. The SWMFDP December 2016 referred to in the Condition is certified within the DCO. KCC request clarity on where this is certified within the DCO.

7.3.27. Article 16 lists The Surface Water Management and Foul Drainage Design Philosophy Statement [APP-152] dated on its face 13 December 2016, pertains to Project K3. It has clearly been updated since then and contains the drawings Site Sections Drawing No 16315 A0 0250 including Rev J dated 31.8.18, and Proposed Drainage Layout Drawing No 16315 A0 0301 including Rev J dated 7.9.18. The revisions including preceding revisions refer back to the matters included in Condition 16 described in the Conditions Tracker. These provide among other things for detailed

mitigation measures to be constructed and operational prior to the acceptance of waste by the development. In addition, the Proposed Drainage Layout 16315/A0/0301 Rev J and Site Sections 16315/A0/0250 Rev J are individually listed among the Approved Plans and Documents in Schedule 2, Part 4.

Condition 22 of permission SW/19/501345– minimum 20% of annual waste throughput to be pre-treated

7.3.28. Condition 22 reads:

"Other than waste arising from within Kent all waste used as a fuel in the Sustainable Energy Plant hereby permitted shall be pre-treated. Unless otherwise agreed in writing by the Waste Planning Authority no less than 20% of the annual waste throughput shall be pre-treated waste sourced from within the area defined as Hinterland shown on the plan attached to the letter from RPS dated 17 March 2011 entitled KENT & HINTERLAND and which includes Kent, Tandridge, Thurrock and Medway."

7.3.29. KCC maintain this condition is still required for the Proposed Development to be sustainable and the waste proximity principle to be met. Its rationale was to ensure that sourcing of waste processed at the plant is consistent with the waste proximity principle and to secure waste management capacity sufficient to achieve net regional and sub-regional self-sufficiency.

7.3.30. The Applicant points out this is a contrary position to KCC's previous submissions, noting its submission [REP4-015] (page 11):

"Given that it is acknowledged that waste will travel beyond administrative boundaries, it is not the sourcing of waste in itself that is problematic to KCC and its Kent Minerals and Waste Local Plan. It is simply that the quantum of capacity proposed is far above that which could ever be required to meet Kent's needs or to 'compensate' for flows of Kent waste beyond its borders."

7.3.31. In its Comments on the Applicant's Response to ExQ1A [REP5-038] (page 13) KCC references the removal of a catchment area condition that had been applied to the Tilbury Green Power Facility, stating:

"This supports KCC's position (as set out in its response to EXAQ1A.1.23) that attempts to condition limits to sourcing, as suggested by the ExA, would be of limited value as they could then be removed on subsequent application, and hence cannot be relied upon to limit the harm identified. The County Council has previous experience of the unsuccessful application of such a condition."

7.3.32. I note this matter is not taken up by KCC in its Closing Statement [REP8-016] or directly in its SoCG with the Applicant [REP8-013] although the quotations provided by the Applicant do not of themselves undermine a position that a minimum amount of annual waste throughput should be pre-treated. That said, it is not explained how such a requirement would be precisely quantified, for example in the definition of "pre-treated" or that any environmental effects of a smaller percentage that the WPA may

approve, which (on this wording) could be as low as a zero percentage, have been assessed within the scope of the ES. Consequently, I find that such a requirement would not be justified.

Key changes made by the Applicant during the Examination

7.3.33. Table 1 sets out the key changes made by the Applicant during the Examination, contained in its preferred dDCO [REP9-007], and which the ExA recommends should remain if the SoS decides to grant consent for both Project K3 and Project WKN. The changes followed discussion at ISHs and in response to written questions and submissions from interested persons. I am satisfied that these changes are justified by the evidence I have examined and recommend they are included in the DCO if the development consent is granted.

7.3.34. In my Preferred Changes [PD-017] I invited the Applicant to consider whether in R25(1) "commissioned" should be replaced with "commenced" to reflect a need to have the Operational Traffic Routing and Management Plan (OTRMP) approved in a timely fashion. The Applicant responded that as the OTRMP applies to the WKN Proposed Development it is appropriate to require the plan to be submitted and approved prior to commissioning of the WKN facility, rather than prior to commencement. I agree that in doing so both R24 and R25 would ensure that WKN construction traffic is appropriately managed and controlled.

Table 1: Changes made by the Applicant during the Examination

Provision	Examination Issue	ExA comment
Article 2 Interpretation:	Date of submission version of Environmental Statement to be inserted.	Amended in response to the ExA's question ISH1:1 [EV-003]
Article 2 Interpretation:	The definition of 'works plan' changed to 'works plans' for consistency with article 16.	Amended in response to the ExA's question ISH1:2 [EV-003]
Article 2 Interpretation:	The words 'Requirement 14 (Detailed Design Approval) have been inserted before 'of Schedule 2'.	Amended in response to the ExA's question ISH1:3 [EV-003]

Provision	Examination Issue	ExA comment
Article 2 Interpretation:	The words 'Schedule 1 of' have been inserted after 'authorised by'.	Amended in response to the ExA's question ISH1:4 [EV-003]
Article 2 Interpretation:	Remaining references to 'plan' to be changed to 'plans' for consistency with the defined term 'works plans' and article 16	Amended in response to the ExA's question 2.13.1 [PD-012]
Article 2 Interpretation:	In the definition of "environmental statement", addition of the words "including all appendices thereto" following words "submitted with the application on 11 September 2019"	Amended in response to the ExA's question 3.13.16. [PD-014]
Article 2 Interpretation:	The definition of "K3 Generating Station" has been amended to read "a generating station authorised by the Order as having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 4 of Schedule 2"	For clarity, and also to complete the date of commissioning of the K3 Sustainable Energy Plant.
Article 4(1) Effect on K3 planning permission	The word 'commence' has been replaced by 'start'.	Amended in response to the ExA's question ISH1:8 [EV-003] to avoid any confusion between the defined term 'commence' in

Provision	Examination Issue	ExA comment
		relation to works, and 'commence' in relation to operational use.
Article 4(2) Effect on K3 planning permission	The words 'the conditions of' have been deleted before 'K3 Sustainable Energy Plant Planning Permission'.	Amended in response to the ExA's question ISH1:5 [EV-003]to clarify that the whole planning permission will cease to have effect, not just the conditions.
Article 10(6) Authority to survey and investigate the land	The word 'vehicles' has been inserted before 'apparatus'.	Amended in response to the ExA's question ISH1:8 [EV-003]
Article 13(2) and (3) Defence to proceedings in respect of statutory nuisance	The references to section 65 Control of Pollution Act 1974 have been deleted.	Amended in response to the ExA's question ISH1:10 [EV-003]
Article 16(g) Certification of plans etc	The reference of the WKN parameter plan has been moved from 16(c) to 16(g).	For consistency with the definition in requirement 1 and in response to the ExA's first written questions 1.2.2 [PD-008]. Further information is provided in the Applicant's Further Submissions [REP2-014] on ISH1 DCO Questions – Deadline 2
Article 16 Certification of plans etc	The WKN draft construction environmental management plan dated May 2020 and the Design and Access Statement [APP-083] have been added	In response to the ExA's question 3.13.4 [PD-014]

Provision	Examination Issue	ExA comment
Article 16 Certification of plans etc	The addition of "(m) draft ecological management and enhancement plan".	In response to the ExA's question 4.13.7 [PD-015].
Article 16 Certification of plans etc	The addition of "(o) draft K3 travel plan"	As a result of the addition of requirements in requirement 10 as referred to below.
Article 18(1) Procedure for approvals	"The Order" changed to "this Order"	Amended in response to the ExA's question ISH1:13 [EV-003].
Schedule 2, Parts 2 & 3 Requirements	Various references to the relevant project or works number have been added.	To clarify to which work each requirement relates
Schedule 2 Interpretation	The definition of "commissioning' has been moved to Article 2(1) Interpretation	Amended in response to the ExA's question ISH1:20 [EV-003].
Schedule 2 Interpretation	The definition of "permitted preliminary works" is amended to clarify that archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services are all subject to compliance with Requirement 20(1).	Amended in response to the ExA's question 3.13.3 [PD-014]

Provision	Examination Issue	ExA comment
Schedule 2 Requirement 2 Commencement of authorised development	The words 'Work No 1 and Work No 2' have been replaced by 'Project K3 and Project WKN'	Amended in response to the ExA's question ISH1:20 [EV-003].
Schedule 2 Requirement 4(1) – Decommissioning	The word "decides" has been replaced by "notifies the relevant planning authority that it intends to".	Amended in response to the ExA's question ISH1:23 [EV-003]. A requirement to decommission has not been included as cessation of use may be temporary or subject to approval of refurbishment plans. Any physical decommissioning works will in any event be subject to their own assessment under the planning and EIA regimes.
Schedule 2 Requirement 6(2) Rail and water transportation strategy	Rail and water transportation strategy definition moved to Requirement 1.	Amended in response to the ExA's question ISH1:24 [EV-003]
Schedule 2 Requirement 7 Amendments to approved plans	The definition of 'Approved plans' has been moved to Requirements 1 and used in requirements 7 and 9 and elsewhere as appropriate.	Amended in response to the ExA's question ISH1:25. [EV-003]
Schedule 2 Requirement 10 Heavy goods vehicles	The name of the requirement has been changed, and additional requirements added with respect to the approval of	As a result of discussions with HE in relation to the regulation of the additional movements associated with the K3

Provision	Examination Issue	ExA comment
	operational traffic routing and management plan and travel plan for K3	authorised development
Schedule 2 Requirement 11 Trees	Definition of 'approved Landscape Masterplan' moved to Requirement 1 and reference to it in 11(1) has been corrected for clarity.	Amended in response to the ExA's question ISH1:28 [EV-003].
Schedule 2 Requirement 13 Combined heat and power	A definition of Kemsley Paper Mill has been added to Requirement 1.	Amended in response to the ExA's question ISH1:29 [EV-003]. The definition of the CHP strategy in this requirement has not been moved because the purpose of the requirement is to define the CHP strategy. Therefore a separate definition in requirement would simply refer back to this requirement, making it a circular definition
Schedule 2 Requirement 14 Detailed Design Approval – Table 1	The maximum height of Work No 2(j) Administration Office has been corrected to 30m to be consistent with Table 2.3 of the ES.	Amended in response to the ExA's first written questions 1.2.4 [PD-008].
Schedule 2 Requirement 14(4) Detailed Design Approval	Duplication of "(4)" deleted. Definition of "WKN parameter plan" moved to requirement 1.	Amended in response to the ExA's question ISH1:31 [EV-003]

Provision	Examination Issue	ExA comment
Schedule 2 Requirement 14 Detailed design approval	The addition of paragraph 14(1)(a) requiring the approval of details for the provision of electric vehicle charging point for WKN	Amended as agreed with Swale Borough Council, as referred to in the Applicant's response [REP5- 011] to the ExA's question 3.6.4 [PD-014].
Schedule 2 Requirement 15 Provision of landscaping	The word 'commissioned' is replaced by 'commenced'.	Amended in response to the ExA's question 4.13.5 [PD-015].
Schedule 2 Requirements 16, 24, 25, 26 & 30	The word 'relevant' has been added before 'planning authority'.	Amended in response to the ExA's question ISH1:34 [EV-003].
Schedule 2 Requirements 19 Land contamination and groundwater	Title 'Contaminated Land and groundwater' changed to 'Land contamination and groundwater'	Amended in response to the ExA's first written questions 1.13.4 [PD-008].
Schedule 2 Requirement 20 Archaeology	The words 'and reporting' inserted after the word 'analysis' in paragraph 20(2).	Inserted as requested by KCC's D3 submission dated 24 April 2020 [REP3-020]
Schedule 2 Requirement 20 Archaeology	Amended to provide for field work and post-field work analysis and recording	Amended as requested by KCC's submission dated 2 March 2020 [REP1-009]
Schedule 2 Requirement 21 Ecological management and enhancement plan	The word 'commissioned' is replaced by 'commenced'.	Amended in response to the ExA's question 3.13.15 [PD-014].

Provision	Examination Issue	ExA comment
Schedule 2 Requirement 21 Ecological management and enhancement plan	Paragraph 21(2)(a) has been amended to read "be in accordance with the ecological management and enhancement plan certified by the Secretary of State under article 16"	Amended in response to the ExA's question 4.13.6 [PD-014].
Schedule 2 Requirement 22 Construction environmental management plan	The correct reference has been added to the environmental statement in 22(2)(d)	Amended in response to the ExA's question ISH1:35 [EV-003].
Schedule 2 Requirement 22 Construction environmental management plan	Sub-paragraph 22(2)(a) has been amended to reflect the certification of the draft construction environmental management plan in Article 16.	Amended for consistency with the change to Article 16.
Schedule 2 Requirement 29(1) Piling and penetrative foundation design	Corrected to reflect the restrictions in para 11.9.21 of the ES on impact piling between January and February inclusive and April to August inclusive.	Amended in response to the ExA's first written questions 1.5.13 [PD-008].
Schedule 2 Requirement 29 Piling and penetrative foundation design	Paragraph 29(3) has been deleted in its entirety.	Amended in response to the ExA's question 3.13.1 [PD-014].
Schedule 2 Requirement 30 Employment, skills and training program	The words "in consultation with the Economic Development Officer at Swale Borough Council" have been	At the request of SBC at paragraph 6.8.2 of its LIR [REP1-012] dated 2 March 2020.

Provision	Examination Issue	ExA comment
	inserted after "by the relevant planning authority".	
Schedule 3	The whole of Schedule 3 has been moved to Part 4 of Schedule 2. All references in the DCO to Schedule 3 have as a consequence been amended to Part 4 of Schedule 2, and subsequent Schedule numbers and references changed.	Amended in response to the ExA's question ISH1:36 [EV-003]
Schedule 3	'Revision' numbers have been moved to the 'Reference' column where those documents were never revised and retain their original date.	Amended in response to the ExA's question ISH1:37 [EV-003].

7.3.35. In its D7 submission [REP7-032], HE proposed wording for a Requirement in the DCO to provide for the completion of road improvements discussed in Chapter 4 of this Report, as follows.

"No part of the authorised development shall commence (including site clearance or preparation) until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Construction Management Plans for the WKN and K3 (additional development) sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The prohibition will apply throughout the construction period, and any subsequent period until the authorised development is occupied"; and

"No part of the authorised development shall be occupied until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Travel Plans for the

WKN and K3 sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The Travel Plans shall also include such details as are necessary to set out the agreed means by which, should they choose to do so, the applicant/operator of an authorised development may seek to end the prohibition. Any application to end the prohibition may only be submitted once the SRN improvements have been open to traffic and the WKN/K3 authorised developments have been operational for a sufficient period for any evidence to be robust. The "sufficient period" shall be a minimum 12 months."

7.3.36. I have considered carefully whether, subject to amendments to clarify the drafting of such provisions the proposed Requirement is necessary, however in light of the detailed content of the dCTMP and dTPs for the Proposed Development, together with the existence of Requirements 10 and 24, the restrictions desired by HE will be effectively tied into the Proposed Development. Therefore it is unnecessary to consider the proposed new Requirement further.

Summary of ExA Recommended Changes

7.3.37. In the event that the SoS is minded to grant consent for Project K3 and Project WKN within the Proposed Development, I recommend that the Applicant's Preferred DCO at D7 be amended to:

- Amend Article 16 to refer to Highways England's versions of the WKN dCTMP, WKN dTP and K3 dTP;
- Amend Article 16 (m) (certification of plans) to insert "draft" before "ecological management and enhancement plan dated June 2020";
- Amend R21(2)(a) to insert "draft" before "ecological management and enhancement plan"; and
- Other minor drafting and typographical amendments.

7.3.38. These recommended changes are set out below in Table 2.

Table 2: Recommended changes to Applicant's Preferred DCO should SoS grant consent for Project K3 and Project WKN

Provision	Examination Issue	ExA Comment
Article 16(h)	Delete and replace with "the draft WKN construction traffic management plan – Highways England version (dated 7 August 2020);"	7.3.39. To reflect restrictions on HGV movements

Provision	Examination Issue	ExA Comment
Article 16(i)	Delete and replace with "the draft WKN travel plan - Highways England version (dated 7 August 2020);"	7.3.40. To reflect restrictions on HGV movements
Article 16 (o)	Delete and replace with "the draft K3 travel plan – Highways England version (dated 7 August 2020)"	7.3.41. To reflect restrictions on HGV movements
Article 16 (m)	Insert "draft" immediately before "Ecological" and after "plan" insert "dated June 2020"	7.3.42. Responds to submitted draft EMMP
Schedule 1, Part 2 General Requirements Requirement 7(2)	Insert immediately before "paragraph (1)" "sub-"	7.3.43. Improve drafting
Schedule 1, Part 2 General Requirements Requirement 21(2)(a)	Insert "draft" immediately before "ecological"	7.3.44. Responds to submitted draft EMMP
Explanatory Note 2nd paragraph	Delete "for" before "associated development"	7.3.45. Improve drafting

ExA's recommended final DCO

7.3.46. The key changes which I am proposing in the Recommended DCO which differ from the Applicant's Preferred D7 version [REP7-003], consist of

those changes necessary to omit the WKN Project from the Proposed Development.

7.3.47. No party commented on the wording of the ExA K3 dDCO [PD-016] save as described above.

7.3.48. It should however be noted that since the ExA K3 dDCO [PD-016] was published the Applicant updated its dDCO at D7 (Applicant's Preferred DCO) in the manner set out in its Table of Amendments to the DCO [REP7-008]. Some of these are relevant to a K3 DCO, namely to:

- Amend the definition of "K3 Generating Station"; and
- Add requirements to R10 (HGVs);

7.3.49. The additional requirements in Schedule 2 R10 (Heavy goods vehicles) with respect to the approval of operational traffic routing and management plan, were added as a result of discussions with HE in relation to the regulation of the additional movements associated with the K3 authorised development.

7.3.50. I have considered these updated changes at D7 made by the Applicant in respect of its Preferred DCO and consider that they should also be incorporated into a K3 only DCO with the exception of the change to R21 (ecological management and enhancement plan). At ExQ2.5.7 I noted the various titles of this plan in ES Chapter 11 and requested that the Applicant commit to produce an EMEP referred to in dDCO R21. This was submitted under the title draft Ecological Mitigation and Management Plan (EMMP) [REP5-005]. It is this plan that should be tied to the DCO in the sense that it should be certified under Article 16 and the final plan be in accordance therewith. Therefore R21(2)(a) of the Applicant's Preferred DCO [REP7-003] should be amended to replace "ecological management and enhancement plan" with "draft Ecological Mitigation and Management Plan dated June 2020".

7.3.51. These amendments are incorporated into the Recommended DCO at Appendix D.

7.3.52. Further amendments recommended are in respect of:

- The new Work Plan and Land Plan drawing numbers and dates, and Book of Reference in Article 16;
- Reinstating the items of Associated Development so far as they should apply to Work No. 1; and
- Minor drafting and typographical amendments.

7.3.53. These recommended amendments, together with those necessary to omit Project WKN from the DCO as tabled in [PD-017], are included in Table 3 below.

Table 3: DCO Provisions Recommended to be Changed from the Applicant's Preferred DCO (ExA's final recommended form of DCO)

Provision	Examination Issue	Recommendations
Title and Contents		
Title	Change title of Order to "The Wheelabrator Kemsley K3 Generating Station Order 20[ ]"	7.3.54. Remove references to Project WKN and consequential amendments
Contents, Schedules, Schedule 2, Part 1	Delete "GENERAL"	7.3.55. Remove references to Project WKN and consequential amendments
Contents, Schedules, Schedule 2, Part 2	Delete "PROJECT K3 REQUIREMENTS" and insert "K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS"	7.3.56. Remove references to Project WKN and consequential amendments
Contents, Schedules, Schedule 2	Delete PART 3 and PART 4	7.3.57. Remove references to Project WKN and consequential amendments
Articles		
Article 1	Delete "and (WKN Waste-to-Energy Facility)"	7.3.58. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Article 2(1) "commissioning"	Delete "each of" and "and Work No 2"	7.3.59. Remove references to Project WKN and consequential amendments
Article 2(1) "K3 Generating Station"	Delete definition and replace with: "means a generating station authorised by the Order as having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 2 of Schedule 2;"	7.3.60. Insert date of commissioning of K3 and consequential amendments to removal of references to Project WKN
Article 2(1) "K3 Generating Station"	Delete "Part 4" and insert "Part 2"	7.3.61. Remove references to Project WKN and consequential amendments
Article 2 (1) "operational use"	Where "development" first occurs, replace with "developments", and delete "they are" and replace with "it is"	7.3.62. Remove references to Project WKN and consequential amendments
Article 2(1)	Delete this definition	7.3.63.

Provision	Examination Issue	Recommendations
"Project K3"		Remove references to Project WKN and consequential amendments
Article 2(1) "Project WKN"	Delete this definition	7.3.64. Remove references to Project WKN and consequential amendments
Article 2(1) "WKN Waste-to-Energy Facility"	Delete this definition	7.3.65. Remove references to Project WKN and consequential amendments
Article 2(3)	Delete ", save in respect of the parameters referred to in Requirement 14 (Detailed Design Approval) of Schedule 2"	7.3.66. Remove references to Project WKN and consequential amendments
Article 7(4)(a)	Delete "in the case of Project K3" and after "(Company number 09240062);" insert "or"	7.3.67. Remove references to Project WKN and consequential amendments
Article 7(4)(b)	Delete "in the case of Project WKN the transfer or grant is made to Kemsley North Limited (Company number 11699563); or"	7.3.68. Remove references to Project WKN and consequential amendments
Article 7(4)(c)	Delete.	7.3.69.

Provision	Examination Issue	Recommendations
		Remove references to Project WKN and consequential amendments
Article 16(a)	Delete "October 2019" and insert "August 2020"	7.3.70. Remove references to Project WKN and consequential amendments
Article 16(b)	Delete "9812-0057-006 " and replace with "9812-0071-02"; and delete "October 2019" and replace with "July 2020"	7.3.71. Remove references to Project WKN and consequential amendments
Article 16(c)	Replace "works plans" with "work plan"; and replace "drawing numbers 9812-0059-005 and 9812-0060-007 dated March 2020" with "drawing number 9812-0072-02 dated July 2020"	7.3.72. Remove references to Project WKN and consequential amendments
Articles 16 (g) to (k)	Delete sub-paragraphs (g) to (k) inclusive and (m) and add: "(g) the Design and Access Statement dated September 2019"	7.3.73. Remove references to Project WKN and consequential amendments
Article 16 (i)	Delete (i) (K3 travel plan) and replace with "the draft K3 travel plan – Highways England	7.3.74. To reflect consistency with

Provision	Examination Issue	Recommendations
	version (dated 7 August 2020)"	Alternative Recommended DCO
Schedules/Requirements		
Schedule 1	After "in the County of Kent-" delete "Project K3"	7.3.75. Remove references to Project WKN and consequential amendments
Schedule 1	After "water outfall for Work No 1." Delete everything up to and including "surface water outfall for Work No. 2"	7.3.76. Remove references to Project WKN and consequential amendments
Schedule 1	Delete "In connection with and in addition to Works Nos. 1, 2, 3, 4, 5, 6, and 7" and replace with "In connection with and in addition to Work No. 1"	7.3.77. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "approved Landscape Masterplan"	Delete "4" and insert" 2"	7.3.78. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "approved plans"	Delete "4" and insert" 2"	7.3.79. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Schedule 2, Paragraph 1 "permitted preliminary works"	Delete "works within Work Nos 4, 5 and 6," and delete ", subject to compliance with Requirement 20(1) of this Order,"	7.3.80. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "rail and water transportation strategy"	Delete "relevant"	7.3.81. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "WKN parameter plan"	Delete definition	7.3.82. Remove references to Project WKN and consequential amendments
Schedule 2, PART 1, title	Delete "GENERAL"	7.3.83. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 2 (R2)	Delete "Each of Project K3 and Project WKN"	7.3.84. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 3 (R3)	In both sub-paragraphs (1) and (2) delete "each of" and "and Work No 2"	7.3.85. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Schedule 2, paragraph 4 (R4)	In sub-paragraph (1) delete "either" and delete "or the WKN Waste-to-Energy Facility"	7.3.86. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 6 (R6)	Delete "and the WKN Waste-to-Energy Facility" and delete "for that project"	7.3.87. Remove references to Project WKN and consequential amendments
Schedule 2, PART 2, title	Delete "PART 2 PROJECT K3 REQUIREMENTS"	7.3.88. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 7 (R7(2))	Insert immediately before "paragraph (1)" "sub-"	7.3.89. Improve drafting
Schedule 2, paragraph 9 (R9)	Delete "Project K3", and delete "4" and insert "2"	7.3.90. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 12 (R12)	Delete "Project K3"	
Schedule 2, PART 3, title and Part 3	Delete "PART 1 PROJECT WKN REQUIREMENTS" and everything that follows to the end of Part 3	7.3.91. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Schedule 2, Part 4, title	Delete "4" and insert "2"	7.3.92. Remove references to Project WKN and consequential amendments
Explanatory Note		
1st paragraph	Delete ", and to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW"	7.3.93. Remove references to Project WKN and consequential amendments
2nd paragraph	Delete "for" before "associated development"	7.3.94. Improve drafting

7.4. LEGAL AGREEMENTS AND OTHER CONSENTS

7.4.1. Other than the s106 agreement (Appendix B, Planning Statement [APP-082] discussed in Section 1.7 of this Report, there are no development consent obligations pursuant to the TCPA1990 or equivalent undertakings or agreements of which the SoS needs to be aware or to take into account in the decision.

7.5. NUISANCE

7.5.1. Regulation 5(2)(f) of the APFP Regulations requires that an application must be accompanied by…*"a statement whether the proposal engages one or more of the matters set out in section 79(1)…of the Environmental Protection Act 1990 and, if so, how the applicant proposes to mitigate or limit them"* This obligation has been discharged in the Statement of Statutory Nuisance (SSN) submitted with the application [APP-084].

7.5.2. The SSN reviews the scope of statutory nuisance potentially arising from the Proposed Development. It identifies the potentially engaged areas of statutory nuisance as follows:

- any premises in such a state as to be prejudicial to health or a nuisance (s79(1)(a) Environmental Protection Act 1990 (EPA1990);
- fumes or gases emitted from premises (s79(1)(c) EPA1990);

- any dust, steam, smell or other effluvia arising on industrial, trade or business premises (s79(1)(d) EPA1990);
- any insects emanating from premises (s79(1)(fa) EPA1990);
- artificial light from premises (s79(1)(fb) EPA1990);
- noise emitted from premises or a vehicle, machinery or equipment in a street (s79(1)(g) and (ga) EPA1990); or
- any other matter declared by any enactment to be a statutory nuisance (s79(1)(h) EPA1990).

7.5.3. The DCO seeks defence against proceedings in respect of statutory nuisance through a combination of the effect of section 158 PA2008 and Article 13. Based on the conclusions of the ES and the Requirements proposed within the DCO, I am satisfied that approach is justified and appropriate, as with appropriate mitigation the development proposal would not have the potential to cause a statutory nuisance, during either its construction or operation, of the types identified under Section 79(1) of the Environmental Protection Act 1990.

7.6. CONCLUSIONS

7.6.1. I have considered all versions of the dDCO provided by the Applicant, from the submission version [APP-005] to the Applicant's Preferred DCO [REP7-003]. Excepting the issue of whether consent should be granted for Project WKN within the Proposed Development, the Applicant's Preferred DCO addressed outstanding matters save for the minor recommended changes contained in Table 2 of this Chapter. These are included in the Alternative Recommended DCO in Appendix E of this Report.

7.6.2. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix D.

7.6.3. However in the event that the SoS is not minded to follow the recommendation of the ExA but to grant consent for both the Project K3 and Project WKN the recommended form of DCO is set out in Appendix E.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

8.1.1. Before summarising my findings it would be useful to highlight a matter which the Secretary of State (SoS) may wish to pursue further, namely to seek confirmation from KCC that the formal adoption of changes to the Kent Minerals and Waste Local Plan (KMWLP) through the EPR has by now taken place, thus making the EPR changes formally part of the development plan.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

K3 Proposed Development

8.2.1. Section 104(1) of the Planning Act 2008 has effect for the K3 Proposed Development contained within the Application

8.2.2. Having regard to s104 PA2008 (PA2008), I conclude that making the Recommended Development Consent Order (DCO) would be in accordance with National Policy Statements (NPSs) NPS EN-1 and NPS EN-3. It would also accord with the development plan and other relevant policy, all of which have been taken into account in this report. I have also had regard to the Local Impact Reports produced by Kent County Council and Swale Borough Council in reaching my conclusion.

8.2.3. Whilst the SoS is the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) (as amended), and will make the definitive assessment, I conclude that the K3 Proposed Development would not be likely to have significant effects on European sites, and I have taken this finding into account in reaching my recommendation.

8.2.4. I have had regard to the Public Sector Equality Duty (PSED) throughout the Examination and in producing this report. The K3 Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED.

8.2.5. With regard to all other matters and representations received, I have found no important and relevant matters that would individually or collectively lead to a different recommendation to that below. Therefore there is nothing to indicate that the Application insofar as it concerns the K3 Proposed Development, should be decided other than in accordance with the relevant NPSs.

8.2.6. With the mitigation proposed through the Recommended DCO, there are no adverse impacts arising from the K3 Proposed Development that would outweigh its benefits.

8.2.7. For all of the above reasons, and in the light of my findings and conclusions on important and relevant matters set out in the report, I recommend that the SoS for Business, Energy and Industrial Strategy makes The Wheelabrator Kemsley K3 Generating Station Order in the form recommended at Appendix D to this Report.

WKN Proposed Development

8.2.8. I have found that the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, albeit that generation of up to 42MW of electricity would be in accordance with those national policies and of some benefit. There would be some positive economic advantages through job creation during the construction and operational phases of the facility.

8.2.9. However with no guaranteed heat offtake the proposed incineration would not qualify as Good Quality CHP and the prospect of its becoming a viable CHP facility is uncertain given there is no immediate sustainable source of steam/heat to local customers, unlike Project K3. This is an important and relevant factor to weigh in the balance, also considering the need to transition to a low-carbon electricity market, underlined by the UNFCCC Paris Agreement and the June 2020 Progress Report which indicates that plants without CHP should not be regarded as supplying renewable energy.

8.2.10. In addition, the Applicant's assessment of fuel availability and capacity for its treatment, compares unfavourably with the WPA's own assessments of need and capacity that underpin its strategy in revising targets within the KMWLP so to ensure that new facilities demonstrate the management of the waste clearly moves further up the waste hierarchy. Therefore the WKN Proposed Development would be in conflict with key policies of KMWLP including Policy CSW2, Policy CSW4, Policy CSW6 and Policy CSW7.

8.2.11. Having regard to other benefits of the WKN Proposed Development set out by the Applicant that may comply with other provisions of the development plan including both the Swale Local Plan and KMWLP, my conclusion is that the provision of too much waste capacity in conflict with the waste hierarchy, represented by the WKN Proposed Development, would result in conflict with the development plan as a whole, the adverse impacts arising from which I consider to be serious and which would clearly outweigh the benefits of the facility.

8.2.12. It would also be in conflict with National Planning Policy for Waste (NPPW) which expects applicants to demonstrate that waste disposal facilities not in line with the development plan, would not undermine its objectives through prejudicing movement up the waste hierarchy. The WKN Proposed Development is a non-NSIP proposal and where the NPSs do not apply as such, and the more recent NPPW that sets out detailed waste planning policies should in my view carry considerable weight.

8.2.13. I have had regard to NPS EN-1 at paragraph 5.2, that CO2 emissions are not reasons to place more restrictions on projects in the planning policy

framework than are set out in the energy NPSs. However as I have found that there is no need for the WKN Proposed Development, the GHG emissions would be an additional harm that would result, whether or not a conclusion could have been reached as to any net carbon benefit that would result.

8.2.14. The identified harms in relation to the WKN Proposed Development would outweigh its benefits from the provision of energy and by the other benefits of the application as summarised above. Therefore for the reasons set out in the preceding chapters of this Report and summarised above, I conclude that the WKN Proposed Development should not proceed at this time, and that development consent should not be granted therefor.

8.2.15. However, if the SoS concludes that development consent should be granted for both Project K3 and Project WKN the ExA has examined the form of the Applicant's Preferred DCO [REP7-003] and recommended minor changes thereto in the form of Appendix E to this Report.

Other matters

8.2.16. As noted in Section 7 of this Report, in ExQ4.13.1 [PD-015] I made clear to all Interested Parties (IPs) my view that it would be unlikely on the evidence then available, that any recommendation to grant consent for the WKN Proposed Development would not also justify consent for the K3 Proposed Development, but if any IP considered consent should be granted for the WKN Proposed Development only, they were requested to clarify their position and explain their reasoning.

8.2.17. I received no representations that advocated consent for the WKN Proposed Development only and have not considered consent for WKN only as an option.

8.2.18. Reference is made in Section 1.4.31 of this Report to submissions that were made by the Applicant received by the Planning Inspectorate at 1655hrs on the last day of the Examination, and my letter sent to the Applicant dated 21 August 2020 [PD-019] declining to accept these late submissions, for the reasons given therein. I consider that no new evidence was disclosed as a result of those submissions, however the matter is raised for the SoS to consider if necessary.

8.3. RECOMMENDATION

8.3.1. For all of the above reasons, and in the light of its findings and conclusions on important and relevant matters set out in this Report, the ExA, under the Planning Act 2008 (as amended), recommends that the Secretary of State for Business, Energy and Industrial Strategy makes The Wheelabrator Kemsley K3 Generating Station Order in the form recommended at Appendix D to this Report.

8.3.2. However, if the SoS concludes that development consent should be granted for both Project K3 and Project WKN the ExA has examined the

form of the Applicant's Preferred DCO [REP7-003] and recommended minor changes thereto in the form of Appendix E to this Report.

APPENDICES

APPENDICES I
APPENDIX A: THE EXAMINATION II
APPENDIX B: EXAMINATION LIBRARY III
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APPENDIX A: THE EXAMINATION

Examination Timetable as held

Item	Matters	Due Dates
1	**Preliminary Meeting**	**Wednesday 19 February 2020 (morning)**
2	**Issue Specific Hearing 1 (ISH1)** ISH1 on the draft Development Consent Order (dDCO)	**Wednesday 19 February 2020 (afternoon)**
3	**Issue by ExA of:** • Examination timetable • ExA's Written Questions (ExQ1)	**As soon as practicable following the PM**
4	**Deadline 1 (D1)** Deadline for receipt of: • comments on any updates to application documents submitted by the Applicant before or at the PM; • comments on any additional submissions received before or at the PM; • comments on Relevant Representations (RR); • summaries of all RRs exceeding 1500 words; • Written Representations (WRs) by all Interested Parties (IP); • summaries of all WRs exceeding 1500 words; • Statements of Common Ground (SoCGs) requested by ExA; • Local Impact Reports (LIRs) from any Local Authorities; • response to any further information requested by the ExA for this deadline; • post-hearing submissions including written submissions of oral cases; • notification by Statutory Parties of their wish to be considered as an IP by the ExA; • notification of wish to speak at any subsequent Issue Specific Hearings (ISH); • notification of wish to speak at an Open Floor Hearing (OFH);	**Monday 2 March 2020 (midday)**

	• provision of suggested locations and justifications for site inspections for consideration by the ExA; • notification of wish to attend an Accompanied Site Inspection (ASI); and • notification of wish to have future correspondence received electronically.	
5	**Deadline 2 (D2)** Deadline for receipt of: • comments on WRs; • comments on any SoCG; • comments on any LIRs • responses to ExQ1; • Applicant's revised dDCO; • comments on any additional information/ submissions received by D1; and • responses to any further information requested by the ExA for this deadline.	**Wednesday 18 March 2020**
	Added – publication of ExQ1a	**Thursday 9 April 2020**
6	**Accompanied Site Inspection 1 (ASI1)** Date reserved to hold an ASI1 (if required)	**Wednesday 15 April 2020**
7	**Open Floor Hearing 1 (OFH1)** Date reserved to hold an OFH (if required)	**Wednesday 15 April 2020 (evening)**
10	**Deadline 3 (D3)** Deadline for receipt by the ExA of: • post-hearing submissions including written submissions of oral cases; • comments on responses to ExQ1; • comments on Applicant's revised dDCO; • comments on any additional information/ submissions received by D2; and • responses to any further information requested by the ExA for this deadline.	**Wednesday 22 April 2020**
11	**Issue by ExA of:** • Further Written Questions (ExQ2) (if required);	**Wednesday 6 May 2020**
12	**Deadline 4 (D4)** Deadline for receipt by the ExA of:	**Wednesday 20 May 2020**

	• responses to ExQ2 (if required); • Applicant's revised dDCO; • Any revised/updated SoCGs; • comments on any additional information/ submissions received by D3; and • responses to any further information requested by the ExA for this deadline.	
	ExQ3 added	**Wednesday 3 June**
16	**Deadline 5 (D5)** Deadline for receipt by the ExA of: • Responses to ExQ3 if required • comments on responses to ExQ2 (if required); • comments on Applicant's revised/updated dDCO; • comments on any revised/updated SoCGs; • comments on any additional information/ submissions received by D4; and • responses to any further information requested by the ExA for this deadline.	**Wednesday 19 June 2020**
	Deadline 6 **Comments on ExQ3 etc.**	**29 June**
17	**Publication by ExA of:** • ExQ4 if needed • Consultation on the ExA's preferred DCO (if required); and • Report on the Implications for European Sites (RIES) (if required).	**Wednesday 15 July 2020**
18	**Deadline 7 (D7)** Deadline for receipt by the ExA of: • Responses to ExQ4, if required • comments on the ExA's preferred DCO (if required); • comments on the ExA's RIES (if required); • Applicant's Final preferred DCO in Statutory Instrument (SI) template validation report; • Any revised/updated SoCGs; • comments on any additional information/ submissions received by D5; and	**Wednesday 5 August 2020**

	• responses to any further information requested by the ExA for this deadline.	
19	**Deadline 8 (D8)** Deadline for receipt by the ExA of: • comments on any revised/ updated SoCG; • comments on the Applicant's Final preferred DCO in the Statutory Instrument (SI) template validation report; • comments on any additional information/ submissions received by D6; and • responses to any further information requested by the ExA for this deadline.	**Wednesday 12 August 2020**
20	The ExA is under a duty to complete the Examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.	**Wednesday 19 August 2020**

Alterations to the Exam Timetable

When	Status	What	Date of original event
26 March 2020	Added	A date was added for the publication of ExQ1a of 9 April 2020	
	Postponed	Issue specific Hearing 2 (ISH2) ISH2 into Environmental issues, including traffic and transport	16 April 2020
	Postponed	Issue specific Hearing 3 (ISH3) ISH3 on the dDCO	17 April 2020
22 May 2020	Cancelled	Accompanied Site inspection 2 (ASI2)	16 June 2020
	Cancelled	Issue Specific Hearing 4 (ISH4)	17 June 2020
	Cancelled	Issue Specific Hearing 5 (ISH5)	18 June 2020
	Added	A date for the publication of ExQ3 on 3 June 2020	
	Altered	Deadline 5: was moved to 19th June 2020	24 June 2020
	Added	Deadline 5: added 'Responses to ExQ3 if required'	19 June 2020

	Added	A date for Deadline 6 Comments on ExQ3 etc was added on 29 June 2020	
	Added	Text was added to allow publication by ExA of ExQ4 on 15th July 2020	
	Added	Text was added to Deadline 7: to allow responses to ExQ4 on 5 August 2020	

APPENDIX B: EXAMINATION LIBRARY

Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility

Examination Library

Updated – 18 August 2020

This Examination Library relates to the Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first

EN010083 – Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility **Examination Library - Index**	
Category	**Reference**
Application Documents Application documents as submitted, and any amended versions received before the PM. (Amended versions received during the examination stage are saved under the relevant deadline)	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination including responses to Rule 6 and Rule 8 letters	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications and applicant's hearing notices	EV-xxx
Representations – by Deadline	
Deadline 1:	REP1-xxx
Deadline 2:	REP2-xxx
Deadline 3:	REP3-xxx

Document Index

Deadline 4:	REP4-xxx
Deadline 5:	REP5-xxx
Deadline 6:	REP6-xxx
Deadline 7:	REP7-xxx
Deadline 8:	REP8-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

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APP-002	WTI/EFW Holdings Ltd (SUPERSEDED WITH – AS-001) 1.2 - Application Guide
APP-003	WTI/EFW Holdings Ltd 1.3 - Application Form
APP-004	WTI/EFW Holdings Ltd 1.4 - Copies of Newspaper Notices
APP-005	WTI/EFW Holdings Ltd (SUPERSEDED WITH – AS-002) 2.1 - Draft Development Consent Order
APP-006	WTI/EFW Holdings Ltd 2.2 - Explanatory Memorandum
APP-007	WTI/EFW Holdings Ltd (SUPERSEDED WITH – AS-003) 2.3 - DCO Validation Report
APP-008	WTI/EFW Holdings Ltd (SUPERSEDED WITH – AS-004) 2.4 - Book of Reference
APP-009	WTI/EFW Holdings Ltd (SUPERSEDED WITH – AS-005) 2.5 - Statement of Reasons
APP-010	WTI/EFW Holdings Ltd (SUPERSEDED WITH – AS-006) 2.6 - Funding Statement
APP-011	WTI/EFW Holdings Ltd 3.1 - ES Appendix 1.1 – Environment Statement Author CV's
APP-012	WTI/EFW Holdings Ltd 3.1 - ES Appendix 2.1 - Draft Construction Environmental Management Plan (CEMP)
APP-013	WTI/EFW Holdings Ltd 3.1 - ES Appendix 3.1 - Scoping Report
APP-014	WTI/EFW Holdings Ltd 3.1 - ES Appendix 3.2 – PINS Scoping Opinion
APP-015	WTI/EFW Holdings Ltd 3.1 - ES Appendix 3.3 - Response to the PINS Scoping Opinion
APP-016	WTI/EFW Holdings Ltd 3.1 - ES Appendix 3.4 - S42 Consultation Letter and S42 Responses
APP-017	WTI/EFW Holdings Ltd 3.1 - ES Appendix 3.5 - Applicant Response to S42 Consultation
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APP-020	WTI/EFW Holdings Ltd 3.1 - ES Appendix 4.1 - Transport Assessment Part 1
APP-021	WTI/EFW Holdings Ltd 3.1 - ES Appendix 4.1 - Transport Assessment Part 2

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APP-022	WTI/EFW Holdings Ltd 3.1 - ES Appendix 4.1 – Transport Assessment Part 3
APP-023	WTI/EFW Holdings Ltd 3.1 - ES Appendix 4.2 – Draft Construction Traffic Management Plan
APP-024	WTI/EFW Holdings Ltd 3.1 - ES Appendix 4.3 – Draft Travel Plan
APP-025	WTI/EFW Holdings Ltd 3.1 - ES Appendix 5.1 – Air Quality – Construction Assessment Methodology
APP-026	WTI/EFW Holdings Ltd 3.1 - ES Appendix 5.2 – Air Quality – Stack Height Determination
APP-027	WTI/EFW Holdings Ltd 3.1 - ES Appendix 5.3 – Air Quality – Additional Baseline Assessment
APP-028	WTI/EFW Holdings Ltd 3.1 - ES Appendix 5.4 – Air Quality – Assessment of Impacts on Ecological Receptors
APP-029	WTI/EFW Holdings Ltd 3.1 - ES Appendix 5.5 – Air Quality – Traffic Impacts
APP-030	WTI/EFW Holdings Ltd 3.1 - ES Appendix 5.6 – Air Quality - Odour Assessment
APP-031	WTI/EFW Holdings Ltd 3.1 - ES Appendix 6.1 – K3 Proposed Development Carbon Assessment
APP-032	WTI/EFW Holdings Ltd 3.1 - ES Appendix 6.2 – WKN Proposed Development Carbon Assessment
APP-033	WTI/EFW Holdings Ltd 3.1 - ES Appendix 6.3 - Practical Effect of K3 Proposed Carbon Assessment
APP-034	WTI/EFW Holdings Ltd 3.1 - ES Appendix 7.1 - Noise Survey Results
APP-035	WTI/EFW Holdings Ltd 3.1 - ES Appendix 7.2 – Proposed Development Construction Noise Model Input Data
APP-036	WTI/EFW Holdings Ltd 3.1 - ES Appendix 7.3 - Proposed Development Construction Noise and Vibration Assessment
APP-037	WTI/EFW Holdings Ltd 3.1 - ES Appendix 7.4 - Operational Noise Model
APP-038	WTI/EFW Holdings Ltd 3.1 - ES Appendix 7.5 - Operational Noise Assessment
APP-039	WTI/EFW Holdings Ltd 3.1 - ES Appendix 8.1 – Human Health Baseline
APP-040	WTI/EFW Holdings Ltd 3.1 - ES Appendix 9.1 – Desk Study Ground Conditions Preliminary Risk Assessment
APP-041	WTI/EFW Holdings Ltd

	3.1 - ES Appendix 10.1 – Flood Risk Assessment
APP-042	WTI/EFW Holdings Ltd 3.1 - ES Appendix 10.2 – Drainage Design Philosophy
APP-043	WTI/EFW Holdings Ltd 3.1 - ES Appendix 11.1 - Kemsley Ornithological Surveys
APP-044	WTI/EFW Holdings Ltd 3.1 - ES Appendix 11.2 – Habitats Regulation Assessment Report
APP-045	WTI/EFW Holdings Ltd 3.1 - ES Appendix 11.3 – Ecological Baseline Surveys 2007 - 2009
APP-046	WTI/EFW Holdings Ltd 3.1 - ES Appendix 11.4 – Ecological Mitigation and Management Plan
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APP-048	WTI/EFW Holdings Ltd 3.1 - ES Appendix 11.6 – Natural England Discretionary Advice
APP-049	WTI/EFW Holdings Ltd 3.1 - ES Appendix 11.7 - Marine Licence Surface Water Outfall to Swale
APP-050	WTI/EFW Holdings Ltd 3.1 - ES Appendix 11.8 - External Lighting
APP-051	WTI/EFW Holdings Ltd 3.1 - ES Appendix 12.1 - LVIA Scoping Correspondence with KCC
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AS-004	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority - 2.4 - S51 Book of Reference
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AS-007	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority 4.1 - S51 Consultation Report
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AS-011	Kent Fire and Rescue Service Additional Submission prior to Preliminary Meeting - Accepted at the discretion of the Examining Authority – 30 January 2020
AS-012	Natural England Additional Submission accepted at the discretion of the Examining Authority – 7 February 2020
AS-013	Marine Management Organisation Additional Submission accepted at the discretion of the Examining Authority – 14 February 2020
AS-014	Royal Mail Group Limited Additional Submission accepted at the discretion of the Examining Authority – 8 April 2020
AS-015	Allyson Spicer Additional Submission accepted at the discretion of the Examining Authority
AS-016	WTI/EFW Holdings Ltd Additional Submission accepted at the discretion of the Examining Authority - Applicant's Post Deadline 6 Submission

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AS-017	WTI/EFW Holdings Ltd Additional Submission accepted at the discretion of the Examining Authority - 14.3 Post Deadline 6 - Applicant's Response to Kent County Council's Submissions at Deadline 5
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EV-003	Agenda for Issue Specific Hearing 1 (ISH1) into the draft Development Consent Order
EV-004	Recording of Issue Specific Hearing 1 (ISH1) into the draft Development Consent Order - 19 February 2020
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EV-005	Note from Unaccompanied Site Inspection - Undertaken on 30 June and 1 July 2020
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Deadline 1 – 02 March 2020 Deadline for receipt by the ExA of: • Comments on any updates to Application Documents submitted by Applicant before or at PM • Comments on any additional submissions received before or at the PM • Comments on Relevant Representations (RR) • Summaries of all Relevant Representations (RR) exceeding 1500 words • Written Representations (WR) by all Interested Parties (IP) • Written Representations (WR) - Summaries of WRs exceeding 1500 words • Statement of Common Ground (SoCG) requested by ExA - see Annex E • Local Impact Reports (LIR) from any Local Authorities • Responses to any further information requested by ExA for this deadline • Post-hearing submissions including written submissions of oral cases • Any updated documents/submissions • Notification by Statutory Parties of their wish to be considered as an IP by the ExA	

• Notification of wish to speak at any subsequent Issue Specific Hearings (ISH) • Notification of wish to speak at an Open Floor Hearing (OFH) • Provision of suggested locations and justifications for site inspections for consideration by the ExA • Notification of wish to attend an Accompanied Site Inspection (ASI) • Notification of wish to have future correspondence received electronically	
REP1-001	WTI/EFW Holdings Ltd Deadline 1 Submission - Cover Letter
REP1-002	WTI/EFW Holdings Ltd Deadline 1 Submission - Application Guide
REP1-003	WTI/EFW Holdings Ltd Deadline 1 Submission - Draft Statement of Common Ground between the Applicant and the Environment Agency
REP1-004	WTI/EFW Holdings Ltd Deadline 1 Submission - Draft Statement of Common Ground between the Applicant and Natural England
REP1-005	WTI/EFW Holdings Ltd Deadline 1 Submission - Applicant's Response to Relevant Representations
REP1-006	WTI/EFW Holdings Ltd Deadline 1 Submission - Applicant's Response to Additional Submissions
REP1-007	WTI/EFW Holdings Ltd Deadline 1 Submission - Written Submission of Oral Case made by the Applicant at Issue Specific Hearing 1: draft DCO
REP1-008	WTI/EFW Holdings Ltd Deadline 1 Submission - Applicant's suggestions of locations for the Accompanied Site Inspection
REP1-009	Kent County Council Deadline 1 Submission - Written Representation
REP1-010	Kent County Council Deadline 1 Submission - Annex 1 Written Representation as Minerals and Waste Planning Authority
REP1-011	Kent County Council Deadline 1 Submission - Local Impact Report
REP1-012	Swale Borough Council Deadline 1 Submission - Local Impact Report
REP1-013	Environment Agency Deadline 1 Submission - Written Representation and Statement of Common Ground
REP1-014	Marine Management Organisation Deadline 1 Submission - Written Representation and Comments on Relevant Representation
REP1-015	Natural England Deadline 1 Submission - Written Representation

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REP1-016	South East Waste Planning Advisory Group Deadline 1 Submission - Written Representation - Submission received by a Non-Interested Party and accepted at the discretion of the Examining Authority
REP1-017	John C Twiselton Deadline 1 Submission - Written Representation - Submission received by a Non-Interested Party and accepted at the discretion of the Examining Authority
REP1-018	Minster-on-Sea Parish Council Deadline 1 Submission - Late Submission accepted at the discretion of the Examining Authority
Deadline 2 – 18 March 2020 Deadline for receipt by the ExA of: • Comments on WR • Comments on any SoCGs • Comments on Local Impact Reports • Responses to ExQ1 • Applicant's revised draft Development Consent Order • Comments on any additional information/submission received by D1 • Response to any further information requested by the ExA for this deadline • Any updated documents/submissions	
REP2-001	WTI/EFW Holdings Ltd Deadline 2 Submission - Cover Letter
REP2-002	WTI/EFW Holdings Ltd Deadline 2 Submission - Application Guide - Deadline 1 Version
REP2-003	WTI/EFW Holdings Ltd Deadline 2 Submission - Application Guide - Deadline 2 Version
REP2-004	WTI/EFW Holdings Ltd Deadline 2 Submission - Explanatory Memorandum (Clean)
REP2-005	WTI/EFW Holdings Ltd Deadline 2 Submission - Explanatory Memorandum (Tracked)
REP2-006	WTI/EFW Holdings Ltd Deadline 2 Submission - Draft Development Consent Order (DCO) - Clean
REP2-007	WTI/EFW Holdings Ltd Deadline 2 Submission - Draft Development Consent Order (DCO) - Tracked
REP2-008	WTI/EFW Holdings Ltd Deadline 2 Submission - Table of Amendments to the Development Consent Order (DCO)
REP2-009	WTI/EFW Holdings Ltd Deadline 2 Submission - Applicant's Response to Examining Authority's Written Questions (EXQ1)

REP2-010	WTI/EFW Holdings Ltd Deadline 2 Submission - Applicant's Response to Local Impact Reports
REP2-011	WTI/EFW Holdings Ltd Deadline 2 Submission - Applicants Comments on Written Representations
REP2-012	WTI/EFW Holdings Ltd Deadline 2 Submission - Summary of Applicant's Structure and Standing (Clean)
REP2-013	WTI/EFW Holdings Ltd Deadline 2 Submission - Summary of Applicant's Structure and Standing (Tracked)
REP2-014	WTI/EFW Holdings Ltd Deadline 2 Submission - Further Submissions on ISH1 DCO Questions
REP2-015	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 2
REP2-016	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 3 Methodology-Clean
REP2-017	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 3 Methodology-Tracked
REP2-018	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 4 Transport-Clean
REP2-019	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 4 Transport-Tracked
REP2-020	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 5 Air Quality-Clean
REP2-021	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 5 Air Quality-Tracked
REP2-022	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 8 Human Health-Clean
REP2-023	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 8 Human Health-Tracked
REP2-024	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 11 Ecology-Clean
REP2-025	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 11 Ecology-Tracked
REP2-026	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 12 LVIA-Clean
REP2-027	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 12 LVIA-Tracked
REP2-028	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 14 Summary Tables- Clean
REP2-029	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 14 Summary Tables-Tracked
REP2-030	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.2-Clean

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REP2-031	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.2-Tracked
REP2-032	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.4 Ecology-clean
REP2-033	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.4 Ecology-Tracked
REP2-034	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 11.2 Habitats Regulations Assessment Report -Clean
REP2-035	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 11.2 Habitats Regulations Assessment Report -Tracked
REP2-036	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 11.7 MMO Licence
REP2-037	WTI/EFW Holdings Ltd Deadline 2 Submission - K3 Works Plan
REP2-038	WTI/EFW Holdings Ltd Deadline 2 Submission - WKN Works Plan
REP2-039	WTI/EFW Holdings Ltd Deadline 2 Submission - WKN Parameter Plan
REP2-040	Environment Agency Deadline 2 Submission - Responses to Examining Authority's First Written Questions
REP2-041	Marine Management Organisation Deadline 2 Submission - Response to Deadline 2
REP2-042	Natural England Deadline 2 Submission - Responses to Examining Authority's First Written Questions
REP2-043	South East Waste Planning Advisory Group Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to Examining Authority's First Written Questions
REP2-044	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to Examining Authority's First Written Questions
REP2-045	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 1 Kent Minerals and Waste Local Plan - relevant policy extracts
REP2-046	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 2 Early Partial Review of the KMWLP - Pre Submission Draft 2018 relevant policy extracts

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REP2-047	Kent County Council Deadline 2 Submission - Late submission accepted at the discretion of the Examining Authority - Appendix 3 Bearing Fruits 2031 The Swale Borough Local Plan - relevant policy extracts
REP2-048	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Submission regarding IBA Facility
Deadline 3 – 22 April 2020 **Deadline for receipt by the ExA of:** • Post-hearing submissions including written submissions of oral cases • Comments on responses to ExQ1 • Comments on Applicant's revised draft Development Consent Order • Comments on any additional information/submission received by D2 • Response to any further information requested by the ExA for this deadline • Any updated documents/submissions	
REP3-001	WTI/EFW Holdings Ltd Deadline 3 Submission - Cover Letter
REP3-002	WTI/EFW Holdings Ltd Deadline 3 Submission - Application Guide - Deadline 3 Version
REP3-003	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Responses to Deadline 2 Submissions
REP3-004	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to Examining Authority's Written Questions (ExQ1A)
REP3-005	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.2 & 1.8 – Local Plan Policies
REP3-006	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.5 - Surrey 2 Hour Drive Time Map
REP3-007	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.6 – Surrey Waste Plan 2008
REP3-008	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.13a – UK Statistics on Waste – 19th March 2020

REP3-009	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.13b – Tilbury Green Section 36 Consent – 26th March 2020
REP3-010	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.15a – Our Waste, Our Resources: A Strategy For England 2018
REP3-011	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.15b - Our Waste, Our Resources - A Strategy For England 2018 – Evidence Annex
REP3-012	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.32 – Tolvik Review 2017 – UK Residual Waste – 2030 Market Review
REP3-013	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.34 – Riverside Energy Park – Supplementary Report to the Project and its Benefits Report
REP3-014	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.46a – WTI C&I Review and RDF Review - Hendeca
REP3-015	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.46b – WTI LACW Review - Hendeca
REP3-016	Environment Agency Deadline 3 Submission - Comments on ExQ1 responses, additional information, the Applicants revised dDCO and responses to ExQ2
REP3-017	Marine Management Organisation Deadline 3 Submission - Comments on responses to ExQ1 and Comments on Applicant's revised draft Development Consent Order
REP3-018	Natural England Deadline 3 Submission - Written Representation
REP3-019	South East Waste Planning Advisory Group Deadline 3 Submission - Response to the Examining Authority's Further Written Questions and requests for information (ExQ1A)
REP3-020	Kent County Council Deadline 3 Submission - Late Submission accepted at the discretion of the Examining Authority

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Deadline 4 – 20 May 2020

Deadline for receipt by the ExA of:

- Responses to ExQ2 (if required)
- Applicant's revised dDCO
- Any revised/updated SoCGs
- Comments on any additional information/submissions received by D3
- Responses to any further information requested by the ExA for this deadline

REP4-001	WTI/EFW Holdings Ltd Deadline 4 Submission - Cover Letter
REP4-002	WTI/EFW Holdings Ltd Deadline 4 Submission - Application Guide - Deadline 4 Version
REP4-003	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's revised Draft Development Consent Order - Clean
REP4-004	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's revised Draft Development Consent Order - Tracked
REP4-005	WTI/EFW Holdings Ltd Deadline 4 Submission - Table of Amendments to the Development Consent Order (DCO)
REP4-006	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to Examining Authority's Second Written Questions (ExQ2)
REP4-007	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to the Examining Authority's Second Written Questions (ExQ2) - Appendix 1 – Environmental Permit for K3
REP4-008	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to Submissions received at Deadline 3
REP4-009	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to Submissions at Deadline 3 - Appendix 1 - Digest of Waste and Resources Statistics 2018, DEFRA
REP4-010	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 – ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report -Clean
REP4-011	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report - Tracked
REP4-012	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report Matrices - also included in REP4-010 and REP4-011

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REP4-013	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 2.1- Draft Construction Environmental Management Plan (CEMP) for WKN - Clean
REP4-014	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 2.1- Draft Construction Environmental Management Plan (CEMP) for WKN - Tracked
REP4-015	Kent County Council Deadline 4 Submission - Response to the Further Written Questions published on 9 April 2020
REP4-016	Kent County Council Deadline 4 Submission - Appendix 1 Kent EPR and MSP Inspector Report
REP4-017	Kent County Council Deadline 4 Submission - Appendix 2 Status of WPAs counted within Study Area with regards to net self sufficiency
REP4-018	Kent County Council Deadline 4 Submission - Appendix 3 WPAs counted within Study Area for DCOs
REP4-019	Kent County Council Deadline 4 Submission - Appendix 4 KMWLP EPR Sensitivity on Recovery Requirement 08 10 2019 v5
REP4-020	Kent County Council Deadline 4 Submission - Appendix 5 BPP Consulting Kent WNA 2018 Residual NHW Management Needs Sept 2018 Update v1.4 05.09.2018
REP4-021	Kent County Council Deadline 4 Submission - Appendix 6 Transport Statement
REP4-022	Kent County Council Deadline 4 Submission - Appendix 7 JNY10115-04a Transport Technical Note April 2020
REP4-023	Medway Council Deadline 4 Submission - Response to Deadline 4
REP4-024	Minster-on-Sea Parish Council Deadline 4 Submission - Responses to ExQ2
REP4-025	Swale Borough Council Deadline 4 Submission - Response to Deadline 4
REP4-026	Swale Borough Council Deadline 4 Submission - Appendix 1 - Climate & Ecological Emergency Action Plan
REP4-027	Environment Agency Deadline 4 Submission - Responses to ExQ2
REP4-028	Marine Management Organisation Deadline 4 Submission - Responses to ExQ2 and comments on Written Representations
REP4-029	Highways England Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ2

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REP4-030	Highways England Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Summary of on-going discussions involving applicant, Highways England and Kent County Highways
REP4-031	Natural England Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ2
REP4-032	South East Waste Planning Advisory Group Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ2
Deadline 5 – 19 June 2020 **Deadline for receipt by the ExA of:** • Responses to ExQ3 • Comments on responses to ExQ2 • Comments on Applicant's revised/updated dDCO • Comments on any revised/updated SoCGs • Comments on any additional information/submissions received by D4 • Responses to any further information requested by the ExA for this deadline	
REP5-001	WTI/EFW Holdings Ltd Deadline 5 Submission - Cover Letter
REP5-002	WTI/EFW Holdings Ltd Deadline 5 Submission - Application Guide - Deadline 5 Version
REP5-003	WTI/EFW Holdings Ltd Deadline 5 Submission - 3.1 – ES Volume 2 Appendix 4.2 - Draft Construction Traffic Management Plan (CTMP) for WKN - Clean
REP5-004	WTI/EFW Holdings Ltd Deadline 5 Submission - 3.1 – ES Volume 2 Appendix 4.2 - Draft Construction Traffic Management Plan (CTMP) for WKN - Tracked
REP5-005	WTI/EFW Holdings Ltd Deadline 5 Submission - 4.10 - Draft WKN Ecological Mitigation and Management Plan
REP5-006	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.1 Draft Statement of Common Ground between the Applicant and Swale Borough Council
REP5-007	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.2 Statement of Common Ground between the Applicant and the Environment Agency
REP5-008	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Clean
REP5-009	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Tracked

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REP5-010	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.6 Statement of Commonality
REP5-011	WTI/EFW Holdings Ltd Deadline 5 Submission – 13.2 Applicant's Response to Examining Authority's Further Written Questions (ExQ3)
REP5-012	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix A – Energy NPS Judicial Review Statement of Facts and Grounds
REP5-013	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix B – Riverside Energy Park Secretary of Statement Decision
REP5-014	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix C – Drax Judgement
REP5-015	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix D – Carbon Burden from Waste Transportation
REP5-016	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix E – Ferrybridge Multifuel 2 (FM2) Recommendation Report to Secretary of State
REP5-017	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix F – Ferrybridge Multifuel 2 (FM2) Secretary of State Decision
REP5-018	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix G – North London Heat and Power Project (NLHPP) Recommendation Report to Secretary of State
REP5-019	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix H - North London Heat and Power Project (NLHPP) Secretary of State Decision
REP5-020	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix I - SW/18/503317 Committee Report

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REP5-021	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.3 Site Photographs and Drone footage
REP5-022	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.3 Applicant's Response to Submissions at Deadline 4
REP5-023	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.3 Applicant's Response to Submissions at Deadline 4 Appendix A - Tolvik UK Energy from Waste Statistics 2019
REP5-024	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.5 Drone video 1
REP5-025	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.6 Drone video 2
REP5-026	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.7 Drone video 3
REP5-027	Swale Borough Council Deadline 5 Submission - Response to ExQ3
REP5-028	Environment Agency Deadline 5 Submission - Response to Deadline 5
REP5-029	Highways England Deadline 5 Submission - Response to ExQ3
REP5-030	Marine Management Organisation Deadline 5 Submission - Response to ExQ3, Comments on Written Representations and Response to Applicant
REP5-031	Natural England Deadline 5 Submission - Response to ExQ3
REP5-032	Royal Mail Group Limited Deadline 5 Submission - Response to Deadline 5
REP5-033	Royal Mail Group Limited Deadline 5 Submission - Draft Construction Traffic Management Plan - Clean
REP5-034	Royal Mail Group Limited Deadline 5 Submission - Draft Construction Traffic Management Plan - Tracked
REP5-035	South East Waste Planning Advisory Group Deadline 5 Submission - Responses to any further information requested by the ExA for this deadline
REP5-036	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to ExQ3
REP5-037	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Highways Response to Draft Development Consent Order

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REP5-038	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on the Applicants Response to the Examining Authority's Written Questions (ExQ1A)
REP5-039	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 1 Brookhurst Wood EfW Appeal Decision
REP5-040	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 2 WTI Representation
REP5-041	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 3 Junction Modelling
REP5-042	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 1 - RAG Analysis of 1,000tonne plus wastes types that fall under HIC Waste Going to Landfill within Applicant Chosen Study Area (WDI 2018)
REP5-043	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Waste Planning article: Covid-19: Recycling rates and quality surge for Horsham
REP5-044	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - BEIS Renewable Energy Statistics, Data Sources and Methodologies (July 2018)
Deadline 6 – 29 June 2020 **Deadline for receipt by the ExA of:** • Comments on responses to ExQ3 • Comments on Applicant's revised/updated dDCO • Comments on any revised/updated SoCGs • Comments on any additional information/submissions received by D5 • Responses to any further information requested by the ExA for this deadline	
REP6-001	WTI/EFW Holdings Ltd Deadline 6 Submission - Cover Letter
REP6-002	WTI/EFW Holdings Ltd Deadline 6 Submission - Application Guide - Deadline 6 Version

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REP6-003	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.1 Draft Development Consent Order (DCO) - Clean
REP6-004	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.1 Draft Development Consent Order (DCO) - Tracked
REP6-005	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.2 Explanatory Memorandum - Clean
REP6-006	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.2 Explanatory Memorandum - Tracked
REP6-007	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.7 Table of Amendments to the Development Consent Order (DCO)
REP6-008	WTI/EFW Holdings Ltd Deadline 6 Submission - 3.1 - ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Clean
REP6-009	WTI/EFW Holdings Ltd Deadline 6 Submission - 3.1 – ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Tracked
REP6-010	WTI/EFW Holdings Ltd Deadline 6 Submission - 14.2 Applicant's Response to Submissions at Deadline 5
REP6-011	Environment Agency Deadline 6 Submission - Response to Deadline 6
REP6-012	Marine Management Organisation Deadline 6 Submission - Comments on responses to ExQ3 and Comments on any revised/updated Statements of Communal Ground

Deadline 7 – 5 August 2020

Deadline for receipt by the ExA of:

- Responses to ExQ4 (if required)
- Comments on the ExA's preferred DCO (if required)
- Comments on the ExA's RIES (if required)
- Applicant's Final preferred DCO in Statutory Instrument (SI) template validation report
- Any revised/updated SoCGs
- Comments on any additional information/submissions received by D6
- Responses to any further information requested by the ExA for this deadline

REP7-001	WTI/EFW Holdings Ltd Deadline 7 Submission - Cover Letter

REP7-002	WTI/EFW Holdings Ltd Deadline 7 Submission - Application Guide - Deadline 7 Version
REP7-003	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.1 Draft Development Consent Order (DCO) - Clean
REP7-004	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.1 Draft Development Consent Order (DCO) - Tracked
REP7-005	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.1 Draft Development Consent Order (DCO) - Validation Report
REP7-006	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.2 Explanatory Memorandum - Clean
REP7-007	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.2 Explanatory Memorandum - Tracked
REP7-008	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.7 Table of Amendments to the Development Consent Order (DCO)
REP7-009	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.8 K3 Book of Reference
REP7-010	WTI/EFW Holdings Ltd Deadline 7 Submission - Document 3.1 - ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Clean
REP7-011	WTI/EFW Holdings Ltd Deadline 7 Submission - Document 3.1 - ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Tracked
REP7-012	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.2 Statement of Common Ground between the Applicant and the Environment Agency - Clean
REP7-013	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.2 Statement of Common Ground between the Applicant and the Environment Agency - Tracked
REP7-014	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Clean
REP7-015	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Tracked
REP7-016	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to Examining Authority's Further Written Questions (ExQ4)
REP7-017	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix A - Kemsley K3 CHP R1 Supporting Information April 2019

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REP7-018	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix B - FM1 R1 Accreditation 2018 and FM1 R1 Revalidation 2019
REP7-019	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix C - WKN Construction HGV Profile
REP7-020	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix D - FM1 Site Location Plan
REP7-021	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix E - Norfolk County Council Cabinet Report - 6th July 2020
REP7-022	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.3 Applicant's Response to Submissions at Deadline 6
REP7-023	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.4 Applicant's Comments on the ExA's preferred DCO
REP7-024	WTI/EFW Holdings Ltd Deadline 7 Submission - ExA's K3 Alternative DCO K3 Works Plan
REP7-025	WTI/EFW Holdings Ltd Deadline 7 Submission - ExA's K3 Alternative DCO Land Plan
REP7-026	Kent County Council Deadline 7 Submission - Responses to ExQ4
REP7-027	Kent County Council Deadline 7 Submission - Response to Applicant's Response to ExAQ3
REP7-028	Kent County Council Deadline 7 Submission - Additional Submission at Deadline 7
REP7-029	Kent County Council Deadline 7 Submission - Appendix 1 CCC Progress Report to Parliament June 2020
REP7-030	Kent County Council Deadline 7 Submission - Appendix 2 Waterbeach EfW Appeal SoS Refusal June 2020
REP7-031	Environment Agency Deadline 7 Submission - Response to Deadline 7
REP7-032	Highways England Deadline 7 Submission - Responses to ExQ4
REP7-033	Marine Management Organisation Deadline 7 Submission - Response to Deadline 7

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REP7-034	Natural England Deadline 7 Submission - Responses to ExQ4
REP7-035	Natural England Deadline 7 Submission - Comments on the ExA's RIES
REP7-036	South East Waste Planning Advisory Group Deadline 7 Submission - Responses to ExQ4
REP7-037	Swale Borough Council Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ4
REP7-038	Kent County Council Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on the draft DCO (REP6-003)
REP7-039	Kent County Council Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on K3 Planning Permission - Planning Conditions Tracker
Deadline 8 – 12 August 2020 **Deadline for receipt by the ExA of:** • Comments on responses to ExQ4 (if required) • Comments on any revised/updated SoCG • Comments on the Applicant's Final preferred DCO in the Statutory Instrument (SI) template validation report • Comments on any additional information/submissions received by D7 • Responses to any further information requested by the ExA for this deadline	
REP8-001	WTI/EFW Holdings Ltd Deadline 8 Submission - Cover Letter
REP8-002	WTI/EFW Holdings Ltd Deadline 8 Submission - Application Guide - Deadline 8 Version
REP8-003	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.11 Draft Construction Traffic Management Plan - WKN - Applicant - Clean
REP8-004	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.11 Draft Construction Traffic Management Plan - WKN - Applicant - Tracked
REP8-005	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.12 Draft Construction Traffic Management Plan - WKN - Highways England - Clean
REP8-006	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.12 Draft Construction Traffic Management Plan - WKN - Highways England - Tracked
REP8-007	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.13 Draft Travel Plan - K3 - Applicant
REP8-008	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.14 Draft Travel Plan - K3 - Highways England

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REP8-009	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.15 Draft Travel Plan - WKN - Applicant - Clean
REP8-010	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.15 Draft Travel Plan - WKN - Applicant - Tracked
REP8-011	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.16 Draft Travel Plan - WKN - Highways England - Clean
REP8-012	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.16 Draft Travel Plan - WKN - Highways England - Tracked
REP8-013	WTI/EFW Holdings Ltd Deadline 8 Submission - 8.4 Statement of Common Ground between the Applicant and Kent County Council
REP8-014	WTI/EFW Holdings Ltd Deadline 8 Submission - 8.6 Statement of Commonality
REP8-015	WTI/EFW Holdings Ltd Deadline 8 Submission - 16.2 Applicant's Response to Submissions at Deadline 7
REP8-016	Kent County Council Deadline 8 Submission - Closing Statement
REP8-017	Environment Agency Deadline 8 Submission - Response to Deadline 8
REP8-018	Marine Management Organisation Deadline 8 Submission - Comments on Deadline 7 Submissions
Other Documents	
OD-001	WTI/EFW Holdings Ltd Section 56 Notice
OD-002	WTI/EFW Holdings Ltd Certificates of compliance

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
µg.m-3	Microgram(s) per cubic metre of air
2009 Act	Marine and Coastal Access Act 2009
2011 Regulations	Waste (England and Wales) Regulations 2011
2018 Revised WFD	revised legislative framework on waste as set out in Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste
2019 HRAR	Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO: Habitats Regulations Assessment Report, together with screening and integrity matrices
25 YEP	25 Year Environment Plan
AA	Appropriate Assessment
AD	Anaerobic Digestion
AEoI	Adverse effects on (the) integrity
AHLV	Area of High Landscape Value
Alternative Recommended DCO	DCO as recommended to be made by the SoS should consent be granted for the K3 Proposed Development and WKN Proposed Development
AMR(s)	Annual Monitoring Report(s)
AN10	Planning Inspectorate Advice Note 10
AOD	Above Ordnance Datum
APFP Regulations	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
APIS	UK Air Pollution Information System
Applicant	WTI/EFW Holdings Ltd
Application	Application made by the Applicant under section 37 of the PA2008 which was received in full by the Planning Inspectorate on 11 September 2019
Application Site	K3 site and WKN site within the DCO boundary on the Site Location Plan (unless context otherwise requires)
AQD	Air Quality Directive
AQMA(s)	Air Quality Management Area(s)
AQP2017	revised draft 'Air Quality Plan for NO_2' published by DEFRA on 26 July 2017
AQS	Air Quality Strategy
ASI	Accompanied Site Inspection

BAT	Best Available Technique
Beddington ERF	Beddington Energy Recovery Facility
BEIS	(Department for) Business, Energy and Industrial Strategy
Birds Directive	Council Directive [2009/147/EC] on the Conservation of Wild Birds
BMW	Biodegradable municipal waste
BoR	Book of Reference
BREEAM	Building Research Establishment Environmental Assessment Method
BREF	BAT reference document(s)
C&I	Commercial and Industrial
C2/13	DfT Circular 02/2013
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
Carbon Plan	2011 Carbon Plan
CCA2008	Climate Change Act 2008
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Readiness
CCS	Carbon Capture and Storage
CCUS	Carbon Capture, Utilisation and Storage
CEMP	Construction Environmental Management Plan
CEMS	Continuous Emissions Monitoring System
CEP	Circular Economy Package
CGS	Clean Growth Strategy for the UK, 2017
CHP	Combined Heat and Power
CHPQA	CHP Quality Assurance
CIL	Community Infrastructure Levy
CL	Critical level
CO_2	Carbon dioxide
Consented K3 Facility	Completed K3 facility commissioned on 16 July 2020 pursuant to planning permission Ref SW/19/501345 granted on 14 June 2019 by KCC pursuant to section 73 TCPA1990 permitting the construction and operation of a generating station having a capacity of up to 49.9MW
CoPA	Control of Pollution Act 1974
CRRNH	Capacity Requirement for the Management of Residual Non-Hazardous Waste
CTMP(s)	Construction Traffic Management Plan(s)

CV	Calorific value
D (number)	(Examination) Deadline (see Appendix A for a list)
dCEMP	draft Construction Environmental Management Plan
DCO	Development Consent Order
dCTMP(s)	draft Construction Traffic Management Plan(s)
dDCO	draft Development Consent Order
DECC	(Former) Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
dEMMP	draft WKN Ecological Mitigation and Management Plan
DEMP	Decommissioning Environmental Management Plan
DfT	Department for Transport
DML	Deemed Marine Licence
dSoCG	draft Statement of Common Ground
DS Smith	DS Smith Paper Limited
dSTS	draft Swale Transportation Strategy 2014 – 2031
dTP(s)	draft Travel Plan(s)
EA	Environment Agency
EA1995	Environment Act 1995
EAL	Environmental Assessment Level
EEA	European Economic Area
EEAAP	(SBC) Climate and Ecological Emergency Action Plan
EfW	Energy from waste
EfW Debate Guide	Energy from Waste, A Guide to the Debate, 2014
EIA(s)	Environmental Impact Assessment(s)
EIA Directive	Council Directive 2011/92/EU, amended by 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations, 2017
ELV(s)	Emission limit value(s)
EMEP	Ecological Management and Enhancement Plan
EMMP	Ecological Mitigation and Management Plan
EP	Environmental Permit
EPA1990	Environmental Protection Act 1990
EPC	Engineering, procurement and construction
EPR	Early Partial Review
EP Regulations	Environmental Permitting (England and Wales) Regulations 2016 (as amended)

EP Rules	Infrastructure Planning (Examination Procedure) Rules 2010
ES(s)	Environmental Statement(s)
EU	European Union
EU CEP	EU's 2020 Circular Economy Package
EU ETS	EU Emissions Trading System
EWCA Civ	Court of Appeal (Civil Division)
ExA	Examining Authority
ExMemo	Explanatory Memorandum
ExQ1	ExA's first Written Questions
ExQ1A	ExA's Further Written Questions
ExQ2	ExA's Further Written Questions
ExQ3	ExA's Further Written Questions
ExQ4	ExA's Further Written Questions
FGT	Flue Gas Treatment Plant
FM2	Ferrybridge Multifuel 2
fn	Footnote
FRA	Flood Risk Assessment
FZ	Flood Zone
FZ1	Flood Zone 1
FZ2	Flood Zone 2
FZ3	Flood Zone 3
GHG	Greenhouse Gas
GLVIA	Guidelines for Landscape and Visual Impact Assessment
GLVIA3	Guidelines for Landscape and Visual Impact Assessment 2013
GW	Gigawatt(s)
ha	Hectare
Habitats Directive	Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
Habitats Regulations	Conservation of Habitats and Species Regulations 2017
HE	Highways England
HGV(s)	Heavy goods vehicle(s)
HIC	Household/Industrial/Commercial
HIF	Housing Infrastructure Fund
HistE	Historic England
HRA	Habitats Regulations Assessment
HRAR	HRA Report

IAPI	Initial Assessment of the Principal Issues
IAQM	Institute of Air Quality Management
IBA	Incinerator Bottom Ash
IBAA	Incinerator bottom ash aggregate
ICE	In-combination effects
IEA	(Former) Institute of Environmental Assessment
IED	Industrial Emissions Directive
IEMA	Institute of Environmental Management and Assessment
Inspectorate	Planning Inspectorate
IP(s)	Interested Party(ies)
IPC	Infrastructure Planning Commission
IPPC Directive	EU Directive 2008/1/EC concerning Integrated Pollution Prevention and Control
ISH(s)	Issue Specific Hearing(s)
J5	Junction 5
June 2020 CCC Progress Report	Reducing UK emissions: Progress Report to Parliament (June 2020)
K1	Existing CHP plant
K3	Wheelabrator Kemsley (Generating Station)
K3 Planning Permission	Original planning permission for the Consented K3 Facility granted in 2012 Ref SW/10/444
K3 Proposed Development	Proposal to increase the generating capacity of the K3 generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum
K3 RWTS	K3 rail and water transportation strategy
K3 Site	Site of K3 being land immediately to the east of the Kemsley Paper Mill, 0.8km east of Kemsley
K4	Proposed CHP facility to replace K1
KCC	Kent County Council
KJMWMS	Kent Joint Municipal Waste Management Strategy
km	Kilometre
KMWLP	Kent Minerals and Waste Local Plan 2013-30 (July 2016)
kt	Kilotonne(s)
ktCO2e	Thousand tonnes of fossil carbon dioxide equivalent
ktpa	Kilo-tonnes per annum
LACW	local authority collected waste
LCE	Low Carbon Economy

LCP	Large Combustion Plant
LCPD	Large Combustion Plant Directive
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LNR(s)	Local Nature Reserve(s)
LOAEL	Lowest Observable Adverse Effect Level
LP	Local Plan
LSE	Likely Significant Effects
LTP4	KCC's fourth Local Transport Plan (2016-2031)
LV(s)	Limit value(s)
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
m	Metre(s)
M2J5	M2 Junction 5
MCAA2009	Marine and Coastal Access Act 2009
MCZ(s)	Marine Conservation Zone(s)
MHCLG	Ministry of Housing, Communities and Local Government
MK	Milton Keynes
MMO	Marine Management Organisation
Model Provisions Order	Infrastructure Planning (Model Provisions) (England and Wales) Order 2009
MoU	Memorandum of Understanding
MP(s)	Model Provision(s)
MPS	Marine Policy Statement
MSPC	Minster-on-Sea Parish Council
MSW	Municipal Solid Waste
Mt	Megatonne(s)
MtCO2e	Million tonnes of fossil carbon dioxide equivalent
MW	Megawatt(s)
MWLP	Minerals and Waste Local Plan
NE	Natural England
NERC Act	Natural Environment and Rural Communities Act 2006 (as amended)
NIA	National Infrastructure Assessment, 2018
NLHPP	North London Heat and Power Project
NNR	National Nature Reserve
NO_2	Nitrogen dioxide

NO_x	Oxides of nitrogen
NOEL	No Observed Effect Level
NPPF	National Planning Policy Framework
NPPW	National Planning Policy for Waste
NPS(s)	National Policy Statement(s)
NPSE	Noise Policy Statement for England
NPS EN-1	Overarching NPS for Energy (EN-1)
NPS EN-3	NPS for Renewable Energy Infrastructure (EN-3)
NR	Network Rail
NSIP(s)	Nationally Significant Infrastructure Project(s)
NTS	Non-Technical Summary
OFH	Open Floor Hearing
OTRMP	Operational Traffic Routing and Management Plan
p(pp)	Page(s)
PA2008	Planning Act 2008
para(s)	Paragraph(s)
PC	Process contribution
PEC	Predicted environmental concentration
PINS	Planning Inspectorate
PM	Preliminary Meeting
$PM_{2.5}$	Particulate matter up to a diameter of 2.5 microns
PM_{10}	Particulate matter up to a diameter of 10 microns
PPG	Planning Practice Guidance
Practical Effect(s)	Effect(s) in reality (of the K3 Proposed Development)
Preferred Changes	ExA's preferred changes to the DCO in the event consent
Preferred DCO	Applicant's preferred dDCO submitted at D7
Project K3	Proposal to increase the generating capacity of the K3 generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum
Project WKN	Proposed waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste
Proposed Development(s)	Project K3 and Project WKN
PRoW(s)	Public Right(s) of Way
PSED	Public Sector Equality Duty
R (number 2 onwards)	Requirement of a DCO
R1 (status)	Recovery operation status

Ramsar	Ramsar Convention on Wetlands
RDF	Refuse derived fuel
Recommended DCO	DCO as recommended by the ExA to be made by the SoS
Rev	Revision
RFC(s)	Ratio(s) of Flow to Capacity
RIES	Report on the Implications for European Sites
ROC(s)	Renewable Obligation Certificate(s)
RPA	Relevant Planning Authority
RR(s)	Relevant Representation(s)
RSPB	Royal Society for the Protection of Birds
Rule 6 Letter	Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8 Letter	Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
rWFD	revised Waste Framework Directive
RWTS	Rail and water transportation strategy
s (number)	Section of a statute
s106 (agreement)	Planning obligations under Section 106 of the TCPA1990
s51 Advice	Advice provided by the Planning Inspectorate under s51 PA2008
SAC(s)	Special Area(s) of Conservation
SBC	Swale Borough Council
SCC	Surrey County Council
Scoping Opinion	Opinion provided by the Planning Inspectorate about the scope of the information in the ES
SDC	Swale District Council
SEIMP	South East Inshore Marine Plan
SEP	Sustainable Energy Plant
SEWPAG	South East Waste Planning Advisory Group
SHD	Stack Height Determination
Site	K3 site and WKN site within the DCO boundary on the Site Location Plan (unless context otherwise requires)
SM	Scheduled Monument
SNCB(s)	Statutory nature conservation body(ies)
SO_2	Sulphur dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG(s)	Statement(s) of Common Ground

SoS	Secretary of State
SoSBEIS	Secretary of State for Business, Energy and Industrial Strategy
SPA(s)	Special Protection Area(s)
SRN	Strategic road network
SSN	Statement of Statutory Nuisance
SSSI(s)	Site(s) of Special Scientific Interest
Swale Local Plan	Bearing Fruits 2031: The Swale Borough Local Plan (July 2017)
Swale LP	Swale Local Plan
SWLP	Surrey Waste Local Plan
SWMFDP	Surface Water Management and Foul Drainage Philosophy
TA	Transport Assessment
TCPA1990	Town and Country Planning Act 1990
TEEP	Technically, environmentally & economically practicable
TEMPRO	Trip End Model Presentation Program
Tolvik Review	UK Residual Waste: 2030 Market Review Final November 2017
TP	Travel Plan
tpa	Tonnes per annum
UK	United Kingdom
UK CCC	UK Committee on Climate Change
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
USI	Unaccompanied Site Inspection
WACA1981	Wildlife and Countryside Act 1981
WaterFD	Water Framework Directive
WDA	Waste disposal authority
WDI	Waste Data Interrogator
WFD	Waste Framework Directive
WfH	Waste from households
WHFAA	Waste Hierarchy and Fuel Availability Assessment
WID	Waste Incineration Directive
WKN	Wheelabrator Kemsley North

WKN Proposed Development	Waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste
WKN Site	Site of WKN being land immediately north of the Consented K3 Facility
WLP	Waste Local Plan
WMPE	Waste Management Plan for England, December 2013
WNA	Waste Needs Assessment
WPA(s)	Waste Planning Authority(ies)
WR(s)	Written Representation(s)
WRATE	Waste and Resources Assessment Tool for the Environment
WRS	Our Waste, Our Resources: A strategy For England 2018 / Waste and Resources Strategy 2018
WSI	Written Statement of Investigation
WtE	Waste to energy
WTI	Applicant (WTI/EFW Holdings Ltd)

APPENDIX D: THE RECOMMENDED DCO

D R A F T S T A T U T O R Y I N S T R U M E N T S

202[ ] No.

INFRASTRUCTURE PLANNING

The Wheelabrator Kemsley K3 Generating Station Order 20[ ]

Made - - - - ***

Coming into force - - ***

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**a**) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 ("the 2008 Act")(**b**);

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**);

The single appointed person, having considered the application with the documents that accompanied it and the representations made and not withdrawn, has submitted a report with a recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the single appointed person, has decided the application and determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make substantial changes to the proposals;

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order:

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wheelabrator Kemsley (K3 Generating Station) Order and shall come into force on [ ] 201[ ].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**d**);

(**a**) S.I. 2009/2264 as amended by S.I. 2013/522.
(**b**) 2008 c.29.
(**c**) S.I. 2010/103 as amended by S.I. 2012/635.
(**d**) 1961 c.33.

"the 1980 Act" means the Highways Act 1980(**a**);

"the 1989 Act" means the Electricity Act 1989(**b**);

"the 1990 Act" means the Town and Country Planning Act 1990(**c**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**d**);

"the 2008 Act" means the New Roads and Street Works Act 1991(**e**);

"the 2016 Regulations" means the Environmental Permitting (England and Wales) Regulations 2016(**f**);

"authorised development" means the development and associated development described in Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

"book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"commissioning" means the process of testing all systems and components of Work No 1 (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and "commission" and other cognate expressions are to be construed accordingly;

"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 11 September 2019 including all appendices thereto;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"K3 Generating Station" means a generating station having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 2 of Schedule 2;

"K3 Sustainable Energy Plant Planning Permission" means planning permission SW/19/501345 granted on 14 June 2019 by Kent County Council pursuant to section 73 of the 1990 Act permitting the construction and operation of a generating station having a capacity of up to 49.9MW;

"land plan" means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

"maintain" includes (i) inspect, repair, adjust, alter, refurbish, improve, the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and "maintenance" is construed accordingly;

"MW" means megawatts of electrical output;

"operational use" of the development comprising the authorised development means operational use for the purposes for which it is authorised under this Order but not including commissioning;

"Order land" means the land shown on the land plan within the Order limits and described in the book of reference;

(**a**) 1980 c.66.
(**b**) 1989 c.29.
(**c**) 1990 c.8.
(**d**) 1991 c.22.
(**e**) 2008 c.29.
(**f**) S.I. 2016/1154.

"Order limits" means the limits shown on the works plan within which the authorised development may be carried out;

"owner", in relation to land, has the same meaning as in Section 7 of the Acquisition of Land Act 1981(**a**);

"relevant highway authority" means the highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated;

"relevant planning authority" means the local authority for the area in which the land to which the relevant provision of this Order applies is situated;

"requirements" means those matters set out in Schedule 2 (requirements) to this Order;

"statement undertaker" means any person falling within the meaning set out in section 127(8) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways (subject to confirmation from the relevant highway authority), and includes part of a street;

"street authority" in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means, subject to article 7 (Benefit of the Order) WTI/EFW Holdings Ltd. (company number 07593865);

"watercourse" includes all rivers, streams, ditches, drains, creeks, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"works plans" means the plans certified as the works plans by the Secretary of State for the purposes of the Order.

(2) A reference in this Order to a "grid reference" is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

(3) All distances, directions and lengths referred to in this Order are approximate.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by Schedule 1 of this Order.

(5) The expression "includes" shall be construed without limitation.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and to the requirements in Schedule 2 the undertaker is granted development consent for the authorised development.

Effect of the Order on the K3 Sustainable Energy Plan Planning Permission

4.—(1) The undertaker may not start operational use of the K3 Generating Station under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate the K3 Sustainable Energy Plant under the K3 Generating Station Planning Permission.

(2) Upon service of the notice under paragraph (1) the K3 Sustainable Energy Plant Planning Permission will cease to have effect.

(**a**) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 c.34. There are other amendments to the 1981 Act which are not relevant to this Order.

Authorisation of the operation of the authorised development

5.—(1) The undertaker is authorised to operate the generating stations forming part of the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Power to maintain authorised development

6. The undertaker may, at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Benefit of the Order

7.—(1) Except where paragraph (4) applies, the undertaker may with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with sub-paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where—

(a) the transfer or grant is made to K3 CHP Limited (Company number 09240062); or

(b) the transfer or grant is made to a licence holder within the meaning of section 6(1) of the Electricity Act 1989.

PART 3

SUPPLEMENTARY POWERS

Access to works

8. The undertaker may with the approval of the relevant highway authority, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Discharge of water

9.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**a**) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior written consent of the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**c**) have the same meaning as in that Act.

Authority to survey and investigate the land

10.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under sub-paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must if so required on entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(**a**) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.
(**b**) S.I. 2016/1154.
(**c**) 1991 c.57.

(4) No trial holes shall be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority.

(5) A consent for the purpose of sub-paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.

(6) As soon as practicable following the exercise of any powers under paragraph (1), any vehicles, apparatus or equipment must be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.

(7) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of Human Remains

11.—(1) Before the undertaker carries out any development or works which it has reason to think will or may disturb any human remains in the Order land it must remove those remains, or cause them to be removed, from the Order land in accordance with the following provisions of this article.

(2) Before any such remains are removed the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

(a) removed and re-interred in a burial ground or cemetery in which burials may legally take place, or

(b) removed to, and cremated in, a crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under sub-paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of a deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or

(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or

(c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

(a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to the relevant planning authority.

(11) The removal of the remains of a deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(**a**) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

Felling or lopping of trees

12.—(1) The undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(**a**) 1857 c.81.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

13.—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—

(i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(**b**);

(ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site); or

(b) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974(**c**) does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised development.

Application of landlord and tenant law

14.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

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(**a**) 1990 c.43. There are amendments to this Act which are not relevant to this Order.
(**b**) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.
(**c**) 1974 c.40.

(c) restrict enforcement (whether by action for damages or otherwise) by any part to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

15. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Certification of plans etc

16. The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

(a) the book of reference (dated August 2020);

(b) the land plan (drawing number 9812-0071-02 dated July 2020);

(c) the work plan (drawing number 9812-0072-02 dated July 2020);

(d) the environmental statement (dated September 2019);

(e) the K3 Generating Station approved plans as follows:

(i) 16315-A1-P-0100 4.3D Proposed Site Layout Rev U dated November 2009;

(ii) 16315-A1-P-0110 4.4D South East Elevation Rev U dated November 2009;

(iii) 16315-A1-P-0111 4.5D North East Elevation Rev T dated November 2009;

(iv) 16315-A1-P-0112 4.6D South West Elevation Rev U dated November 2009;

(v) 16315-A1-P-0113 4.7D North West Elevation Rev T dated November 2009;

(vi) 16315-A1-4.21 Landscape Masterplan Rev M dated June 2013;

(f) the K3 rail and water transportation strategy (dated September 2019);

(g) the Design and Access Statement dated September 2019;

(h) the draft K3 operational traffic routing and management plan; and

(i) the draft K3 travel plan – Highways England version (dated 7 August 2020)

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

17. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in writing by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Procedure in relation to certain approvals

18.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld.

(2) Schedule 3 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to Schedule 2 (requirements).

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Signed
Title
Date Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Kent—

Work No 1- An electricity generating station (the K3 Generating Station) with a gross installed generating capacity of up to 75MW comprising the following works—

(a) tipping hall;

(b) waste fuel bunker;

(c) boiler hall;

(d) flue gas treatment building;

(e) turbine hall housing steam turbine and generator;

(f) air cooled condenser;

(g) stack and associated emissions monitoring system;

(h) electricity substation;

(i) stores and utilities;

(j) administration office;

(k) fire water tanks;

(l) stores;

(m) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No. 1A – Installation of grid connection for Work No 1.

Work No. 1B – Installation of steam connection for Work No 1.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 1C - Alteration of existing private access road to construct, use and maintain Work No 1.

Work No 1D - Creation of a temporary construction compound and laydown area for the construction of Work No 1.

Work No 1E - Construction and operation of a surface water outfall for Work No 1.

In connection with and in addition to Work No. 1 to the extent that it does not otherwise form part of that work, further associated development including—

(n) pipe racks and pipe runs;

(o) external lighting;

(p) fencing, boundary treatment and other means of enclosure;

(q) signage;

(r) CCTV and other security measures;

(s) surface and foul water drainage facilities;

(t) potable water supply;

(u) new telecommunications and utilities apparatus and connections;

(v) hard and soft landscaping;

(w) biodiversity enhancement measures;

(x) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;

(y) works for the protection of buildings and land affected by the authorised development;

(z) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections;

(aa) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

Interpretation

19.—(1) In this Schedule—

"approved Landscape Masterplan" means the K3 Generating Station approved Landscape Masterplan listed in Part 2 of Schedule 2;

"approved plans" means any approved plans or other plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement or which are already approved and listed in Part 2 of Schedule 2;

"bank holiday" is a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

"commencement" means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), other than permitted preliminary works, comprised in or carried out for the purposes of the authorised development; and "commence and other cognate expressions are to be construed accordingly;

"construction site" means the Order land during the construction of the authorised development;

"Kemsley Paper Mill" means the paper mill on the land immediately adjacent to the Order land at Sittingbourne, Kent operated by DS Smith Limited;

"means of enclosure" means fencing, walls or other means of boundary treatment and enclosure;

"permitted preliminary works" means site clearance work, survey work, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements and the provision of site security, and archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services, provided that no permitted preliminary works will give rise to any materially new or materially different effects from those assessed in the environmental statement;

"rail and water transportation strategy" means the rail and water transportation strategy certified by the Secretary of State under article 16.

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the relevant planning authority.

PART 1

REQUIREMENTS

Commencement of the authorised development

20. The authorised development must commence within five years of the date on which this Order comes into force.

Notice of commissioning

21.—(1) Notice of commencement of commissioning of Work No 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of completion of commissioning of Work No 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

Decommissioning

22.—(1) Within six months after it notifies the relevant planning authority that it intends to decommission the K3 Generating Station, the undertaker must submit to the relevant planning authority for its approval a written decommissioning environmental management plan for that generating station.

(2) Decommissioning works must not be carried out until the relevant planning authority has approved the scheme.

(3) The decommissioning environmental management plan submitted and approved must include details of—

(a) the buildings to be demolished;

(b) the means of removal of the materials resulting from the decommissioning works;

(c) the phasing of the demolition and removal works;

(d) all measures necessary for the protection from the potential environmental effects pursuant to decommissioning;

(e) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;

(f) the phasing of any restoration works;

(g) a timetable for the implementation of the scheme.

(4) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

Fuel storage

23.—(1) All fuels, oils and other liquids with the potential to contaminate the Order land shall be stored in a secure bonded area in order to prevent any accidental or unauthorised discharge to the ground.

(2) The area for storage shall not drain to any surface water system.

(3) Where it is proposed to store more than 200 litres of any type of oil must be stored in accordance with the provisions of the Control of Pollution (Oil Storage) (England) Regulations 2001(**a**).

(4) Where a drum or barrel has a capacity less than 200 litres a drip tray capable of retaining 25% of the maximum capacity of the drum or barrel may be used in lieu of storing the drum or barrel in the secure bonded area.

Rail and water transportation strategy

24. The K3 Generating Station must be operated in accordance with the approved rail and water transportation strategy.

(**a**) S.I. 2001/2954.

Amendments to approved plans, etc.

25.—(1) With respect to any approved plans, the undertaker may submit to the relevant planning authority for approval any amendments to the approved plans and following any such approval by the relevant planning authority the approved plans are to be taken to include the amendments approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 14 below must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

Works in the vicinity of gas apparatus

26.—(1) No work involving excavations shall take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained written consent from Southern Gas Networks PLC for those works to proceed.

(2) The undertaker shall provide such information as Southern Gas Networks PLC may reasonably require in order for it to respond to a request for consent under sub-paragraph (1).

Approved details

27. The authorised development must be carried out in accordance with the K3 Generation Station approved plans and documents as listed in Part 2 of this Schedule.

Operational traffic and travel plans

28.—(1) The number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed 348 movements per day until the following have been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority:

(a) a written operational traffic routing and management plan; and,

(b) a written travel plan for operational staff.

(2) The plan submitted and approved under sub-paragraph (1)(a) must be in accordance with the draft K3 operational traffic routing and management plan certified by the Secretary of State under article 16.

(3) The plan submitted and approved under sub-paragraph (1)(b) must be in accordance with the draft K3 travel plan certified by the Secretary of State under article 16.

(4) The plans referred to in sub-paragraphs (1)(a) and (1)(b) must be implemented as approved.

(5) The total maximum number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed a combined total of 416 movements per day subject to any prior written variation as approved by the relevant planning authority

(6) Sub-paragraphs (1) to (5) do not apply to waste deliveries originating from and returning to the railway depot at Ridham Docks accessing and egressing the K3 Generating Station by the use of Ridham Dock Road.

Trees

29.—(1) All trees and shrubs planted under the approved Landscape Masterplan shall be maintained for a period of 5 years.

(2) Any trees or shrubs that either die, are lost, damaged or become diseased during this 5 year period shall be replaced with a tree or shrub of the same species within the next available planting season.

Surface water drainage

30. All surface water drainage from the authorised development discharging to a local water course shall be attenuated for a 1:100 year return storm with a limited discharge of 7 litres per second per hectare or the equivalent run off from a greenfield site for a 1:2 storm.

Combined heat and power

31.—(1) Within 12 months of ceasing to supply heat and/or power to the Kemsley Paper Mill, the undertaker must submit to the relevant planning authority for its approval a strategy ("the CHP strategy").

(2) The CHP strategy submitted and approved must—

(a) consider the opportunities that reasonably exist at the time of submission for the export of heat and/or power from the K3 Generating Station to other users; and

(b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the K3 Generating Station to other users.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP strategy.

Part 2

K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS

(1) *Title*	*(2)* *Reference*	*(3)* *Revision*
Environmental Statement	March 2010	
ES Addendum (Air Quality)	June 2013	
ES Chapter 10 – Hydrology and Flood Risk – Supplementary Report	May 2017	
ES Addendum	May 2018	
Design and Access Statement	March 2010	
Surface Water Management and Foul Drainage Design Philosophy	December 2016	
Ecological Mitigation and Management Plan	JPP1804-MP-001d	July 2013
Flood Risk Assessment	May 2019	
Proposed (Permitted) Site Location Plan	16315/A0/P/0060	Rev N
Proposed Site Layout	16315/A1/P/0100	Rev U
Proposed Building Layout	16315/A0/P/0105	Rev L
Boundary Treatment	16315/A0/P/0106	Rev R
South East Elevation	16315/A1/P/0110	Rev U
North East Elevation	16315/A1/P/0111	Rev T
South West Elevation	16315/A1/P/0112	Rev U
North West Elevation	16315/A1/P/0113	Rev T
Proposed Structure for Air Cooled Condenser (URC) Elevations	16315/A1/P/0121	Rev N
Main Building – Proposed South East Elevation	16315/A0/P/0125	Rev K

Main Building – Proposed North East Elevation	16315/A1/P/0126	Rev K
Main Building – Proposed South West Elevation	16315/A1/P/0127	Rev L
Main Building – Proposed North West Elevation	16315/A0/P/0128	Rev K
Site Layout and Access	16315/A1/P/0160	Rev K
Typical Office and Staff Amenities Building (UYA) Floor Plans	16315/A1/P/0171	Rev H
Proposed Gatehouse Floor Plan	16315/A2/P/0172	Rev L
Site Sections	16315/A0/0250	Rev J
Proposed Drainage Layout	16315/A0/0301	Rev J
Proposed Levels Site Plan	16315/A1/0600	Rev H
Illustrative Visual 1 of 7	16315/P/0150	Rev R
Illustrative Visual 2 of 7	16315/P/0151	Rev P
Illustrative Visual 3 of 7	16315/P/0152	Rev O
Illustrative Visual 4 of 7	16315/P/0153	Rev Q
Illustrative Visual 5 of 7	16315/P/0154	Rev O
Illustrative Visual 6 of 7	16315/P/0155	Rev O
Illustrative Visual 7 of 7	16315/P/0156	Rev R
Landscape Masterplan	16315/A1/4.21	Rev M
Fuel Bunker Level +2.0000m	16315/A1/P/0220	Rev D
Fuel Bunker Level +20.000m and Level +36.000m	16315/A1/P/0221	Rev E
Fuel Bunker Section A-A	16315/A1/P/0222	Rev C
Fuel Bunker Section B-B	16315/A0/P/0223	Rev C
Tipping Hall Layout Level +2.000m	16315/A1/P/0201	Rev E
Tipping Hall Section A-A	16315/A1/P/0202	Rev D
Overall Roof Layout Comparison Drawing	16315/A1/P/0200	Rev H
Lighting Discharges Report	20020117LXI0019	Rev C
External Lighting Technical Submission	20020117LXJ0922	Rev I
External Lighting Drawing	20020117LXG0907	Rev H
K3 External Lighting Strategy	ECO00047 Fig1	-
Access Road - Proposed Proposed Internal Access Layout	9163-0135-01-JNY9060	Rev 01
K3 Employment Strategy	March 2012	

SCHEDULE 3

Article 18

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Application of this Schedule

32. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as "the authority") for an approval, consent or agreement required by any of the requirements.

Decision Period

33.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), "the decision period" means—

(a) where the authority does not give written notice under paragraph 34(1) or (2) requiring further information, the period of eight weeks from the later of—

(i) the day immediately following the day on which the authority receives the application, and

(ii) the day on which the authority receives the fee payable under paragraph 4; or

(b) where the authority gives written notice under paragraph 34(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or

(c) such longer period as may be agreed in writing by the undertaker and the authority.

Further information

34.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a "consultee") in relation to the application—

(a) the authority must consult the consultee within five business days from the day on which it receives the application;

(b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and

(c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

Fees

35.—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

(a) rejects the application as being invalidly made;

(b) fails to give the written notice required by paragraph 33(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) "the relevant period" means the period of eight weeks from, as the case may be—

(a) the day on which the authority rejects the application as being invalidly made;

(b) the day after the day on which the decision period expires.

Appeal to the Secretary of State (procedure)

36.—(1) The undertaker may appeal to the Secretary of State against—

(a) the authority's refusal of an application;

(b) the authority's grant subject to conditions of an application;

(c) the authority's failure to give the written notice required by paragraph 33(1);

(d) a written notice given by the authority under paragraph 34(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

(a) its grounds of appeal;

(b) a copy of the application submitted to the authority;

(c) any supporting documentation which it wishes to provide.

(3) In sub-paragraph (2), "the relevant day" means—

(a) in the case of an appeal under sub-paragraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;

(b) in the case of an appeal under sub-paragraph (c), the day after the day on which the decision period expires;

(c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority's notice.

(4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—

(a) appoint a person (referred to in this Schedule as "the appointed person") to determine the appeal on his behalf;

(b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person's address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—

(a) may submit written representations in respect of the appeal to the appointed person; and

(b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—

(a) may make further representations to the appointed person in response to the representations of another party; and

(b) must, at the same time, send a copy of any such further representations to each other party.

Appeal to the Secretary of State (powers of the appointed person)

37.—(1) The appointed person may—

(a) allow or dismiss the appeal;

(b) reverse or vary any part of the authority's decision, irrespective of whether the appeal relates to that part;

(c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

(a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;

(b) if he gives such a notice, must—

(i) at the same time send a copy of it to each other party, and

(ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

Appeal to the Secretary of State (supplementary)

38.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for WTI/EFW Holdings Ltd (company number 07593865) to construct, operate and maintain the K3 Generating Station with a gross installed capacity of up to 75MW.

The Order also authorises associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in this Order and certified in accordance with article 16 (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Kent County Council, Sessions House, County Hall, Maidstone, Kent ME14 1XQ.

APPENDIX E: THE ALTERNATIVE RECOMMENDED DCO

DRAFT STATUTORY INSTRUMENTS

2018 No.

INFRASTRUCTURE PLANNING

The Wheelabrator Kemsley K3 Generating Station and Wheelabrator Kemsley North Waste-to-Energy Facility Order 20[ ]

Made - - - - ***

Coming into force - - ***

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SCHEDULE 3 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**a**) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 ("the 2008 Act")(**b**);

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**);

The single appointed person, having considered the application with the documents that accompanied it and the representations made and not withdrawn, has submitted a report with a recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the single appointed person, has decided the application and determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make substantial changes to the proposals;

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order:

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wheelabrator Kemsley (K3 Generating Station) and (WKN Waste-to-Energy Facility) Order and shall come into force on [ ] 201[ ].

(**a**) S.I. 2009/2264 as amended by S.I. 2013/522.
(**b**) 2008 c.29.
(**c**) S.I. 2010/103 as amended by S.I. 2012/635.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1980 Act" means the Highways Act 1980(**b**);

"the 1989 Act" means the Electricity Act 1989(**c**);

"the 1990 Act" means the Town and Country Planning Act 1990(**d**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**e**);

"the 2008 Act" means the New Roads and Street Works Act 1991(**f**);

"the 2016 Regulations" means the Environmental Permitting (England and Wales) Regulations 2016(**g**);

"authorised development" means the development and associated development described in Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

"book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"commissioning" means the process of testing all systems and components of each of Work No 1 and Work No 2 (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and "commission" and other cognate expressions are to be construed accordingly;

"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 11 September 2019 including all appendices thereto;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"K3 Generating Station" means a generating station having a capacity of up to 75MW which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 4 of Schedule 2;

"K3 Sustainable Energy Plant Planning Permission" means planning permission SW/19/501345 granted on 14 June 2019 by Kent County Council pursuant to section 73 of the 1990 Act permitting the construction and operation of a generating station having a capacity of up to 49.9MW;

"land plan" means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

"maintain" includes (i) inspect, repair, adjust, alter, refurbish, improve, the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and "maintenance" is construed accordingly;

"MW" means megawatts of electrical output;

(**a**) 1961 c.33.
(**b**) 1980 c.66.
(**c**) 1989 c.29.
(**d**) 1990 c.8.
(**e**) 1991 c.22.
(**f**) 2008 c.29.
(**g**) S.I. 2016/1154.

"operational use" of the developments comprising the authorised development means operational use for the purposes for which they are authorised under this Order but not including commissioning;

"Order land" means the land shown on the land plan within the Order limits and described in the book of reference;

"Order limits" means the limits shown on the works plan within which the authorised development may be carried out;

"owner", in relation to land, has the same meaning as in Section 7 of the Acquisition of Land Act 1981(**a**);

"Project K3" means Work No 1 and any other authorised development associated with that work;

"Project WKN" means Work No 2 and any other authorised development associated with those works;

"relevant highway authority" means the highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated;

"relevant planning authority" means the local authority for the area in which the land to which the relevant provision of this Order applies is situated;

"requirements" means those matters set out in Schedule 2 (requirements) to this Order;

"statement undertaker" means any person falling within the meaning set out in section 127(8) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways (subject to confirmation from the relevant highway authority), and includes part of a street;

"street authority" in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means, subject to article 7 (Benefit of the Order) WTI/EFW Holdings Ltd. (company number 07593865);

"watercourse" includes all rivers, streams, ditches, drains, creeks, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"works plans" means the plans certified as the works plans by the Secretary of State for the purposes of the Order;

"WKN Waste-to-Energy Facility" means the Wheelabrator Kemsley North Waste-to-Energy Facility, a generating station having a generating capacity of up to 42MW which is treated as development for which development consent is required pursuant to a direction by the Secretary of State for Business, Energy and Industrial Strategy under section 35 of the 2008 Act dated 27 June 2018;

(2) A reference in this Order to a "grid reference" is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

(3) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to in Requirement 14 (Detailed Design Approval) of Schedule 2.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by Schedule 1 of this Order.

(5) The expression "includes" shall be construed without limitation.

(**a**) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 c.34. There are other amendments to the 1981 Act which are not relevant to this Order.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2 the undertaker is granted development consent for the authorised development.

Effect of the Order on the K3 Sustainable Energy Plan Planning Permission

4.—(1) The undertaker may not start operational use of the K3 Generating Station under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate the K3 Sustainable Energy Plant under the K3 Generating Station Planning Permission.

(2) Upon service of the notice under paragraph (1) the K3 Sustainable Energy Plant Planning Permission will cease to have effect.

Authorisation of the operation of the authorised development

5.—(1) The undertaker is authorised to operate the generating stations forming part of the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Power to maintain authorised development

6. The undertaker may, at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Benefit of the Order

7.—(1) Except where paragraph (4) applies, the undertaker may with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where—

(a) in the case of Project K3 the transfer or grant is made to K3 CHP Limited (Company number 09240062);

(b) in the case of Project WKN the transfer or grant is made to Kemsley North Limited (Company number 11699563); or

(c) the transfer or grant is made to a licence holder within the meaning of section 6(1) of the Electricity Act 1989.

PART 3

SUPPLEMENTARY POWERS

Access to works

8. The undertaker may with the approval of the relevant highway authority, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Discharge of water

9.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**a**) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior written consent of the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**c**) have the same meaning as in that Act.

Authority to survey and investigate the land

10.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

(**a**) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.
(**b**) S.I. 2016/1154.
(**c**) 1991 c.57.

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must if so required on entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority.

(5) A consent for the purpose of sub-paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.

(6) As soon as practicable following the exercise of any powers under paragraph (1), any vehicles, apparatus or equipment must be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.

(7) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of Human Remains

11.—(1) Before the undertaker carries out any development or works which it has reason to think will or may disturb any human remains in the Order land it must remove those remains, or cause them to be removed, from the Order land in accordance with the following provisions of this article.

(2) Before any such remains are removed the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

(a) removed and re-interred in a burial ground or cemetery in which burials may legally take place, or

(b) removed to, and cremated in, a crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of a deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or

(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or

(c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

(a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to the relevant planning authority.

(11) The removal of the remains of a deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(**a**) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(**a**) 1857 c.81.

Felling or lopping of trees

12.—(1) The undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

13.—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—

(i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(**b**);

(ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site); or

(b) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974(**c**) does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised development.

Application of landlord and tenant law

14.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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(**a**) 1990 c.43. There are amendments to this Act which are not relevant to this Order.
(**b**) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.
(**c**) 1974 c.40.

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict enforcement (whether by action for damages or otherwise) by any part to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

15. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Certification of plans etc

16. The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

(a) the book of reference (dated October 2019);

(b) the land plan (drawing number 9812-0057-006 dated October 2019);

(c) the works plans (drawing numbers 9812-0059-005 and 9812-0060-007 dated March 2020);

(d) the environmental statement (dated September 2019);

(e) the K3 Generating Station approved plans as follows:

(i) 16315-A1-P-0100 4.3D Proposed Site Layout Rev U dated November 2009;

(ii) 16315-A1-P-0110 4.4D South East Elevation Rev U dated November 2009;

(iii) 16315-A1-P-0111 4.5D North East Elevation Rev T dated November 2009;

(iv) 16315-A1-P-0112 4.6D South West Elevation Rev U dated November 2009;

(v) 16315-A1-P-0113 4.7D North West Elevation Rev T dated November 2009;

(vi) 16315-A1-4.21 Landscape Masterplan Rev M dated June 2013;

(f) the K3 rail and water transportation strategy (dated September 2019);

(g) the WKN parameter plan (drawing number 9812-0031-10 dated March 2020);

(h) the draft WKN construction traffic management plan – Highways England version (dated 7 August 2020);

(i) the draft WKN travel plan - Highways England version (dated 7 August 2020);

(j) the WKN rail and water transportation strategy dated September 2019;

(k) the WKN draft construction environmental management plan dated May 2020;

(l) the Design and Access Statement dated September 2019;

(m) the draft ecological management and enhancement plan;

(n) the draft K3 operational traffic routing and management plan; and

(o) the draft K3 travel plan – Highways England version (dated 7 August 2020)

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

17. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in writing by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Procedure in relation to certain approvals

18.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld.

(2) Schedule 3 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to Schedule 2 (requirements).

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Signed
Title
Date Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Kent—

Project K3

Work No 1- An electricity generating station (the K3 Generating Station) with a gross installed generating capacity of up to 75MW comprising the following works—

(a) tipping hall;
(b) waste fuel bunker;
(c) boiler hall;
(d) flue gas treatment building;
(e) turbine hall housing steam turbine and generator;
(f) air cooled condenser;
(g) stack and associated emissions monitoring system;
(h) electricity substation;
(i) stores and utilities;
(j) administration office;
(k) fire water tanks;
(l) stores;
(m) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No. 1A – Installation of grid connection for Work No 1.

Work No. 1B – Installation of steam connection for Work No 1.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 1C - Alteration of existing private access road to construct, use and maintain Work No 1.

Work No 1D - Creation of a temporary construction compound and laydown area for the construction of Work No 1.

Work No 1E - Construction and operation of a surface water outfall for Work No 1.

Project WKN

Work No 2– An electricity generating station (the WKN Waste-to-Energy Facility) with a gross installed generating capacity of up to 42MW comprising the following works—

(n) raised tipping hall (with demineralised water treatment plant beneath);
(o) waste fuel bunker;
(p) boiler hall;

(q) flue gas treatment building;

(r) turbine hall housing steam turbine and generator;

(s) air cooled condenser;

(t) stack and associated emissions monitoring system;

(u) electricity substation;

(v) stores and utilities;

(w) administration office;

(x) fire water tanks;

(y) stores;

(z) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No 3 – Installation of grid connection for Work No 2.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 4 - Alteration of existing private access road to construct, use and maintain Work No 2.

Work No 5 – Temporary construction or alteration of existing private haul road for the construction of Work No 2.

Work No 6 - Creation of a temporary construction compound and laydown area for the construction of Work No 2.

Work No 7 - Construction and operation of a new surface water outfall for Work No 2.

In connection with and in addition to Works Nos. 1, 2, 3, 4, 5, 6, and 7, to the extent that it does not otherwise form part of those works, further associated development including—

(aa) pipe racks and pipe runs;

(bb) external lighting;

(cc) fencing, boundary treatment and other means of enclosure;

(dd) signage;

(ee) CCTV and other security measures;

(ff) surface and foul water drainage facilities;

(gg) potable water supply;

(hh) new telecommunications and utilities apparatus and connections;

(ii) hard and soft landscaping;

(jj) biodiversity enhancement measures;

(kk) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;

(ll) works for the protection of buildings and land affected by the authorised development;

(mm) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections;

(nn) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

Interpretation

19.—(1) In this Schedule—

"approved Landscape Masterplan" means the K3 Generating Station approved Landscape Masterplan listed in Part 4 of Schedule 2;

"approved plans" means any approved plans or other plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement or which are already approved and listed in Part 4 of Schedule 2;

"bank holiday" is a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

"commencement" means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), other than permitted preliminary works, comprised in or carried out for the purposes of the authorised development; and "commence and other cognate expressions are to be construed accordingly;

"construction site" means the Order land during the construction of the authorised development;

"Kemsley Paper Mill" means the paper mill on the land immediately adjacent to the Order land at Sittingbourne, Kent operated by DS Smith Limited;

"means of enclosure" means fencing, walls or other means of boundary treatment and enclosure;

"permitted preliminary works" means works within Work Nos 4, 5 and 6, site clearance work, survey work, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements and the provision of site security, and, subject to compliance with Requirement 20(1) of this Order, archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services, provided that no permitted preliminary works will give rise to any materially new or materially different effects from those assessed in the environmental statement;

"rail and water transportation strategy" means the relevant rail and water transportation strategy certified by the Secretary of State under article 16;

"WKN parameter plan" means the plan certified by the Secretary of State as the WKN parameter plan under article 16;

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the relevant planning authority.

PART 1

GENERAL REQUIREMENTS

Commencement of the authorised development

20. Each of Project K3 and Project WKN must commence within five years of the date on which this Order comes into force.

Notice of commissioning

21.—(1) Notice of commencement of commissioning of each of Work No 1 and Work No 2 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of completion of commissioning of each of Work No 1 and Work No 2 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

Decommissioning

22.—(1) Within six months after it notifies the relevant planning authority that it intends to decommission either the K3 Generating Station or the WKN Waste-to-Energy Facility, the undertaker must submit to the relevant planning authority for its approval a written decommissioning environmental management plan for that generating station.

(2) Decommissioning works must not be carried out until the relevant planning authority has approved the scheme.

(3) The decommissioning environmental management plan submitted and approved must include details of—

(a) the buildings to be demolished;

(b) the means of removal of the materials resulting from the decommissioning works;

(c) the phasing of the demolition and removal works;

(d) all measures necessary for the protection from the potential environmental effects pursuant to decommissioning;

(e) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;

(f) the phasing of any restoration works;

(g) a timetable for the implementation of the scheme.

(4) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

Fuel storage

23.—(1) All fuels, oils and other liquids with the potential to contaminate the Order land shall be stored in a secure bonded area in order to prevent any accidental or unauthorised discharge to the ground.

(2) The area for storage shall not drain to any surface water system.

(3) Where it is proposed to store more than 200 litres of any type of oil must be stored in accordance with the provisions of the Control of Pollution (Oil Storage) (England) Regulations 2001(**a**).

(**a**) S.I. 2001/2954.

(4) Where a drum or barrel has a capacity less than 200 litres a drip tray capable of retaining 25% of the maximum capacity of the drum or barrel may be used in lieu of storing the drum or barrel in the secure bonded area.

Rail and water transportation strategy

24. The K3 Generating Station and the WKN Waste-to-Energy Facility must be operated in accordance with the approved rail and water transportation strategy for that project.

Amendments to approved plans, etc.

25.—(1) With respect to any approved plans, the undertaker may submit to the relevant planning authority for approval any amendments to the approved plans and following any such approval by the relevant planning authority the approved plans are to be taken to include the amendments approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 14 below must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

Works in the vicinity of gas apparatus

26.—(1) No work involving excavations shall take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained written consent from Southern Gas Networks PLC for those works to proceed.

(2) The undertaker shall provide such information as Southern Gas Networks PLC may reasonably require in order for it to respond to a request for consent under sub-paragraph (1).

PART 2

PROJECT K3 REQUIREMENTS

Approved details

27. The Project K3 authorised development must be carried out in accordance with the K3 Generation Station approved plans and documents as listed in Part 4 of this Schedule.

Operational traffic and travel plans

28.—(1) The number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed 348 movements per day until the following have been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority:

29. (a) a written operational traffic routing and management plan; and,

30. (b) a written travel plan for operational staff.

31. (2) The plan submitted and approved under sub-paragraph (1)(a) must be in accordance with the draft K3 operational traffic routing and management plan certified by the Secretary of State under article 16.

32. (3) The plan submitted and approved under sub-paragraph (1)(b) must be in accordance with the draft K3 travel plan certified by the Secretary of State under article 16.

33. (4) The plans referred to in sub-paragraphs (1)(a) and (1)(b) must be implemented as approved.

34. (5) The total maximum number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed a combined total of 416 movements per day subject to any prior written variation as approved by the relevant planning authority.

35. (6) Sub-paragraphs (1) and (5) do not apply to waste deliveries originating from and returning to the railway depot at Ridham Docks accessing and egressing the K3 Generating Station by the use of Ridham Dock Road.

Trees

36.—(1) All trees and shrubs planted under the approved Landscape Masterplan shall be maintained for a period of 5 years.

(2) Any trees or shrubs that either die, are lost, damaged or become diseased during this 5 year period shall be replaced with a tree or shrub of the same species within the next available planting season.

Surface water drainage

37. All surface water drainage from the Project K3 authorised development discharging to a local water course shall be attenuated for a 1:100 year return storm with a limited discharge of 7 litres per second per hectare or the equivalent run off from a greenfield site for a 1:2 storm.

Combined heat and power

38.—(1) Within 12 months of ceasing to supply heat and/or power to the Kemsley Paper Mill, the undertaker must submit to the relevant planning authority for its approval a strategy ("the CHP strategy").

(2) The CHP strategy submitted and approved must—

(a) consider the opportunities that reasonably exist at the time of submission for the export of heat and/or power from the K3 Generating Station to other users; and

(b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the K3 Generating Station to other users.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP strategy.

PART 3

PROJECT WKN REQUIREMENTS

Detailed design approval

39.—(1) No part of Work No 2 may commence until written details of:

(a) the siting, layout, scale and external appearance (including colours, materials, and surface finishes) of all permanent buildings and structures; and

(b) the provision of electric vehicle charging points throughout the Project WKN authorised development;

have been submitted to and approved by the relevant planning authority.

(2) The details to be submitted for approval under sub-paragraph (1) must be in accordance with:

(a) the noise mitigation measures referred to in chapter 7 (Noise and Vibration) of the environmental statement;

(b) the lateral limits of deviation for each of the works comprising Work No 2 as shown on the WKN parameter plan;

(c) the height parameters specified in table 1 below.

Table 1

Building or structure	*Maximum length (metres)*	*Maximum width (metres)*	*Minimum height (metres)*	*Maximum height (metres)*
Tipping hall (Work No 2(a))	45	36	-	30
Waste fuel bunker (Work No 2(b))	35	36	-	44
Boiler hall (Work No 2(c))	50	36	-	58
Flue gas treatment plant (Work No 2(d))	45	35	-	44
Turbine hall (Work No 2(e))	40	25	-	30
Air-cooled condensers (Work No 2(f))	45	30	-	40
Stack (Work No 2(g))	-	4	90	99
Electricity substation (Work No 2(h))	45	30	-	15
Stores & Utilities (Work No 2(i))	20	10	-	15
Administration office (Work No 2(j))	30	15	-	30
Fire water tanks (Work No 2(k))	-	7.2	-	15
Stores (Work No 2(l))	40	35	-	15
Supporting infrastructure (Work No 2(m))	-	-	-	10

(3) The Project WKN authorised development must be carried out in accordance with the approved details.

Provision of landscaping

40.—(1) No part of Work No 2 may be commenced until a written detailed landscaping scheme has been submitted to and approved by the relevant planning authority.

(2) Each scheme submitted and approved must include details of all proposed hard and soft landscaping works, including—

(a) the treatment of hard surfaced areas;

(b) earthworks, including the proposed levels and contours of landscaped areas;

(c) the seed mix for areas of grassland;

(d) shrub planting, including the height, size and species and the density of distribution;

(e) the management of existing and new areas of grassland and tree and shrub planting;

(f) an implementation timetable for the phasing and completion of the landscaping works.

(3) Each scheme submitted and approved must be in accordance with the ecological management and enhancement plan approved under requirement 46.

Implementation and maintenance of landscaping

41.—(1) All landscaping works must be carried out in accordance with the relevant landscaping scheme (including the implementation timetable) approved under requirement 40.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

(3) Any area of grassland planted as part of an approved landscaping scheme that, within a period of five years after planting, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be reseeded in the first available planting season with the same seed mix as that originally planted.

(4) The undertaker must implement and maintain the approved landscaping scheme during the construction, operation and decommissioning of the WKN Waste-to-Energy Facility.

Fencing and other means of enclosure

42.—(1) No part of Work No 2 may be commenced until written details of all proposed means of enclosure have been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the Project WKN authorised development must remain securely fenced at all times during construction of the Project WKN authorised development.

(3) Any approved temporary means of enclosure must be removed within 12 months after the Project WKN authorised development is brought into commercial use.

(4) The Project WKN authorised development must not be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) The Project WKN authorised development must be carried out in accordance with the approved details.

Surface water drainage

43.—(1) No part of the surface and foul water drainage systems may commence until written details have been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in chapter 10 of the environmental statement and its relevant appendices including:

(a) surface water drainage strategy;

(b) drainage maintenance plan;

(c) flood management plan;

(d) emergency spillage management plan;

(e) water quality monitoring plan;

(f) flood evacuation plan.

(3) The surface and foul water drainage systems must be constructed in accordance with the relevant approved details.

(4) The Project WKN authorised development must not be commissioned until the surface and foul water drainage systems have been constructed.

Land contamination and groundwater

44.—(1) No Project WKN authorised development may be commenced, and no archaeological investigations, investigations for the purpose of assessing ground conditions or remedial work in respect of contamination or other adverse ground conditions may take place, until details of capping layer and ground gas protection measures for that part, or for those activities to the extent they may be required, have been submitted to and approved by the relevant planning authority.

(2) Construction works for the Project WKN authorised development must be carried out in accordance with the approved measures.

(3) If contamination not previously identified is found during the construction of the Project WKN authorised development, no further works for the authorised development may be carried out in the affected area until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

(a) how the contamination is to be identified and assessed;

(b) where remediation is required by the scheme, the remediation measures;

(c) timescales for carrying out the remediation measures; and

(d) any ongoing monitoring or mitigation requirements.

(4) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (3) must be carried out in accordance with the approved scheme.

Archaeology

45.—(1) No Project WKN authorised development shall commence until a written scheme for the investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found. The scheme should also detail measures for post-field work processing, assessment, analysis and reporting of the results of archaeological work and the deposition of the archive.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme unless otherwise agreed in writing with the relevant planning authority.

Ecological management and enhancement plan

46.—(1) The Project WKN authorised development must not be commenced until a written ecological management and enhancement plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must—

(a) be in accordance with the draft ecological management and enhancement plan certified by the Secretary of State under article 16; and

(b) include an implementation timetable and details relating to maintenance and management.

(3) The plan must be implemented as approved.

Construction environmental management plan

47.—(1) The Project WKN authorised development must not commence until a written construction environmental management plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must—

(a) be in accordance with the draft construction environmental management plan certified by the Secretary of State under article 16;

(b) include measures for the protection of any protected species found to be present on the Order land during construction;

(c) include the mitigation measures included in chapter 14 of the environmental statement;

(d) identify the consideration given to greenhouse gas emissions reduction measures during construction referred to in chapter 6 of the environmental statement and the measures that have been included;

(e) incorporate a scheme for handling complaints received from local residents, business and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.

(3) In sub-paragraph (2)(b), a "protected species" means a species protected under the Wildlife and Countryside Act 1981(**a**) or the Conservation of Habitats and Species Regulations 2017(**b**).

(4) All construction works associated with the Project WKN authorised development must be carried out in accordance with the approved construction environmental management plan.

External lighting

48.—(1) No part of the external lighting may be commenced until a scheme for all permanent external lighting to be installed during the operation of the Project WKN authorised development has been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in chapter 11 of the environmental statement and be designed to avoid any consequential adverse impacts on biodiversity.

(3) The external lighting must be constructed in accordance with the relevant approved details.

(4) The Project WKN authorised development must not be brought into operational use until the external lighting has been constructed in accordance with an approved external lighting scheme.

Construction traffic management plan

49.—(1) The Project WKN authorised development must not commence until a written construction traffic routing and management plan has been submitted to and, after consultation with the relevant highway authorities, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement and the draft construction traffic management plan contained in Appendix 4.2 to the environmental statement.

(3) The plan submitted and approved must include—

(a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;

(b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;

(c) the construction programme;

(d) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment and any temporary removal of street furniture;

(**a**) 1981 c. 69.
(**b**) S.I. 2017/1012.

(e) measures to promote the use of sustainable transport modes by construction personnel in order to minimise the overall traffic impact and promote sustainable transport modes;

(f) details of parking for construction personnel within the construction site; and

(g) details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved.

Operational traffic routing and management plan

50.—(1) Work No 2 must not be commissioned until a written operational traffic routing and management plan has been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement and the operational travel plan framework contained in Appendix 4.3 to the environmental statement.

(3) The plan submitted and approved must include details of the routes to be used for the transport of fuel, consumables and combustion by-products to and from the authorised development.

(4) The plan must be implemented as approved.

Travel plan – operational staff

51.—(1) Work No 2 must not be brought into commercial use until a written travel plan for operational staff has been submitted to and, after consultation with the relevant highway authorities, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement and the operational travel plan framework contained in Appendix 4.3 to the environmental statement.

(3) The plan submitted and approved must include—

(a) details of the travel plan budget;

(b) measures to promote the use of sustainable transport modes to and from the WKN Waste-to-Energy Facility by operational staff;

(c) provision as to the responsibility for, and timescales of, the implementation of those measures;

(d) a monitoring and review regime.

(4) The approved plan must be implemented within six months after Work No 2 is brought into commercial use and must be maintained throughout the operation of Work No 2.

Construction hours

52.—(1) With the exception of construction using the concrete slip-forming method, construction using constant pour methods for concrete laying and internal process works relating to mechanical and/or electrical equipment installation, construction activities shall only take place between 07:00 and 19:00 hours Monday to Friday inclusive and 07:00 and 16:00 hours on Saturday and Sunday with no construction activities to take place on Bank or Public Holidays.

Piling and penetrative foundation design

53.—(1) No part of Work No 2 may commence until a piling risk assessment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) Construction works for the Project WKN authorised development must be carried out in accordance with the approved piling method and agreed risk management for that method as set out in the approved piling risk assessment.

(3) All piling and penetrative foundation works must be carried out in accordance with the relevant approved method statement.

54.—(1) No impact piling associated with Work No 2 shall take place in the months of January, February, or between April and August inclusive.

(2) No more than ten days of impact piling associated with the Project WKN authorised development, whether consecutive or otherwise, shall take place in the months of November and December.

Employment, skills and training program

55.—(1) Work No 2 may not commence until a written plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to and approved by the relevant planning authority in consultation with the Economic Development Officer at Swale Borough Council.

(2) The approved plan must be implemented and maintained during the construction and operation of Work No.2.

Part 4

K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS

(1) *Title*	*(2)* *Reference*	*(3)* *Revision*
Environmental Statement	March 2010	
ES Addendum (Air Quality)	June 2013	
ES Chapter 10 – Hydrology and Flood Risk – Supplementary Report	May 2017	
ES Addendum	May 2018	
Design and Access Statement	March 2010	
Surface Water Management and Foul Drainage Design Philosophy	December 2016	
Ecological Mitigation and Management Plan	JPP1804-MP-001d	July 2013
Flood Risk Assessment	May 2019	
Proposed (Permitted) Site Location Plan	16315/A0/P/0060	Rev N
Proposed Site Layout	16315/A1/P/0100	Rev U
Proposed Building Layout	16315/A0/P/0105	Rev L
Boundary Treatment	16315/A0/P/0106	Rev R
South East Elevation	16315/A1/P/0110	Rev U
North East Elevation	16315/A1/P/0111	Rev T
South West Elevation	16315/A1/P/0112	Rev U
North West Elevation	16315/A1/P/0113	Rev T

Proposed Structure for Air Cooled Condenser (URC) Elevations	16315/A1/P/0121	Rev N
Main Building – Proposed South East Elevation	16315/A0/P/0125	Rev K
Main Building – Proposed North East Elevation	16315/A1/P/0126	Rev K
Main Building – Proposed South West Elevation	16315/A1/P/0127	Rev L
Main Building – Proposed North West Elevation	16315/A0/P/0128	Rev K
Site Layout and Access	16315/A1/P/0160	Rev K
Typical Office and Staff Amenities Building (UYA) Floor Plans	16315/A1/P/0171	Rev H
Proposed Gatehouse Floor Plan	16315/A2/P/0172	Rev L
Site Sections	16315/A0/0250	Rev J
Proposed Drainage Layout	16315/A0/0301	Rev J
Proposed Levels Site Plan	16315/A1/0600	Rev H
Illustrative Visual 1 of 7	16315/P/0150	Rev R
Illustrative Visual 2 of 7	16315/P/0151	Rev P
Illustrative Visual 3 of 7	16315/P/0152	Rev O
Illustrative Visual 4 of 7	16315/P/0153	Rev Q
Illustrative Visual 5 of 7	16315/P/0154	Rev O
Illustrative Visual 6 of 7	16315/P/0155	Rev O
Illustrative Visual 7 of 7	16315/P/0156	Rev R
Landscape Masterplan	16315/A1/4.21	Rev M
Fuel Bunker Level +2.0000m	16315/A1/P/0220	Rev D
Fuel Bunker Level +20.000m and Level +36.000m	16315/A1/P/0221	Rev E
Fuel Bunker Section A-A	16315/A1/P/0222	Rev C
Fuel Bunker Section B-B	16315/A0/P/0223	Rev C
Tipping Hall Layout Level +2.000m	16315/A1/P/0201	Rev E
Tipping Hall Section A-A	16315/A1/P/0202	Rev D
Overall Roof Layout Comparison Drawing	16315/A1/P/0200	Rev H
Lighting Discharges Report	20020117LXI0019	Rev C
External Lighting Technical Submission	20020117LXJ0922	Rev I
External Lighting Drawing	20020117LXG0907	Rev H
K3 External Lighting Strategy	ECO00047 Fig1	-
Access Road - Proposed Proposed Internal Access Layout	9163-0135-01-JNY9060	Rev 01
K3 Employment Strategy	March 2012	

SCHEDULE 3

Article 18

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Application of this Schedule

56. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as "the authority") for an approval, consent or agreement required by any of the requirements.

Decision Period

57.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), "the decision period" means—

(a) where the authority does not give written notice under paragraph 58(1) or (2) requiring further information, the period of eight weeks from the later of—

(i) the day immediately following the day on which the authority receives the application, and

(ii) the day on which the authority receives the fee payable under paragraph 4; or

(b) where the authority gives written notice under paragraph 58(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or

(c) such longer period as may be agreed in writing by the undertaker and the authority.

Further information

58.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a "consultee") in relation to the application—

(a) the authority must consult the consultee within five business days from the day on which it receives the application;

(b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and

(c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

Fees

59.—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

(a) rejects the application as being invalidly made;

(b) fails to give the written notice required by paragraph 57(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) "the relevant period" means the period of eight weeks from, as the case may be—

(a) the day on which the authority rejects the application as being invalidly made;

(b) the day after the day on which the decision period expires.

Appeal to the Secretary of State (procedure)

60.—(1) The undertaker may appeal to the Secretary of State against—

(a) the authority's refusal of an application;

(b) the authority's grant subject to conditions of an application;

(c) the authority's failure to give the written notice required by paragraph 57(1);

(d) a written notice given by the authority under paragraph 58(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

(a) its grounds of appeal;

(b) a copy of the application submitted to the authority;

(c) any supporting documentation which it wishes to provide.

(3) In sub-paragraph (2), "the relevant day" means—

(a) in the case of an appeal under sub-paragraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;

(b) in the case of an appeal under sub-paragraph (1)(c), the day after the day on which the decision period expires;

(c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority's notice.

(4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—

(a) appoint a person (referred to in this Schedule as "the appointed person") to determine the appeal on his behalf;

(b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person's address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—

(a) may submit written representations in respect of the appeal to the appointed person; and

(b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—

(a) may make further representations to the appointed person in response to the representations of another party; and

(b) must, at the same time, send a copy of any such further representations to each other party.

Appeal to the Secretary of State (powers of the appointed person)

61.—(1) The appointed person may—

(a) allow or dismiss the appeal;

(b) reverse or vary any part of the authority's decision, irrespective of whether the appeal relates to that part;

(c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

(a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;

(b) if he gives such a notice, must—

(i) at the same time send a copy of it to each other party, and

(ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

Appeal to the Secretary of State (supplementary)

62.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for WTI/EFW Holdings Ltd (company number 07593865) to construct, operate and maintain the K3 Generating Station with a gross installed capacity of up to 75MW, and to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW.

The Order also authorises for associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in this Order and certified in accordance with article 16 (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Kent County Council, Sessions House, County Hall, Maidstone, Kent ME14 1XQ.

APPENDIX 4B

DECISION LETTER

Department for Business, Energy & Industrial Strategy

Department for Business, Energy & Industrial Strategy

1 Victoria Street
London
SW1H 0ET

T +44 (0)20 7215 5000
E beiseip@beis.gov.uk
W www.gov.uk

Mr David Harvey
dha
Eclipse House
Eclipse Park
Maidstone
ME14 3EN

Our Ref: EN010083

19 February 2021

Dear Mr Harvey

PLANNING ACT 2008

APPLICATION FOR THE WHEELABRATOR KEMSLEY K3 GENERATING STATION AND WHEELABRATOR KEMSLEY NORTH WASTE-TO-ENERGY FACILITY ORDER

1. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to the report dated 19 November 2020 of the Examining Authority ("the ExA"), comprising a single examining Inspector, Grahame Kean, who conducted an examination into the application ("the Application") submitted on 11 September 2019 by WTI/EFW Holdings Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Wheelabrator Kemsley K3 and Wheelabrator Kemsley North waste-fuelled electricity generating stations.

1.2 The Application was accepted for examination on 8 October 2019. The examination began on 19 February 2020 and was completed on 19 August 2020. The Secretary of State received the report containing the ExA's conclusions and recommendation on 19 November 2020.

1.3 The Order as applied for would grant development consent for an increase in generating capacity from 49.9MW to 75MW and an increase in the throughput of waste that is permitted to be utilised at the operational Wheelabrator Kemsley K3 generating station ("WK3") and permit the construction, operation and decommissioning of a new energy from waste generating station, Wheelabrator Kemsley North ("WKN"). The projects would be located on adjoining sites next to the DS Smith Paper Mill near

Sittingbourne in Kent. The WK3 and WKN sites would be within the boundary of Swale Borough Council in the County of Kent.

1.4 As applied for, WK3 and WKN would comprise (in general terms):

- **Work No 1 [WK3]** – Construction and operation of an onshore generating station with a generating capacity of up to 75MW and permissible waste throughput of 657,000 tonnes per annum;
- Work 1A – Installation of grid connection for Work No 1;
- Work 1B – Installation of steam connection for Work No 1;
- Work 1C – Alteration of existing private access road to construct, use and maintain Work No 1;
- Work 1D – Creation of a temporary construction compound and laydown area for the construction of Work No 1;
- Work 1E – Construction and operation of a surface water outfall for Work No 1;

- **Work No 2 [WKN]** – Construction and operation of a waste-to-energy facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of up to 42MW;
- Work No 3 – Installation of a grid connection for Work No 2;
- Work No 4 – Alteration of existing private access road to construct, use and maintain Work No 2;
- Work No 5 – Temporary construction or alteration of existing private haul road for the construction of Work No 2;
- Work No 6 – Creation of a temporary construction compound and laydown area for the construction of Work No 2; and
- Work No 7 – Construction and operation of a new surface water outfall for Work No 2.

1.5 No compulsory acquisition powers are sought by the Applicant.

1.6 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 Report"). The main features of the development proposals, as applied for, and site are set out in section 2 of the ExA's Report. The ExA's findings are set out in sections 4 - 6 of the ExA Report, and the ExA's conclusions on the terms of the Order and the case for development consent and are set out at sections 7 and 8 respectively.

2. Summary of the ExA Report and Recommendation

2.1 The ExA's recommendation in the 'Overview' section of the ExA Report is as follows:

*"*The Examining Authority recommends that the Secretary of State should grant consent for the K3 Generating Station only and should make the Order in the form attached at Appendix D".

3. The Secretary of State's Consideration of the ExA Report

3.1 The Secretary of State notes that a total of 9 Relevant Representations (as defined in the Planning Act 2008) were received from statutory and non-statutory authorities, local councils and local residents. In addition, the Secretary of State notes that during the examination of the Application, the ExA accepted two individuals and two organisations (Royal Mail and the South East Waste Planning Advisory Group) as Interested Parties to enable their views to be heard during the examination.

3.2 The principal matters considered by the ExA, as set out in the ExA Report are:

- the principle and need for the proposed developments;
- conformity with the National Policy Statements for Energy
- conformity with Development Plan policies;
- waste hierarchy and fuel availability;
- air quality;
- archaeology and cultural heritage;
- ecology;
- greenhouse gases and climate change;
- ground conditions;
- landscape and visual impact;
- noise and vibration;
- traffic and transport;
- water environment; and
- Habitats Regulations Assessment.

3.3 The Secretary of State has considered the ExA Report and all other material considerations, including further representations received after the close of the ExA's examination ("the post-examination representations"). The Secretary of State's consideration of the ExA's Report and the post-examination representations is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].

3.4 The Secretary of State notes that the ExA concluded [ER 8.2.7] that for WK3, with the mitigation proposed through the DCO recommended by the ExA, there would be no adverse effects that would outweigh the benefits of the project. He further notes the ExA's conclusion for WKN [ER 8.2.14] was that the identified harms did outweigh the benefits. As noted above, the ExA's overall conclusion [ER 8.3.1] was that development consent should be granted for WK3 only. The Secretary of State agrees with the ExA's conclusion.

<u>The Principle and Need for the Development</u>

4.1 The Planning Act 2008 sets out a process for decision-makers to follow in considering applications for nationally significant infrastructure projects. In the first instance, the decision-maker needs to consider whether the proposed nationally significant infrastructure projects are in accordance with the relevant National Policy Statement(s). WK3 is a 'Nationally Significant Infrastructure Project' as defined in

sections 14 and 15 of the Planning Act 2008 by virtue of having a generating capacity of more than 50MW.

4.2 WKN is not a nationally significant infrastructure project as defined in the Planning Act 2008 as its proposed generating capacity is 42MW. However, WKN was 'directed in' to the Planning Act regime by the Secretary of State under section 35 of the Planning Act 2008 on 27 June 2018 following a request by the Applicant. The Secretary of State considered that the project would be of national significance given that it would be located on the same site as two other projects of national significance, which together comprised a significant facility of sustainable energy supply and taking into account the fact that the WKN project would be applied for at the same time as the WK3 project. There would also be benefits from the two projects being considered together in a consistent manner.

4.3 Section 104 of the Planning Act 2008 sets out that decisions on nationally significant infrastructure projects where a National Policy Statement has effect must have regard to the relevant statement and any other matters that are both important and relevant to the decision. Any decision must be taken in accordance with the relevant National Policy Statement except where doing so would: lead to a breach of the UK's international obligations; lead to the Secretary of State being in breach of any duty imposed on him by or under any enactment; be unlawful by virtue of any enactment; or where the adverse effects of a development outweigh its benefits (the last at section 104(7) of the Act).

4.4 Section 105 of the Planning Act 2008 sets out that decisions on nationally significant infrastructure projects where a National Policy Statement does not have effect must have regard to any local impact reports, any matters prescribed in relation to development of the description to which the application refers and any other matters which the Secretary of State considers are relevant and important.

4.5 National Policy Statements EN-1 (the Overarching National Policy Statement for Energy - "NPS EN-1") and EN-3 (the National Policy Statement for Renewable energy Infrastructure "NPS EN-3") set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. NPS EN-1 sets out that the assessment of development consent applications for electricity generating infrastructure should start with a presumption in favour of granting consent. The ExA noted the strong need case for electricity generating projects that is set out in NPS EN-1 and NPS EN-3 but considered that the presumption in favour of granting consent did not apply to the WKN project because it had been directed into the Planning Act process and, therefore, did not fall to be considered under section 104 of the Planning Act 2008, but rather under section 105 of that Act. Instead, the ExA concluded that, while the National Policy Statements were important and relevant matters in the consideration of the development consent application for WKN, the primary consideration in determining the development should be the local development plan.

4.6 The Secretary of State takes the view that the Application should be treated as a whole and determined under section 104 of the Planning Act 2008. This section, and section 105 would seem to be mutually exclusive and it would not be correct to determine different parts of the Application under different provisions. It is also noted

that WKN is a type of generating station which would generally fall to be considered under EN-3 had it met the 50MW threshold by itself and was directed into the Planning Act regime on the basis of its combined significance with the WK3 project. In any event, the Secretary of State does not consider that determining the whole application under section 104 has a material impact on the overall outcome in this case. Section 104(2)(d) of the 2008 Act enables the Secretary of State to give consideration to any important and relevant matters appropriate to this aspect of the application as fully considered by the ExA.

4.7 The Energy White Paper, "Powering our Net Zero Future", was published on 14 December 2020. The White Paper announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application.

Consideration of Alternatives

4.8 The Applicant considered the question of alternatives in section 2.14 of Chapter 2 of its Environmental Statement that was submitted to the Planning Inspectorate as part of its application for development consent. The Applicant's position was that, in relation to WK3, the fact that it had been constructed meant that it was not necessary to consider alternatives, while for WKN, the need to locate it next to the sister WK3 generating station and the proximity to viable feedstock also meant that it was not necessary to consider alternatives.

4.9 The ExA did not explicitly consider alternatives to the proposed developments that are the subject of the Applicant`s request for a development consent order. However, in considering the need for WKN, the ExA states at ER 6.2.20 of its Report that "there is no proven need for the plant to be located in Kent" and at ER 6.2.31 that "… an alternative location outside Kent….. would appear to better serve the strategic purposes of member authorities of SEWPAG [the South East Waste Planning Advisory Group]….in particular the KMWLP [Kent Minerals and Waste Local Plan]".

4.10 The Secretary of State notes the ExA's comments in this matter and has considered these in the overall 'planning balance' section of this decision letter.

Conformity with Development Plan Policies

4.11 The ExA considered in general terms the conformity of WK3 and WKN with policies in the relevant local development plans [ER 4.6.1 et seq]. The ExA took the view that there were supportive statements in the plans that referenced sustainability and none that were in conflict with the policy directions of the National Policy Statements. However, in its analysis of this point, the ExA again indicates that the National Policy Statements are the primary source of policy direction for WK3 but that the local development plans have primacy for WKN.

Waste Hierarchy and Fuel Availability

4.12. The ways that the waste hierarchy (a set of priorities for making efficient use of resources) and fuel availability apply to WK3 and WKN were key issues in the ExA's assessment of the development consent application for the two projects.

4.13 The National Policy Statements set out that energy from waste is a type of infrastructure that is needed. However, the National Policy Statement for Renewable Energy Infrastructure, NPS EN-3 states that an applicant for development consent must assess "the conformity with the waste hierarchy and the effect on relevant waste plans…..". NPS EN-3, notes that the decision-maker should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets.

4.14 The ExA notes that there are a number of national and local policies and plans that come into play in considering such applications [ER 4.10.8 et seq]. The ExA notes [ER 4.10.24 et seq] that the Kent Minerals and Waste Local Plan refers to the potential for waste management proposals to contribute towards local energy supply. The ExA also notes [ER 4.10.28 et seq] that policies within the Kent Minerals and Waste Local Plan state that, in order to deliver sustainable waste management solutions for Kent, proposals for waste management must demonstrate how waste is being driven to ascend the waste hierarchy.

4.15 The ExA considered the case made by the Applicant in support of WK3 and WKN and notes that the Applicant's starting position [ER 4.10.31] is that the projects would be wholly in accordance with the waste hierarchy and not prejudicial to the achievement of national or local waste management targets. The ExA sets out in detail the Applicant's consideration of waste capacities and sourcing of its fuel supplies which would come from a number of local authority areas in the South East of England in addition to Kent. The Applicant concluded that bringing fuel sources in from outside Kent should not be the subject of an objection. In its overall conclusion, the Applicant stated [ER 4.10.44] that WK3 and WKN would meet objectives of national and local policy through: delivering the waste hierarchy; contributing to self-sufficiency at national level; and being part of a network of facilities from which value would be recovered from appropriate residual wastes.

4.16 The ExA sets out the key issues that were considered during the examination in respect of the application. It notes [ER 4.10. 46 et seq] that both Kent County Council and the South East Waste Planning Advisory Group (an organisation which seeks to coordinate the planning of waste management within the South East of England) objected to the grant of consent for WK3 and WKN. Kent County Council stated that the projects would be counter to the waste hierarchy in diverting waste from more sustainable solutions such as preparation for re-use and recycling [ER 4.10.54]. The Council also stated that existing waste disposal capacity was sufficient to deal with capacity demand – additional waste capacity was not required or expected during the existing contract period [ER 4.10.56].

4.17 The ExA notes [ER 4.10.74 et seq] that there were several matters still outstanding in relation to Waste Hierarchy and Fuel Availability at the end of the examination: Local Policy Principles; Waste Hierarchy; Energy Production; the Relevance of the National Policy Statements to WK3; and the Kent Minerals and Waste Local Plan Policy. In its conclusion on the Waste Hierarchy and Fuel Availability, the ExA weighs up the relevant considerations that have been presented by the Applicant, Kent County Council, the South East Waste Planning Advisory Group and other Interested Parties. The ExA sums up its overall position in relation to WK3 and WKN as follows:

Wheelabrator Kemsley K3 [ER.4.10.139 et seq]

4.18 While Kent County Council submits that there is no need in Kent for additional waste capacity for the period of the Kent Minerals and Waste Local Plan (up to 2030) and that neither WK3 nor WKN should benefit from the National Policy Statements' presumption in favour of energy development infrastructure, the Applicant submits that both projects are important and relevant to meeting a number of critical national needs including on net zero and waste management. The ExA notes that WK3 would, in addition to generating electricity, also provide steam and heat to local customers which is a factor in its favour. The ExA's overall conclusion is that the need for WK3 should carry significant weight in the decision-making process and the small increase in the proposed generating capacity with related increase in waste throughput would not prejudice the principles of sourcing waste locally and aiming for self-sufficiency.

Wheelabrator Kemsley North [ER 4.10.142 et seq]

4.19 The project would contribute 42MW of electricity to the electricity grid. Whilst noting this, the ExA states that the Applicant has not provided robust arguments to support the new plant and that there is no proven need for it to be located in Kent. WKN would be inconsistent with the Kent Mineral and Waste Local Plan and the revisions to it that were the result of the 'Early Partial Review' carried out on the Plan. (The Early Partial Review is an independent report carried out by the Planning Inspectorate which checks whether local plans are 'sound'.) The ExA considered that WKN did not accord with paragraph 2.5.70 of NPS EN-3 as it was not in compliance with the Kent Minerals and Waste Local Plan and there was no evidence provided as to why an exception should be made. Following on from that, WKN would not satisfy the statement in paragraph 2.2.4 of NPS EN-1 that the planning system should provide a framework which permits the construction of the infrastructure needed in the place where it is acceptable in planning terms. Finally, the ExA noted that WKN would be in conflict with the National Planning Policy for Waste because it would put at risk the achievement of revised recycling and composting targets in the Kent Minerals and Waste Local Plan.

4.20 The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Air Quality

4.21 The ExA points out [ER 4.11.1 et seq] that the National Policy Statements and the National Planning Policy Framework include the policy considerations that should

be taken into account in determining the acceptability of proposed developments in relation to impacts on air quality. The National Policy Statements acknowledge that the construction, operation and decommissioning of energy infrastructure can lead to emissions to air which have the potential to adversely impact human health as well as protected habitats and species and the wilder environment. The ExA also notes that the Swale Local Plan includes a policy which sets out to address climate change through, among other things, the management of emissions.

4.22 The ExA notes [ER 4.11.8 et seq] the Applicant provided a detailed assessment of potential air quality impacts arising from the construction and operation of WK3 and WKN as part of its application for development consent.

4.23 The Applicant assessed that during the construction of WKN, the impacts of dust emissions and emissions from construction traffic would be low as a result of mitigation and utilisation of best practices. The Applicant's assessment of potential impacts from the operation of WKN was that the design of the facility, including the use of a 90-metre-tall emissions chimney would ensure that any pollutant concentrations would be adequately dispersed before they reached ground level. A 'Continuous Emissions Monitoring System' would ensure emissions would be controlled and regulated under an Environment Agency permit. The impacts of operational traffic were assessed as being negligible.

4.24 During the examination of the Application, the ExA asked questions of the Applicant and other Interested Parties about a range of air quality and emissions topics [ER 4.11.18 et seq]. The ExA notes that the Statement of Common Ground between the Applicant and Natural England set out agreement between the two parties on the absence of significant adverse effects arising from emissions linked to the construction and operation of WK3 and WKN. However, Kent County Council and Swale Borough Council both expressed concerns about potential impacts arising from WK3 and WKN but the ExA notes that no evidence was provided about the projects exceeding local Air Quality Objectives.

4.25 In its conclusion [ER 4.11.26 et seq], the ExA states that appropriate mitigation measures would be put in place to avoid any significant adverse impacts on air quality arising from WK3 and WKN either on their own or in-combination with other developments. WK3 and WKN would, therefore, accord with national and local policies as regards to air quality. The Secretary of State sees no reasons to disagree with the ExA's conclusions in this matter.

Archaeology and Cultural Heritage

4.26 The National Policy Statements and the National Planning Policy Framework set out the policy considerations that should be taken into account in determining the acceptability of proposed developments in relation to archaeological and cultural heritage. The ExA [ExA 4.12.6] also notes the policies in the Swale Local Plan which seek to conserve and enhance the historic environment and prevent adverse effects on Scheduled Monuments and their setting.

4.27 The ExA considered the potential impacts of WK3 and WKN on archaeology and cultural heritage during the examination of the Application. The ExA notes that

there would be no external changes to WK3 and that the Applicant states there are no designated heritage assets within the site of the two projects although there are a number of listed buildings at a minimum of 1 km distance from the development site. The Applicant's Environmental Statement [ER 4.12.7 et seq] sets out that no listed buildings within 3km of the development site would experience more than a minor adverse impact [ER 4.12.16]. In addition, the Environmental Assessment set out that the in-built mitigations of WK3 and WKN projects would limit any effects on designated heritage assets. Finally, the Environmental Statement also considered the cumulative impacts of WK3 and WKN with other relevant projects and concluded there would be no significant effects.

4.28 The ExA notes that no significant concerns about impacts on cultural heritage assets were raised during the examination of the Application. However, Historic England (the statutory adviser on all matters relating to the historic environment and its heritage assets) raised the likelihood that WK3 and WKN would be visible across a wide area and could affect the significance of some heritage assets located some distance away from them. Historic England did, however, agree with the Applicant that any harm would be low level and might, therefore, be found to be outweighed by the benefits of the projects [ER 4.12.22 et seq]. Kent County Council also made representations to the examination suggesting that a Written Scheme of Investigation should be produced by the Applicant which should be agreed with the Council before any works commenced. This was included as a Requirement in the development consent order recommended to the Secretary of State by the ExA.

4.29 In assessing potential impacts on archaeological and cultural heritage, the ExA concludes [ER 4.12.29 et seq and 6.2.38 et seq] that there would be no significant effects on archaeological or heritage assets from the construction, operation or decommissioning of WK3 and WKN (including on the setting of any Scheduled Monument, listed building or other designated heritage asset). All impacts were addressed in a way which complies with the relevant sections of the National Policy Statements and the local development plan.

4.30 The Secretary of State notes the Infrastructure Planning (Decisions) Regulations 2010 set out the desirability of preserving listed buildings or scheduled monuments or their setting and require him to give substantial importance and weight to these matters. Noting the benefits of WK3 and WKN, he must be satisfied that these outweigh any harm. The Secretary of State must also agree that there is a clear and convincing justification for any harm that would result, both individually and collectively, upon designated heritage assets and that overall, historic environment matters would accord with NPSs EN-1 and EN-3 and do not weigh significantly against the Order being made. The Secretary of State believes that the position set out above meets the requirements of the regulations and that impacts on archaeology and cultural heritage have been minimised to an acceptable level. He sees no reason, therefore, to disagree with the ExA's conclusions.

Ecology

4.31 The National Policy Statements set out that energy infrastructure development should avoid significant harm to ecological interests through mitigation measures and the use of alternatives where possible. The National Policy Statements and the

National Planning Policy Framework set out a range of other considerations that are of relevance in assessing the potential impacts of energy infrastructure projects on those interests. The Kent Minerals and Waste Local Plan and the Swale Local Plan also set out the need for developments to avoid adverse impacts on ecological features.

4.32 The Applicant set out in the Environmental Statement that was submitted with the Application information about a range of international and nationally designated nature conservation sites. While there were no such sites within the boundaries of WK3 and WKN, there were a number of such sites within a reasonable distance (10km), including Swale Special Protection Area ("SPA" – originally designated under the EU Birds Directive) and Ramsar site (designated under the Convention on Wetlands of International Importance), the Medway Estuary and Marshes SPA and Ramsar site, the Thames Estuary and Marshes SPA and Ramsar site, the Outer Thames Estuary SPA and the Queendown Warren Special Area of Conservation ("SAC" – originally designated under the EU Habitats Directive). A number of the nationally designated sites (Sites of Special Scientific Interest) are within one kilometre of WK3 and WKN's site boundaries.

4.33 The Applicant also set out its consideration of potential impacts arising from the construction and operation of WK3 and WKN projects and the mitigations that were proposed to be put in place to avoid or reduce impacts. It noted that during the construction of WKN, there were potential impacts on a number of receptors including on Schedule 1 breeding birds (including, Marsh Harrier, Bearded Tit and Cetti's Warbler) and on reptiles [ER 4.13.17 et seq]. The Applicant also assessed possible impacts from the operation of WKN [ER 4.13.38 et seq] including from drainage run off into sensitive sites, light spill, disturbance from people and plant, recreation and noise and vibration. The Applicant`s assessment of operational impacts also covered [ER 4.13.43 et seq] potential impacts on breeding birds in the vicinity of the projects and on reptiles. Finally, the Applicant looked at the provision of habitat enhancement measures to mitigate impacts on relevant species and set out mitigation measures in its proposed development consent order [ER 4.13.48] including the approval of an 'Environmental Mitigation and Management Plan' and the timing of piling. The Applicant's overall conclusion was there would be no significant effects on sites or species important for the conservation of biodiversity as a result of WK3 and WKN.

4.34 The ExA notes that during the examination, both Natural England (the Government's statutory advisers on nature conservation matters) and Kent County Council agreed with the Applicant that WK3 and WKN would not result in adverse impact on ecological factors. The ExA concluded [ER 4.13.57] that with the mitigation measures proposed by the Applicant in place the construction and development of WK3 and WKN would result in no significant harm to biodiversity conservation interests and the aims of the National Policy Statements, the National Planning Policy Framework and relevant local development policies would be met.

4.35 The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Greenhouse Gases and Climate Change

4.36 The ExA notes the many policy and legislative provisions that address the need to reduce emissions of greenhouse gases.

4.37 The ExA's Report set out that the Applicant assessed the likely significant effects resulting from WK3 and WKN resulting from greenhouse gas emissions and the resultant impact on climate change [ER 4.14.24].

4.38 The Applicant considered the direct greenhouse gas emissions from the operation of WK3 and WKN but also set these against notional emissions figures for emissions from landfill disposal of waste and from conventional electricity generation which would be avoided [ER 4.14.24 et seq]. The Applicant estimated that the annual greenhouse gas emissions from the already consented WK3 project would be 255,000 tonnes of carbon dioxide equivalent per year of operation. However, when greenhouse gas emissions from landfill were taken into account, there would be a net reduction 232,000 tonnes of carbon dioxide equivalent per year of operation. The Applicant predicted that the requested increase in generating capacity and throughput of waste capacity at WK3 would produce a reduction of 60,000 tonnes of carbon dioxide equivalent per year of operation when set against emissions from landfill and from conventional electricity generation which would be avoided. The comparable figures for WKN are 163,000 tonnes of carbon dioxide equivalent per year of operation emitted but an overall reduction in emissions of 64,000 tonnes of carbon dioxide equivalent per year of operation. It is noted [ER 4.14.36] that these reductions in emissions are based on some uncertainties but the overall assessment is that they are of significant benefit.

4.39 During the examination, Kent County Council and Swale Borough Council queried the figures provided by the Applicant because there were too many unknowns in the assessments. The ExA's Report notes [ER 4.14.47] that both councils objected to WK3 and WKN because they were not necessary to meet waste requirements for Kent and conflicted with policies for self-sufficiency and promotion of recycling. Swale Borough Council is recorded as being concerned that the projects would result in significant carbon impacts and lead to an increase in heavy goods vehicle movements within the borough and impact negatively on climate change.

4.40 The ExA's Report [ER 4.4.19 and 4.15.54] refers to the Climate Change Committee's 2020 Progress Report which expresses concerns about the proliferation of energy from waste plants because of its competition with recycling and seeks mechanisms to reduce carbon emissions from those plants.

4.41 In its conclusions [ER 4.14.58 et seq], the ExA sets out that, given the uncertainties in the Applicant's assessment of carbon benefits, the matter should carry little weight in the assessment of WK3 and WKN. However, the ExA notes that, while they are conjoined in the Application, there are differences between the two projects so that the 'environmental burden' of WKN should not apply to WK3. As far as the possibility of waste being diverted from landfill to fuel the two projects is concerned, the ExA considers that the projects would divert a significant proportion of waste from recycling rather than landfill. Finally, with respect to the level of guaranteed heat utilisation for the WK3 and WKN, the ExA considers that, taken together, neither

project is particularly energy efficient. However, the ExA goes on to say that WK3 project provides the greater benefit as a result of its better Combined Heat and Power performance. The Secretary of State sees no reason to take different view to the ExA in this matter.

Ground Conditions

4.42 As indicated above, WK3 project is already operational as an electricity generating station. The ExA, therefore concluded [ER 4.15.5] that it was anticipated that there would be no potential for ground condition-related effects for this part of the Application.

4.43 The ExA set out the Applicant's case that no significant issues had been raised by consultees during the scoping exercise for WKN. There were no concerns raised by Interested Parties during the examination of the Application. A Statement of Common Ground between the Applicant and the Environment Agency agreed that the Applicant`s assessment of ground conditions and potential contamination impacts was appropriate. The Statement of Common Ground also agreed that conditions in the proposed development consent order would ensure appropriate management regimes would be put in place in the event that consent was granted.

4.44 The ExA concluded [ER 4.15.13] that WK3 and WKN were in accord with all relevant legislation and policy and that ground condition matters would be provided for and secured in the proposed development consent order. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Landscape and Visual Impact

4.45 The ExA notes [ER 4.16.5 et seq] the National Policy Statements set out that virtually all nationally significant energy infrastructure projects will have effects on the landscape but that the aim should be to minimise any harm. Any harm should be assessed against the benefits of the projects in question. The National Policy Statements also set out how assessments of landscape and visual impacts should be undertaken. The ExA also notes that the Kent Minerals and Waste Local Plan sets out that proposals for developments should aim to 'protect and enhance the character of the Site's setting'. The Swale Local Plan sets out similar ambitions for development within its area.

4.46 The ExA sets out the Applicant`s assessment of the landscape and visual effects of WK3 and WKN. In respect of the WK3 project, the Applicant stated that the additional generating capacity and waste throughput for which development consent was being sought would not result in any changes to the physical structure of the already consented and constructed development and no additional visual impacts were likely. However, WK3 would be taken into account in considering any 'in-combination' impacts.

4.47 In respect of WKN, the Applicant noted that the site of the proposed development was currently an area of hard-standing which was being used for the storage of construction material for WK3. The site was not currently visible from most of the nearby town of Sittingbourne because of existing developments around the

town. The Applicant assessed that for landscape and townscape character impacts, the constructed WK3 and WKN would become an element of the existing industrial setting provided by the DS Smith Paper Mill and the constructed WK3. However, it also notes that walkers on the Saxon Shore Way (a designated long-distance footpath) would notice the introduction of another industrial element to the landscape although the Applicant's assessment is that this would only lead to a moderate adverse effect for those people. The Applicant set out mitigation measures in its environmental statement but notes that certain features are dictated by function of the development and cannot be mitigated.

4.48 As far as the cumulative visual and landscape impacts of WK3 and WKN projects are concerned, the Applicant's view is that, while there would be increased visibility with some substantial adverse impacts for walkers using the Saxon Shore Way, the contribution of the projects would vary between a moderate adverse effect to negligible.

4.49 During the examination, the ExA noted that no significant matters of concern about visual and landscape impacts were raised by Interested Parties [ER 4.16.32]. Nonetheless, the ExA did pursue a large number of matters with the Applicant and other parties [ER 4.16.33 et seq]. The ExA also considered the Local Impact Report submitted by Swale Borough Council [ER 4.16.36 et seq] which noted the possible visibility of WK3 and WKN albeit as part of a wider industrial scene. The ExA also noted the unsigned and undated draft Statement of Common Ground between Swale Borough Council and the Applicant and a submission by the Council during the examination which stated that WK3 and WKN would be unlikely to result in significant adverse visual or landscape character effects [ER 4.16.41]. Finally, the ExA considered the potential impact of the lighting at WK3 and WKN [ER 4.16.42 et seq] and noted that this would lead to an intensification of baseline conditions in the vicinity of the projects when combined with the lighting at the existing developments in the area.

4.50 The ExA's conclusions [ER 4.16 46 et seq] were that while WK3 and WKN would give rise to adverse impacts on visual and landscape receptors, the overall impact would at its worst be moderately adverse (for walkers on the Saxon Shore Way). The ExA also concluded that there would be no significant landscape effects as a result of WKN during its construction, operation or decommissioning. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Noise and Vibration

4.51 The ExA notes [ER 4.17.1 et seq] that the National Policy Statements and the National Planning Policy Framework set out relevant matters for the assessment and consideration of noise and vibration impacts from nationally significant energy infrastructure noting that excessive noise can have adverse impacts on human health as well as on wildlife and biodiversity.

4.52 The ExA also notes that the Applicant predicted that there would be no significant changes to noise emissions as a result of WK3 and WKN (including from increases in levels of traffic associated with them).

4.53 During the examination, the ExA sought to clarify the potential sources of noise, what the impacts might be and how they could be mitigated. The ExA draws attention to the draft Statement of Common Ground between Swale Borough Council and the Applicant which sets out mitigation measures that would be included in any development consent order that the Secretary of State might issue and records the Council's position of no objection to WK3 and WKN in respect of their potential noise impacts [ER 4.17.12 et seq].

4.54 In its conclusion [ER 4.17.22 et seq], the ExA sets out that it found there would be no significant impacts arising from the construction and operation of WK3 and WKN projects and that the projects would comply with the National Policy Statements and the National Planning Policy Framework in respect of noise and vibration. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Traffic and Transport

4.55 The National Policy Statements acknowledge that traffic movements into and out of nationally significant infrastructure projects during its development life cycle can have a wide variety of impacts on the surrounding transport infrastructure. However, the National Policy Statements also note that it is possible to mitigate those impacts. The National Planning Policy Framework sets out that development should only be refused on traffic and transport grounds if there would be unacceptable impacts on road safety or on the road network more generally. Both Kent County Council's fourth Local Transport Plan and Swale Borough Council's Local Plan and Swale Borough Council's draft Transportation Strategy 2014 – 2031 include matters that are potentially impacted by the increase in traffic density arising from WK3 and WKN.

4.56 The ExA notes [ER 4.18.10 et seq] that the Applicant submitted an assessment of potential traffic impacts arising from WK3 and WKN as part of the environmental statement that accompanied its application for development consent. The assessment covers a range of transport links including roads, footpaths and local rail and bus routes. The Applicant notes that WK3 and WKN, particularly if operated together would lead to an increase in traffic flow movements in the vicinity of the plants. However, the Applicant's overall conclusion was that [ER 4.18.37] WK3 and WKN would not result in an unacceptable or severe impact on the transport network.

4.57 The question of potential impacts of WK3 and WKN on traffic and transport matters with Highways England and Kent County Council (the Local Highways Authority) both raising concerns in relation to the 'Strategic Road Network' [motorways and major 'A' roads] and local routes respectively. The concerns related to the increase in the number of Heavy Goods Vehicle movements along the already congested local and strategic road network that would result from the increase in waste throughput at WK3 and the operation of the new WKN project. There would also be impacts from the transport arrangements necessary to remove Incinerator Bottom Ash from WK3 and WKN for disposal.

4.58 The ExA considered the traffic and transport issue in great detail during the examination with a number of questions being asked of the Applicant, Highways

England and Kent County Council to seek clarification on relevant issues related to potential impacts and mitigations. If both WK3 and WKN were consented and developed to their requested generating and waste throughput capacities, there would be a total increase of 318 additional Heavy Goods Vehicle movements per day in the vicinity of the projects and on the wider road network. The individual daily increases would be 68 additional movements for WK3 and 250 additional movements for WKN [ER 4.18.55]. This total would be in addition to the 348 daily movements arising from the existing consented WK3 project. It was also noted that other infrastructure developments in the vicinity of WK3 and WKN – particularly proposals for a new housing development – that would also impact on the local and strategic road networks with the potential to adversely affect road congestion (the carrying capacity at certain important road junctions would be exceeded) and road safety.

4.59 Kent County Council and Highways England considered that mitigation measures to limit the numbers of Heavy Goods Vehicles on the road network at particular points during the day was necessary to minimise impacts on congestion and road safety. These matters were outstanding at the end of the examination.

4.60 The ExA concluded [ER 4.18.79 et seq] that with a number of mitigation measures in place then WK3 and WKN would not give rise to adverse impacts on the Strategic Road Network. The mitigation measures that would apply are:

- a prohibition on the timing of Heavy Goods Vehicle movements at the M2 Junction 5 and A249 Grovehurst Road traffic junctions until such time as suitable upgrades to those junctions had been out in place;

- the prohibitions should continue to apply until the Applicant can demonstrate an absence of an unacceptable impact on the Strategic Road Network which can only happen once the road improvements are in place and WK3 and WKN have been operational for a minimum of twelve months;

- there would be no need to restrict further the existing limitation of Heavy Goods Vehicle movement numbers for WK3. However, there should be limits on the number of Heavy Goods Vehicle movements in relation to the increased generation and waste throughout for WK3 project; and

- approval for the relevant local planning authority would be needed for construction and operational travel management plans.

4.61 The ExA's overall conclusion [ER 4.18.90] is that mitigation for impacts would ensure that WK3 and WKN would accord with the requirements of the National Policy Statements, local development plan and other policies.

4.62 The ExA notes that there was no completed Statement of Common Ground between the Applicant and Highways England at the close of the examination and that this omission adversely affected the conduct of the examination by making it difficult to know which key issues were still in dispute and how those issues might be resolved. The Applicant did submit a 'working draft' of a Statement of Common Ground with Highways England to the ExA on the last afternoon of the examination along with a 'Position Statement on Highways Matters' but the documents were not accepted into

the Examination as the ExA decided that there would be no opportunity for Interested Parties to review them and provide comments.

4.63 The Applicant subsequently wrote to the Secretary of State drawing his attention to the existence of the two documents and asking that they should be taken into account in the Secretary of State's decision-making. The Applicant also asked whether it would be asked to continue to discussions with Highways England to try to seek agreement on some of the key issues. The Applicant copied its correspondence to Highways England which responded that it was unable to enter into any further discussions with the Applicant and that the draft Statement of Common Ground did not reflect Highways England's position.

4.64 The Secretary of State does not consider that the correspondence from the Applicant and the response from Highways England add any new information to that which is available to the Secretary of State from the ExA Report.

Water Environment

4.65 The National Policy Statements and the National Planning Policy Framework set out policy considerations that should be taken into account by developers and decision-makers in relation to flood risks to and arising from nationally significant energy infrastructure projects and in relation to potential impacts on water courses and other resources. In relation to flood risk, the general presumption is to avoid locating energy infrastructure in areas at highest risk of flooding: all energy projects with an area greater that 1 hectare in Flood Zone 1 and all proposals for energy projects in Flood Zones 2 and 3 should be accompanied by a Flood Risk Assessment. [The Flood Zone Level reflects the probability of a flooding event occurring over a defined geographical area, with Flood Zone 1 being the lowest risk category] [ER 4.19.2 et seq].

4.66 The ExA [ER 4.19.8 et seq] notes that the Applicant assessed that the overall location of the WK3 and WKN would fall into each of the Flood Zone categories, however much of the land on which the developments would be located had been elevated as part of previous construction work and so most of it now was categorised as Flood Zone 1. Where parts of the development site are still in Flood Zone 2 or 3, then mitigation is in place to limit the impacts of flooding on and from the proposed developments. As indicated above, the WK3 facility has already been constructed so has already been assessed for its flood risk potential. However, for WKN, the Applicant's assessment is that with mitigation measures employed, there would be a minor adverse – not significant – impact on flood risk.

4.67 The ExA notes [ER 4.19.25] that there were no concerns raised during the examination about the Applicant's Flood Risk Assessment. It also notes [ER 4.19.26 et seq] that the Environment Agency considered the potential flood risk to be acceptable and that WK3 and WKN would not pose a risk to surface water quality and the nearby River Swale provided that appropriate mitigation measures were included in any development consent order which might be granted by the Secretary of State. Similarly, the Environment Agency agreed that WK3 would not pose a risk to groundwater, while the WKN would manage any potential contamination through mitigation measures in the development consent order [ER 4.19.30].

4.68 The ExA asked a number of questions of the Applicant and other parties to the examination about the 'water environment' and about the mitigation measures that were being proposed by the Applicant [ER 4.19.31]. In particular, there was an exchange of information with the Marine Management Organisation and the Environment Agency about the permitting regime necessary for two water outfall pipes that would take clean water from WK3 and WKN into the River Swale. There was agreement that the existing Marine Licences that covered the two outfall pipes would remain in place (so there would be no deemed Marine Licence within any development consent order that might be issued by the Secretary of State) and discharges from the pipes would be covered by an Environmental Permit issued by the Environment Agency.

4.69 The ExA concluded [ER 4.19.44 et seq] that for flood risk, WK3 and WKN would be acceptable and would comply with relevant policies in the National Policy Statements, the National Planning Policy Framework and local development plan policies. In addition, the Applicant had demonstrated compliance with the provisions of the Water Framework Directive and that there would be no impacts on designated sites. Further, the potential impacts of WKN on the water environment would be avoided by the use of mitigation measures including the design of the project. The ExA's overall conclusion was that WK3 and WKN would comply with all relevant national and local policy requirements. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Submissions to the Secretary of State after Receipt of the ExA's Report

4.70 In addition to the Applicant submitting representations about traffic and transport issues to the Secretary of State after receipt of the ExA Report (see paragraphs 4.66 – 4.67 above), it also asked the Secretary of State to consider additional matters related to waste management. These matters were submitted to the ExA at the very close of the examination but as with the representations about traffic and transport, the ExA declined to accept them into the examination because Interested Parties would not have had a chance to review them or offer comments.

4.71 The Applicant also wrote to the Secretary of State on 27 January 2021 to inform him that the Environment Agency was minded to grant an Environmental Permit for WKN subject to any final comments from Natural England. (The Applicant notes that Natural England did not raise any objections to the project during the examination.)

4.72 While noting the late representations above (and the one set out at paragraphs 4.63 – 4.64 above about Traffic and Transport), the Secretary of State does not consider that these late representations materially add to the information that was already available through the ExA. The Secretary of State has not, therefore, taken them into account in the decision-making process.

5. **Findings and Conclusions in Relation to Habitats Regulations Assessment**

5.1 The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") require the Secretary of State to consider whether the proposed

Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site forming part of the national site network as defined in the Habitats Regulations (a "protected site"). If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the project if he has ascertained that it will not adversely affect the integrity of a protected site. This process is collectively known as a Habitats Regulations Assessment.

5.2 The preparation of the Habitats Regulations Assessment ("HRA") that is published alongside this decision letter was prepared by environmental specialists in BEIS. The HRA concludes that a likely significant effect cannot be ruled out in respect of two protected sites, the Swale SPA and Ramsar site, when considered alone. No potential in-combination likely significant effects were identified. The potential impact pathways identified were changes to air quality during construction and decommissioning, and noise and visual disturbance and changes to water quality during construction and operation. It is, then, necessary to consider whether the proposed WK3 and WKN projects alone would have an adverse effect on the integrity of those sites. An appropriate assessment was, therefore, undertaken to determine whether an adverse effect on the sites could be ruled out in light of the sites' conservation objectives. The overall conclusion of the assessment was that the proposed Development would have no adverse effects on the integrity ("AEoI") of any protected sites subject to the implementation of suitable mitigation. The Secretary of State does not, therefore, consider that there would be any breach of his duty under the Habitats Regulations in the event he was to grant development consent for WK3 [and WKN].

5.3 The Secretary of State also notes that the ExA also concluded that the proposed Development, subject to the inclusion of suitable mitigation in any development consent order that might be granted, would not have any AEoI on the integrity of any protected sites. The Secretary of State further notes that neither Natural England nor any other Interested Parties disagreed with the ExA in this matter [ER 5.7.1 et seq]

6. The Secretary of State's Consideration of the Planning Balance

6.1 All nationally significant energy infrastructure developments will have some potential adverse impacts. In the case of WK3 and WKN, most of the potential impacts have been assessed by the ExA as being acceptable subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely. As set out above, the ExA determined that consent should be granted for WK3 only. The adverse impacts for the WK3 project did not outweigh the significant weight attaching to the need case established by the National Policy Statements.

6.2 However, the ExA's consideration of all the issues, particularly in respect of arguments about where the incineration of waste stood in the waste hierarchy and how this related to adopted policies in relevant local plans, led to the conclusion that WKN, while offering some benefits (particularly from the 42MW of electricity that would be generated), did not accord with the relevant provisions in the National Policy

Statements, the National Planning Policy Framework and in relevant local plans. The ExA recommended, therefore, that WKN should not benefit from the grant of consent.

6.3 As set out in above, sections 104 and 105 of the Planning Act 2008 set out the procedures to be followed by the Secretary of State in determining applications for development consent where National Policy Statements have and do not have effect. In both cases, the Secretary of State has to have regard to a range of policy considerations including the relevant National Policy Statements and development plans and local impact reports prepared by local planning authorities in coming to a decision. However, for applications determined under section 104, the primary consideration is the policy set out in the National Policy Statements, while for applications that fall to be determined under section 105, it is local policies which are specifically referenced although the National Policy Statements can be taken into account as 'important and relevant considerations'.

6.4 The Secretary of State adopts a different approach to the ExA's in this matter and is of the view that the whole application (including the benefits and impacts of WKN) fall to be considered under section 104 of the Planning Act 2008. This means that in the consideration by the Secretary of State, more weight has been given to the National Policy Statements. However, the Secretary of State does not consider that this different approach to the planning process results in a different conclusion to that reached by the ExA, namely that development consent should not be granted for WKN and that the benefits of WKN are outweighed by the non-compliance with policies elsewhere, in particular, the policies regarding compliance with the NPS EN-1 and the policies referencing both the waste hierarchy and local waste management plans in NPS EN-3.

6.5 The determination of applications for development consent for nationally significant infrastructure projects is a balancing exercise and the weight afforded to different elements of the matrix of impacts and benefits may affect the overall conclusion. The ExA identifies that there are undoubtedly concerns that WKN would have adverse impacts on local and regional targets for moving waste up the waste hierarchy. As noted, the ExA has had regard to these matters in framing its recommendation. However, the Secretary of State is not bound to follow that recommendation if he feels that the evidence presented to him can support a different conclusion.

6.6 The Secretary of State has considered the arguments in the ExA Report together with the strong endorsement of developments of the type that is the proposed Development. He notes the ExA's comments that WK3's anticipated provision of steam to nearby industrial facilities is a further benefit in its favour. He considers that the overall planning balance supports the grant of consent for the increase in generating capacity and an increase in waste-fuel throughput at WK3. As noted, whilst taking a different approach to the application of sections 104 and 105 of the Planning Act 2008 and consequently to the application of the planning balance in considering WKN, the Secretary of State nevertheless agrees with the ExA's conclusion that even though there are benefits from WKN, these do not outweigh the adverse impacts. The Secretary of State does not, therefore, consider that development consent should be granted for WKN.

7. Other Matters

Human Rights

7.1 The Applicant has not requested powers of compulsory acquisition as part of the Application. The Secretary of State has considered the potential infringement of human rights in relation to the proposed Development and notes there were no human rights concerns raised during the Examination. He has no reason to believe, therefore, that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Equality Act 2010

7.2 The Equality Act 2010 includes a public sector equality duty ("PSED"). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Planning Act 2008; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships[1]; pregnancy and maternity; religion and belief; and race.) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.3 In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

7.4 The ExA states [ER 8.2.4] that it had due regard to the relevant provisions of the Equality Act 2010 during the examination and in writing its Report. It concluded that the WK3 project "would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic" and on that basis "there would be no breach of the PSED".

7.5 The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing the Application and can conclude that the WK3 project will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that neither the grant nor refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

[1] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Natural Environment and Rural Communities Act 2006

7.6 The Secretary of State has considered the Secretary of State's duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006, where he is required 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.

7.7 The Secretary of State is of the view that the ExA Report, together with the environmental impact analysis, considers biodiversity sufficiently to inform his decision to grant consent to the proposed Development.

Climate Change Act and the Net Zero Target

7.8 On 2 May 2019, the Climate Change Committee recommended the UK reduce greenhouse gas emissions by net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline.

7.9 The Secretary of State notes the Energy White Paper states that National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has lessened the need for development of the sort represented by WK3 which is, therefore, still in accordance with the National Policy Statements.

8. Modifications to the draft Order

8.1 The ExA records that there were a number of changes to the development consent order submitted by the Applicant as part of its Application as it progressed through the examination process. Many of the changes were minor in nature but others were more substantive. All potential changes the development consent order were subject to discussion and consultation during the examination. The ExA recommended draft DCO contained at Annex D of the report is on the basis that only the K3 plant should be granted development consent. This is the version that the Secretary of State has adopted as the basis for the consented development consent order.

8.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to confirm with the current practice for statutory instruments and changes in the interests of clarity and consistency. In particular:

- an amendment to Article 3 to confirm that the undertaker is granted development consent for the authorised development within the Order limits;

- a provision (article 7) has been included confirming that the provisions for the benefit of the order have effect for the undertaker unless the benefit is transferred in accordance with article 8;

- under article 8, the undertaker must notify the Secretary of State and the relevant planning authority at least 14 days before any transfer if no consent is otherwise required;

- the provision in relation to human remains has been removed on the basis that it does not appear to be relevant or necessary in relation to WK3;

- a provision in relation to the service of notices has been added (article 19);

- a reference to the waste capacity of WK3 has been included in the description of the generating station in Schedule 1.

9. Challenge to decision

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

10. Publicity for decision

10.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Yours sincerely

Gareth Leigh

Gareth Leigh
Head of Energy Infrastructure Planning

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

https://infrastructure.planninginspectorate.gov.uk/projects/south-east/wheelabrator-kemsley-generating-station-k3-and-wheelabrator-kemsley-north-wkn-waste-to-energy-facility/

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

APPENDIX 5

Gatwick Airport Northern Runway documents comprising:	
Appendix 5A	Environmental Statement Chapter 21
Appendix 5B	Examining Authority Report
Appendix 5C	Decision Letter

APPENDIX 5A

ENVIRONMENTAL STATEMENT CHAPTER 21

Gatwick Airport Northern Runway Project

Environmental Statement
Chapter 21: Summary of Effects

Book 5

VERSION: 1.0

DATE: JULY 2023

Application Document Ref: 5.1

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APFP Regulations 5(2)(a) **Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009**

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21 Summary of Effects

21.1. Introduction

21.1.1 This chapter provides a summary of the likely significant effects of the proposal to make best use of Gatwick Airport's existing runways and infrastructure (referred to within this report as 'the Project'). As such, this chapter only identifies likely effects of the Project where these are considered significant in Environmental Impact Assessment (EIA) terms.

21.1.2 Full details of the findings of the EIA process undertaken to date are provided in the individual topic chapters (Chapters 7 to 19) of the Environmental Statement (ES) (Doc Ref. 5.1). A table of the adverse and beneficial effects, including those predicted not to be significant, has been provided at the end of each topic chapter of the ES.

21.1.3 A list of the mitigation measures relied upon for the purposes of the assessment for each topic chapter of the ES, including the mechanism through which these are to be secured, is provided in **ES Appendix 5.2.3: Mitigation Route Map** (Doc Ref. 5.3).

21.2. Methodology and Assessment Criteria

21.2.1 The following section provides a summary of the methodology and assessment criteria used for the EIA. A full description of the approach to environmental assessment is provided in **ES Chapter 6: Approach to Environmental Assessment** (Doc Ref. 5.1).

Assessment Years

21.2.2 The approach to assessment has incorporated the use of identified assessment periods to allow for evaluation of the likely effects during the construction process and during the operation of the Project. The indicative construction programme is described in Section 5.3 of **ES Chapter 5: Project Description** (Doc Ref 5.1). The following assessment periods (also referred to in this ES as assessment years) have been used to inform this ES:

- 2024 to 2029: represents the anticipated initial construction period prior to opening of the altered northern runway;
- 2029: represents the anticipated opening year of the altered northern runway (and therefore the first point at which effects arising from its operation would occur);
- 2032: an interim assessment year (and anticipated surface access improvements opening year);
- 2038: represents the anticipated year in which the development works proposed as part of the Project would be completed; and
- 2047: represents the long term forecast year and to meet a specific requirement of guidance in the Design Manual for Roads and Bridges to assess impacts 15 years after the last of the key highways works associated with the Project are due to be completed.

21.2.3 For the purposes of this ES, the assessment concentrates on the period 2024 to 2047, with topics modelling 2029, 2032, 2038 and 2047 as the primary assessment years.

21.2.4 For some of the assessment years (including the airfield opening year (2029) and the interim assessment year (2032)), construction activities would occur alongside operation of the altered northern runway, and this has been taken into account in the assessments.

21.2.5 In some cases, individual topic chapters may also identify additional years to be included in the assessment work, in accordance with topic-specific good practice guidance.

Sensitivity or Importance of Receptors

21.2.6 Sensitivity has been defined within each of the topic chapters of the ES (Doc Ref. 5.1). The receptor sensitivity levels have been defined as set out in Table 21.2.1, and further clarified in **ES Chapter 6: Approach to Environmental Assessment** (Doc Ref. 5.1).

Table 21.2.1: Definitions of Receptor Sensitivity (based on Highways England *et al.*, (2020))

Sensitivity	Typical Descriptors
Very High	Very high importance and rarity, international scale and very limited potential for substitution.
High	High importance and rarity, national scale and limited potential for substitution.
Medium	High or medium importance and rarity, regional scale, limited potential for substitution.
Low	Low or medium importance and rarity, local scale.
Negligible	Very low importance and rarity, local scale.

Term

21.2.7 Where appropriate, chapters have referred to temporary and permanent impacts (where temporary impacts are those that last for a limited period of time).

21.2.8 The impacts related to land take have been assessed as part of the construction process within the year that the impact would occur.

21.2.9 These impacts could be considered either temporary or permanent depending on whether the land would be restored following completion of the construction period.

21.2.10 With respect to the duration of temporary impacts, the following has been used as a guide within this assessment, unless defined separately within the topic chapters:

- Short term: A period of months, up to one year;
- Medium term: A period of more than one year, up to five years; and
- Long term: A period of greater than five years.

Magnitiude of Impact

21.2.11 Magnitude has been defined within each of the topic chapters of the ES (Doc Ref. 5.1). The magnitude levels have been defined as set out in Table 21.2.2 below

Table 21.2.2: Definitions of Impact Magnitude (based on Highways England *et al.*, 2020)

Magnitude	Typical Descriptors
High	Loss of resource and/or quality and integrity of resource; severe damage to key characteristics, features and elements (Adverse).
	Large scale or a major improvement of resource quality; extensive restoration or enhancement; major improvement of attribute quality (Beneficial).
Medium	Loss of resource but not adversely affecting the integrity; partial loss of/damage to key characteristics, features or elements (Adverse).
	Benefit to, or addition of, key characteristics, features or elements; improvement of attribute quality (Beneficial).
Low	Some measurable change in attributes, quality or vulnerability; minor loss of, or alteration to, one (maybe more) key characteristics, features or elements (Adverse).
	Minor benefit to, or addition of, one (maybe more) key characteristics, features or elements; some beneficial impact on attribute or a reduced risk of negative impact occurring (Beneficial).
Negligible	Very minor loss or detrimental alteration to one or more characteristics, features or elements (Adverse).
	Very minor benefit to or positive addition of one or more characteristics, features or elements (Beneficial).
No change	No loss or alteration of characteristics, features or elements; no observable impact in either direction.

Significance of Residual Effects

21.2.12 Table 21.2.3 sets out the general approach used to inform the assessment of significance based on the sensitivity of the receptor and the magnitude of impact.

Table 21.2.3: Assessment Matrix

Sensitivity	Magnitude of Impact				
	No Change	Negligible	Low	Medium	High
Negligible	No change	Negligible	Negligible or Minor	Negligible or Minor	Minor
Low	No change	Negligible or Minor	Negligible or Minor	Minor	Minor or Moderate
Medium	No change	Negligible or Minor	Minor	Moderate	Moderate or Major

High	No change	Minor	Minor or Moderate	Moderate or Major	Major or Substantial
Very high	No change	Minor	Moderate or Major	Major or Substantial	Substantial

21.2.1 Where a range of significance levels are presented, the final assessment for each effect is based upon expert judgement. In all cases, the evaluation of receptor sensitivity or value, impact magnitude and significance of effect has been informed by professional judgement and is underpinned by narrative to explain the conclusions reached.

21.2.2 The significance of effect has been determined post-mitigation (ie residual effects), including embedded and further mitigation measures, where appropriate. Unless set out otherwise in each topic chapter of the ES (Doc Ref. 5.1), effects assessed as moderate or above are considered to be significant within the assessment.

21.3. Summary Tables

21.3.1 The summary tables below provide a summary of the likely adverse and beneficial residual effects of the Project identified within each topic chapter of the ES, where these are considered significant in EIA terms.

21.3.2 Significant adverse and beneficial residual effects identified within each of the topic chapters of the ES have been grouped according to the assessment years in which they occur.

21.3.3 Full details of the findings of the EIA process undertaken to date are provided in the individual topic chapters (Chapters 7 to 19) of the ES (Doc Ref 5.1).

21.4. Initial Construction Period (2024-2029)

21.4.1 Table 21.4.1 provides a summary of the likely significant adverse and beneficial residual effects of the Project identified during the initial construction period (2024-2029) within each topic chapter of the ES.

Table 21.4.1: Summary of Significant Effects identified during the Construction Period (2024-2029) in the ES

Topic	Receptor	Receptor Sensitivity*	Description of Impact	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Construction Period (2024-2029)						
Historic Environment	Buried archaeological remains (Museum Field flood compensation area)	Up to Medium	Complete loss or substantial damage resulting from reduction in ground level	Permanent	Up to High	Up to Major Adverse
	Deposits of geoarchaeological interest (flood compensation area– Car Park X	Low	Complete loss or substantial damage resulting from ground reduction	Permanent	Up to High	Up to Moderate Adverse
	Buried archaeological remains (new water treatment works)	Up to Medium	Complete loss or damage resulting from excavation and construction	Permanent	Up to High	Up to Major Adverse

Topic	Receptor	Receptor Sensitivity*	Description of Impact	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Construction Period (2024-2029)						
	Buried archaeological and geoarchaeological remains (environmental mitigation land at Museum Field extending north as far as Charlwood Road)	Up to Medium	Planting, scrapes, replacement habitats etc	Permanent	High	Up to Major Adverse
Landscape, Townscape and Visual Resources	Mole Valley Open Weald	Medium	Construction period impact on landscape character	Long term, temporary	Negligible (wider character area) to High (locally)	Negligible to Major Adverse
	Occupiers of Hilton Hotel	Medium	Visual, construction and operational period	Medium term, temporary and long term permanent	High to Medium	Major to Moderate Adverse
Ecology and Nature Conservation	Semi-natural broadleaved woodland and mature broadleaved trees	National	Loss of woodland	Long term	Medium	Moderate Adverse
	Hedgerows	National	Reconfiguration of airport facilities	Long term	Medium	Moderate Beneficial

Topic	Receptor	Receptor Sensitivity*	Description of Impact	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Construction Period (2024-2029)						
	Watercourses (River Mole and Gatwick Stream)	County (River Mole	Creation of a new section of river channel providing high value habitats	Long term	Medium	Moderate Beneficial
	Broadleaved plantation woodland and associated scrub	Local	Loss of woodland and scrub and loss of habitat connectivity	Long-term	High	Moderate Adverse
	Breeding bird assemblage including species of conservation interest (confirmed or possible)	County (other)	Loss of suitable nesting sites for a range of species	Long-term	Medium	Moderate Adverse
	Assemblage of other bat species	Local	Diversion of River Mole and lead-in works for the surface access improvements; construction of surface access satellite contractor compound; and	Long term	High	Moderate Adverse

Topic	Receptor	Receptor Sensitivity*	Description of Impact	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Construction Period (2024-2029)						
			South Terminal and North and South Terminal improvement works			
	Terrestrial Invertebrate assemblage	County	Habitat loss	Medium term	Medium	Moderate Adverse
Geology and Ground Conditions	No likely significant residual effects identified					
Water Environment	Surface Water – Water Quality – De-icer - River Mole	High	New de-icer treatment system providing additional treatment	Long term	Moderate Beneficial	Moderate Beneficial
	Surface Water – Water Quality – De-icer - Gatwick Stream	High	New de-icer treatment system discharge	Long term	Moderate Beneficial	Moderate Beneficial
Traffic and Transport	No likely significant residual effects identified					
Air Quality	No likely significant residual effects identified					

Topic	Receptor	Receptor Sensitivity*	Description of Impact	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Construction Period (2024-2029)						
Noise and Vibration	Properties adjacent to the works	Residential (high) and non-residential (various) Noise Sensitive Receptors (NSRs)	Construction noise during daytime and night-time	Short term	Medium. For whole construction period potential for adverse effects at approximately 37 properties	Moderate Adverse
Climate Change	No likely significant residual effects identified					
Greenhouse Gases	No likely significant residual effects identified					
Socio-economics	Construction business and activity within the Local Study Area (LSA)	Medium	Direct employment	Medium	High	Moderate Beneficial
	Construction business and activity within the Functional Economic Market Areas (FEMA)	Low	Direct employment	Medium	High	Moderate Beneficial
Health and Wellbeing	No likely significant residual effects identified					

Topic	Receptor	Receptor Sensitivity*	Description of Impact	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Construction Period (2024-2029)						
Agricultural Land Use and Recreation	Public rights of way & Sussex Border Path	Medium	Temporary diversion or disruption	Medium term temporary	High	Moderate Adverse
	National Cycle Route (NCR) 21	High	Temporary diversion or disruption	Short term temporary	Medium	Moderate Adverse
	Public Open Space Riverside Garden Park	Medium	Temporary disruption to southern fringe of Riverside Garden Park	Long term temporary	Medium	Moderate Adverse
	Public Open Space Church Meadows	Medium	Temporary disruption to southern fringe of Riverside Garden Park	Medium term temporary	Medium	Moderate Adverse

21.5. Construction and Operation 2030-2032

21.5.1 Table 21.5.1 provides a summary of the likely significant adverse and beneficial residual effects of the Project identified from 2030 to 2032 within each topic chapter of the ES.

Table 21.5.1: Summary of Significant Effects identified from 2030 to 2032 in the ES

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
2030 to 2032 (Construction and Operation Effects)						
Historic Environment	Church Road (Horley) Conservation Area (Longbridge Roundabout Highway Improvements)	Medium	Effect on significance of heritage asset	Long term	Up to Medium	Up to Moderate Adverse
	Buried archaeological remains (Car Park B contractor compound)	Up to Medium	Potential loss of or damage to remains from establishment of compound	Permanent	Up to High	Up to Major Adverse
	Buried archaeological remains (environmental mitigation land at Car Park B)	Up to High	Planting, scrapes, replacement habitats etc	Permanent	Up to High	Up to Major Adverse
Landscape, Townscape and Visual Resources	Mole Valley Open Weald Character Area	Medium	Construction /operational period impact on landscape character	Medium term, temporary and long term permanent	High	Major Adverse (day) and Moderate Adverse (night)

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
2030 to 2032 (Construction and Operation Effects)						
	Users of public open space at Riverside Garden Park and Church Meadows Horley	High	Visual, construction period	Medium term, temporary	Medium to Negligible	Major Adverse (locally) Moderate to Negligible (generally)
	Occupiers of Hilton Hotel	Medium	Visual, construction period	Medium term, temporary and long term permanent	High	Moderate to Major Adverse
	Occupiers of number 74 Longbridge Road Horley	High	Visual, construction period	Medium term, temporary	Medium	Major Adverse
Ecology and Nature Conservation	Semi-natural broadleaved woodland and individual broadleaved trees	National	Continued absence of woodland due to new planting being immature	Long-term	Medium	Moderate Adverse
	Broadleaved plantation woodland and associated scrub	Local	Continued absence	Long-term	High	Moderate Adverse
	Breeding birds -Natural Environment and Rural Communities (NERC) Act	County	Loss of suitable nesting sites for a range of species	Long term	Medium	Moderate Adverse

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
2030 to 2032 (Construction and Operation Effects)						
	2006 Species of Principal Importance and Birds of Conservation Concern (BoCC) Red or Amber listed species					
	Assemblage of Bat Species	Local	Loss of semi-natural broadleaved woodland due to Longbridge roundabout improvements	Long-term	High	Moderate Adverse
Geology and Ground Conditions	No likely significant residual effects identified					
Water Environment	Surface Water – River Mole	High	New de-icer treatment system providing additional treatment	Long term	Moderate Beneficial	Moderate Beneficial
	Surface Water – Gatwick Stream	High	New de-icer treatment system discharge	Long term	Moderate Beneficial	Moderate Beneficial
Traffic and Transport	No likely significant residual effects identified					
Air Quality	No likely significant residual effects identified					

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
2030 to 2032 (Construction and Operation Effects)						
Noise and Vibration	West of runway at Ifield Road, Russ Hill, and Partridge Lane. East of the runway at Balcombe Road and Peeks Brooke Lane.	Residential (high) and non-residential (various) NSRs	Air noise disturbance	Permanent	Total 210 people.	Moderate Adverse
	Properties in Charlwood, Charlwood Road, Povey Cross, Lowfield Heath and Rowley Farm	Residential (high) and non-residential (various) NSRs	Ground noise disturbance	Permanent	Approximately 17 properties; Medium	Moderate Adverse
	Charlwood, Lowfield Heath, Rowley Farm	Residential (high)	Ground noise disturbance	Permanent	Approximately 20 properties; Medium	Moderate Adverse
Climate Change	No likely significant residual effects identified					
Greenhouse Gases	No likely significant residual effects identified					
Socio-economic Effects	Construction business and activity within the LSA	Medium	Direct employment	Medium	High	Moderate Beneficial

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
2030 to 2032 (Construction and Operation Effects)						
	Construction business and activity within the FEMA	Low	Direct employment	Medium	High	Moderate Beneficial
	Construction business and activity within the LMA	Medium	Indirect, induced and catalytic employment	Permanent	Medium	Moderate Beneficial
	Business and commercial activity within the FEMA	High	Indirect, induced and catalytic employment	Permanent	Medium	Moderate Beneficial
	Business and commercial activity within the LSE	High	Indirect, induced and catalytic employment	Permanent	Medium	Moderate Beneficial
	Business and commercial activity within the LMA	Medium	Indirect, induced and catalytic employment	Permanent	High	Moderate Beneficial
	Labour Market within the LSA	Medium	Availability of labour	Permanent	High	Moderate Beneficial
	Labour Market within the FEMA	Low	Availability of labour	Permanent	High	Moderate Beneficial
Health and Wellbeing	Health and wellbeing effects from changes in socio-economic factors	Low (general population) High (vulnerable group population)	Operational increase in direct, indirect and induced employment opportunities	Long-term, permanent	Medium	Moderate to Major Beneficial

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
2030 to 2032 (Construction and Operation Effects)						
Agricultural Land Use and Recreation	Public rights of way & Sussex Border Path	Medium	Temporary diversion or disruption	Medium term temporary	Medium	Moderate Adverse
	NCR 21	High	Temporary diversion or disruption	Short term temporary	Medium	Moderate Adverse
	Public Open Space Riverside Garden Park	Medium	Temporary disruption to southern edge of Riverside Garden Park	Long term temporary	Medium	Moderate Adverse
	Public Open Space Church Meadows	Medium	Temporary disruption to southern and western fringes of Church Meadows	Medium term temporary	Medium	Moderate Adverse

21.6. Construction and Operation 2033-2038

21.6.1 Table 21.6.1 provides a summary of the likely significant adverse and beneficial residual effects of the Project identified from 2033 to 2038 within each topic chapter of the ES.

Table 21.6.1: Summary of Significant Effects identified from 2033 to 2038 in the ES

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
2033 to 2038 (Construction and Operation Effects)						
Historic Environment	No likely significant residual effects identified					
Landscape, Townscape and Visual Resources	Occupiers of number 74 Longbridge Road Horley	High	Visual operational period	Long term permanent	Medium	Major Adverse
Ecology and Nature Conservation	Semi-natural broadleaved woodland and mature broadleaved trees	National	Continued absence of habitat	Long term	Medium	Moderate Adverse
	Assemblage of other bat species	Local	Continued reduced area of habitat and reduced connectivity from surface access improvements	Long-term	High	Moderate Adverse
Geology and Ground Conditions	No likely significant residual effects identified					

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
2033 to 2038 (Construction and Operation Effects)						
Water Environment	Surface Water – River Mole	High	New de-icer treatment system providing additional treatment	Long term	Moderate Beneficial	Moderate Beneficial
	Surface Water – Gatwick Stream	High	New de-icer treatment system discharge	Long term	Moderate Beneficial	Moderate Beneficial
Traffic and Transport	No likely significant residual effects identified					
Air Quality	No likely significant residual effects identified					
Noise and Vibration	No likely significant residual effects identified					
Climate Change	No likely significant residual effects identified					
Greenhouse Gases	No likely significant residual effects identified					
Socio-economic Effects	No likely significant residual effects identified					
Health and Wellbeing	No likely significant residual effects identified					
Agricultural Land Use and Recreation	No likely significant residual effects identified					

21.7. Design Year: 2038

21.7.1 Table 21.7.1 provides a summary of the likely significant adverse and beneficial residual effects of the Project identified during the Design Year: 2038 within each topic chapter of the ES.

Table 21.7.1: Summary of Significant Effects identified during the Design Year: 2038 in the ES

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Design Year: 2038						
Historic Environment	No likely significant residual effects identified					
Landscape, Townscape and Visual Resources	No likely significant residual effects identified					
Ecology and Nature Conservation	No likely significant residual effects identified					
Geology and Ground Conditions	No likely significant residual effects identified					
Water Environment	Surface Water - Geomorphology	High	River Mole renaturalised channel works, including re-meandering and restoration of natural	Long-term	Medium Beneficial	Moderate Beneficial

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Design Year: 2038						
			channel morphology, improved floodplain coupling			
	Surface Water - Geomorphology	High	River Mole runway culvert weir to improve low flow conditions through culvert	Long-term	Medium Beneficial	Moderate Beneficial
	Surface Water – River Mole	High	New de-icer treatment system providing additional treatment	Long term	Moderate Beneficial	Moderate Beneficial
	Surface Water – Gatwick Stream	High	New de-icer treatment system discharge	Long term	Moderate Beneficial	Moderate Beneficial
	Flood Risk – Fluvial (offsite)	Very High (Transport Infrastructure) to Medium (Industrial)	Change in flood risk due to encroachment into floodplain	Long-term	Medium Beneficial to No Change	Major Beneficial to No Change
	Flood Risk –Fluvial (on Airport)	Very High to Low	Change in flood risk due to encroachment into floodplain	Long-term	Medium Beneficial to No Change	Major Beneficial to Minor Adverse

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Design Year: 2038						
Traffic and Transport	No likely significant residual effects identified					
Air Quality	No likely significant residual effects identified					
Noise and Vibration	No likely significant residual effects identified					
Climate Change	No likely significant residual effects identified					
Greenhouse Gases	No likely significant residual effects identified					
Socio-economic	Business and commercial activity within the LSA	High	Direct employment	Permanent	High	Major Beneficial
	Business and commercial activity within the LSA	High	Indirect, induced and catalytic employment	Permanent	Medium	Moderate Beneficial
	Business and commercial activity within the FEMA	High	Indirect, induced and catalytic employment	Permanent	Medium	Moderate Beneficial
	Business and commercial activity within the LMA	Medium	Indirect, induced and catalytic employment	Permanent	High	Moderate Beneficial
	Labour market within the LSA	Medium	Availability of labour	Permanent	High	Moderate Beneficial
	Labour market within the FEMA	Low	Availability of labour	Permanent	High	

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of residual effect*
**Refer to definitions provided in Section 21.2.*						
Design Year: 2038						
Health and Wellbeing	Health and wellbeing effects from changes in socio-economic factors	Low (general population) High (vulnerable group population)	Operational increase in direct, indirect and induced employment opportunities	Long-term, permanent	Medium	Moderate to Major Beneficial
Agricultural Land Use and Recreation	No likely significant residual effects identified					

21.8. Long Term Forecast Year: 2047

21.8.1 Table 21.8.1 provides a summary of the likely significant adverse and beneficial residual effects of the Project identified during the Long Term Forecast Year: 2047 within each topic chapter of the ES.

Table 21.8.1: Summary of Significant Effects identified during the Long Term Forecast Year: 2047 in the ES

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of effect*
**Please refer to definitions provided in section 21.2 above.*						
Long Term Forecast Year: 2047						
Historic Environment	No likely significant residual effects identified					
Landscape, Townscape and Visual Resources	No likely significant residual effects identified					
Ecology and Nature Conservation	No likely significant residual effects identified					
Geology and Ground Conditions	No likely significant residual effects identified					
Water Environment	No likely significant residual effects identified					
Traffic and Transport	No likely significant residual effects identified					
Air Quality	No likely significant residual effects identified					

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of effect*
**Please refer to definitions provided in section 21.2 above.*						
Long Term Forecast Year: 2047						
Noise and Vibration	No likely significant residual effects identified					
Climate Change	No likely significant residual effects identified					
Greenhouse Gases	No likely significant residual effects identified					
Socio-economic	Business and commercial activity within the LSA	High	Direct employment	Permanent	High	Moderate beneficial
	Business and commercial activity within the LSA	High	Indirect, induced and catalytic employment	Permanent	Medium	Moderate beneficial
	Business and commercial activity within the FEMA	High	Indirect, induced and catalytic employment	Permanent	Medium	Moderate beneficial
	Business and commercial activity within the LMA	Medium	Indirect, induced and catalytic employment	Permanent	High	Moderate beneficial
	Labour market within the LSA	Medium	Availability of labour	Permanent	High	Moderate beneficial
	Labour market within the FEMA	Low	Availability of labour	Permanent	High	Moderate beneficial

Topic	Receptor	Receptor Sensitivity*	Description of Impact*	Term*	Magnitude of Impact*	Significance of effect*
**Please refer to definitions provided in section 21.2 above.*						
Long Term Forecast Year: 2047						
Health and Wellbeing	Health and wellbeing effects from changes in socio-economic factors	Low (general population) High (vulnerable group population)	Operational increase in direct, indirect and induced employment opportunities	Long-term, permanent	Medium	Moderate to Major Beneficial
Agricultural Land Use and Recreation	No likely significant residual effects identified					

21.9. References

Highways England, Transport Scotland, Welsh Government and the Department for Infrastructure Northern Ireland (2020) Design Manual for Roads and Bridges: Sustainability and Environmental Appraisal. LA 104: Environmental assessment and monitoring.

21.10. Glossary

Table 21.10.1: Glossary of Terms

Term	Description
BoCC	Birds of Conservation Concern
CoCP	Code of Construction Practice
EIA	Environmental Impact Assessment
ES	Environmental Statement
FEMA	Functional Economic Market Areas
LSA	Local Study Area
NCR	National Cycle Route
NERC	Natural Environment and Rural Communities
NSRs	Noise Sensitive Receptors

APPENDIX 5B

EXAMINING AUTHORITY REPORT

Planning Inspectorate

The Planning Act 2008

Gatwick Airport Northern Runway Project

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the

Secretary of State for Transport

Volume 1 of 2

Examining Authority

Kevin Gleeson BA MCD MRTPI (Lead member of the Panel)

Philip Brewer PhD BSc (Hons) MIOA

Helen Cassini BA (Hons) DipTp MRTPI

Jonathan Hockley BA (Hons) DipTp MRTPI

Neil Humphrey BSc (Hons) CEng FICE MTPS

27 November 2024

REPORT VOLUMES

This Report comprises two volumes.

This is Volume 1 of 2.

1. Volume 1: Recommendation Report
2. Volume 2: Appendices

OVERVIEW

File Ref: TR020005

The application, dated 6 July 2023, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on that date.

The Applicant is Gatwick Airport Limited.

The application was accepted for examination on 3 August 2023.

The examination of the application began on 27 February 2024 and was completed on 27 August 2024.

The development proposed seeks powers to enable dual runway operations at Gatwick Airport through altering the existing northern runway, lifting restrictions on the northern runway's use and delivering the upgrades or additional facilities and infrastructure required to increase the passenger throughput capacity of the airport. This includes substantial upgrade works to certain surface access routes which lead to the airport.

Summary of Recommendation:

The Examining Authority recommends that based on the Applicant's final draft Development Consent Order development consent should not be granted for the Proposed Development. Conversely, with the Examining Authority's recommended Development Consent Order, and subject to the necessary Crown approvals being granted, the Examining Authority recommends that the Secretary of State for Transport makes the Gatwick Airport (Northern Runway Project) Development Consent Order in the form attached at Appendix E of this Report.

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Planning Inspectorate

ERRATA SHEET – Gatwick Airport Northern Runway Project - Ref. TR020005

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport dated 27 November 2024.

Page No.	Paragraph for further clarification	Correction
114	ER 6.4.125	With regard to daytime, referring to Figure 1 of [REP9-148] and the relevant conclusion [ER 6.4.113], the Applicant's central fleet transition case would be expected to achieve the ExA's proposed air noise limit for the first five years of dual runway operations, but to achieve a further 8% reduction in contour area from year 6 would rely upon increasingly uncertain continued reductions in aircraft source noise beyond 2035. Hence upon review the ExA recommended no further reduction in the day-time air noise limit beyond the first 8% reduction in contour area, compared with the same noise contour area in 2019; With regard to night-time, referring to Figure 2 of [REP9-148] and the relevant conclusion [ER 6.4.114], the Applicant's central fleet transition case would be expected to achieve the ExA's proposed air noise limit for years 1 to 5 to the extent that the Applicant's central case would by the sixth year already have achieved the ExA's proposed further 8% reduction in contour area for years 6 to 10. However, achieving a further 8% from year 11 would rely upon increasingly uncertain continued reductions in aircraft source noise beyond 2035. Hence upon review the

Page No.	Paragraph for further clarification	Correction
		ExA recommended no further reduction in the night-time air noise limit beyond the second 8% reduction in area compared with 2019.
375	ER 22.4.9	From “with regard to air noise limits.” As explained in Chapter 6 of this Report, the Applicant should have based its proposals for air noise limits on its original central fleet transition case.” From “as set out in policy.” This statement considered all the evidence presented to us including that additional to [ER 6.4.118].

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application for the Gatwick Airport Northern Runway Project (NRP) (the Proposed Development), Planning Inspectorate (the Inspectorate) reference TR020005, was submitted by Gatwick Airport Limited (the Applicant) to the Inspectorate on 6 July 2023 under section (s) 37(2) of the Planning Act 2008 (PA2008) and accepted for examination under s55 of the PA2008 on 3 August 2023 [PD-001][1]. This Report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State (SoS) for Transport.

1.1.2. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for the Department of Levelling Up, Housing and Communities (now the Ministry of Housing, Communities and Local Government) in its decision to accept the application for examination in accordance with s55 of the PA2008 [PD-001].

1.1.3. The Proposed Development comprises alterations to the existing northern runway to enable dual runway operations, the development of existing infrastructure and facilities to increase the airport's passenger throughput capacity and works to highways to upgrade the existing surface access routes to the airport [APP-030]. The Applicant in its Planning Statement [APP-245] confirms that *"The Project is classed as a Nationally Significant Infrastructure Project ("NSIP") because it comprises both "airport-related development" and "highway-related development" under Section 14 of the Planning Act 2008*."

1.1.4. The Proposed Development comprises alterations to an existing airport under s14(1)(i) and 23(1)(b), (4), (5) and (6) of the PA2008, as it involves the alteration of an airport where the effect is to increase the number of passengers by at least 10 million per year. As such, the Proposed Development meets the definition of an NSIP set out in s14(1)(i) of the PA2008 and requires development consent in accordance with s31 of the PA2008.

1.1.5. Furthermore, the Proposed Development includes works to the highway which are classed as an NSIP under s14(1)(h) and 22(1)(b), (3) and (4) of the PA2008, as they involve the alteration of a highway in England to which National Highways is the highway authority where the speed limit is 50 mph or over and the works exceed the 12.5 hectare limit that applies to that category of road.

1.1.6. This Report does not contain extensive summaries of all documents and representations received, although full regard has been had to them and all important and relevant matters arising. Key written sources are set out further below.

[1] References to documents in the Examination Library (EL) for this Report are enclosed in brackets [ ]. The EL provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number eg [APP-001]. The reference numbers are used throughout this Report and the EL is included in Appendix C of this Report to allow the reader to access them directly.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 15 August 2023, Kevin Gleeson (Lead Member), Philip Brewer, Helen Cassini, Jonathan Hockley and Neil Humphrey were appointed as the ExA for the application under s61 and s65 of the PA2008 [PD-004].

1.3. THE APPLICATION

1.3.1. A visual representation of the existing context and key components of the Proposed Development can be found in the Applicant's Design and Access Statement (DAS): Volume 1 [AS-154]. Similarly, the executive summary of the Applicant's Needs Case document [Section 1, APP-250] provides a useful written summary of the Applicant's position on the need for the development.

LOCATION OF THE PROPOSED DEVELOPMENT

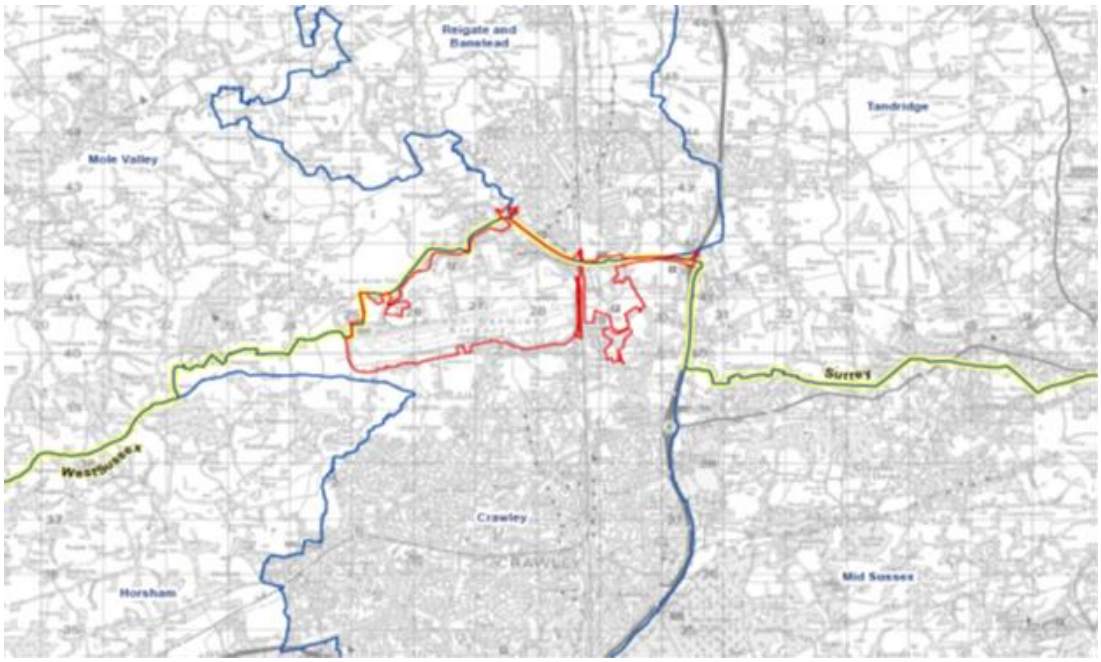
1.3.2. The location of the Proposed Development is shown in Environmental Statement (ES) Figure 1 [APP-047] (extract shown in Figure 1.1 below) and on the Location Plan [APP-013].

1.3.3. The Proposed Development site lies largely within the administrative area of Crawley Borough Council (CBC). Small parts of the site lie within the administrative areas of Mole Valley District Council (MVDC) to the north-west, Reigate and Banstead Borough Council (RBBC) to the north and Tandridge District Council (TDC) to the north-east. The majority of the site is within the administrative area of West Sussex County Council (WSCC), with small parts in the north being located in the administrative area of Surrey County Council (SCC).

1.3.4. The Proposed Development site is within proximity to several other local authorities:

- Kent County Council (KCC) to the east/ north-east;
- East Sussex County Council (ESCC) to the east/ south-east;
- Horsham District Council (HDC) to the south-west;
- Mid Sussex District Council (MSDC) to the south-east;
- Wealden District Council (WDC) to the south-east; and
- Sevenoaks District Council (SDC) to the east/ north-east.

Figure 1.11: Location Plan – Order Limits Shown in Red Outline



1.3.5. Chapter 8 of the ES [APP-033] provides a detailed description of the surrounding area. In summary, the characteristics of the surrounding area are:

- a smooth and gently undulating landform with occasional rounded low hills which interrupt an otherwise low-lying landscape;
- occasional higher hills, such as the Low Weald hills to the west of Gatwick Airport;
- a rising in the landform of the High Weald National Landscape to the south-east of the airport;
- the large settlement of Crawley, which lies immediately to the south of Gatwick, and the settlement of Horley, which lies immediately to the north-east of Gatwick; and
- the smaller settlements of Hookwood, and Charlwood, which lie to the north and west of Gatwick respectively.

1.3.6. The Design and Access Statement (DAS) [AS-154] provides a description of the existing Gatwick Airport site. In summary, and as can be seen in Figure 1.2 below (extract from the DAS), the site is characterised by its own distinctive and well-defined urban townscape, including:

- flat and open land within the Proposed Development site, occupied by runways, taxiways, stands, surface car parking, and mown grassland;
- the North and South Terminal clusters, which provide the main built form;
- several large aircraft hangars, a cargo hall, hotels, multi-storey car parks, and control towers;
- the M23 spur, which forms the main road transport route into the airport from the east, linking the M23 to the South Terminal and the A23 to the North Terminal and surrounding settlements; and
- rail infrastructure situated immediately to the east of the Gatwick Airport site.

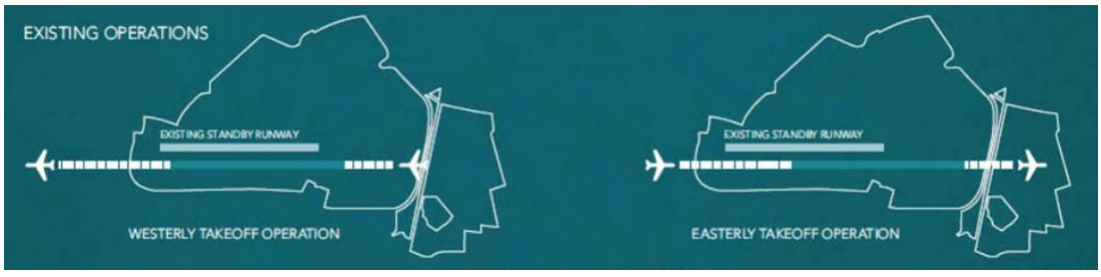
Figure 1.22: Aerial View of the Existing Site Looking South-West

EXISTING RUNWAY OPERATION

1.3.7. The existing operation of the airport is described in detail in ES Chapter 4: Existing Site and Operation [APP-029]. The airport is served by a single main runway and two terminals: North Terminal and South Terminal. The existing northern runway is only used when the main runway is unavailable. When not in use as a runway, the existing northern runway is used as a parallel taxiway for the main runway.

1.3.8. The main runway is used in a westerly or easterly direction depending on the direction of the wind as shown in Figure 1.3 [APP-250]. Due to the prevailing wind conditions, the runway is used in the westerly direction for approximately 75% of the time in a typical year.

Figure 1.33: Existing Runway Operations



DESCRIPTION OF THE PROPOSED DEVELOPMENT

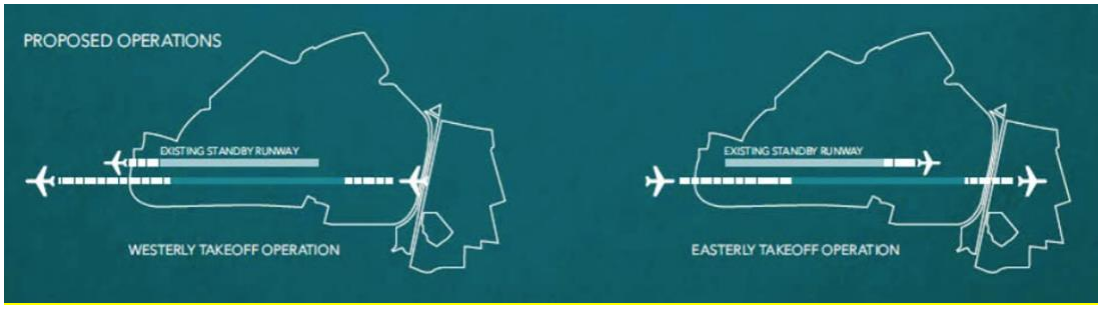
1.3.9. The Proposed Development, as described in the application form [APP-002], involves alterations to the existing northern runway which, together with the lifting of the current restrictions on its use, would enable dual runway operations.

1.3.10. Dual runway operations would mean the following changes to runway operations, as shown in Figure 1.4 [APP-250]:

- all arriving flights would use the existing main runway;

- departing flights would be shared between the existing main runway and the northern runway, with the northern runway being used mainly for smaller aircraft; and
- there would be controlled dependency between the two runways to enable safe crossing of the northern runway by arrival flights.

Figure 1.44: Proposed Runway Operations



1.3.11. In addition to the amendments to the existing northern runway, the Proposed Development includes corresponding enhancements to the taxiway system and parking stands to accommodate an increase in air transport movements. Further detail on the description of the Proposed Development is provided in Chapter 5 of the ES [APP-030], which was subsequently updated at Deadline (D) 9 to reflect proposed project changes [REP9-026].

1.3.12. Other components of the Proposed Development would enable the increased airfield capacity to be accessed by passengers through additional processing capability and improved airport access. These other components include airport support facilities, works to the north and south terminals, surface access works, hotels, offices and car parking.

1.3.13. The Proposed Development works comprise the following Work Numbers (Nos.) [AS-004]:

Airfield Works

Work No. 1 – Works to reposition the northern runway 12 metres to the north;
Work No. 2 – Works to construct a runway access track between the repositioned northern runway and the main runway, running east to west;
Work No. 3 – Works to convert three existing aircraft stands to overnight parking/ remote aircraft stands;
Work No. 4 – Works relating to the runways and taxiways;
Work No. 5 – Works to the Aircraft Holding Area (Charlie Box);
Work No. 6 – Works to construct a new pier (Pier 7);
Work No. 7 – Works to construct the Oscar Area;

Airport Support Facilities

Work No. 8 – Works to remove the airside support facilities;
Work No. 9 – Works to construct the replacement Central Area Recycling Enclosure (CARE) facility;
Work No. 10 – Works to construct the replacement motor transport facilities;
Work No. 11 – Works to construct the replacement grounds maintenance facilities;
Work No. 12 – Works to construct the replacement airfield surface transport facilities;
Work No. 13 – Works to construct the replacement Rendezvous Point North;
Work No. 14 – Works to remove and construct the replacement fire training ground;

Work No. 15 – Works to construct the satellite airport fire service facility;
Work No. 16 – Works to construct a new aircraft hangar;
Work No. 17 – Works to relocate the Hangar 7 support structures;
Work No. 18 – Works to remove and replace the western noise mitigation bund;
Work No. 19 – Works to construct pumping station 2a;
Work No. 20 – Works to realign Larkins Road;

Terminal Works

Work No. 22 – Works associated with the North Terminal building;
Work No. 23 – Works associated with the South Terminal building;
Work No. 24 – Works to upgrade the North Terminal forecourt;
Work No. 25 – Works to upgrade the South Terminal forecourt;

Hotels, Offices and Car Parking

Work No. 26 – Works to construct a hotel north of multi-storey car park 3;
Work No. 27 – Works to construct a hotel on the car rental site;
Work No. 28 – Works associated with the Car Park H Site;
Work No. 29 – Works to convert the existing Destination Place office into a hotel;
Work No. 30 – Works to construct Car Park Y;
Work No. 31 – Works associated with Car Park X;
Work No. 32 – Works to remove existing car parking at North Terminal Long Stay car park and construct a decked car parking structure;
Work No. 33 – Works associated with the existing Purple Parking car park;
Work No. 34 – Works to remove Car Park B South, Car Park B North, and deliver replacement open space;

Surface Access Works

Work No. 35 – Works associated with the South Terminal Junction improvements;
Work No. 36 – Works associated with the North Terminal Junction improvements;
Work No. 37 – Work associated with the Longbridge Roundabout Junction improvements;

Miscellaneous

Work No. 38 – Works to construct the habitat enhancement area and flood compensation area at Museum Field;
Work No. 39 – Works associated with the River Mole;
Work No. 40 – Works associated with land to the north east of Longbridge Roundabout;
Work No. 41 – Works to create an ecological area at Pentagon Field;
Work No. 42 – Works to establish a habitat enhancement area along Perimeter Road East and Perimeter Road South, and works to construct a weir and a fish pass; and
Work No. 43 – Works to construct water treatment works.

1.3.14. There were subsequent additions to the Work Nos. in Schedule 1 of the draft Development Consent Order (dDCO) proposed by the Applicant and Interested Parties (IPs) in the Examination. These are discussed in the relevant chapters of this Report.

1.3.15. The illustrative layout is shown on the following pages in Figures 1.5 and 1.6 (extracts from the DAS [AS-154]).

Figure 1.55: Illustrative Plan Layout of Proposed Development

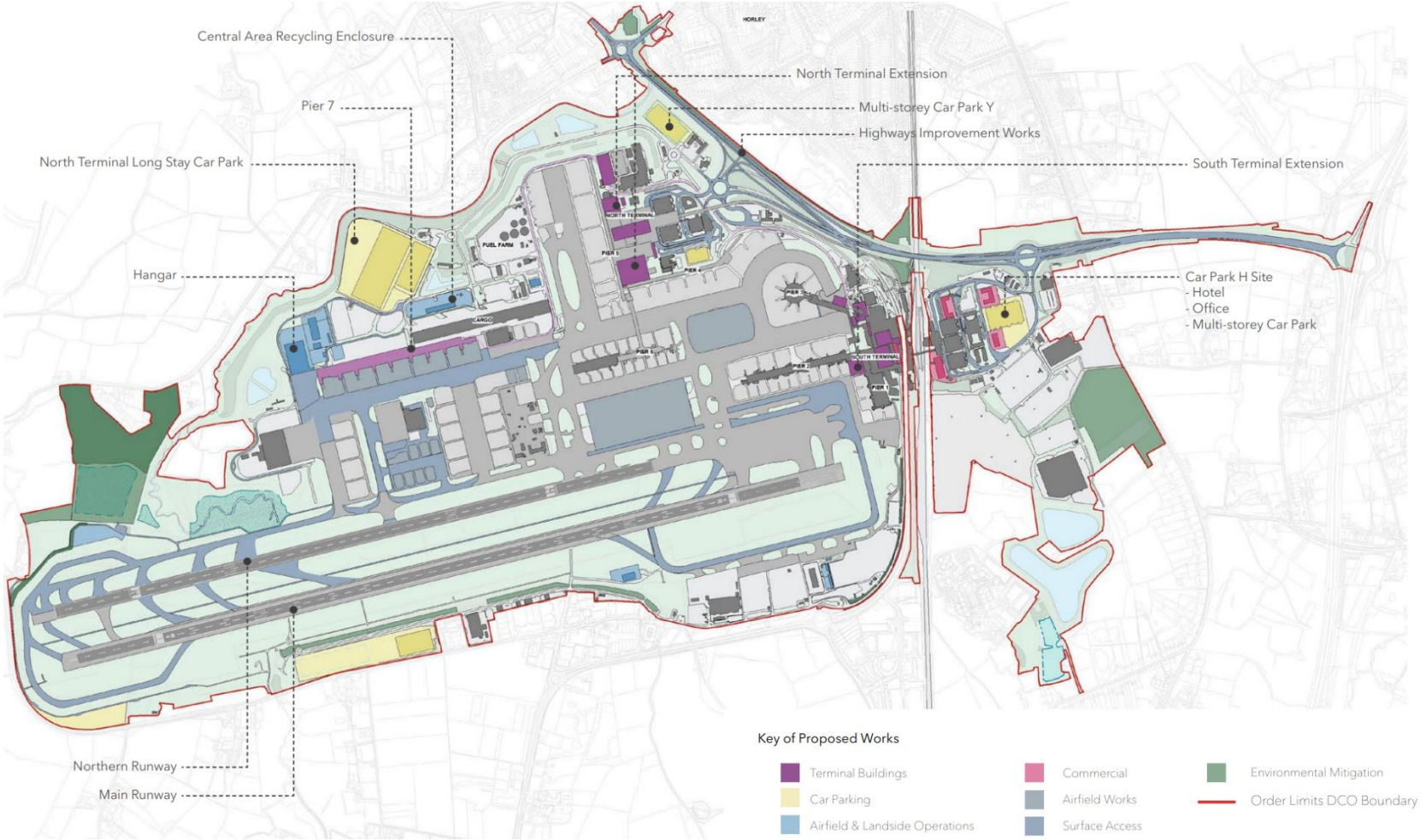
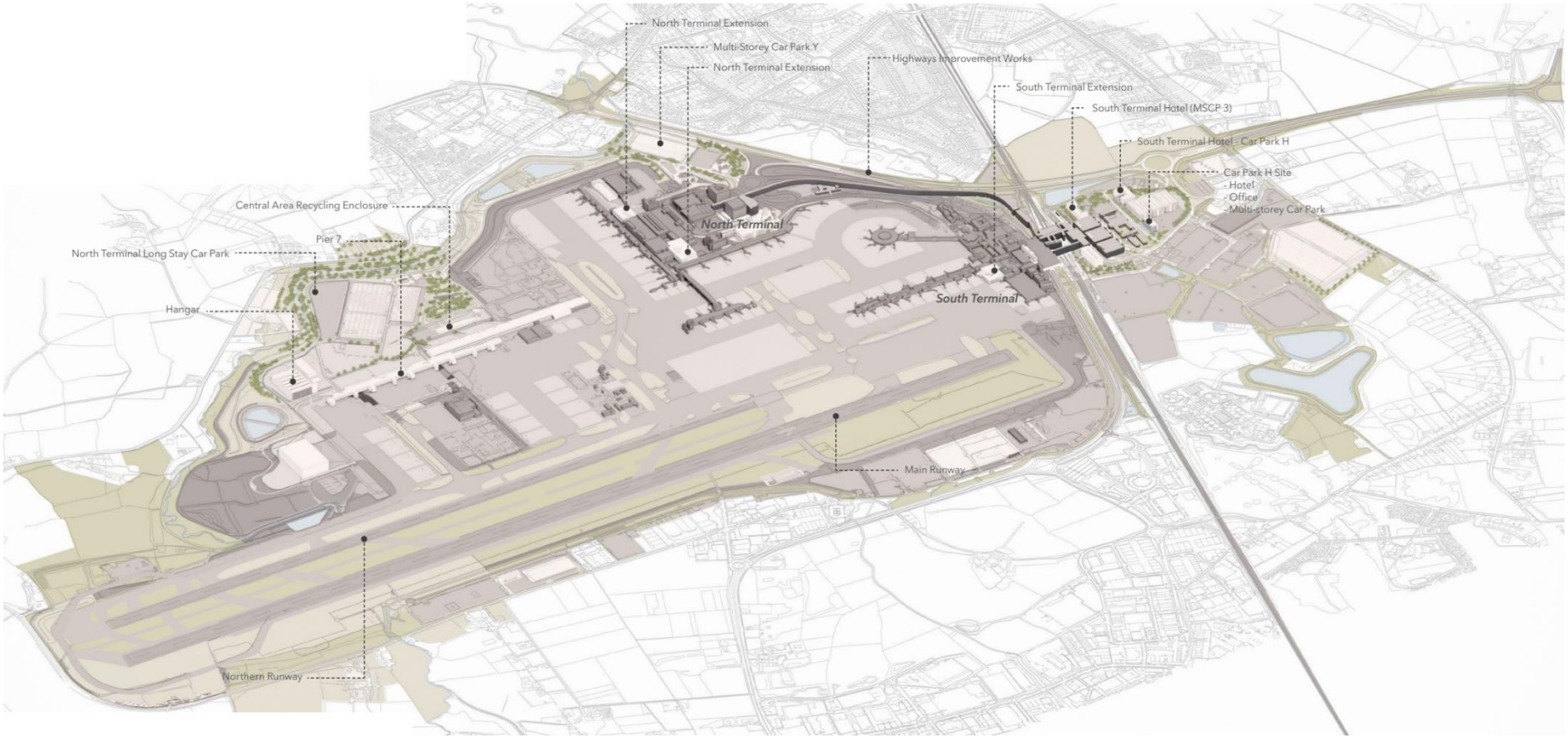


Figure 1.66: Indicative Illustration of Key Components of the Proposed Development



RELEVANT PLANNING HISTORY

1.3.16. Gatwick Airport was constructed in 1930 as the Surrey Aero Club, a small flyers club, and in 1935, was licensed as a public aerodrome. A railway station and the Beehive Terminal were added in the same year, and in 1936, the airport was officially opened. In 1950, Gatwick Airport was designated as London's second passenger airport, and in 1956, a substantial renovation was carried out. The renovated airport was officially opened by Queen Elizabeth II in 1958.

1.3.17. From the 1970s to the 2000s, Gatwick Airport was developed and expanded. This included the extension of the main runway in the early 1970s, the construction of the north terminal in the 1980s, and a further extension to the main runway in 1998. In the early 2000s the north terminal and the south terminal were significantly upgraded, followed by the extension of the baggage reclaim hall and the construction of Pier 6. In 2016, Pier 1 at the south terminal was rebuilt.

1.3.18. Planning permission was granted for the northern runway in 1979, with Condition 3 providing that it could not be used simultaneously with the main runway. A legal agreement with WSCC also precluded the simultaneous use of both runways. However, this agreement expired in 2019.

1.3.19. The Gatwick Airport site has an extensive planning history, with approximately 1,300 planning records listed on the CBC public planning register. The relevant recent planning history and planning permissions relating to Gatwick Airport and its surrounds are set out in more detail in Appendix A of the Planning Statement [APP-246] and subsequently updated at D7 [REP7-056] in response to the Joint West Sussex Local Impact Report (LIR) [REP1-068] and Appendix C (Planning History) of the Joint West Sussex LIR [REP1-069] which identified a number of planning permissions in relation to land at Gatwick Airport and their associated planning conditions.

1.3.20. The Joint Local Authorities (JLAs) (refer to paragraph 1.4.2 to 1.4.5 of this Report for the parties that make up the JLAs) maintained at D8 [REP8-126] that the planning history set out in the updated Planning Statement Appendix A [REP7-056] was still not comprehensive, listing just some of the airport planning history and only as far back as 2014. The JLAs also stated that it does not reflect the evidence provided in the Joint West Sussex LIR [REP1-069] which provided a much larger number of planning records relating to planning applications within the DCO limits.

1.3.21. As set out in ES Chapter 20 (Cumulative Effects) [para 20.4.17, APP-045], the Applicant undertook a search of relevant planning history for major development within 10 kilometres (km) of the Order Limits including NSIPs, Transport and Works Act Orders, Hybrid Bills, Major Applications and Local Development Plan allocations. In addition, large housing developments were identified to the west and east in areas that extend outwards from the 10 km area (around 5 km each). Other developments located outside of the search radius were considered on a case-by-case basis as to whether they are likely to result in cumulative effects.

FUTURE GROWTH

1.3.22. Gatwick Airport grew from serving 31 million passengers per annum (mppa) in 2009 to more than 46mppa in 2019. Following the Covid pandemic the Applicant is confident that passenger and airline demand at Gatwick will return to previous levels over the course of the next few years and then continue to grow thereafter (ES Chapter 5: Project Description [para 1.3.1, REP9-026]).

1.3.23. The Applicant has indicated that several consented or permitted developments that are planned or under construction are intended to proceed in the absence of the Proposed Development. These include developments at the airfield that the Applicant believes would lead to a forecast throughput of 67.2mppa by 2047 without the Proposed Development. With the Proposed Development, it is anticipated that by 2047 airport throughput would increase to approximately 80.2mppa. This represents an increase of approximately 13mppa by 2047 (ES Chapter 5: Project Description (para 1.3.4, REP9-026]).

1.3.24. Chapter 3 introduces the main planning issues which underpin the consideration of detailed Examination matters including how the application is assessed in terms of relevant policies. Issues surrounding the levels of growth which are achievable both without the Proposed Development, and as a result of it, were fundamental to our consideration of the application. They are considered in depth in Section 4.3 of Chapter 4. Chapter 4 addresses the need for the Proposed Development which also sets the context for the individual planning issues addressed in Chapters 5 to 18.

1.3.25. While concerns regarding airspace change were raised by a number of IPs during the Examination, this matter is covered by a separate process and based on separate legislation. Nevertheless, it is further addressed in Section 4.4 of this Report.

1.4. PRE-EXAMINATION

THE PERSONS INVOLVED

1.4.1. The persons involved in the Examination were:

- Persons who were entitled to be IPs because they had made a Relevant Representation (RR) or were a statutory party who requested to become an IP; and
- Affected Persons (APs) who were affected by a compulsory acquisition (CA) and/ or temporary possession (TP) proposal made as part of the application and objected to it at any stage in the Examination.

LOCAL AUTHORITIES

1.4.2. There were different groupings of the local authorities used in the Examination for the purposes of making joint submissions as follows:

- Legal Partnership Authorities (LePAs);
- JLAs;
- Joint West Sussex Local Authorities (JWSLAs); and
- Joint Surrey Councils (JSCs).

1.4.3. The LePAs are comprised of the following host and neighbouring Authorities who were jointly represented for the purposes of the Examination: CBC; HDC; MSDC; WSCC; RBBC; SCC; and ESCC.

1.4.4. The LePAs included MVDC for some parts of the Examination (namely, those aspects relating to the legal agreement entered into between the Applicant and any of the LePAs).

1.4.5. The JLAs comprise the local authorities that form the LePAs in addition to the following Authorities: MVDC; TDC; and KCC.

1.4.6. The JWSLAs consisted of the following authorities: CBC; HDC; MSDC; and WSCC.

1.4.7. The JSCs consisted of the following authorities: MVDC; RBBC; SCC; and TDC.

RELEVANT REPRESENTATIONS

1.4.8. On 5 September 2023, the Applicant submitted a notice under s56 [OD-001] of the PA2008 that the deadline for submission of RRs was 29 October 2023.

1.4.9. On 29 October 2023, the final day on which RRs could be submitted, the Inspectorate received reports that users had encountered problems accessing the Registration and RR Form and that several parties had made submissions via the Inspectorate's Project email inbox instead.

1.4.10. The issue was rectified, and the Inspectorate advised the Applicant through s51 advice [OD-002] on 6 November 2023 that the deadline for RRs to be received should be extended. The deadline for the receipt of RRs by the Inspectorate was extended to 19 November 2023 [OD-003].

1.4.11. There were also three parties identified that should have been but had not been notified by the Applicant under s56 due to a technical error (listed in Schedule 1 of the certificate of compliance with s56 [OD-004]) for whom the deadline for submission of RR was 11 December 2023.

1.4.12. In total 4813 RRs were received by the Inspectorate. Due to the number of RRs and to assist navigation of the EL, the RRs are recorded in a separate RR library. Analysis of the RRs can be found in Section 3.2 of this Report.

1.5. THE EXAMINATION

PROCEDURAL DECISIONS

1.5.1. The Procedural Decisions (PDs) taken by the ExA are recorded in the Examination Library referenced [PD-]. They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development.

START OF THE EXAMINATION

1.5.2. The Preliminary Meeting (PM) took place on 27 February 2024 [EV3-001]. The ExA's PDs and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-011], dated 8 March 2024.

1.5.3. The Examination began on 27 February 2024 and concluded on 27 August 2024. The principal components of and events around the Examination can be seen in the Examination Timetable and are summarised below.

1.5.4. Four parties requested to join the Examination. The ExA decided that the four parties were within Category 3 of s102B of the PA2008. Therefore, the ExA issued PDs [PD-014, PD-015, PD-016 and PD-017] notifying the parties that they had become IPs under s102(1)(ab) of PA2008. No parties requested to leave the Examination.

STATEMENTS OF COMMON GROUND

1.5.5. By the end of the Examination, the following bodies had concluded and signed Statements of Common Ground (SoCG) with the Applicant:

- CBC [REP9-066];
- ESCC [REP9-068];
- HDC [REP9-070];
- KCC [REP9-072];
- MSDC [REP9-074];
- MVDC [REP9-076];
- RBBC [REP9-078];
- SCC [REP9-080];
- TDC [REP9-082];
- WSCC [REP9-084];
- Civil Aviation Authority (CAA) [REP9-086];
- Environment Agency (EA) [REP10-015];
- Historic England (HE) [REP1-035];
- National Highways (NH) [REP10-017];
- Natural England (NE) [REP9-090];
- Network Rail (NR) [REP9-092];
- JLAs (capacity and operations) [REP9-096];
- JLAs (forecasting and need) [REP9-098]; and
- National Air Traffic Services (NATS) (En Route) Plc [REP9-099].

1.5.6. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this Report.

1.5.7. The SoCG with Thames Water Utilities Limited (TWUL) [REP9-094] remained unsigned at the end of the Examination. The weight afforded to the unsigned SoCG is considered in the relevant sections of this Report.

WRITTEN QUESTIONS, SITE INSPECTIONS AND HEARINGS

1.5.8. The ExA asked two rounds of written questions (ExQ1 [PD-012] and ExQ2 [PD-021]) and made seven requests for further information and comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 [PD-013, PD-018, PD-023, PD-025, PD-027, PD-029 and PD-030].

1.5.9. The ExA carried out five Unaccompanied Site Inspections (USIs) [EV1-001, EV16-001, EV18-001, EV21-001 and EV22-001] and an Accompanied Site Inspection (ASI) [EV1-003].

1.5.10. Nine Issue Specific Hearings (ISH) were held:

- ISH1 [EV6-001 to EV6-003];
- ISH2 [EV7-001 and EV7-002];
- ISH3 [EV8-001 and EV8-002];
- ISH4 [EV9-001, EV9-002];
- ISH5 [EV10-001 and EV10-002];
- ISH6 [EV12-001 to EV12-004];
- ISH7 [EV13-001 to EV13-004];
- ISH8 [EV17-002 to EV17-005 and EV17-010 to EV17-013]; and
- ISH9 [EV20-003, EV20-005, EV20-007, EV20-009, EV20-011 and EV20-013].

1.5.11. Two Compulsory Acquisition Hearings (CAH) were held: CAH1 [EV14-001 and EV14-002] and CAH2 [EV19-003 and EV19-005].

1.5.12. Three Open Floor Hearings (OFH) were held:

- OFH1 [EV4-001 to EV4-004];
- OFH2 [EV5-001]; and
- OFH3 [EV15-001 to EV15-003].

1.6. CHANGES TO THE APPLICATION

1.6.1. Changes to the application documents, including the wording of the draft Development Consent Order (dDCO), were made during the Examination. The changes sought to address points raised by IPs and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination.

1.6.2. The Applicant's changes to the application documents, together with any additional information submitted, are detailed in the Navigation Document submitted at D10 [REP10-002]. This provides a guide to all documents submitted as part of the application and was updated at each deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the Examination.

1.6.3. The ExA requested through second written questions (ExQ2) at ExQ2.GEN.2.11 [PD-021] that the Applicant provide a consolidated ES incorporating all the various amendments to the ES throughout the Examination. The final version of this document was submitted at D10 [REP10-020] as a reference document providing a list of all documentation associated with the ES and other associated documentation, and the appropriate EL references.

FIRST CHANGE REQUEST

1.6.4. The Applicant submitted a formal change request on 13 February 2024. Table A2 in Appendix A of this Report sets out the documents comprising the change request.

1.6.5. The Change Application Report [AS-139] details the proposed changes in Table 1. Three changes were proposed for which the Applicant carried out a non-statutory consultation exercise. In summary the proposed changes were:

- Project Change 1, an extension to the design parameters for the north terminal international departure lounge proposed southern extension;
- Project Change 2, a reduction in height of the proposed replacement Central Area Recycling Enclosure (CARE) facility and change in the purpose of the CARE facility; and
- Project Change 3, a revision to the proposed water treatment works.

1.6.6. We agreed with the Applicant that the proposed changes were non-material and could be accepted into the Examination. The proposed changes were not considered, individually or cumulatively, to lead to the Proposed Development being different in nature or substance to that which was originally applied for in July 2023.

1.6.7. In the Rule 8 Letter [PD-011], the ExA therefore included a PD to accept the proposed changes into the Examination.

SECOND CHANGE REQUEST

1.6.8. The Applicant submitted a second formal change request on 26 June 2024. Table A2 in Appendix A of this Report sets out the documents comprising the change request.

1.6.9. The Second Change Application Report [REP6-072] details the proposed changes. One change was proposed, Project Change 4, for which the Applicant carried out a non-statutory consultation exercise. The proposed change was for the provision of on-airport Wastewater Treatment Works (WTW).

1.6.10. We agreed with the Applicant that the proposed changes were non-material and could be accepted into the Examination. The proposed changes were not considered, individually or cumulatively, to lead to the Proposed Development being different in nature or substance to that which was originally applied for in July 2023.

1.6.11. The ExA therefore issued a PD [PD-023] on 10 July 2024 to accept the proposed change request into the Examination.

THIRD CHANGE REQUEST

1.6.12. The Applicant submitted a third formal change request on 15 July 2024. Table A2 in Appendix A of this Report sets out the documents comprising the change request.

1.6.13. The Third Change Application Report [REP7-097] details the proposed changes. One change was proposed, Project Change 5, for which the Applicant carried out a non-statutory consultation exercise. The proposed change was for a revision to the Order Limits at the Holiday Inn to facilitate a temporary access point and associated works.

1.6.14. We agreed with the Applicant that the proposed changes were non-material and could be accepted into the Examination. The proposed changes were not considered, individually or cumulatively, to lead to the Proposed Development being different in nature or substance to that which was originally applied for in July 2023.

1.6.15. As the documentation in support of Project Change 5 was submitted at D6 with a further submission at D8, the ExA considered that there was sufficient time within the Examination for IPs and APs to comment on the proposed change and for it to be properly and fairly examined.

1.6.16. The ExA therefore issued a PD [PD-027] on 14 August 2024 to accept the proposed change request into the Examination.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. By the end of the Examination, the Applicant had entered into agreements and obligations of the following types:

- an agreement under s106 of the Town and Country Planning Act 1990; and
- framework agreements.

Section 106 Agreement

1.7.2. At D10 [REP10-019] a finalised s106 agreement was submitted. This was dated 22 August 2024 and signed by the Applicant, WSCC, CBC, RBBC and SCC. The agreement related to:

- Air Quality;
- Noise;
- Surface Access;
- London Gatwick Community Fund;
- Employment, Skills and Business;
- Biodiversity and Landscaping;
- Health;
- Homelessness Prevention Fund; and
- Council Resources.

Framework Agreements

1.7.3. NH confirm in its Closing Statement [REP9-160] that it had entered into a Framework Agreement with the Applicant. NR also confirmed in its D10 submission [REP10-031] that it had entered into a Framework Agreement with the Applicant and the withdrawal of its objection to the application.

1.8. OTHER CONSENTS

1.8.1. In addition to the consents required under the PA2008, the Applicant would require others to construct, operate and maintain the Proposed Development. These are set out by the Applicant in Other Consents and Licences [APP-264], subsequently updated at D8 [REP8-092]. These consents are largely dependent on the finalisation of design and construction details which are not sufficiently developed at this stage and these consents therefore cannot be included within the DCO. The ExA is not aware of any reason why any relevant necessary consents and licences would not subsequently be granted.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of the remainder of this Report is as follows:

- **Chapter 2** summarises the key legislation and policy context.
- **Chapter 3** identifies the main planning issues.
- **Chapters 4 - 18** set out the findings and conclusions in relation to the planning issues that arose from the application and during the Examination as listed below.
    - **Chapter 4** – The Need for the Proposed Development
    - **Chapter 5** - Traffic and Transport.
    - **Chapter 6** - Noise and Vibration.
    - **Chapter 7** - Air Quality.
    - **Chapter 8** - Greenhouse Gas Emissions.
    - **Chapter 9** - Climate Change.
    - **Chapter 10** - Socio Economics.
    - **Chapter 11** - Water Environment.
    - **Chapter 12** - Landscape and Visual Effects.
    - **Chapter 13** - Historic Environment.
    - **Chapter 14** - Ecology.
    - **Chapter 15** - Health and Wellbeing
    - **Chapter 16** - Land Use and Recreation.
    - **Chapter 17** - Other Matters.
    - **Chapter 18** - Good Design.
- **Chapter 19** sets out the findings and conclusions of the Habitats Regulations Assessment (HRA).

- **Chapter 20** sets out the balance of planning considerations arising from Chapters 2 to 19 in the light of important and relevant factual, legal and policy considerations.
- **Chapter 21** sets out the ExA's examination of land rights and related matters.
- **Chapter 22** considers the implications of the matters arising from the preceding chapters, other control documents and the s106 agreement for the Development Consent Order.
- **Chapter 23** summarises all relevant considerations and sets out the ExA's recommendation to the SoS for Transport.

1.9.2. This Report is supported by the following appendices which are contained in a separate volume:

- **Appendix A** – The Examination/ Reference Tables.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – The Examination Library
- **Appendix D** – Reference Tables for the DCO
- **Appendix E** – The Recommended DCO

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This Chapter identifies the key legislation, policy and Local Impact Reports (LIR) that the Examining Authority (ExA) has had regard to in its findings and recommendations to the Secretary of State (SoS) for Transport.

2.2. KEY LEGISLATION

PLANNING ACT 2008

2.2.1. The Planning Act 2008 (PA2008) provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) has effect from that where no NPS has effect.

2.2.2. Section (s)104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) include any relevant NPS, any LIR, any matters prescribed in relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.

2.2.3. Section 104(3) of the PA2008 requires the SoS to decide an application for development consent in accordance with any relevant NPS that has effect in relation to the application, subject to the exceptions in s104(4) to (8) as follows:

- Deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations.
- Deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment.
- Deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment.
- The adverse impact of the proposed development would outweigh its benefits.
- Any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.4. Section 105(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision if s104 does not apply because there is no NPS in effect relating to the specific type of development, the subject of the application. These comprise any LIR, any matters prescribed in relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.

2.2.5. Section 115(1)(b) of the PA2008 provides that a Development Consent Order (DCO) can include consent for "*associated development*" which is development that is not part of but is associated with the NSIP.

2.2.6. Chapter 3 of this Report (Section 3.5: 'Policy Considerations') sets out our findings and conclusions in relation to the applicability of s104, s105 and s115 to the application.

OTHER LEGISLATION

2.2.7. A full list of relevant primary and secondary legislation, including but not limited to duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in Table A5 of Appendix A of this

Report. All applicable legislation has been considered by the ExA as required and the findings and recommendations in this Report are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

2.3.1. NPSs set out Government policy on different types of national infrastructure development. With regard to the purposes of the PA2008, the ExA considers that the Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England (June 2018) (ANPS) and the National Policy Statement for National Networks (NNNPS) are relevant to the application. The extent to which theses NPSs apply to the Proposed Development is discussed further in Chapter 3 within Section 3.5: 'Policy Considerations'.

2.3.2. This Report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in the PA2008. The purpose and broad content of these NPSs is summarised here. Table A3 in Appendix A provides further detail on the NPSs of relevance to the Proposed Development.

AIRPORTS NATIONAL POLICY STATEMENT

2.3.3. The ANPS sets out the Government's policy on the need for new airport capacity in the south-east of England and particular considerations relevant to a development consent application to which the ANPS relates.

2.3.4. The ANPS provides the primary basis for decision making on development consent applications for a Northwest Runway at Heathrow Airport. It does not have effect in relation to an application for development consent for an airport development not comprised in an application relating to the Heathrow Northwest Runway (para 1.41). However, it also states that it will be an important and relevant consideration in respect of applications for new runway capacity and other airport infrastructure in London and the south-east of England (para 1.12).

NATIONAL POLICY STATEMENT FOR NATIONAL NETWORKS

2.3.5. The 2015 NNNPS sets out the national policy for highways-related development. It provides planning policy for promoters of NSIPs on the road and rail networks, and the basis for examination by examining authorities and decisions by the SoS for Transport.

2.3.6. A revised NNNPS was designated on 24 May 2024. The 2024 NNNPS has effect for any applications for development consent accepted for examination after the designation of the revised NNNPS. Since the Gatwick Airport Northern Runway Project application was accepted for examination prior to 24 May 2024, the 2015 NNNPS has effect for this application. Nevertheless, as recognised in paragraph 1.17 of the 2024 NNNPS any NPS which is designated but does not have effect is potentially capable of being important and relevant in the decision-making process. All references in this Report to the NNNPS should be understood to relate to the 2015 NNNPS unless clearly stated otherwise.

2.3.7. To understand the Proposed Development's compliance with the 2024 NNNPS, the Applicant has provided a comparison of the 2024 NNNPS with the 2015 NNNPS and ANPS policy in response to the ExA's first written questions (ExQ1) ExQ1.GEN.1.33 [REP3-092].

2.4. OTHER GOVERNMENT POLICIES AND STRATEGIES

2.4.1. Other relevant Government policy has been taken into account by the ExA, including the following:

- The National Planning Policy Framework (2023).
- The Aviation Policy Framework (APF) (2013).
- Beyond the Horizon: The Future of UK Aviation: Making Best Use of Existing Runways (2018).
- Flightpath to the Future: A Strategic Framework for the Aviation Sector (2022).
- Jet Zero Strategy: delivering net zero aviation by 2050 (2022).
- Net Zero Strategy: Build Back Greener (2021).

2.4.2. Table A4 in Appendix A provides further detail on the relevance of each of the above policies to the Proposed Development. These policies are also discussed in more detail in Chapter 4 of this Report 'The Need for the Proposed Development' and other chapters as appropriate.

2.5. LOCAL IMPACT REPORTS

2.5.1. Five LIRs were submitted into the Examination at Deadline (D) 1, and these were:

- Joint West Sussex Local Authorities (JWSLAs) [REP1-068];
- Joint Surrey Councils (JSCs) [REP1-097]
- East Sussex County Council (ESCC) [REP1-070];
- Kent County Council (KCC) [REP1-079]; and
- Sevenoaks District Council (SDC) [REP1-095].

2.5.2. The LIRs describe the impacts arising from the Proposed Development by topic area. Table A6 in Appendix A sets out a list of the topic areas covered in each LIR.

2.5.3. Amongst other matters, LIRs identify local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s104(2)(d) and s105(2)(c) of the PA2008. Table A7 in Appendix A lists the individual local policies that are relevant to the Proposed Development.

2.5.4. No overall conclusion was drawn on the Proposed Development as a whole in the JWSLAs and ESCC LIRs.

2.5.5. The JSCs state in the introduction to its LIR (para 1.8, [REP1-097]) that the JSCs *"recognise the importance of Gatwick Airport's role in supporting employment for Surrey residents and generating investment in Surrey's economy. However, the JSCs are firmly of the view that any economic and strategic benefits do not override other considerations. It is not currently demonstrated to the JSCs' satisfaction that any benefits would be sufficient to outweigh the adverse impacts of the NRP [Northern Runway Project]".*

2.5.6. KCC concludes its LIR [REP1-079] by stating that *"Whilst an increase in aircraft movements would enhance the economic benefits of the airport (through business travel, tourism, trade and increased employment both on site and in the supply chain), routine use of the northern runway would have an adverse impact on local communities on the ground, would not further the purpose of the National Landscapes and would further contribute towards Climate Change."*

2.5.7. SDC states in the conclusion of its LIR (para 5.2, [REP1-095]) that *"The District Council is supportive of the project in principle, particularly in relation to the significant economic benefits the expansion will bring to our thriving tourism industry. However, we remain concerned about the negative social and environmental impacts that our communities living in the south of the District will have to endure."*

2.5.8. The issues raised in the LIRs are considered in further detail in the relevant planning issues topic chapters of this Report (Chapters 4 - 18).

2.6. ENVIRONMENTAL IMPACT ASSESSMENT

2.6.1. On 16 August 2019 the Applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) of its intention to provide an Environmental Statement (ES) [PD-002]. In accordance with Regulation 6(2)(a) of the EIA Regulations, the Planning Inspectorate (the Inspectorate) determined that the Proposed Development was EIA development.

2.6.2. On 2 September 2019, the Applicant submitted a Scoping Report [APP-092] to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion).

2.6.3. On 11 October 2019 the Inspectorate provided a Scoping Opinion [APP-095].

2.6.4. Overall, the ExA considers that the ES, as supplemented with additional information during the Examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.

2.6.5. The ExA considered that changes to the documentation, comprising the ES during the Examination, together with the change requests (see section 1.6 of this Report) did not individually or cumulatively undermine the scope and assessment of the ES. Chapters 4 - 18 of this Report summarise the environmental effects for each planning issue.

2.7. HABITATS REGULATIONS ASSESSMENT

2.7.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

2.7.2. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA). As is the convention and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Chapter 19 of this Report.

2.8. TRANSBOUNDARY EFFECTS

2.8.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS following the Applicant's request for an EIA Scoping Opinion. The Scoping Report concluded that the Proposed Development is not likely to have significant effects on another European Economic Area (EEA)

State and proposes that transboundary effects do not need to be considered within the ES.

2.8.2. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. The ExA is satisfied, on the basis of the information provided by the Applicant and Natural England's agreement that the correct sites had been considered in the HRA [RR-3223], that the Proposed Development would not have an LSE on European sites in any EEA States.

3. IDENTIFYING THE MAIN PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. Chapter 3 introduces the Examining Authority's (ExA) findings and conclusions on the planning issues. It reviews the Initial Assessment of Principal Issues (IAPI) and explains how the issues identified have been managed.

3.2. RELEVANT REPRESENTATIONS

3.2.1. As stated in Section 1.4 of this Report, a total of 4813 Relevant Representations (RRs) were received by the Planning Inspectorate (the Inspectorate). A majority of RRs objected to the Proposed Development and the most prevalent issues (raised by 500 Interested Parties (IPs) or more) in the RRs by broad topic area were as follows (numbers are approximate):

- Noise and vibration raised in 3050 RRs.
- Traffic and transport raised in 1820 RRs.
- Climate change and greenhouse gas (GHG) emissions raised in 1780 RRs.
- Air quality raised in 1750 RRs.
- Socioeconomics raised in 900 RRs.
- The case for the development raised in 570 RRs.
- Health and wellbeing raised in 550 RRs.

3.2.2. Approximately 715 RRs expressed support for the Proposed Development.

3.3. INITIAL ASSESSMENT OF PRINCIPAL ISSUES

3.3.1. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, the ExA prepared an IAPI arising from the application in advance of the Preliminary Meeting (PM). The IAPI was based on the application documents and submitted RRs. The list of issues relates to all phases of the Proposed Development. The IAPI was considered at the PM and no other principal issues were identified either during the PM or during the Examination. The IAPI can be found in Annex C of the Rule 6 letter [PD-009]. The issues identified alphabetically in the IAPI are as follows:

- Air Quality.
- Case for the Proposed Development.
- Climate Change and GHG Emissions.
- Compulsory Acquisition and Temporary Possession of Land and Rights.
- Draft Development Consent Order, Planning Obligations, Agreements and Management Plans.
- Ecology.
- Historic Environment.
- Landscape and Visual Effects.
- Noise and Vibration.
- Social, Economic and Land Use Considerations.
- Traffic and Transportation.
- Water Environment.

3.4. THE PLANNING ISSUES IN THIS REPORT

3.4.1. The ExA considers that the issues raised by IPs were broadly in line with the IAPI and were subject to written and oral questioning during the Examination. These are the issues that the ExA has used to structure most of the following chapters in this

Report (Chapters 4 - 18) which address each issue in turn. To facilitate efficient consideration of the relationships between certain issues and to avoid repetition in analysis, the ExA has varied the order of its consideration of issues arising from the IAPI and subdivided some of the issues into separate chapters. It should also be noted that the IAPI is a high-level framework. The ExA has nevertheless had regard to all important and relevant matters arising from submissions from IPs and has reported on these, if required, within each chapter below.

3.4.2. The following section of this Chapter addresses the main policy considerations for the Gatwick Airport Northern Runway Project application. Chapter 4 addresses the matters of principle including, the need for the Proposed Development, the future baseline and consideration of alternatives. The following chapters (5 - 18) of this Report set out the ExA's findings and conclusions on the planning issues by topic area, refer to paragraph 1.9.1 of this Report for the list of topic areas covered by these chapters.

3.4.3. In each chapter, the ExA will provide a summary of the application as made, then report on the main issues for each topic. Findings and conclusions will then be drawn for each topic and whether the effects carry a little weight, moderate weight, great weight, or very great weight for or against the making of the Development Consent Order (DCO).

3.5. POLICY CONSIDERATIONS

The Planning Act 2008 and National Policy Statements

3.5.1. The matter of whether the Proposed Development should be assessed against section (s) 104 or s105 of the PA2008 was discussed at Issue Specific Hearing (ISH) 1 [EV6-001, EV6-002 and EV6-003]. A summary of the Applicant's case on this matter can be found in section 2 of The Applicant's Response to Actions - ISH 1: The Case for the Proposed Development [REP1-062] and their Written Summary of Oral Submissions from the same Hearing [REP1-056]. A summary of the Legal Partnership Authorities (LePAs) case on this matter can largely be found in the Joint West Sussex LIR (paras 6.1 - 6.10, [REP1-068]), supplemented by their response to the first written questions (ExQ1) of the ExA (ExQ1.CS.1.27) [PD-012] and summarised in their closing statement [REP9-151].

3.5.2. There is no dispute between the parties that the Airports National Policy Statement (ANPS) does not have effect in relation to the Proposed Development, but that the NPS is important and relevant. Paragraph 1.41 of the ANPS states that:

"The Airports NPS does not have effect in relation to an application for development consent for an airport development not comprised in an application relating to the Heathrow Northwest Runway, and proposals for new terminal capacity located between the Northwest Runway at Heathrow Airport and the existing Northern Runway and reconfiguration of terminal facilities between the two existing runways at Heathrow Airport. Nevertheless, the Secretary of State considers that the contents of the Airports NPS will be both important and relevant considerations in the determination of such an application, particularly where it relates to London or the South East of England. Among the considerations that will be important and relevant are the findings in the Airports NPS as to the need for new airport capacity and that the preferred scheme is the most appropriate means of meeting that need."

3.5.3. There is also no dispute between the parties that the highways related development proposed as part of the overall scheme falls within the remit of the National Networks National Policy Statement 2015 (NNNPS).

3.5.4. On the face of it therefore part of the Proposed Development falls to be considered under s104 of the PA2008, and part falls within s105. During the Examination there was discussion around the practical implications of this.

3.5.5. The Applicant's position [REP1-056, REP1-062, APP-245, REP3-078, REP4-031, REP6-095 and REP9-112] can be summarised as follows:

a. Section 104 PA2008 applies to the highway elements of the scheme; s105 applies to the airport aspects of the Proposed Development.
b. The ExA on the NSIP Case for EFW[2] applied s104 and s105 to different elements of an energy from waste plant. In a Judicial Review into the case[3] it was held that s105 should be interpreted as applying to those discrete elements of an application which comprise proposals for development for which no NPS has effect. Section 105 should be interpreted as applying to free-standing parts of the application to the extent that s104 does not apply in relation to the application.
c. The EFW Case was different as the separate elements of the proposal were distinct, whereas the Proposed Development is indivisible (the highway and airfield works are interrelated). However, the Applicant considers that the conclusion of Dove, J in the EFW Case - that s104 and s105 of the PA2008 should apply to components of a single application depending on whether an NPS was in effect for any component - are capable of a more general application.
d. The main purpose of the Proposed Development is to enable the expansion of airport operations. The highway works are proposed to facilitate this expansion and are secondary to it, so it is appropriate to start with the application of s105. Applying s104 to the overall scheme would focus the consideration of policy on an NPS which was only in effect in relation to the highways-related development, but not in effect in relation to the airport-related development as the primary element of the application. The NNNPS and s104 are in effect for the highways elements of the scheme.
e. The ANPS, whilst focused on the development of a new runway at Heathrow, included policy tests based on highway works anticipated to be part of that proposal (works to the M25).
f. While formal determination of the highways elements of the Proposed Development must take place against the requirements of s104, it is appropriate to use the policy framework of the ANPS as the primary framework against which the Proposed Development as a whole should be tested (and the policy principles within the NNNPS broadly reflect those which are applied under the ANPS).

3.5.6. The position of the LePAs [REP1-068, REP1-097, REP3-135, REP5-094, REP7-107 and REP9-151] to this matter can be summarised as:

a. Words and passages in a statute derive their meaning from their context and must be read in the context of the section, as a whole, and that where the same words are used in an Act they have the same meaning.
b. Section 104(3) of the PA2008 states that the "*Secretary of State must decide the application in accordance with any relevant national policy statement*…" and s104(1) states that s104 applies to an application if a NPS has effect in relation to development of the description to which the application relates.

[2] https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010083
[3] EFW Group Limited v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 2697 (Admin)

c. Where an application proposes development, only part of which falls within the scope of matters addressed by a NPS which has effect for some of the development, that application is still one which satisfies s104(1) of the PA2008 and thus s104 applies to it.
d. Section 105 of the PA2008 only applies to an application if s104 does not apply.
e. The description of the development includes highway related development – this qualifies as an NSIP and has a NPS in effect (NNNPS). Therefore, the application satisfies s104 of the PA2008.
f. A wider question applies to circumstances where the NPS does not give guidance on or address large parts of the application that is the subject of the application, as is the situation here. The airport related development contained in the Proposed Development is not capable of being regarded as in accordance with the NNNPS because the policies of that NPS do not have relevance or application to that part of the development. In such circumstances the SoS should decide the application having regard to the matters set out in s104(2) of the PA2008.
g. The EFW Case was different, in that there were two separate developments on adjacent sites, whereas the Proposed Development is not divisible.
h. The NNNPS is not required to be applied to the whole of the development. Through s104(3) of the PA2008 it is possible to apply the NNNPS to the highway aspects of the development, without distorting the meaning of the NNNPS so as to apply it to matters that it clearly does not address. The ANPS can be considered as an important and relevant matter under s104(2)(d) of the PA2008.
i. There is no need for the SoS to make a definitive interpretation on the correct approach to s104 and s105 to make a lawful decision on this application. It would be open to the SoS to conclude that the matter was open to different legal interpretation.

3.5.7. For similar reasons to the LePAs, Communities Against Gatwick Noise and Emissions (CAGNE) also consider that the Proposed Development should be considered under s104 [REP1-137].

ExA's Conclusion on the Planning Act 2008 and National Policy Statements

3.5.8. We tend towards the view of the Applicant on this matter. The primary focus of the Proposed Development is the airfield works; the highway elements are required solely as a result of the Proposed Development and while the works themselves are indivisible the highway elements are purely required to facilitate the Proposed Development.

3.5.9. We acknowledge the view of the LePAs and understand the logic of their submissions. However, the DCO application is for an airport based scheme; it is called the Gatwick Airport Northern Runway Project and the application form [APP-002] description primarily concerns the airport elements of the Proposed Development, with the highway elements of the scheme clearly being present to facilitate that development:

"The application seeks powers to enable dual runway operations at Gatwick Airport through altering the existing northern runway, lifting restrictions on the northern runway's use and delivering the upgrades or additional facilities and infrastructure required to increase the passenger throughput capacity of the airport. This includes substantial upgrade works to certain surface access routes which lead to the airport."

3.5.10. In the EFW Case, Dove, J said:

"Proposals for development within the statutory framework's decision-making process for which there is no applicable NPS having effect are to be decided pursuant to the framework provided by section 105 of the 2008 Act. Such an approach clearly reflects the language of section 104(1) which refers to an NPS having effect "in relation to development of the description to which the application relates". It is less consistent with a literal reading of section 105(1), but when that text is placed in the context of the purpose and structure of the legislation as a whole, it is clear that section 105(1) should be interpreted as applying to those discrete elements of an application which comprise proposals for development for which no NPS which has effect."

3.5.11. We are of the view that the starting point in policy terms for the Proposed Development should therefore be the ANPS, and as this does not have effect in relation to the Proposed Development, the application falls to be considered primarily under s105 of the PA2008. The ANPS will be both an important and relevant consideration in the determination of the application, particularly as the airport lies within the south-east of England and is considered to be a London airport.

3.5.12. The ANPS is therefore the primary source of policy against which the Proposed Development as a whole should be tested. The NNNPS (2015) will also be an important and relevant consideration and will necessarily inform the formal determination of the highways elements of the proposal. This approach to the policy framework also solves the initial problem raised by the LePAs in their point (f) above.

3.5.13. Section 104 of the PA2008 will apply to the highways elements of the Proposed Development (and the traffic and transport chapter of this Report, as well as the highway element sections in other chapters) but the ANPS is the primary source of policy against which the Proposed Development as a whole should be tested in the view of the ExA.

3.5.14. While the LePAs reference to the Net Zero Teesside project is noted [REP5-094], as well as the EFW Case, such an approach also follows the precedent set by other NSIPs, for instance the proposal for Sizewell C which contains multiple projects which individually satisfied the requirements to be NSIPs in their own right, but the scheme as a whole was considered under s105 of the PA2008. We also note that the Net Zero Teesside project was the subject of a direction from the SoS under s35 of the PA2008, and that this direction confirmed that the relevant NPS had effect for that case (contrary to a similar direction made for the EFW Case). Such a direction does not exist in this situation.

3.5.15. It is also noted that the LePAs are of the view that whichever interpretation is adopted would not materially affect the outcome of the decision. The Applicant also accepts that whichever interpretation is adopted would not affect the outcome of the decision on the Proposed Development. The Applicant's D6 submission on s104 and s105 of the PA2008 [REP6-095] stated:

"the Applicant is prepared to accept that the conclusions each party reaches on whether consent should be granted would not differ, whether the application was determined under section 104 and 105, or whether the application was determined under the alternative approaches to section 104".

3.5.16. The LePAs stated [REP9-151]:

"It does not depend on whether the application is considered only under s.104 PA 2008 (which the JLAs consider is the correct legal position) or under the 'hybrid' approach advocated by the Applicant, whereby the highway-related development is considered under s.104 PA 2008 and the airport-related development is considered under s.105 PA 2008. For that reason, the JLAs consider that there is no need for the SoS to make a definitive interpretation on the correct approach to s.104 and s.105 PA 2008 in order to make a lawful decision in this case. It would be open to the SoS to conclude that the matter was open to different legal interpretations, and that in the circumstances, the SoS would consider the application under both the JLAs' approach of applying only s.104 PA 2008 and under the Applicant's 'hybrid' approach of applying both s.104 and s.105 PA 2008. Either way, the JLAs do not consider that the ultimate outcome would be changed."

3.5.17. The ExA agrees with these views.

The Planning Act 2008 Section 115 and Associated Development

3.5.18. Section 115 of the PA2008 provides that, in addition to the development for which development consent is required, consent may also be granted for associated development, and that "*Associated development*" means development which is associated with the development.

3.5.19. Guidance on associated development[4] states that it is for the SoS to decide on a case-by-case basis whether or not development should be treated as associated development. In making this decision the SoS will take into account the following: associated development should support the construction or operation of the principal development, or help address its impacts; associated development should be subordinate to the principal development; development should not be treated as associated if it is only necessary as a source of additional revenue – it can cross-subsidise but this should not be its sole purpose; and associated development should be proportionate to the nature and scale of the principal development.

3.5.20. The Planning Statement [APP-245] notes that the airfield elements and the highways works of the Proposed Development fall within the description of a nationally significant infrastructure project under s14 (i) and (h) and 22(1)(b), (3) and (4)(b) and s23(1)(b), (4) and (5)(a) of the PA2008 (as set out in paragraphs 1.1.4 and 1.1.5 above). Associated development within the Proposed Development comprises Work Numbers (Nos.) 26 to 34 and 38 to 44 of the draft Development Consent Order (dDCO) [REP10-004]. In summary these works consist of:

- four hotels (Work Nos. 26, 27, 28 (a), and 29);
- an office building (Work No. 28(b));
- multi storey, decked, surface and reconfiguration of car parks (Work Nos. 28 (c), 30 (b), 31 (e), 32, 33 and 34;
- habitat enhancement, flood compensation, works to the River Mole, planting and open space works (Work Nos. 38 to 42); and
- water and wastewater treatment works and associated works (Work Nos. 43 and 44).

3.5.21. Concern was raised by, amongst others, Crawley Borough Council (CBC), Horsham District Council (HDC), Mid Sussex District Council (MSDC) and West Sussex County Council (WSCC) in various documents, including their Joint Local Impact

[4] Planning Act 2008: Guidance on associated development applications for major infrastructure projects, Department for Communities and Local Government, April 2013.

Report (LIR) [REP1-069], and by Reigate and Banstead District Council (RBDC) [REP5-049] over the inclusion of the hotels and the office within the dDCO. Queries raised included issues over the provision of additional on-airport parking at the hotels. The Councils' view was that any such parking should be operational parking only so as to support the Applicant's Surface Access Commitments. This was seen as particularly important as the hotels will, in due course, exist as commercial operations operated by other parties and so there is no reason that they should be exempt from the Local Planning Authorities' wider policies in relation to car parking merely by virtue of their conception under the DCO for authorising consent [REP2-040].

3.5.22. In response, the Applicant stated that hotel accommodation on-site supports the operation of the airport in providing necessary accommodation for passengers and helps to address the airport's impacts by reducing the need for transport between accommodation and the airport. It noted that the hotels are subordinate to the airport, do not solely cross-subsidise the principal development and are proportionate (as an example, [REP5-037]) and that they consider it is open to the SoS to conclude that the hotels are "*associated development*", and that such a conclusion is clearly justified [AS-060].

3.5.23. In response to the ExA's second written questions (ExQ2.DCO.2.17, [PD-021]) the Applicant confirmed that there would be no car parking provision for the proposed hotels, except for disabled users and servicing [REP7-081]. Following this, CBC confirmed that they agreed that, with this stipulation, the hotels could be considered as associated development [REP9-066].

3.5.24. The ExA's ExQ2 asked if the proposed office as part of the Proposed Development would be occupied by users not relating to the airport (ExQ2.SE.2.10 [PD-021]). The Applicant confirmed [REP7-091] that the proposed offices would be used for airport related business purposes. While they could not confirm that it would be exclusively used for employees of the Applicant otherwise displaced from the current office-space at Destinations Place (Work No. 29), it would be used and made-available for wider airport-related business use (eg airlines or other companies associated with activities at Gatwick). To secure this, Requirement (R) 34 of the dDCO was introduced to ensure that the new office must only be occupied by an entity related to, or whose business and/ or operations are related to, the airport, air travel and/ or aviation, unless otherwise agreed in writing by CBC. This commitment was welcomed by the LePAs [REP8-161].

ExA's Conclusion on the Planning Act 2008 Section 115 and Associated Development

3.5.25. The works relating to habitat enhancement, flood compensation, works to the River Mole, planting and open space works, and the water/ wastewater treatment works and associated works are provided to address the impacts of the Proposed Development and are associated development. The proposed new car parks and reconfiguration of existing car parks are subordinate to the principal development, would cross-subsidise the development but are not only necessary for this purpose. The car parks are, on the face of it, also proportionate although further discussion over the number of car parking spaces can be found in Chapter 5, Traffic and Transport.

3.5.26. Hotels are considered in more detail in Chapter 4, the Need for the Proposed Development in reference to the Future Baseline case. However, with regard to the Proposed Development, the ExA considers that the hotels would be subordinate to

the principal development and would cross-subsidise the development but are not only necessary for this purpose. Hotels are a common feature for airports, providing accommodation for travellers on a flight the following day or on arrival on a late flight, as well as accommodation for flight crew. The ExA considers that, given the proposed number of passengers the Proposed Development would cater for, an additional four hotels are proportionate to the nature and scale of the principal development. With regard to car parking at the hotels, R37 of the dDCO includes a limit on the overall number of car parking spaces. The ExA therefore agrees with CBC and the Applicant that the hotels constitute associated development.

3.5.27. Work No. 28(b), an office, would support the operation of the principal development, be subordinate to the development and would be proportionate to the nature and scale of the principal development. R34 would ensure that the offices were occupied by relevant aviation based occupiers and this building would therefore constitute associated development.

3.5.28. We conclude therefore that the development applied for consists solely of development for which development consent is required, or associated development, and that the associated development is reasonably associated with the Proposed Development. The Proposed Development accords with s115 of the PA2008.

4. THE PRINCIPLE OF THE PROPOSED DEVELOPMENT AND THE NEED CASE

4.1. INTRODUCTION

4.1.1. A large section of the Examination was taken up with the case for the Proposed Development. This topic covered a range of issues and was considered solely at Issue Specific Hearing (ISH) 1 and partially at ISH7 and ISH9. A number of questions were also asked as part of the Examining Authority's (ExA) first and second written questions (ExQ1 [PD-012]) (ExQ2 [PD-021]). Questions of relevance to the topic were also asked under Rule 17 of the Examination Procedure Rules[5] in May [PD-018], July [PD-025], and August [PD-027] 2024.

4.1.2. The range of issues encompasses the following topics:

- The policy background and compliance or otherwise;
- The need case itself, including:
    - National forecasts and airport and system constraints;
    - The Applicant's demand forecasts; and
    - The baseline case and the Proposed Development case.
- The capacity and capability of:
    - The airport to accommodate the baseline and the Proposed Development case;
    - The surrounding surface access network to accommodate both scenarios; and
    - Airspace and considerations regarding this.

4.2. POLICY BACKGROUND

4.2.1. As noted in Chapter 2, The Airports National Policy Statement (ANPS) (June 2018) sets out the Government's policy on the need for new airport capacity in the south-east of England. The ANPS provides the primary basis for decision making on development consent applications for a Northwest Runway at Heathrow Airport.

4.2.2. The ANPS does not have effect in relation to an application for development consent for an airport development not comprised in an application relating to the Heathrow Northwest Runway (para 1.41); but notes that the contents of the ANPS will be both important and relevant considerations in the determination of such an application, particularly where it relates to London or the south-east of England. Among the considerations that will be important and relevant are the findings in the Airports NPS as to the need for new airport capacity and that the preferred scheme (the Heathrow Northwest runway) is the most appropriate means of meeting that need.

4.2.3. The Airports Commission preceded the ANPS. In 2013 the Commission's interim report concluded that there was a need for one additional runway to be in operation in the south-east of England by 2030, and the final report of the Commission concluded that this should be the proposed Northwest runway at Heathrow, as this "*offered the greatest strategic and environmental benefits*" over the other shortlisted

[5] Infrastructure Planning (Examination Procedure) Rules 2010

schemes. These schemes included a second runway at Gatwick, to be located to the south of the existing runway.

4.2.4. Paragraph 1.39 of the ANPS confirms that the Government is supportive of airports beyond Heathrow making best use of their existing runways, while recognising that the development of airports can have positive and negative effects. Paragraph 1.42 states that airports wishing to make more intensive use of existing runways will still need to submit an application for planning permission or development consent to the relevant authority, which should be judged on the application's individual merits. Paragraph 1.39 also notes that such merits should take account of all relevant considerations, particularly economic and environmental impacts. Paragraph 1.42 confirms that the Government accepts it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow.

4.2.5. The Aviation Policy Framework (APF)[6] contains Government policy on wider aviation issues not covered by the ANPS (paragraph 1.38 ANPS). Paragraph 1.60 of the APF states that in the short term ('to around 2020') the Government's aviation strategy is based on making the best use of capacity to improve performance, resilience and the passenger experience. In the longer term the objective remains to ensure that the UK's air links continue to make it one of the best-connected countries in the world (paragraph 1.110); the Airports Commission was established to investigate how to achieve this objective.

4.2.6. Beyond the Horizon, Making best use of existing runways[7] (MBU) confirms that the Government is supportive of airports beyond Heathrow making best use of their existing runways in similar text in paragraph 1.29 to paragraph 1.42 of the ANPS, although stating that this policy leaves it up to local rather than national government to consider each case on its merits. Paragraph 1.28 notes that the policy (of making best use of existing runways) would only lead to a relatively small increase in Air Transport Movements (ATMs) of some 2% without Heathrow expansion.

4.2.7. Flightpath to the Future (2022) contains a ten-point plan for the future of UK Aviation, including to support growth in airport capacity where it is justified and to ensure that capacity is used in a way that delivers for the UK (point 3). Footnotes 5, 13 and 22 confirm that the ANPS and MBU are the most up to date policy on planning for new airport development.

4.2.8. The Jet Zero strategy (JZS)[8] sets out commitments for the UK aviation sector to reach net zero greenhouse gas emissions by 2050. It contains a five-year delivery plan (chapter 4) which states that the Government *"will support airport growth where it can be delivered within our environmental obligations"*, stating that:

"The Government's existing policy framework for airport planning in England – the Airports National Policy Statement (ANPS) and Beyond the horizon, the future of UK aviation: Making best use of existing runways (MBU) – have full effect, as a material consideration in decision making on applications for planning permission. Our analysis shows that it is possible to achieve our goals without the need to restrict people's freedom to fly".

[6] Aviation Policy Framework, March 2013
[7] Beyond the horizon: The future of UK aviation Making best use of existing runways, June 2018.
[8] Jet Zero Strategy: Delivering net zero aviation by 2050, July 2022.

ISSUES ARISING DURING THE EXAMINATION

4.2.9. During the Examination discussion centred around the following topics within this category:

- Does the Proposed Development fall within the acknowledged policy support for MBU?
- Is it necessary to demonstrate need?

MAKING BEST USE OF EXISTING RUNWAYS

Whether the Proposed Development Constitute an 'Existing Runway'

4.2.10. The existing northern runway at Gatwick is used solely when the primary southern runway is unavailable – whether this is because of an emergency or if this runway is undergoing maintenance. In 2019 the northern runway was used by 2,800 flights [REP1-062]. The runway is certified by the Civil Aviation Authority (CAA).

4.2.11. The northern runway has a width of 45m, with 7.5m shoulders on either side (adding up to a total of 60m). Appendix B to [REP1-062] shows the construction required to the runway for the Proposed Development. In essence this means the southern 12m of existing pavement (made up of the existing 7.5m shoulder and 4.5m of the runway) would be dug up and returned to grass, while the northern shoulder would be dug up and re-laid as runway pavement (along with an additional 4.5m constructed) with a new 7.5m shoulder provided. This would amount to a new 12m of additional pavement where none exists at present, or an additional 19.5m of construction when counting the digging up of the existing shoulder.

4.2.12. The figures below show an indicative cross section of the works (Figure 4.1, taken from [REP1-062]) and a plan view of the runway works (Figure 4.2, taken from [AS-136] - where the pink denotes the proposed runway and the red speckled shading the previous southern extent of the runway).

Figure 4.17: Northern Runway Construction Indicative Cross Section

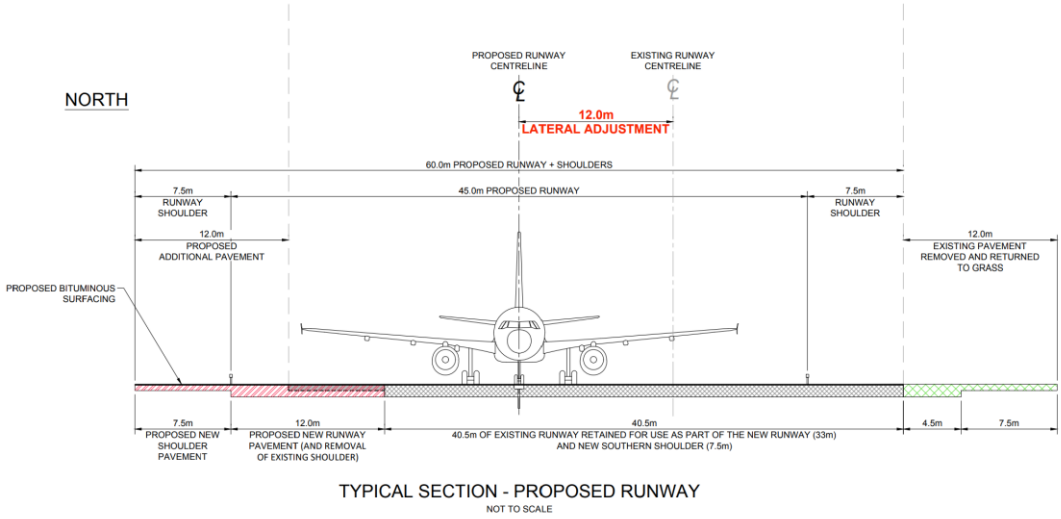
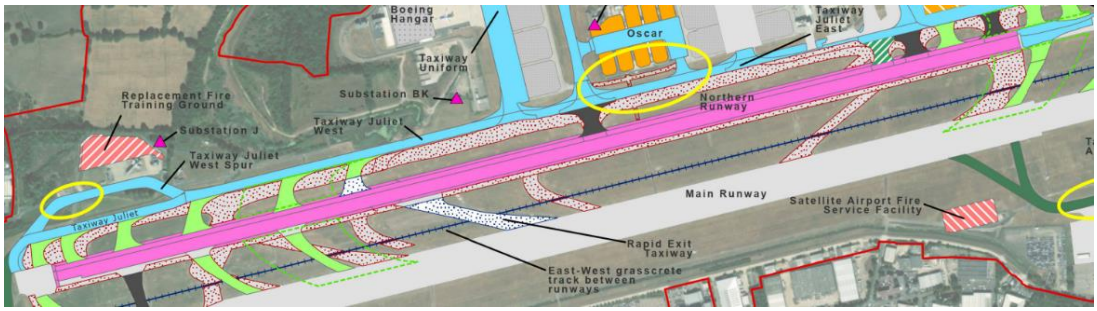


Figure 4.28: Plan View of the Proposed Runway Works



4.2.13. The Proposed Development, also known as the Northern Runway Project (NRP), would allow the northern runway to be used on a full-time basis, and concurrently with the southern runway, which it is not possible to do so at present due to the spacing between the runways (as set out by various UK (EU) Regulations and International Civil Aviation manuals and procedures [REP1-062]). The northern runway would be limited to departures only and up to Code 'C' sized aircraft. The operations are shown in Figure 4.3 below, taken from the Needs Case [APP-250].

Figure 4.39: Existing and Proposed Runway Operations

4.2.14. A range of comments were made by Interested Parties (IPs) of the view that the Proposed Development constituted a new runway, and that consequently the Proposed Development could not comply with the policy of making the best use of an existing runway. For example, in their written representation Communities Against Gatwick Noise Emissions (CAGNE) [REP1-137] stated that:

"the NRP scheme is not seeking to make best use of an existing runway, but to create a new, additional, runway. Accordingly, it gets no policy support from MBU".

4.2.15. CAGNE noted that Gatwick is a single runway airport and that the Proposed Development would enable dual runway operations, transforming "*Gatwick from a single runway airport into a dual runway airport"*

4.2.16. This is re-affirmed in CAGNE's closing statement [REP9-223], where it stated that the proposal would introduce a new operational runway, and that:

"The NRP proposes replacing the existing emergency/standby runway and creating a new main runway to the north. The emergency/standby runway will need to be completely repositioned, such that its centreline is moved to the north by 12 metres, and resurfaced; the resulting runway will be a new runway."

and

"These works – including excavation, reprofiling of the land, moving buried utilities, new drainage, new lighting, and upfilling the ground – cannot be described as anything other than a creation of a new runway in a different position and with different physical attributes to the existing standby runway."

4.2.17. CAGNE noted that such works would also require other development to facilitate the dual runway operations, including the reconfiguration of taxiways, a new pier and stands.

4.2.18. In response to CAGNE, the Applicant noted that the scale of development is entirely different from that which would be necessary to construct a full-length southern runway at Gatwick or a new runway at Heathrow [REP3-074], and stated that:

"it cannot sensibly be concluded that works which allow for the repositioning, only 12m to the north, of the centre line of what is plainly an existing runway remove the runway from the scope of an "existing runway" into being as "an entirely new runway"

4.2.19. The Legal Partnership Authorities (LePAs) noted within their Local Impact Report (LIR) [REP1-068] that there was some ambiguity in the scope of MBU and whether it applies only to making best use of 'existing runways' or more widely to 'existing infrastructure' and that there was some uncertainty about the nature and extent of the physical works as part of the Proposed Development to reposition and resurface the emergency runway. At Deadline (D) 2 [REP2-081] the LePAs noted issues around drainage, as witnessed on the Accompanied Site Inspection [EV1-003], and raised concerns that a new drainage channel would need to be cut into the original runway. At D3 the Applicant noted [REP3-106] that this would not be necessary as the existing runway drainage falls to the north – so the drainage channel which would need to be removed as part of the removal of the shoulder would then be replaced at the new northern extent of the proposed runway works.

4.2.20. At ISH1 [EV6-006 to EV6-007] the Applicant considered that the proposed works to the Northern Runway would fall within the remit of permitted development rights[9] [APP1-062], using this in part as justification of their view of the minor nature of works proposed to the northern runway. It noted that permitted development rights included the carrying out on operational land by a relevant airport operator or its agent of development in connection with the provision of services and facilities at a relevant airport unless it relates to *"the construction or extension of a runway"*, stating that the widening on one side and reduction on the other does not extend the runway or amount to the construction of a new runway. CAGNE [REP3-113] disagreed with this proposition as they considered that the Proposed Development would involve the construction or extension of a runway, actions which are not permitted development.

4.2.21. CAGNE was also of the view that the Applicant had stated during the Examination that the terms 'existing runways' and 'existing infrastructure' were used

[9] Class F of Part 8 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 concerns development at an Airport.

interchangeably in Government policy, in a manner which assisted their proposal. However, CAGNE noted [REP1-137], [REP9-223] that 'infrastructure' was used in the Airports Commission's final report and the only use of it in the ANPS was in this context (when referring to the Airports Commission), using 'runways' in the remainder of the ANPS, including in the policy itself and the title of MBU.

4.2.22. The Applicant considers [REP3-074] that both the ANPS and MBU (at paragraphs 1.1, 1.2, 1.3 and 1.4) refer directly to the need to make more intensive use of existing infrastructure or existing airport capacity and that in any event if there is a distinction to be drawn (between infrastructure and runways) then it is a distinction without effect because if an airport makes better use of its airport, or of its capacity or infrastructure the intended consequence would be for increased or better use of its runway(s).

ExA's Conclusion on Whether the Proposed Development Constitute an 'Existing Runway'

4.2.23. The ExA notes and agrees with CAGNE that Gatwick is commonly referred to as a single runway airport, and that the effect of the Proposed Development would be to allow dual runway operations at the airport (as described in the application form) [APP-002]. However, it is also clear that the airport has two runways at present.

4.2.24. The northern runway was used for 2,800 flights in 2019. Although shorter than the southern runway, it is fully CAA certified and, as evidenced by its usage when the southern runway is closed (for whatever reason) can be used fully for aircraft arriving at or departing from the airport. It is clear to our minds therefore that the airport at present has two runways but that for operational and safety reasons both runways cannot be used at the same time. The main runway is in use primarily for historical and practical reasons (being a longer runway) but equally the northern runway comes into use when the main runway is not available.

4.2.25. The works to the northern runway to make it usable at the same time as the southern runway (albeit only for departures of aircraft up to Code C) involve moving the runway 12m to the north. In detail the works involve:

- The removal of a 12m strip of hardstanding on the southern side of the runway and the planting of grass;
- Reconstruction of the existing (7.5m) northern shoulder to runway standard;
- Construction of new 12m strip of hardstanding (part runway, part shoulder) to the northern side of the existing runway;
- Replacement of drainage and re-installation of airfield ground lighting; and
- Resurfacing of the repositioned northern runway. [REP1-062].

4.2.26. Such works are not minor and would not in the ExA's view fall within the remit of permitted development rights, as development is not permitted if it would consist of or include the construction or extension of a runway. In the ExA's view, even though the works would take place on the northern side of the runway and the overall width of the runway would not increase, the proposed works would effectively constitute the extension of the runway to the north and would not therefore be permitted development (notwithstanding issues around the EIA regulations).

4.2.27. However, nor would the Proposed Development create a new additional runway. It would be moving an existing runway to the north. The movement north of 12m when compared to the existing 60m of pavement would not constitute a significant movement of the runway – equalling a movement of around 20%. On a question of fact and degree the ExA does not consider that this constitutes a new runway.

4.2.28. Furthermore, the runway would be restricted by Requirement 19(3) of the dDCO [REP10-004] to be used for departures of aircraft only up to Code C. While the Proposed Development would result in an airport able to run dual runway operations, it would not be a two-runway airport in the same sense as, for example, Heathrow which has two runways able to run concurrently for all plane types and for arrivals and departures (subject to planning restrictions).

4.2.29. The attendant works necessary to reposition/ move the runway by 12m – including excavation, new drainage, new lighting, and resurfacing the runway to ensure it is correctly graded – are all contingent works of repositioning the runway. The drainage works were explained in the Examination and while they require the removal and replacement of the existing channel such works are considerably less than they would be if the current runway drained from the middle of the pavement (with channels on both sides).

4.2.30. Furthermore, while other works are then necessary as a result of the repositioning of the runway, such as the reconfiguration of taxiways and a new pier and stands, the ExA does not consider that this means the Proposed Development constitutes a new runway – more that they are the necessary knock on effects and required works due to the repositioning of the runway and the growth in potential traffic that this would bring.

4.2.31. In terms of the use of differing language relating to existing runways and infrastructure the ExA agrees that to all intents and purposes any distinction may not be entirely relevant, since an increased use of an airport's infrastructure, its capacity, or its terminal(s), will in effect all result in an increased use of their runway (or the ability to make better use of their runway(s)). More intensive use of an existing airport will inevitably lead to increased use of runways and infrastructure, whether infrastructure is used in a non-runways sense or in a way to encompass runways too.

4.2.32. Taking all of the above into account the ExA is content that the Proposed Development constitutes works to an existing runway.

Scale of the Proposed Development

4.2.33. A theme which ran throughout the Examination concerned the potential scale of the Proposed Development and whether this facet of the Proposed Development complied with MBU policy. CAGNE stated [REP1-137] that the expectation of MBU policy is that the majority of MBU based applications would be on a relatively local level, noting that paragraph 1.28 of MBU states (within the context of overall airspace capacity):

"Given the likely increase in ATMs that could be achieved through making best use of existing runways is relatively small (2% increase in ATMs "without Heathrow expansion" scenario; 1% "with Heathrow"), we do not expect that the policy will have significant implications for our overall airspace capacity."

4.2.34. The ExA's written question ExQ1.CS.1.26 asked a similar question of the Applicant and at D3 CAGNE raised the question of Table 1 of MBU which contains a range of figures and shows the expected figures in passenger numbers at a national level for selected years, including the baseline and baseline plus best use (MBU). For ease, this is replicated below:

Figure 4.410: Table 1 of Beyond the Horizon, The Future of UK Aviation

	Baseline	Baseline + best use	LHR NWR base	LHR NWR + best use
2016	266.6	266.6	266.6	266.6
2030	313.4	314.8	342.5	341.9
2040	359.8	365.9	387.4	388.8
2050	409.5	421.3	435.3	444.2

Table 1: Terminal Passengers at UK airports, million passengers per annum

4.2.35. CAGNE [REP3-113] noted that the 13mppa growth predicted by the Applicant for the Proposed Development would exceed the 11.8mppa assumed to be possible nationally under MBU (for 2050).

4.2.36. In response [REP3-084], the Applicant considered that the APF (at paragraph 1.24) and the Airports Commission (at paragraphs 16.40-43 of their Final Report) encouraged MBU proposals of a significant scale and noted that recent modelling undertaken by the Government to inform its JZS included the Proposed Development as a capacity assumption aligned with MBU policies (Jet Zero Modelling Framework, paragraph 3.18) and that MBU applications made at other airports have involved significant operational development. The Applicant also noted that the ATM increase promoted as part of the London Luton Airport Expansion DCO in the name of MBU exceeds that promoted in the Proposed Development and that both the ANPS and MBU anticipate that some MBU applications may meet the threshold for NSIPs (an increase in capability of 10mppa).

4.2.37. In their 'Response to the Actions arising from ISH1' [REP1-062], the Applicant drew attention to a paragraph (47) in the Manston Airport decision letter, which states that:

"The MBU policy does not limit the number of MBU airport developments that might be granted and does not include a cap on any associated increase in ATMs as a result of intensifying use at MBU developments."

ExA's Conclusion on the Scale of the Proposed Development

4.2.38. Paragraph 1.28 of MBU clearly states that the likely increase in ATMs that could be achieved through MBU is "relatively small" at only 2% without London Heathrow (LHR) Northwest Runway (NWR) and 1% with. However, as CAGNE notes, this statement is made within the context of airspace capacity and the paragraph goes on to note that despite this ("however") if there are airspace changes required as a result of MBU (via flightpath changes) that this would follow due process.

4.2.39. Table 1 of MBU shows the expected amount of passengers 'generated' by MBU at 11.8mppa in 2050 (and less with LHR NWR). For 2030 the figure is some 1.4mppa. However, it is also clear that the ANPS (paragraph 1.42) considers that airports wishing to make more intensive use of existing runways may need to submit an application for development consent, a process that is only applicable for developments of over 10mppa.

4.2.40. Planning permissions at Stansted, London City, and Manston (albeit primarily for freight traffic in the case of the latter) have been granted since the MBU policy was made, with the Stansted permission allowing for an increase of some 8mppa at that airport. Paragraph 47 of the Manston Airport decision letter, confirmed that the MBU policy does not limit the number of MBU airport developments that might be granted and does not include a cap on any associated increase in ATMs as a result of intensifying use at MBU developments is also noted in this context.

4.2.41. The ExA also notes that the modelling undertaken to inform the JZS included the Proposed Development as a capacity assumption aligned with MBU policies. Paragraph 3.18 of the Jet Zero Modelling Framework states:

"In June 2018, the government set out its policy support for airports to make best use of their existing runways in Beyond the Horizon: The future of UK aviation: making best use of existing runways ("MBU") and a new runway at Heathrow Airport in the Airports National Policy Statement: new runway capacity and infrastructure at airports in the south-east of England (ANPS), subject to related economic and environmental considerations. In common with the Jet Zero Consultation the capacity assumptions in our modelling reflect and are aligned with these policies."

4.2.42. The ExA is content therefore that a) MBU policy does not include a cap or restriction on the size of a proposed project, and accordingly b) the scale of the Proposed Development falls within MBU policy.

Whether it is Necessary to Demonstrate Need

4.2.43. In their D1 submission Heathrow Airport Limited (HAL) [REP1-192] stated that national policy is clear that there is a need for one new runway in the south-east of England to maintain the UK's hub status and that this need is most appropriately and effectively met by the Heathrow NWR scheme, and that, to be consistent with this policy framework, any scheme brought forward must complement but not threaten the future delivery of additional hub capacity at Heathrow through the NWR scheme. In their opinion, the Applicant must demonstrate this and show that the demand to be served at Gatwick will be additional to, or different from, the additional hub capacity to be delivered by the NWR scheme. HAL stated that they remain committed to their own long term sustainable growth in line with Government policy.

4.2.44. HAL noted that the Airports Commission had previously found that the Gatwick second runway scheme considered as part of that process (a runway to the south of the existing airport) would neither deliver the same economic benefits as a third runway at LHR nor:

"provide the same boost to the UK's overall connectivity as adding capacity at Heathrow or be as effective in maintaining the UK's position in the global aviation system in the face of competition from other major airports in Europe and the Middle East" (paragraph 13.21)

4.2.45. HAL goes on to note the final sentence of paragraph 1.41 of the ANPS, which states that:

"Nevertheless, the Secretary of State considers that the contents of the Airports NPS will be both important and relevant considerations in the determination of such an application, particularly where it relates to London or the south-east of England. Among the considerations that will be important and relevant are the findings in the Airports NPS as to the need for new airport capacity and that the preferred scheme is the most appropriate means of meeting that need"

4.2.46. HAL also notes the long-haul growth predicted in the DCO application. It stated that it will need to be proved that this long-haul traffic is point-to-point growth that is additional to, or different from, the hub demand to be served by the NWR scheme. It considers that the Applicant's core forecasts should include additional capacity that would be provided by Heathrow.

4.2.47. Finally, HAL notes that the Airports Commission was tasked with reporting on (a) credible long term options for meeting the UK's international connectivity needs and (b) immediate actions, consistent with the long term options, to improve the use of existing runway capacity in the next five years. It considers there to be a distinction here between MBU policy in the short term (para 2.2.15) and the NWR scheme for the long term.

4.2.48. Similar arguments to those made by LHR are made by others, such as, for example, CAGNE, the Gatwick Area Conservation Campaign (GACC), and Gatwick Obviously Not (GON). CAGNE [REP1-137] note that paragraph 1.42 of the ANPS means that there will not be policy support (at least in the ANPS) for a proposed airport expansion that is justified by the same need for airport capacity in the south-east of England as that which justified the NWR, and that such an expansion would be counter to ANPS policy. They note that the ANPS explains why the NWR is preferable to the previously proposed second runway at Gatwick, noting the phrase in paragraph 3.19 of the ANPS that:

"By contrast, expansion at Gatwick Airport would not enhance, and would consequently threaten, the UK's global aviation hub status. Gatwick Airport would largely remain a point to point airport, attracting very few transfer passengers."

4.2.49. CAGNE consider [REP1-137] that the ANPS specifically chose (and only gave national policy support to) a new runway at Heathrow; notwithstanding the fact that the disbenefits of a third runway at Heathrow were greater than those for a second runway at Gatwick, the unique advantages offered by Heathrow (notably its contribution to the UK's international "hub status") were enough to outweigh them.

4.2.50. GACC [REP1-173] notes that the ANPS requires airports seeking to expand (other than LHR) to demonstrate sufficient need, additional to (or different from) that met by the provision of the NWR and consider that the Applicant has not done this, with more data and assessments required to justify the need for increased use of its existing runway above 2019 levels, without the Proposed Development.

4.2.51. GON [REP1-179] is of the view that the Applicant did not put forward a policy compliant needs case and that it has assumed that there will be no development at Heathrow, contrary to the ANPS. GON considers that there is not a credible needs case for the Proposed Development because the airport has substantial surplus passenger and ATM capacity without it. It notes that the Applicant projects that it can handle 67.2m passengers and 326,000 ATMs without the Proposed Development, and it is therefore currently using less than 79% of its current ATM capacity and only some 61% of current passenger capacity.

4.2.52. GON further notes that it took over 24 years, pre-Covid, for the airport to grow by the amount of surplus passenger capacity that currently exists and over 20 years for it to grow by the amount of ATM capacity that still exists and therefore considers that Gatwick will not utilise its existing surplus passenger capacity until the 2050s and its existing ATM capacity until the 2040s. On this basis it considered that it is very likely that there will never be a need for additional capacity at Gatwick and that the Applicant's forecasts are characterised by excessive and unsubstantiated

optimism, assuming levels of growth in the period before and after 2029 that are substantially out of line with recent pre-pandemic growth and which Gatwick has not achieved historically.

4.2.53. The Applicant notes [REP3-075] that it is their case that policy identifies the need both for a new runway at Heathrow and for existing airports to make the best use of their existing capacity/ runways/ infrastructure. It is also of the view that paragraph 1.42 of the ANPS when read as a whole calls on applications to be considered on their own merits against the in-principle support for MBU and that it does not set a test or requirement for any type of need to be met and that this has been confirmed in various decided cases [REP1-056], [REP3-075], such as Stansted and Manston:

"There is no requirement flowing from national aviation policy for individual planning applications for development at MBU airports, such as Stansted, to demonstrate need for their proposed development or for associated additional flights and passenger movements." (Stansted)

"…He [the Secretary of State] also agrees that the MBU policy, which is relevant to this Application, does not require making best use developments to demonstrate a need for their proposals to intensify use of an existing runway or for any associated Air Traffic Movements ("ATMs")." (Manston)

4.2.54. In response to the point concerning long term and immediate actions, the Applicant states [REP3-075], [REP5-076] that the Airports Commission's recommendations in relation to making best use of other airports were not time limited, and that their Final Report confirmed on its final page that the need to make best use of existing infrastructure will remain. Furthermore, the Government responded to the Commission's reports with policy, such as the ANPS, and the ANPS is supportive of airports beyond LHR making best use of their existing runways.

ExA's Conclusion on Whether it is Necessary to Demonstrate Need

4.2.55. Paragraph 1.42 of the ANPS states:

"As indicated in paragraph 1.39 above, airports wishing to make more intensive use of existing runways will still need to submit an application for planning permission or development consent to the relevant authority, which should be judged on the application's individual merits. However, in light of the findings of the Airports Commission on the need for more intensive use of existing infrastructure as described at paragraph 1.6 above, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow. As indicated in paragraph 1.39 above, the Government's policy on this issue will continue to be considered in the context of developing a new Aviation Strategy".

4.2.56. The ExA therefore agrees that policy identifies the need both for a new runway at LHR and for existing airports to make the best use of their existing runways and infrastructure and notes the cited cases in the Stansted and Manston decisions confirming that there is not a requirement for MBU developments to demonstrate a need for their proposals.

4.2.57. However, it is considered that both Stansted and Manston are significantly different cases from the DCO application. Manston was a proposal for a primarily freight driven operation, based on point-to-point freight traffic for largely specialist freight

and for new integrator carriers. Stansted is an airport significantly smaller than Gatwick (in terms of passenger numbers) and is set to the northeast of London.

4.2.58. Gatwick is the second largest airport in the UK (by a large margin, in either direction – to the 'first' or the 'third' place airport) but is also reasonably close to LHR. In their shortlist of options for a new national runway, the Airports Commission considered two schemes at LHR and one at Gatwick. As CAGNE points out, the Commission chose the proposed NWR scheme as the best option, despite the increased environmental effects of that scheme over a new runway at Gatwick, because of the economic and connectivity benefits of that scheme and the effectiveness of maintaining the UK position in the global aviation hub system.

4.2.59. While the Proposed Development utilises an existing runway and is a different scheme to that considered by the Airports Commission, the scale and size of Gatwick (and that of the Proposed Development) and the proximity of Gatwick to LHR and overlapping catchments of the airports makes the proposal a different case to that of Stansted or Manston. The ExA agrees with LHR that there is a requirement for the Proposed Development to complement but not threaten the future delivery of future hub capacity at LHR through the NWR proposal. To paraphrase paragraph 1.42 of the ANPS, the ExA considers that while it is not necessary for the Applicant to demonstrate sufficient need for their proposal, it is necessary to show that the need for the Proposed Development is additional to, or different from the need that would be met by the provision of the NWR.

4.2.60. On a similar but related note the ExA does not consider that MBU policy is time limited or linked to immediate or short-term options only (with LHR NWR being the long-term solution) and notes that no reference to such views exist in the policy documents of the ANPS or MBU.

4.2.61. The ExA therefore considers that there is a requirement to demonstrate need – in the sense that the need that is required to be shown is additional to, or different from the need that would be met by the NWR scheme.

ExA's OVERALL CONCLUSION ON POLICY CONSIDERATIONS

4.2.62. The ExA has concluded that the Proposed Development would involve works to an existing runway, and that the scale of the Proposed Development falls within the MBU policy (as there is no cap within this policy on the scale of schemes). However, the ExA also considers that to receive the benefit of such policy support requires that the need for the Proposed Development is shown to be additional to, or different from the need that would be met by the NWR scheme.

4.3. THE NEED CASE

NEED FOR GROWTH

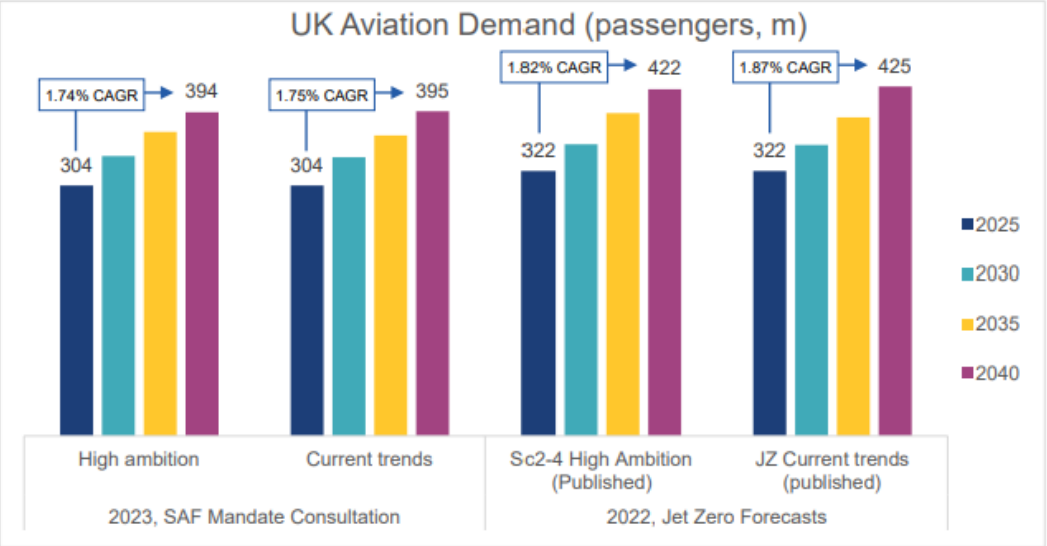
4.3.1. Department for Transport (DfT) central case demand forecasts from 2017 predict growth in air passenger demand of around 1.8% per annum in the long term (2016-2050). The DfT updated these forecasts in 2022 post pandemic as part of the JZS. These figures included an increase in the cost of carbon (and the effect this may have on supressing demand) and result in a slightly lower growth forecast rate of 1.7% per annum long term (2016-2050) and around 1.82% for the period 2025-2040. The Jet Zero forecasts included four different scenarios representing differing levels of ambition for reducing emissions [APP-250].

4.3.2. London and the surrounding area are served by six primary commercial airports: Heathrow, Gatwick, Stansted, Luton, London City, and Southend. London is the biggest aviation market in the world in terms of passenger numbers – in 2019 the six airports served 181 million passengers [APP-250]. The Airports Commission, as referred to above, was set up in 2012 to examine the scale and timing of any requirement for additional capacity to maintain the UK's position as Europe's most important aviation hub and to identify how any need for additional capacity should be met in the short, medium and long term. The results of the Commission's work were incorporated into the ANPS.

4.3.3. Capacity forecasts included in the Jet Zero Modelling included the NWR, as well as the Proposed Development. The Applicant states [APP-250] that within the Jet Zero forecasts there is forecast to be an additional 42 million passengers in the London market – compared with the number of passengers served in 2019 - and that by 2040 and 2050 this increase will rise to 84mppa and 122mppa respectively, going on to state that substantial new capacity is required to serve that demand. It is of the view that a third runway at Heathrow could not be consented and constructed in time to meet the shortfall of capacity in 2030, although, depending on when the runway came online, it could contribute significantly to the projected continuing shortfall beyond the mid-2030s and into the 2040s. It notes that the London airports would have a capacity of 210mppa in 2030 without expansion and that the forecast increase in demand would be well above current planned airport capacity.

4.3.4. In April 2023 the DfT consulted on a new set of aviation forecasts (Consultation on Sustainable Aviation Fuels (SAF)). These assumed growth of 1.74% per annum between 2025 and 2040. The figure below (excerpt from [APP-250]) compares these forecasts with the Jet Zero ones.

Figure 4.511: Comparison of Government Aviation Demand Forecasts



4.3.5. The SAF figures show a lower demand in 2025, reflecting a slower recovery from Covid but details a demand for 394mppa in 2040, a growth of 40% against the baseline [APP-250]. The Applicant notes that applying this growth rate to the London system would result in an extra 70mppa by 2040 [APP-250].

ExA's Conclusion on the Need for Growth

4.3.6. There are long recognised aviation capacity constraints; hence why the Airports Commission was set up in 2012 and why the NWR was recommended by the Commission and supported in policy by the ANPS.

4.3.7. While there has been some decline in the DfT central case forecasts successively from 2017 through to the 2023 SAF figures, Government forecasts still predict significant growth in air passenger demand. The same forecasts indicate a significant increase in aviation demand in London, with a predicted 230mppa demand in 2023, some 50mppa above 2019 levels and to over 300mppa in 2050 [APP-250]. In the context of these overall levels of air passenger demand, the ExA agrees with the Applicant that the Proposed Development would deliver a reasonably modest increase in capacity to help meet this demand.

Capacity at London Airports

4.3.8. Due to ATM limits at Heathrow, the Applicant predicts that in the absence of the NWR, Heathrow would be able to handle another 9mppa by 2040 (to 90mppa). The NWR would grow this figure to 136mppa in 2050.

4.3.9. Gatwick itself predicts growth in the absence of the Proposed Development to around 67mppa to 2047. Stansted airport has a current passenger cap of 43mppa (and 274,000 ATMs). Southend airport has a passenger cap of 53,000 ATMs, equivalent to around 5mppa [APP-250].

4.3.10. At the close of the Examination a decision on the application to increase the passenger cap at Luton airport from 19mppa to 32mppa was awaited. In the final week of the Examination, London City airport received planning consent to expand to around 9mppa (from a previous cap of 6.5mppa).

4.3.11. Based on these figures and the Government forecast growth in aviation demand, the Applicant considers that even with the Proposed Development (and the additional 13mppa growth this would provide), the shortfall in capacity would still be significant over the long term [APP-250].

Heathrow and Gatwick interlinkages

4.3.12. The Applicant notes that LHR has not traditionally served the lower cost carrier (LCC) market, with 1.2mppa LCC passengers in 2019, 3% of the London system's market. In contrast, Gatwick's traffic is dominated by LCC, with airlines such as easyJet, Ryanair, Wizz Air, and Norwegian all operating from the airport. The Applicant notes that LCC growth is responsible for 73% of total growth in the London system since 2005 and the short haul (majority) element of this market is forecast to continue to deliver the largest growth in passenger volumes [APP-250].

4.3.13. The LCC market is largely served by Gatwick, Stansted and Luton in the London system, with the Applicant considering that the comparative lack of LCC at Heathrow is due in part to the landing charges that are levied at Heathrow (£27 per passenger as compared to £11 at Gatwick) [APP-250].

4.3.14. Gatwick consider that the Proposed Development would be operational in 2029, well ahead of the NWR and eight years ahead of the programme for Luton which assumes a capacity of 32mppa in 2037. The Applicant considers that the airport is unique amongst London's airports due to its carrier make up of full service, low cost, charter and regional airlines [APP-250].

4.3.15. The Applicant notes the existence of a secondary slot market at the airport, citing a sale in 2012 when Flybe sold 25 slot pairs to easyJet for around £0.8m per pair and a market value in 2019 of around £3m per pair, a value *"significantly higher"* than other London airports (apart from Heathrow) [APP-250]. At D1 a letter was submitted by the Applicant from Airport Coordination Limited (ACL) [REP1-052], which is appointed by the SoS for Transport as the independent slot coordinator for the UK. This letter states that a waitlist is maintained for Gatwick for slots, with over 600 slot requests from airlines being unallocated in Summer 2023 at the initial coordination point. For the same period for Winter 2023 there were nearly 300 slot requests unallocated. ACL notes that over the data available (2015-23) on average 12% of requested slots were not allocated, a figure *"higher than any other ACL Coordinated Airport"*.

4.3.16. In ISH1 [EV6-001 to EV6-003], the ExA asked the Applicant whether it could envisage a scenario where Gatwick became more of a hub airport like LHR, particularly if LHR remained constrained. In response [REP1-056] the Applicant noted that Gatwick already has some transfer traffic that self-connects and a significant volume of passengers connect from low cost services onto long haul. However, it noted that the aspirations are not to create a similar operation to Heathrow and that the forecasts submitted by the Applicant show that transfers are expected to remain a small sector demand (<5% of total passengers). In response to an earlier question the Applicant also noted that many markets served at Gatwick are hubs themselves so that significant volumes will hub at the other end rather than London.

4.3.17. In a follow up question at ExQ1 [PD-012], the ExA asked if this latter point had the potential to threaten the UK's global aviation hub status. In response the Applicant noted that HAL estimates that 23% of their passengers are transferring between flight. The Applicant noted that Gatwick plays a complementary role, referring to the previous estimate of <5% (<2% in 2023).

4.3.18. The Applicant was of the view [REP3-084] that Heathrow would continue to maintain its hub position in the UK, and that while other markets have naturally started to catch up due to their economies and populations, such as Turkiye, the UAE, India, and Saudi Arabia, Heathrow would continue to feature prominently as a hub due to its strong geographical location for many transfer flows (e.g. Europe to North America) while other airports (e.g. Dubai, Istanbul) are better placed to benefit from flows involving faster growing markets in Asia.

4.3.19. The Applicant noted that LHR already has and will continue to have strong connectivity with overseas hubs, considering that if Gatwick achieves some enhanced connectivity with those hubs, passengers will benefit but Heathrow's position as a hub is unaffected. Equally if Gatwick achieves point to point connections with other airports the role of hub airports is unaffected; Gatwick will be able to support Heathrow's position as a hub airport as Gatwick and its airlines will not provide a competing hub proposition. To the extent that Gatwick would serve an increasing share of the UK's long-haul market, this would take some pressure away from Heathrow and supporting its airlines in being able to continue their hub operation.

4.3.20. Further, the Applicant considered that without the Proposed Development, more transfer demand would likely be priced out of Heathrow (since transfers passengers are typically the most price sensitive and airlines favour 'local' passenger due to their higher yields). Therefore, with the northern runway, Heathrow will be able to attract more transfer demand supporting its role as a hub airport.

4.3.21. To support this point of view, the Applicant referred to the DfT's modelling at the time when both Heathrow and Gatwick were being considered for new full-length runways as part of the Airports Commission work, showing that under 'no expansion' Heathrow transfer demand was predicted to decline significantly to 4.7mppa by 2050 but that a second (southern) runway at Gatwick would lead to 10.9mppa transfer passengers at Heathrow by 2050.

4.3.22. HAL noted [REP1-192] that the demand forecasts put forward by the Applicant contain strong long-haul growth of over 145% by 2047, nearly double the overall airport growth rate. In their view Gatwick would need to demonstrate that this long-haul growth arises from point-to-point demand that is additional to, or different from, the additional hub demand to be served by the LHR NWR scheme. It also noted that the Applicant's forecasts do not include any additional capacity that would be provided by the NWR.

4.3.23. The LePAs considered [REP4-052] that any erosion of point-to-point flights at LHR as a result of the Proposed Development would in itself undermine the hub role at LHR as flights are made viable by a combination of point to point and transfer demand at a hub. They consider that there is inevitably an overlap with demand that could be met at Gatwick with the Proposed Development and with the NWR given the overlap of catchment areas. The LePAs consider that the overlap and interactions with Heathrow and the possible effects of the NWR have not been properly assessed or the impacts consistently considered.

4.3.24. In response to HAL, the Applicant noted [REP3-075] that Gatwick would continue to serve point to point routes where demand is typically large enough to justify several carriers on a route, such as New York, Orlando, and connectivity into non-UK hubs, where passengers can transfer often to markets unserved from London or not large enough to warrant further non-stop capacity. The Applicant goes on to state that the absence of the third runway inhibits Heathrow's ability to attract more long-haul traffic and with the Proposed Development Gatwick could secure some of that long haul traffic in the meantime. However, it recognised that with the implementation of the NWR a large proportion of long haul traffic would revert to Heathrow, while Gatwick would consolidate as a lower cost, complementary airport playing an important role as part of the wider market offer.

4.3.25. In response to the LePAs, the Applicant [REP5-077] considered that it is illogical that the airport could attract services from Heathrow which are made viable by a combination of point-to-point and transfer demand, considering that by definition such services will stay at Heathrow.

ExA's Conclusion on Capacity at London Airports

4.3.26. There are capacity constraints at all London Airports either through planning or operational reasons. However, in this context there is some spare capacity and various recent permissions have been granted; specifically at London Stansted and London City airports. While London City is a much smaller airport than Gatwick with differing characteristics, Stansted is more of a comparison airport. Although Stansted is smaller than Gatwick, it is an airport that has also grown substantially with the advent of LCC carriers and the ExA agrees with the LePAs that there is the potential for more long-haul growth from this airport.

4.3.27. However, the ExA also acknowledges that Gatwick is unique in other ways as a UK airport; with a fairly diverse mixed range of traffic (albeit dominated by LCC traffic), set in a reasonably affluent catchment with frequent and reasonably easy and direct

access to London. The airport is also well established as the second largest airport in the UK.

4.3.28. At the time of writing a decision is awaited on the application for Development Consent for Luton Airport to increase the passenger cap at that airport from 19mppa to 32mppa. As such, the ExA does not apportion weight to this potential growth, but notes that even in the event of a positive decision for Luton it would still likely be smaller than Stansted and much of their forecast growth would occur in the mid-2030s.

4.3.29. The ExA notes the strong secondary slot market at Gatwick. The letter from ACL submitted at D1 [REP1-052] offers persuasive evidence of an airport that is heavily constrained at certain key times and months of the year with demand significantly outstripping supply. The ExA also notes evidence from the LePAs in this respect which states:

"The JLAs recognise that Gatwick Airport, as currently configured, is constrained as to the numbers of passengers that can be accommodated, especially at peak times, and, to that extent, there is a need case for expanding its capacity." [para 3.11, REP9-151]

4.3.30. Evidence from easyJet is also noted:

"GAL has significant market power in a London airport constrained system where slots are scarce and demand is high" [REP9-371]

4.3.31. While this quote is set in the context of airport quality and reliability, it clearly shows the demand for growth at Gatwick (and the wider London system), from the airport's current leading airline with around 50% of the traffic at the airport.

4.3.32. The Applicant is of the view that the Proposed Development would be operational in 2029. While this may be slightly ambitious given the timing of the Examination and possible timescales for any approval and legal challenges, the ExA agrees that if granted, it would still be operational substantially in advance of LHR NWR given the significant construction times and position in the planning system of that proposal.

4.3.33. Heathrow and Gatwick airports are set reasonably close to each other and to a certain extent share the same catchments. However, the markets they serve, while similar in some ways, are very different in others. As the hub airport for the UK, Heathrow is not just in competition with UK airports such as Gatwick but also other hubs in Europe such as Paris Charles de Gaulle and Amsterdam Schiphol and also more globally in the Middle and Far East.

4.3.34. The ExA appreciates that Heathrow only has a small LCC market, with just 3% of the London's systems market in 2019 [APP-250]. This is in direct contrast to Gatwick, which is an airport (like Stansted and Luton) that is dominated by the LCC market. The ExA note that LCC growth is responsible for 73% of total growth in the London system since 2005 and the short haul (majority) element of this market is forecast to continue to deliver the largest growth in passenger volumes [APP-250].

4.3.35. The ExA notes that 23% of Heathrow passengers are transferring between flights and that less than 5% of Gatwick passengers are expected to do the same. While this figure is up from less than 2% in 2019, this is still a small increase and would be significantly less than LHR where a large proportion (nearly ¼ of all passengers) use the airport as a hub.

4.3.36. It is clear that the Gatwick forecasts include some significant long-haul growth, at a rate of 145% growth by 2047; however, this is starting from a relatively small base. In the absence of the NWR the growth of Gatwick would inevitably attract some point-to-point traffic which might otherwise have flown from Heathrow given the current restrictions at Heathrow, the proximity of the airports and of their catchment areas. However, the ExA agrees with the Applicant that such traffic (including long-haul) would likely revert to Heathrow if and when the NWR opens.

4.3.37. The ExA therefore considers that the Proposed Development would not unduly affect the hub status of LHR in the long term. While in the short term there may be some effect, this would not be significant or long lasting. Furthermore, the DfT's modelling for the Airports Commission cited by the Applicant demonstrates that the Proposed Development could in itself promote more transfer traffic at LHR with more capacity for point-to-point traffic opened at Gatwick. The ExA agrees that flights at Heathrow which are viable from a mixture of point to point and transferring traffic would stay at LHR as the transferring passengers contribution to the flight would remain at LHR and economies of scale would be unlikely to make a move to Gatwick logical for the connecting flights for the transfer traffic.

DEMAND FORECASTS

4.3.38. Forecasts were submitted with the application for the 'existing runway case' (or the future baseline) and the 'northern runway case' (the NRP case). The forecasts were prepared through a mixture of bottom-up and top-down forecasting [APP-250]. The Applicant states that:

"the bottom-up approach is useful for a capacity constrained airport such as Gatwick and provides a detailed picture of how the airport and its airlines would respond to a release of capacity in terms of future traffic mix, informed by discussions with airlines and slot applications", and *"the top-down approach provides useful context around the wider London system demand levels and constraints at other airports."*

4.3.39. The future baseline case represents the Applicant's forecasts for the growth of traffic at the airport without the Proposed Development, whereas the NRP case shows the forecast growth with the Proposed Development. It is the Applicant's case that the future baseline case is achievable without developments that require planning permission; that the future baseline forecasts can be met by the existing facilities, extant planning permissions, and the use of permitted development powers. The Applicant's Needs Case [APP-250] notes that unlike other London airports Gatwick is not subject to passenger or air transport movement caps, and stated that in the 'no project' world the existing controls that the airport is subject to would continue to have effect (although an existing voluntary section 106 is time limited and subject to review) [REP8-108].

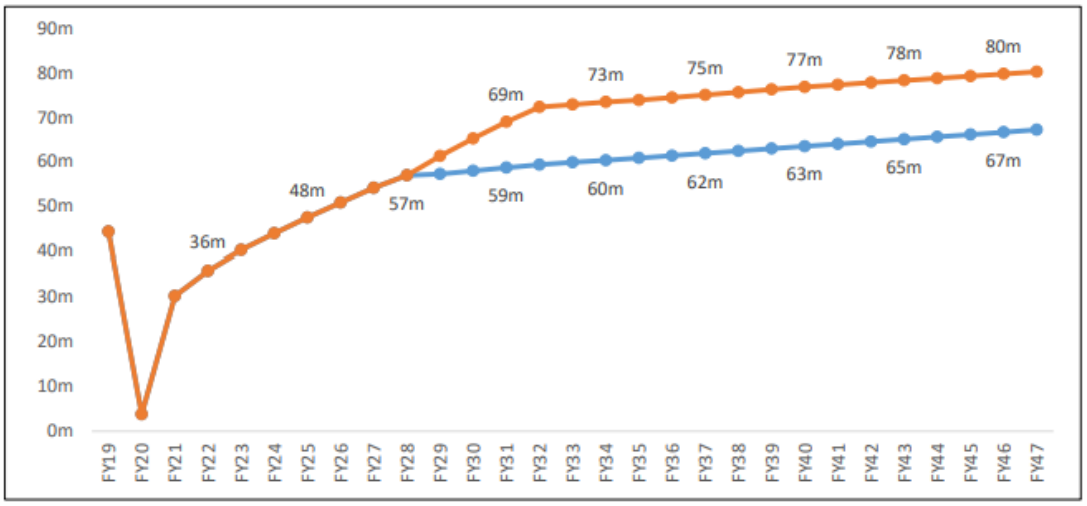
4.3.40. Forecasts were created for four primary years – 2029, 2032, 2038, and 2047. The core forecasts were created with the current planning caps for Heathrow and Luton maintained with the approved Stansted permission to 43mppa included. The NRP forecast assumes the Proposed Development becomes operational in 2029 and after a phased release of capacity will return to a constrained environment with excess demand. Sensitivity test forecasts were produced for four other separate scenarios:

- A slower growth scenario, adopting a more conservative view of growth;
- A slower fleet transition, wherein the rate of transition to next generation aircraft within the forecasts is slowed;
- A scenario where the NWR is constructed; and

- A scenario including an expanded Luton airport.

4.3.41. The primary forecasts are shown below (taken from [APP-250]):

Figure 4.612: Primary Passenger Forecasts from Applicant's Need Case



Note: Recovery profile prepared mid-2020 with short term updated with actuals. FY22 (YE Mar 2023) is an estimate as of Jan'23.
Source: CAA/GAL Statistics

4.3.42. Crawley Borough Council, Horsham District Council, Mid Sussex District Council, and West Sussex County Council express in their LIR [REP1-068] concerns with a primarily bottom-up approach to forecasting, considering that the use of this approach to modelling future demand, coupled with uncertainty about the validity of top-down modelling, led them to consider that the demand forecasts in their present form could not be relied on. Appendix F to the LIR [REP1-068] expanded upon this:

"Whilst bottom-up forecasts are commonly used for short term planning at airports, typically for up to 5 years, as these are able to reflect known discussions with the airlines, they are too dependent on judgement and assumptions to be reliable over the longer term not least given the short term nature of airlines' planning horizons at the individual route level."

"Best practice for long term demand forecasting is to use econometric modelling and, in the circumstances where there are step changes in airport capacity expected, it would be best practice to use a systematic allocation model that assesses the share of each airport in different competitive circumstances. We do not accept GAL's [Gatwick Airport Limited's] contention that top-down modelling is less applicable to capacity constrained situations (Issues Tracker [AS-060], 16.2) as, properly specified, a model can replicate the effect of constraint and its release. Such an approach has traditionally been adopted by the Department for Transport and has been used for the London Luton Airport DCO application as well as for other airport applications, such as at Bristol in 2021."

4.3.43. Following such concerns the Applicant presented a '*refreshed and more detailed*' top-down approach at D1 in their Technical Note on the Future Baseline [REP1-052]. These were based on the Jet Zero March 2023 forecasts. They were presented on a 'without prejudice' basis and the Applicant stated that they preferred the bottom-up forecasts. The tables below (Figure 4.7 [REP1-052]) show the comparison between the two types of forecasts for the baseline and NRP case:

Figure 4.713: Comparison of Top-Down and Bottom-Up Forecasts for Baseline and NRP Case

Figure 45 Comparison of Top-Down and Bottom-Up Forecasts, LGW Baseline (passengers, m)

	2029	2030	2032	2035	2038	2044	2047
Bottom up	57.3	58.0	59.4	60.9	62.4	65.6	67.2
Top down	56.1	58.0	59.4	60.9	62.4	65.6	67.2
Variance	-2%	0%	0%	0%	0%	0%	0%

Note: Capacity assumptions aligned in both scenarios

Table 29 Comparison of Top-Down and Bottom-Up Forecasts, Northern Runway (passengers, m)

	2029	2030	2032	2035	2038	2044	2047
Bottom up	61.3	65.3	72.3	73.8	75.6	78.7	80.2
Top down	57.1	61.1	65.7	70.8	75.6	78.7	80.2
Variance	-7%	-6%	-9%	-4%	0%	0%	0%

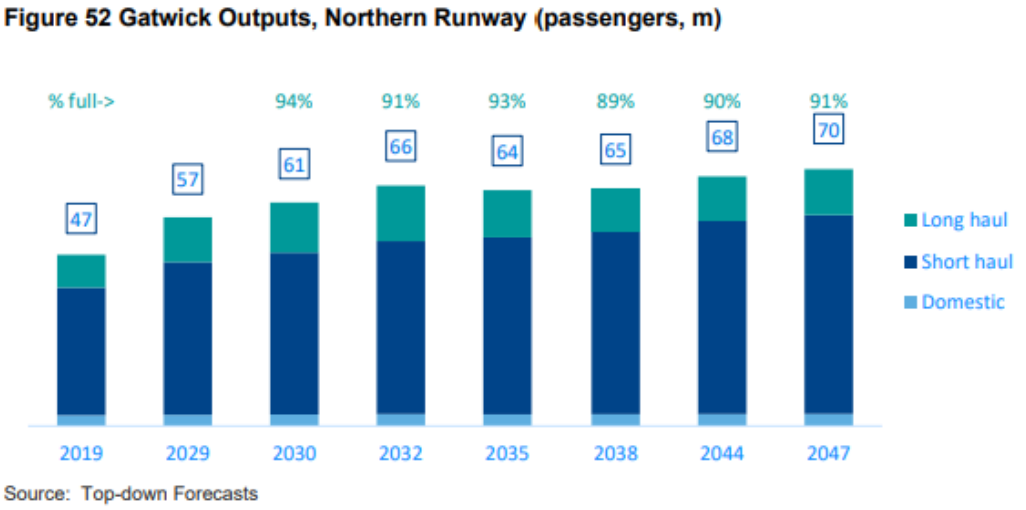
Note: Capacity assumptions aligned in both scenarios

4.3.44. The LePAs were of the view that the top-down forecasts were preferable [REP9-098] and considered that it was significant that the top-down forecasts show a slower build-up of demand to use the NRP. They considered that the forecasts for the NRP must be based on the overall demand within the London area and the extent of competition across the London airports to meet that demand, which could only be determined through top-down econometric modelling of the interaction between airports and their catchment areas [REP7-104].

4.3.45. The top-down forecasts were also used to ‘provide insight’ into the sensitivity forecasts [REP1-052], using assumptions that the NWR could open in 2035 and separately expansion at Luton airport and London City airport could take place under the terms of their development consent order/planning applications.

4.3.46. The NWR would have a significant impact on long haul volumes, with much of this demand back filled by short haul demand and is summarised by the chart below [REP1-052]:

Figure 4.814: Effect of LHR NWR on Gatwick NRP Case Under a Top-Down Forecast



4.3.47. The Applicant considers that spare capacity under this scenario could be used to incentivise airlines and that this would be significant. The scenario with the expanded Luton and London City shows a Gatwick airport with numbers very similar in the NRP case to those shown in Figure 7 above, with slightly lower numbers at 2030 and 2038 (around 1mppa at each) [REP1-052].

ExA's Conclusion on Demand Forecasts

4.3.48. The differences between the original top-down forecasts and the bottom-up ones submitted at D1 [REP1-052] is primarily a difference based on rates of growth at the airport. The top-down future baseline forecast shows a slightly slower rate of growth in initial years, with traffic 2% down but by 2030 traffic has caught up and remains at the same predicted levels as that predicted by the bottom-up forecast until the final forecast year of 2047. However, the NRP forecasts show significantly more variance, with the figures not matching up until 2038 (75.6mppa). The earlier years of 2029, 2030, and 2032 show figures of 7%, 6% and 9% lower respectively in the top-down forecast when compared to the bottom-up forecasts.

4.3.49. The ExA agrees with the concerns of the LePAs over the reliance of bottom-up forecasts over the longer term. While bottom-up forecasts are necessarily useful in the short term and would reflect the detailed conversations that the airport would have with its key airline customers and their plans, the ExA notes that aviation is a volatile business subject to numerous external factors and that airports are located in a highly competitive marketplace for airline traffic, where routes and flights can be altered at short notice.

4.3.50. However, the ExA also notes that the years of significant variance between the bottom-up and top-down forecasts are fairly early; at years 2029-2035 for the NRP and thus within six years of the proposed opening date of the NRP. It is reasonable to assume that conversations with airlines over their plans for if and when the NRP opened and the opening of capacity that this would provide (especially at peak times) would be well advanced and typically more reliable than a 'normal' bottom-up forecast for five to ten years in the future under a 'business as usual' plan.

4.3.51. The ExA therefore considers that while growth in the NRP may not be as rapid as predicted by the bottom-up forecasts it would nevertheless likely be 'quicker' than the top-down forecasts and the true figure may be somewhere in between the two

figures – potentially at half of the variance figures presented in Figure 7, although this figure is largely conjecture. Such a figure would lead to the benefits of the NRP in the 'early years' being overstated to a small degree. However, the ExA does not consider that such impacts would be significant and notes that by 2038 the projected figures would have 'caught up' with each other.

4.3.52. Given the timeline assumed for the potential opening of the NWR (agreed with by the ExA above, assumed at 2035), the top-down forecasts are considered to be more likely and realistic for this scenario. These show Gatwick impacted reasonably significantly, particularly for long haul traffic. This accords with our conclusions above. The potential for Gatwick to replace such traffic with short haul traffic is noted and recognised, particularly given methods such as price incentivisation. Benefits would be lower with the NWR, as would adverse effects.

FUTURE BASELINE AND NORTHERN RUNWAY PROJECT

4.3.53. The Technical Note on the Future Baseline [REP1-047] contained details of the 'make up' of the future baseline forecast and outlined the four elements of growth (shown in Figure 4.9 below) that the Applicant considered would take the airport from 47mppa in 2019 to 67mppa in 2047. These were:

- Peak growth +2mppa
- Peak spreading +5mppa
- Aircraft size +9mppa
- Load factor +4mppa

4.3.54. Although specifically related to the future baseline, it was confirmed by the Applicant at ISH1 [EV6-001 to EV6-003] that the same principles of growth also applied to the NRP case - that in effect the NRP case includes the baseline growth, plus that attainable from the specified use of the northern runway.

Figure 4.915: Component Parts of Future Baseline Growth 2019 to 2047

4.3.55. Following discussion in the Examination around these elements of growth the ExA issued a request for further information under Rule 17[10] on 9 May 2024. This

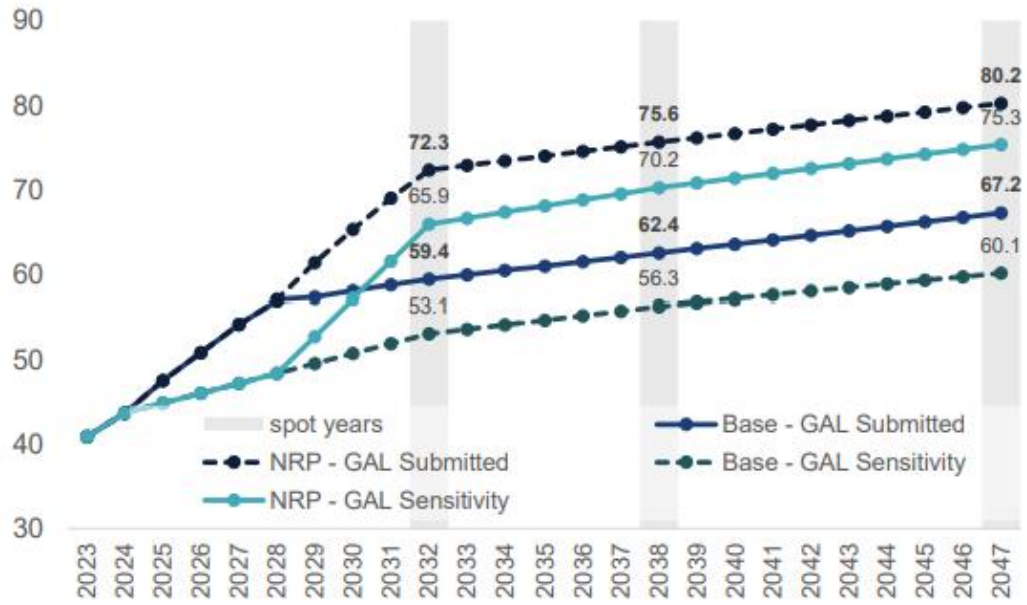
[10] Infrastructure Planning (Examination Procedure) Rules 2010

included a request for the LePAs to confirm their view of what would be a realistic future baseline figure (together with which elements of the Applicant's case they disagreed with to come to this figure) and for the Applicant to subsequently provide a sensitivity analysis based on this/these figures upon the effects stated in the application (such as noise, transport, air quality, surface access, socioeconomics etc) [PD-018].

4.3.56. At D4 [REP4-049] the LePAs produced their baseline figure range of between 56.4mppa and 60.1mppa. By the end of the Examination [REP9-151] this had been narrowed down to 57mppa by 2047, 10mppa short of the Applicant's figure. With the NRP in place, the LePAs considered that the airport could grow to some 75-76mppa by 2047, around 6mppa shy of the Applicant's forecast of 80.2mppa. This results in a gap, or delta, between the two figures of around 18-19mppa as opposed to the 13mppa in the Applicant's figures. The LePAs also stress that their NRP figure does not take account of any effects of potential airport development taking place elsewhere (in the sense that such competition could further reduce anticipated passenger numbers).

4.3.57. At D5 the Applicant provided comments on the LePAs initial forecast figures and produced a further sensitivity test of their own, while stressing that this was without prejudice to their central case. This test adopted a '*far more conservative assumption in both the future baseline and the NRP case'* and arrived at figures of 60.1mppa for the baseline case and 75.3mppa for the NRP, and a delta of just over 15mppa (see figure 4.10 below) [REP5-081].

Figure 4.1016: Applicant's DCO Case and Sensitivity Case Comparison



Peak Growth

4.3.58. The Applicant notes that growth has historically been achieved in the peak months through the incremental growth of runway capacity. It cites an example of the 2009-2019 period when the airport increased its maximum hourly throughput from 53 to 55 movements per hour as well as operating at its maximum capacity in more hours of the busy month [REP1-052].

4.3.59. The forecasts predict that the airport will increase the number of hours declared at 55 movements per hour as well as continuing to increase the number of hours operating at its hourly capacity limits: in 2019 the airport's busiest month was August and in 2019 on the busiest day of the year Gatwick handled 924 commercial movements; this is forecast to increase to over 950 movements on future peak days [REP1-052].

4.3.60. The Applicant also states that within the busy months there is a range of runway utilisation performance: while the busiest day in August 2019 had 924 commercial movements, the average daily movements in the month was just under 900. Over time, the quieter days are forecast to become proportionally busier. It is noted that the growth forecast in these peak periods will also support capacity throughout the year since airlines typically operate year-round schedules [REP1-052].

4.3.61. Much of the LePAs views on peak growth are included under peak spreading, below. At D3 [REP3-123] they noted that it appeared that the increase in busy day operations is all expected to be after 19:00 and consider that it is not clear that there is sufficient airline demand to operate solely in the evening to deliver an uplift on such a basis. Furthermore, they were unsure of the extent to which this assumption would place pressure on any limits on nighttime operations of new departures added after 19:00 and needing to return to the Gatwick base so as to be ready for the next day, noting that similar considerations could apply to new long haul arrivals in this period as allowance would need to be made for realistic aircraft turnaround times. They were not convinced that this would not lead to more night flights.

4.3.62. At D9 the Applicant stated that while the average of daily ATMs in August is largely aligned between the LePAs and the Applicant, the busy month is not, and that the LePAs make no allowance for quieter days in August to become busier. The Applicant noted that a combination of this becoming busier (in 2014 the peak August day was 5% busier than the average August day; in 2019 this was down to 3%) and an increase in the peak day capacity of a further 12 slots across the day would add an extra 1.5mppa to the LePAs baseline figure [REP9-115].

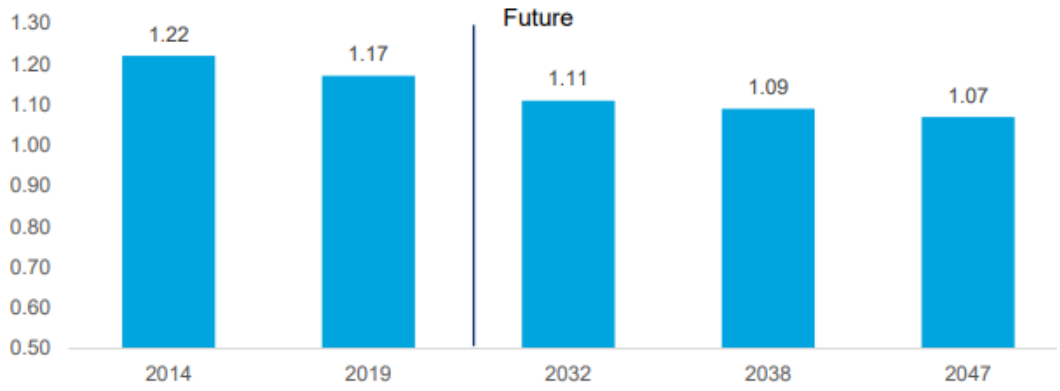
Peak Spreading

4.3.63. Peak spreading was often also referred to as seasonality in the Examination. The Applicant noted [APP-250] that aviation demand is inherently seasonal reflecting demand patterns seen throughout the year with the summer peak months representing the busiest time of the year.

4.3.64. The Applicant noted at D1 [REP1-052] that the peak month (August) in 2019 was 17% busier than the year round average, a reduction from 22% in 2013, demonstrating, in the Applicant's view how the airport's airlines were incrementally infilling the off peak periods of demand, noting that between 2013 and 2019 the peak months (Jul-Sep) grew by 8% (in terms of ATMs) while the off peak months (Nov-Mar) grew by 15%.

4.3.65. The forecasts assume that this peak spreading will continue and that by 2032 the busiest month would be 11% busier than average. Such a trend was forecast to continue so that by 2047 this figure would drop to 7%. The figure below shows this 'seasonality ratio' – for example, that in 2038 the busiest month would be 9% busier than average, a seasonality ratio of 1:09 (in the view of the Applicant) [REP1-052].

Figure 4.1117: Peak Spreading/ Seasonality Averages



Source: CAA/Gatwick Statistics/Gatwick Forecasts

4.3.66. The LePAs note that the baseline case relies on an increase of 43,000 annual ATMs above 2019 levels by 2047, an additional 118 movements on average over each day of the year (and 82 a day by 2032). They note that the Forecast Databook [APP-075] shows a further 47 movements a day in the peak period by 2032, equating to 17,000 ATMs annually if the flights were operated on a year-round basis [REP4-049].

4.3.67. Further, they note that the total number of daily slots available to airlines in 2019 was 870 and the average number of actual movements in a peak month was 845. In 2024 the number of slots available was increased to 882, which the LePAs assume was due to the opening of a new rapid exit taxiway. However, the modelling assumed 869 slots per day. They state that the Applicant's own case adds 24 movements on a busy day (869-845) which is significantly less than the 47 previously stated [REP4-049].

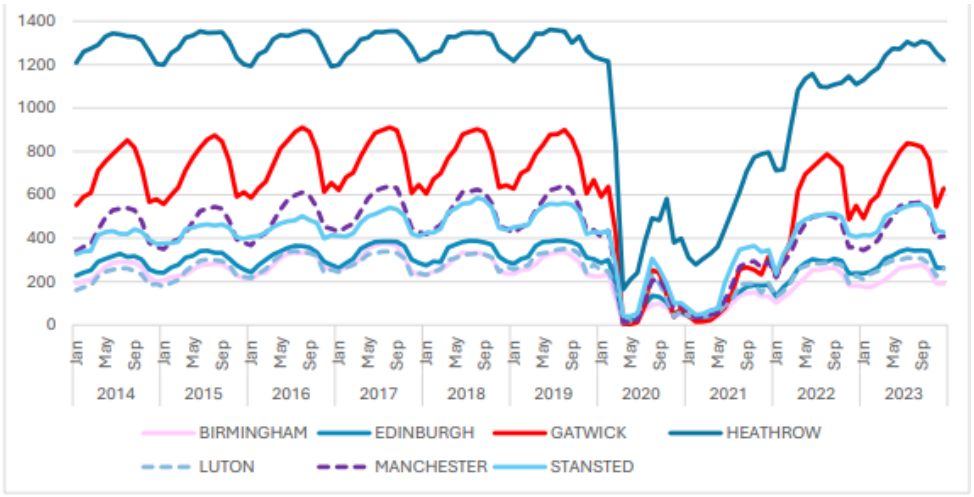
4.3.68. If the 118 movements cannot be accommodated in the peak period, then this would place a greater emphasis on adding services in the shoulder and off peak/ winter months only. They note that peak growth delivers peak spreading by adding new services which operate consistently on a year-round basis, but state that as the Applicant only predicts a 2mppa uplift by peak growth then this would equate to 27 additional movements to be added year round, more than the 24 movements shown above. Based on these 27 movements, this would require an average of 122 additional daily flights to be added over the remaining nine months of the year. The LePAs do not consider it is plausible that so many additional flights would be operated only outside of the peak period (especially as peak operations are the most profitable for airlines). The LePAs consider that overall growth is more likely to be pro-rata to the ability to accommodate more movements in the peak period [REP4-049].

4.3.69. The Applicant was of the view that the LePA's view of peak spreading is 'extreme' [REP5-081] and consider that the LePA's baseline forecast shows no peak spreading and the NRP forecast shows every new slot perfectly peak spread (flat throughout the year). The Applicant disputed this due to, amongst other reasons, the history of peak spreading from 2014-2019 when ATMs grew by 14% a year outside the summer season (against 6% across the year), and that between 2016-2019 when no uplift in the peak period was experienced 5% growth in the winter occurred, as well as details such as seasonal pricing/ incentivisation through pricing.

4.3.70. The Applicant noted that the consequence of the LePAs NRP forecast was that the peak traffic was predicted to exceed the Applicant's forecast in August but be less for the remainder of the year and consider that this relies on the airport being able to achieve a substantially greater number of flights than the airport believes is physically possible. This issue was particularly acute in the LePA's 'high' NRP forecast, with modelling software used by the Applicant showing grid lock of the taxiway system; the 'low' NRP forecast would result in significant delays for departing and arriving passengers. Both scenarios would require additional stands and terminal facilities over and above that proposed in the Proposed Development [REP5-081].

4.3.71. The LePAs state [REP6-099] that their position is that the ability to spread the peak over the year is related to the ability to add services during the busy summer period that can operate year round. They predict some peak spreading derived from the usage of slots in the summer which are at less attractive times of the day being filled, which would reduce the seasonality ratio to 1.16. They noted that in 2023 the ratio achieved was 1.21, considering that this showed changes in traffic post pandemic that increased the dependence on the peak period and to some extent showed the faster recovery of leisure travel over business travel. A graph showing the average daily movements at the UK's largest airport was submitted (Figure 4.11 below [REP6-099]), showing Gatwick's profile more in line with other larger UK airports other than Heathrow (and potentially more 'peaky').

Figure 4.1218: Average Daily Movements by Month 2014 to 2023 at UK's Largest Airports



Source: CAA Airport Statistics

4.3.72. They note that a ratio of 1.07/1.06 would match Heathrow and the same assumption applies to the baseline as to the NRP case, which, in the opinion of the LePAs does not seem logical or plausible [REP6-099]. The LePAs at this stage revised their forecast for the future baseline to 57mppa and using their same assumptions arrived at 75-76mppa for the NRP (with a peak spreading of 1.13 rounded up), and 18-19mppa for the delta between the two [REP6-099].

4.3.73. In response to the ExA's ExQ2 CS2.3, the Applicant [REP7-078] stated that given the extensive engagement and comprehensive evidence presented to date, it was not considered that any further discussion between the two parties would result in any agreement being reached on these matters – but that the ExA need not be concerned by this lack of agreement, as even if the LePAs were correct then this

would not give rise to significantly different environmental effects and the case for the NRP would be stronger, as the need case would be stronger if Gatwick's ability to meet demand is as constrained as the LePAs suggest.

4.3.74. At D6 the Applicant had noted that [REP6-091] the LePAs stated at D5 that Gatwick could reach 80mppa in time:

"To reiterate our position, subject to being able to verify that the simulation modelling is robust, it appears plausible that the NRP may be able to accommodate c.80 mppa over the longer term based on the latest simulation modelling presented by the Applicant. However, the question remains as to the timescale over which the passenger demand at Gatwick will build up and how this interacts with matters such as the transition of the airline fleet to new generation aircraft or the realisation of surface access targets and mitigations so as to ensure that controls and limits are set appropriately to manage the impacts of the NRP. It is equally important that the timescale over which the benefits of the development will arise are properly understood and that those benefits are not overstated." [REP5-094]

4.3.75. The Applicant advanced the view that the timing of the fulfilment of the forecasts is not important, noting paragraph 30 from the Stansted decision, which stated:

"30. It remained unclear throughout the Inquiry, despite extensive evidence, why the speed of growth should matter in considering the appeal. If it ultimately takes the airport longer than expected to reach anticipated levels of growth, then the corresponding environmental effects would also take longer to materialise or may reduce due to advances in technology that might occur in the meantime. The likely worst-case scenario assessed in the ES and ESA, and upon which the appeal is being considered, remains just that. Conversely, securing planning permission now would bring benefits associated with providing airline operators, as well as to other prospective investors, with significantly greater certainty regarding their ability to grow at Stansted, secure long-term growth deals and expand route networks, potentially including long haul routes". [REP6-091]

4.3.76. At D7 the LePAs noted that they allow in their baseline case for between 12 and 24 additional daily movements at average over the peak month, and that these would be spread across the year to contribute to seasonal spreading, and they reiterated to achieve the increase in throughput to reach the Applicant's baseline forecast would require 47 daily additional movements in the peak, which is not possible within the context of the declared capacity of the runway. They also state that demand for winter slots has fallen at Gatwick for winter 2024/ 25 compared to 2023/ 24, a situation which is not mirrored at Heathrow or Stansted [REP7-104].

4.3.77. At ISH9 [REP8-112] the Applicant stated that the 47 additional daily ATMs was a misunderstanding on the behalf of the LePAs, noting that Annex 6 of the Forecast Data Book [APP-075] states that this figure is the peak month increase in ATMs. The growth in the peak day is forecast to be less than the growth in the peak month, reflecting peak spreading across the peak month as well as across the year. Busy day movements increase from 928 in 2019 to 950 in 2032 and 954 in 2038 [REP8-108].

4.3.78. At the same ISH (9) [REP8-166], the LePAs noted that the issue of baseline capacity is critical because if airlines request slots at specific times and the airport is already full at those times, achieving the degree of peak spreading asserted by the Applicant becomes unlikely. Evidence, including statements from the Applicant, shows that the airport is full during the times airlines want to operate, supporting the view that a baseline of 67mppa is not plausible and confirming their view that a

baseline of 57mppa is more realistic. They considered that the calculations regarding the 47 movements showed that to achieve the uplift in passenger volume claimed, these services would need to operate daily, including both peak and off-peak days, with additional services on off-peak days. The Applicant's information did not align with this requirement and was mathematically inconsistent [REP8-166].

4.3.79. At D9 the Applicant submitted a comprehensive document [REP9-115] containing details on peak spreading, reaffirming their views. This document states that easyJet for instance were 21% busier in August 2014 to other months (on average) but that by 2019 this had fallen to 14%. The Applicant also noted that other UK airports (other than Heathrow) are not constrained to the same levels as Gatwick and that Gatwick saw seasonality decrease by 22% from 2014 to 2019 whereas Birmingham and Manchester saw negligible shifts.

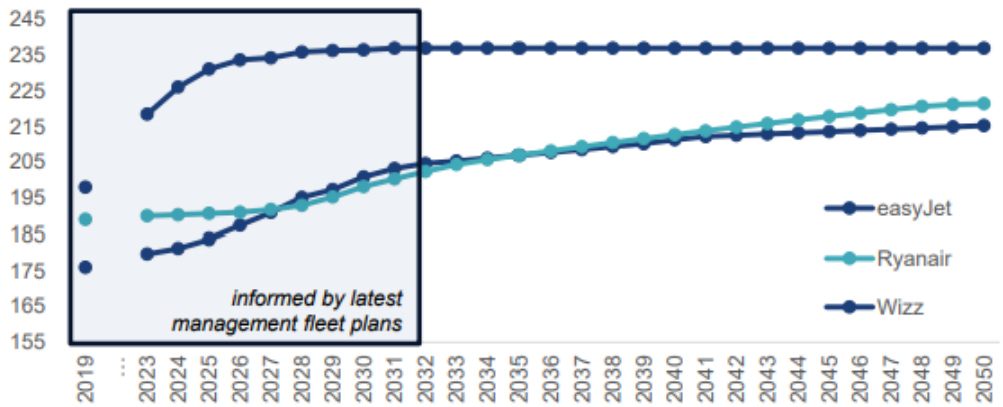
4.3.80. The Statement of Common Ground between the Applicant and the LePAs on Forecasting and Need [REP9-098] showed a large number of disagreements outstanding.

4.3.81. The Gatwick sensitivity test produced by the Applicant assumes that peak spreading ratio reduces from 1.16 to 1.13, a figure far less than the DCO assumption. This is what primarily drives the drop in the baseline figures from 67.2mppa to 60.1mppa. The peak spreading reduction has knock on effects in terms of peak growth, aircraft size and load factors and in turn the NRP case is restricted to a ratio of 1.12, providing the majority of the reduction from 80.2mppa to 67.2mppa [REP5-081].

Aircraft Size

4.3.82. The Applicant notes that average aircraft sizes have been growing across the industry and details the increase in the average aircraft size at Gatwick in the period 2010-2019 from 170 to 192 seats, a 13% increase [REP1-052]. The average aircraft size is assumed to increase by 9% (to 210 seats) in the period up to 2030, with further growth up to 224 seats per average plane by 2047 (Figure 4.13 below) [REP1-052]. This is based on fleet assumptions for the main airlines using the airport. They note that airlines focus on ordering aircraft that have more seats where they can, in essence, fit more people on to a single plane. The Applicant is also of the view that at capacity constrained airports, airlines are more likely to up-gauge aircraft at a faster rate reflecting the scarcity of capacity.

Figure 4.1319: Average Aircraft Assumptions



Source: Airline reports

4.3.83. The LePAs broadly agree that increase in the average number of passengers per aircraft will occur, although they note that in the future baseline case the more limited scope for new services would limit the overall increase in average aircraft size. They do not consider that it is necessarily the case that airlines are more likely to up-gauge aircraft more quickly at a capacity constrained airport as this would depend on the aircraft available within their fleet [REP9-098].

4.3.84. At D9 the Applicant noted that using the airport's aircraft size figures would add an extra 1.6mppa to the LePAs future baseline figure [REP9-115].

4.3.85. The Applicant's Gatwick sensitivity test includes the same average aircraft sizing as the DCO submission [REP5-081].

Load Factor

4.3.86. The Technical Note on the Future Baseline [REP1-052] notes that average seat occupancy (load factor) has been growing across the industry, with Gatwick having experienced an increase from 79% to 86% in the years from 2010 to 2019. While this dropped significantly during the pandemic, 2023 figures up to August indicated a return to 85% [REP1-052]. The forecasts assume that this will increase to 90% by 2030 and to 91% to 92% by 2040-47. LCC such as easyJet and Ryanair have improved load factors significantly in recent years.

4.3.87. The LePAs note [REP4-049] that although some airlines do operate regularly with load factors in excess of 90% over the year as a whole, many airlines operate at below these levels. They also note that there is a natural ceiling on the load factor as markets are not balanced, giving the example that more people leave the UK at the start of a holiday period meaning that inbound flights will necessarily be more lightly loaded whilst the converse is true at the end of a holiday period. They also note seasonal differences in load factor and these will vary by market. The LePAs consider that a load factor of 90% would be more realistic for a year round load factor, accepting that it is likely to be higher in peak periods. At D9 the Applicant notes that using the airport's load factor figures would add an extra 1.4mppa to the LePAs baseline figure [REP9-115].

4.3.88. The Applicant's Gatwick sensitivity test reduced the load factor assumptions to around 90%, and thus the same as the LePAs assumption [REP5-081].

ExA's Conclusion on Future Baseline and Northern Runway Project

4.3.89. The ExA was grateful for the assistance of the main parties in discussions relating to this complex subject. Conclusions on the main elements of the proposed growth for the baseline and the NRP cases are set out below.

Peak Growth

4.3.90. The ExA agrees that a 2mppa increase for peak growth in the baseline forecasts is reasonable and theoretically achievable (subject to capacity constraints, see below). The ExA has come to this view due to the increase in hours declared at 55 movements per hour and continuing to increase the number of hours operating at Gatwick's hourly capacity limits. Quieter days in peak months are likely to become busier and the ExA agrees that this would generate a significant amount of traffic in itself.

Peak Spreading

4.3.91. The issue of peak spreading was possibly the area where the views of the Applicant and the LePAs differed the most. The two parties were set significantly apart and the gap in opinions did not vary during the Examination.

4.3.92. The ExA considers that, based on the evidence provided, the Applicant's case seems optimistic in this regard. To achieve a traffic profile akin to that of Heathrow in the baseline case seems over ambitious, particularly given the different nature of much of Heathrow's traffic. While the ExA can appreciate that peak spreading will occur more in the future (and note in this respect the change from 2013 to 2019) both due to necessity (ie lack of slots in the peak periods) and customer profile and habit (an ageing population with more disposable income travelling out of the school holidays) the peak periods will likely always be significantly busier than the off peak periods, primarily due to school holidays, and will generate more profit for airlines.

4.3.93. However, the ExA is also of the view that the LePAs forecasts seem overly negative. No peak spreading other than largely as a function of peak growth seems unduly pessimistic. The ExA appreciates that some peak spreading will occur and that the increase that was witnessed in the years running up to the pandemic may return, even if at not quite such a quick rate. It also appears to the ExA that based on the evidence provided the 47 additional movements are a peak month increase as opposed to a peak day.

4.3.94. Given our views above around the ratio of Heathrow (1.07) a ratio at Gatwick in the region of 1.09/1.10 for the NRP and baseline case respectively may be achievable, reflecting the different traffic at Gatwick to Heathrow, noting the dominance of LCC and primarily leisure traffic at Gatwick.

Aircraft Size

4.3.95. Aircraft size makes up a substantial proportion of the growth in the future baseline case (and NRP) of 9mppa. The LePAs broadly agreed with the Applicant on this point, subject to reservations over the more limited scope for new services in the baseline case and doubts that the constraints at the airport would make it more likely for airlines to up gauge aircraft more quickly than they might otherwise have done so.

4.3.96. The ExA shares such concerns. While growth via larger planes would be significant and in the region of the Applicant's estimates, the 9mppa uplift may be slightly overoptimistic, although not to a large degree.

Load Factor

4.3.97. The ExA concurs with the LePAs that there is a natural ceiling on load factors, and considers that 90%-91% for this ceiling seems appropriate. While it is in the airlines' clear interest to increase load factors as far as possible, there will always be routes which are not as popular as others and passengers will always miss flights. However, the LePA example that more people leave the UK at the start of a holiday period meaning that inbound flights will necessarily be more lightly loaded whilst the converse is true at the end of a holiday period may well be true but would seem unlikely to affect average load factors, as while the route out may be, for example, less than 90% full, the route back would likely be more than 90%.

4.3.98. The ExA notes that the Applicant stated that the airport's load factor figures would add an extra 1.4mppa to the LePAs baseline figure and that their own sensitivity test reduced the figure to 90%.

ExA's OVERALL CONCLUSION ON THE NEED CASE

4.3.99. As detailed above, the ExA considers:

- In the context of the overall levels of air passenger demand in the London system, the Proposed Development would deliver a reasonably modest increase in capacity to help meet this demand.
- There is the potential for more long-haul growth from Stansted airport, but Gatwick is fairly unique as a UK airport; with a diverse mixed range of traffic (albeit dominated by LCC traffic), set in a reasonably affluent catchment with frequent and reasonably easy and direct access to London.
- That no weight should be given to potential growth at Luton airport, but that even in the event of a positive decision for Luton it would still likely be smaller than Stansted and much of their forecast growth would occur in the mid-2030s.
- The letter from ACL submitted at D1 [REP1-052] offers persuasive evidence of Gatwick being heavily constrained at certain key times and months of the year with demand significantly outstripping supply. Evidence from the LePAs and easyJet in this respect is also noted.
- If consent is granted for the NRP it would be operational substantially in advance of LHR NWR.
- The Proposed Development would not unduly affect the hub status of LHR in the long term. While in the short term there may be some effect, this would not be significant or long lasting.
- There are concerns over the reliance of bottom-up forecasts over the longer term. However, the years of variance between the bottom-up and top-down forecasts are fairly early. Due to this the benefits of the NRP in the 'early years' may be overstated to a small degree, but such impacts would not be significant.
- In the event of the LHR NWR being opened, the top-down forecasts are more realistic. Under such forecasts Gatwick would be impacted reasonably significantly, particularly for long-haul traffic. Benefits of the NRP would be lower, as would adverse effects.
- A 2mppa increase for peak growth in the baseline forecasts is reasonable and theoretically achievable (subject to capacity constraints).
- The Applicant's case for peak spreading seems optimistic, but also that the LePAs forecasts seem overly negative. A seasonality ratio in the region of 1.09/1.10 for the NRP and future baseline case respectively may be achievable.
- For aircraft size the 9mppa uplift may be slightly overoptimistic, although not to a large degree.
- There is a natural ceiling on load factors, and 90%-91% for this ceiling seems appropriate.

4.4. CAPACITY AND CAPABILITY

AIRPORT

4.4.1. Discussions on airport capacity largely resolved themselves during the Examination between the Applicant and the LePAs, as is evident from the Statement of Common Ground between the Applicant and the LePAs [REP9-096]. It was agreed between these parties that:

- Future Baseline

- The current runway has a capacity at peak hours of 55 movements per hour (mph) and that the number of hours in a given day that it handles this number of movements can increase.
- The current runway (and airfield) can achieve 954 ATMs on a busy day (although the LePAs note delay levels are relatively high).

- Northern Runway Project

  - It is agreed that the airfield is capable of delivering 1132 ATM on a busy day by 2038 with a peak runway declaration of 69 mph (although the LePAs note very limited headroom for the number of ATMs to be increased).
  - Such movements can be achieved in part due to a range of performance improvements planned to be implemented by the Applicant [REP1-054].
  - In relation to Aerodrome Certification, the CAA see no issue to the approval of the project [REP3-068]; and have issued a letter of 'no impediment' to the same purpose [REP9-086].

- Both cases – Future Baseline and Northern Runway Project

  - New initiatives to improve resilience have been put in place, or are planned by the end of 2025, including an additional Rapid Exit Taxiway (RET), Time Based Separation (TBS), Reduced Departure Separation (RDS) and enhanced departure sequence capability projects. The LePAs note that the effectiveness of these is not yet known and that the new RET cannot be used in dual runway operations.

4.4.2. easyJet submitted a Relevant Representation [RR-1256] stating the following:

- Gatwick Airport Limited (GAL) is not best placed to deliver an increase in capacity at LGW given current performance. GAL is consistently ranked in the lower half of punctuality rating in relation to average arrival and departures of the 33 airports reported by Eurocontrol.
- GAL has provided sub-standard Air Traffic Control services in 2022 and 2023 demonstrating a clear inability to cope with the current levels of traffic, let alone an increase in capacity with a second runway.
- Current infrastructure plans do not sufficiently account for increased capacity. ACL have demonstrated that current critical infrastructure at LGW is full or close to full during the morning peak hours. This makes it impossible to add more aircraft or up gauge to larger aircraft with more seats. easyJet is concerned that GAL has not shared any details relating to the plans, design, or scope of infrastructure needed to support the northern runway nor has it provided any timing for delivery.
- LGW's current operations have several underperforming elements which are struggling at current levels of traffic and would be exacerbated by increased traffic from a northern runway. These are:

  - Security: there is no capacity to expand on the current infrastructure and no increase in resources at peak times leading to long queues and delays. easyJet is not aware of any contingency that can be deployed.
  - Immigration: is full at certain times in both terminals. This is driven by the UK Border Force (UKBF) and there is no clear plan on how UKBF will support a significant increase in passenger numbers, nor if the current terminal infrastructure could accommodate further e-gates or desks.
  - Stand capacity: aircraft stand and coaching gate capacity are at maximums during certain times of the day. Delivery of pier service levels in line with

GAL targets is only made possible by an extensive programme of aircraft towing during first wave operations. It is not understood how GAL would mitigate against further ground delays as a result of more aircraft than stands/gates available. Only an extensive programme of taxiway work to improve airfield flow could mitigate this.

- Night Movements: are relied on by carriers that operate at LGW. Further traffic that increases congestion are likely to cause delay that further compound the night movement limitations.

4.4.3. At D1 the International Airlines Group and British Airways (IAG & BA) submitted a Written Representation [REP1-198], noting that in 2023 IAG were the second largest operator at Gatwick and stating that:

- Gatwick's current operational performance is poor and we have significant concerns about performance at its current capacity, let alone its ability to successfully manage the proposed increases brought by the Proposed Development.
- The airport is a long way from operating consistently to its targets.
- Significant investment is required in infrastructure to reduce airfield and stand congestion, taxi times and accommodate the volumes being processed now.
- To achieve the passenger numbers suggested by Gatwick significant new terminal capacity would need to be added to the airport. Such a level of passenger growth could not be accommodated either in the existing terminal infrastructure or without material investment in new infrastructure.
- ATC provision at Gatwick over the past two years has not met the required standard and the operation in the tower has not been resilient to resource disruption.

4.4.4. In response the Applicant noted [REP1-048], [REP1-056], [REP3-072] that "despite recent challenges, London Gatwick continues to be demanded by a variety of carriers as is demonstrated by the over subscription of slots.". It noted that NATS have been the ATC provider at LGW since 2022 and training is being expedited. The Applicant drew attention to the new resilience initiatives being put in place and stated that the NRP would improve resilience and reduce delays. Delays during 2023 were partly attributed to European airspace constraints and signposting to terminal improvements as part of the Proposed Development were included. An air traffic and airfield infrastructure optimisation program has also been implemented.

4.4.5. Questions were asked at ISH7 concerning terminal capacity of the NRP. In response Gatwick noted [REP4-037] that the primary limiting factor in the North Terminal is pier served stand availability. They noted that a current project underway to construct Pier 6 would deliver eight additional pier stands and that the south terminal had a later peak than the north terminal so that terminal rebalancing could take place. The Applicant did not recognise the description of long queues and delays at security, noting that the airport consistently exceeds its target for passengers to wait for no more than five minutes 95% of the time. It was also noted that there is latent capacity in the departing baggage system, check in, and security to accommodate the planned uplift in passengers at peak times.

4.4.6. On 14 August 2024 the ExA issued questions under Rule 17 [PD-027] asking questions directly of easyJet and IAG & BA whether they wished to respond to the Applicant. IAG & BA stated that they had had various productive meetings with Gatwick and that they expected these to continue. They noted that their operational concerns remained although they appreciated Gatwick's engagement [REP9-202]. easyJet [REP9-371] reaffirmed its previous comments and continued to express concern that the issues that they raised would not be improved by the Proposed

Development. They note that the plans for aircraft stands continue to show a bias toward remote operations which add to congestion and complexity.

ExA's Conclusion on Airport Capacity

4.4.7. The ExA noted the agreement between the Applicant and the LePAs on much of the relevant capacity issues. However, the representations from easyJet and IAG & BA are noteworthy, particularly as these companies are currently the largest operators out of the airport.

4.4.8. Questions at ExQ1 and ISH7 focused on terminal and stand capacity. In particular the answer to ExQ1.GEN1.17 [REP3-091] provided details of capacity and service levels for the north and south terminals. The ExA considers that these responses satisfactorily answered the queries of easyJet in terms of terminal capacity and proved that the Proposed Development would, based on the forecasts provided, provide a suitable passenger experience and adequate terminal infrastructure capacity for the Proposed Development.

4.4.9. The construction of Pier 7 and associated direct stands would assist airfield matters in the NRP case. However, the outstanding concerns of easyJet and IAG & BA for remote aircraft stands are relevant, remain outstanding and carry weight. For the future baseline case in particular, the ExA considers that there has to be a doubt that the airfield infrastructure would be able to efficiently deal with the traffic forecast. Lengthy and regular delays would likely have an effect on passengers' desire to travel from the airport and could potentially lead to airlines moving to alternative airports, although the clear demand for slots is noted in this regard.

OTHER FUTURE BASELINE CAPACITY ISSUES

4.4.10. Paragraph 3.3.3 of the Scoping Opinion [APP-095] states that "The ES should include a description of the baseline scenario with and without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge."

4.4.11. Paragraph 3.3.6 goes on to state that "The ES should clearly define the 'future baseline', explaining any assumptions made in relation to the growth in passenger numbers (and the physical airport itself) in the absence of the Proposed Development (paragraphs 3.2.4 – 3.2.6 of the Scoping Report). The extent to which the parameters in Table 4.6.1 are associated with or reliant upon other consents and assumptions are not fully explained. In particular the ES should set out what (if any) additional consents are required to enable this growth since, it is unclear if any specific additional consents (beyond those listed in section 4.3 of the Scoping Report) would be required to allow for increased passenger numbers from 46mppa to 61mppa as outlined in table 4.6.1 of the Scoping Report."

4.4.12. Finally, paragraph 3.3.7 states that *"The Applicant should be careful to ensure that the 'future baseline' is established relevant to suitably robust assumptions and is fully representative of the likely outcomes in the absence of the Proposed Development."*

4.4.13. As stated in paragraph 3.3.3 the ExA has tried to establish whether the baseline and future baseline scenario promoted by the Applicant relate to natural changes at the airport and how much reliance is placed on the need for additional consents to deliver the changes anticipated in the assessment. During the Examination we explored the practical consideration in the delivery of the Applicant's future baseline

scenario. We looked at the following areas where we thought more evidence was required to be certain the future baseline scenario was the result of natural changes and not reliant on other consents. We considered the following areas:

- Traffic levels and congestion; and
- Hotels.

Traffic levels and congestion

4.4.14. Paragraph 13.5.15 of the Transport Assessment (TA) [REP3-058] states that "The VISSIM outputs for the 2047 future baseline indicate a network which has very limited capacity to accommodate additional demand by this time, leading to poorer overall performance and significant congestion at key locations, both within the Airport network and on the strategic and local network." We asked about whether this significant congestion and poor performance could restrict levels of traffic growth to the airport and thus be a practical restraint on airport growth. The Applicant [REP1-059] stated that it *"has confidence in the transport modelling and the CIP [Capital Investment Programme] highway improvements at the North and South Terminal roundabouts will deliver additional capacity that assists the airport to deliver the growth assumed, in the absence of the Project."*

4.4.15. The signalisation of the North and South Terminal roundabouts which is already planned in the airport's CIP will alleviate some congestion issues. However, as paragraph 13.2.5 of the TA confirmed these works were included in the future baseline modelling. As a consequence, the comments in paragraph 13.5.5 about congestion relating to the future baseline traffic levels remain valid. It is also worth noting that in paragraph 13.5.14 of the TA, "*The PM peak in 2047 shows significant queuing and delay for traffic on the A217 and Povey Cross Road approaching Longbridge Roundabout."* This demonstrates that the predicted congestion will affect a larger area than just the two terminal roundabouts.

4.4.16. Given the evidence presented in the TA, the ExA considers that it is likely that there could be significant congestion at key locations in the future baseline scenario.

Hotels

4.4.17. We asked in question ExQ1.GEN.1.24 [PD-012] why the future baseline scenario does not require any additional hotels. The Applicant [REP3-091] responded "*It is likely that further hotels will be required as the airport passenger numbers grow in the baseline, and these could be provided on or off-site and applications will be made by the Applicant or the market as appropriate*."

4.4.18. To clarify the situation, we asked the Applicant in question ExQ2.GEN.2.13 [PD-021] to explain why:

"If hotel capacity will be required to accommodate future baseline growth in passenger numbers and no planning consent exists for such an increase is this not a practical constraint on the ability of the airport to accommodate any theoretical increased passenger growth represented by the future baseline position?

The Indicative Construction Sequencing [REP2-016] shows that all the proposed hotels will be constructed in advance of the opening of the dual runway. Is this a further indication that the airport in either scenario needs additional hotel accommodation to satisfy demand in any significant passenger growth?"

4.4.19. The Applicant [REP7-083] responded repeating that further hotel capacity is likely to be needed and "If there is an increase in demand from passengers, the market

signal that sends will encourage further capacity to be delivered around the airport through TCPA [Town and Country Planning Act] applications." It goes on to state, "Any short term constraint would be met by changes in the pattern of those who use hotels and those who travel from home or stay further afield. It would not impede the growth of passenger numbers at the airport."

4.4.20. The ExA considers that increasing hotel provision by means of separate planning applications cannot be regarded as a natural change in the baseline environment. The ExA also considers that the proposed delivery of the new hotels in advance of the start of dual runway operations further indicates that hotel provision would be an element of the airport's operational success. The Applicant fails to explain that given the Proposed Development subsumes the future baseline case, why early delivery of the proposed hotels does not indicate that the new hotels are also part of the operational requirement in the future baseline scenario.

4.4.21. The ExA is not convinced that the Applicant has fully explained how the future baseline hotel requirements could be met by any natural changes in the baseline environment.

ExA's Conclusion on Other Future Baseline Capacity Issues

4.4.22. Above we have noted that it is likely that there could be significant road traffic congestion levels at key locations in the future baseline scenario, and that we are not convinced that the Applicant has fully explained how the future baseline hotel requirements could be met. These two issues carry some weight in respect of whether the future baseline, as stated by the Applicant at 67mppa, is realistic and achievable.

4.4.23. It is difficult to say what would happen to the propensity of potential passengers to use Gatwick airport should road traffic congestion be severe, or that no hotel rooms were available (or the ones that were had a very high price). Some passengers may leave earlier to get to the airport, some may use public transport, and some may travel on the day of travel rather than staying overnight the day before an early morning flight. However, the combination of both factors may also dissuade some passengers from using the airport, causing them to instead choose an alternative airport to travel from. Passenger disquiet may also influence airlines to locate new services or routes at other more accessible airports where hotel rooms are more plentiful.

AIRSPACE

4.4.24. Various discussions (for example, at ISH9 [EV20-001]) took place during the Examination concerning airspace and the need or otherwise for airspace change proposals (ACP) as a result of the Proposed Development, the interlinkages between the two issues and future plans. The ExA asked a question under Rule 17 [PD-027] asking for a final update on airspace change/ modernisation.

4.4.25. The CAA [REP9-086] confirmed that the Proposed Development would not constitute a change in airspace design since the conventional Standard Instrument Departure routes (SIDs) for the current northern standby runway, which are already notified, would continue to be used under the proposal. The SoCG between the Applicant and NATS En-Route Limited (NERL) [REP9-099] confirms that no airspace change is required to the London Terminal Control Area route network to enable the Proposed Development.

4.4.26. There was also discussion over any implications of the Proposed Development for the future airspace strategy implementation (FASI) programme, co-sponsored by the DfT and the CAA and specifically the southern element of this project (FASI-S). Within this scheme are various elements, including the London Airspace South (LAS) element. The CAA [REP9-131] describe LAS as the first phase of airspace modernisation proposed for deployment in the south-east of England, and states that the proposed LAS deployment includes two of the south-east cluster ACPs. They note that one is sponsored by Gatwick to upgrade the arrival and departure routes below 7,000 ft. to the south of the airport, and the other is sponsored by NERL to upgrade the route network and airspace structure above 7,000 ft, including the airborne holds serving Gatwick. They noted that the proposed LAS is a relatively simple airspace change that can be deployed sooner than the rest of the south-east of England, realising benefits earlier.

4.4.27. NERL noted [REP9-161] that stage 3 of the airspace change process for FASI-S was underway and that further consultation was due in Autumn 2024. For LAS NERL noted that public consultation on this aspect would commence around Quarter (Q)1/ Q2 2025 with the target window for deployment being Q1 2027 to Q4 2028.

4.4.28. While the LePAs [REP9-096] agree that the NRP does not directly require an airspace change to facilitate dual runway operations, they note that the growth of air traffic across the London system as a whole (including the NRP) has prompted FASI-S and the Applicant part-sponsored LAS suggests some linkage between the NRP increased traffic and the need for airspace change. Detailed comments were made over the increased use of certain routes, including 'WIZAD' and the potential for airspace to become more congested, leading to more delays at airports.

4.4.29. easyJet [RR-1256] state that UK airspace modernisation needs to be completed before the airspace above London takes on additional traffic, and that failure to modernise the airspace coupled with increased traffic over London will result in delays for passengers, increased operating costs, and excessive fuel burn creating higher emissions in the south-east region. This would be further exacerbated by additional capacity added through the Northern Runway if this problem is not addressed.

4.4.30. IAG & BA [REP1-198] state they have significant reservations about the current ability of airspace around London and the south-east to cope with the levels of additional capacity proposed, noting that the costs to airlines of disruption are excessive and it is very challenging to successfully deliver an on-time schedule with the current levels of performance.

4.4.31. CAGNE [REP8-146] note that the NRP would result in a significant growth of flights and consider that this would not be possible without FASI-S, noting the representations of IAG & BA and easyJet. They note that at Dublin Airport [REP2-070] new flightpaths were used from those assessed in the ES without any noise assessment undertaken and the CAA seems to assess the effects of the NRP on ACP without an increase in aircraft movements.

4.4.32. The Applicant noted [REP9-114] that the environmental impacts of Gatwick's Airspace Modernisation project, as with all airports participating in the Airspace Modernisation programme, will be assessed under the CAA's regulated airspace change process and the airspace design options and the potential configurations that may result at this stage of Gatwick's airspace change project mean they are not yet able to be assessed cumulatively with the Proposed Development.

ExA's Conclusion on Airspace

4.4.33. Both the CAA and NERL state that the Proposed Development would not necessitate an airspace change and the LePAs agree that one is not needed as part of the DCO application. However, it is also clear to the ExA that various airspace changes are in process and that these are required due to both the current and future airspace requirements of the south-east and the London system. The ExA considers that part of these future requirements will be the growth of aviation traffic in the south-east and it is inevitable that the NRP (and baseline case) would feed into this.

4.4.34. The CAA airspace change process is a separate regulatory regime to the DCO application and this will consider the environmental implications of any such changes (including for FASI-S and LAS). Environmental impacts of the proposed increase in flights proposed as part of this application are considered in the relevant chapters of this Report.

4.4.35. In respect of the concerns of easyJet and IAG & BA the ExA notes that the target date for deployment of LAS is 2027-2028, prior to the proposed opening of the NRP.

4.5. ExA's CONCLUSION ON THE PRINCIPLE OF THE PROPOSED DEVELOPMENT AND THE NEED CASE

4.5.1. In the Policy Conclusion we concluded that the Proposed Development would involve works to an existing runway, and that the scale of the Proposed Development falls within the MBU policy. However, we also considered that to receive the benefit of such policy support requires that the need for the Proposed Development is shown to be additional to, or different from the need that would be met by the LHR NWR scheme.

4.5.2. While we consider that need in general does not need to be demonstrated by the Proposed Development, it is clear from the ANPS, the work by the Airports Commission preceding this national policy statement, and by the DfT forecasts from 2017, 2022 and 2023 that there is a nationally recognised need for aviation development, particularly in the south-east of England. It is clear too that the current capacity at London Airports falls far short of this need.

4.5.3. The ExA are content that the need that has been shown to be present for Gatwick's growth is both largely additional to, and different from the need that would be met by the LHR NWR runway scheme. Gatwick is dominated by LCC traffic, a trend that is likely to largely continue and is a sector of the market that LHR does not serve to any great extent.

4.5.4. Transfer traffic is not forecast to grow significantly under the Proposed Development and while some long-haul traffic may be attracted to Gatwick which would have otherwise gone to Heathrow, this would likely revert to that airport as and when the NWR scheme opens, as Heathrow's economies of scale and structural advantages to this marketplace would remain.

4.5.5. We have concluded that the forecast growth in the NRP may not be as rapid as predicted by the bottom-up forecasts but it would likely be 'quicker' than the top-down forecasts presented. This would lead to the benefits of the NRP in the 'early years' being overstated to a small degree, but this would not be significant and would be a relatively short-term effect.

4.5.6. In terms of the future baseline and NRP forecasts, the ExA is of the view that these are overly ambitious and unlikely to be realised in the timeline forecast. We are also of the view that conversely the LePAs forecasts are potentially too pessimistic.

4.5.7. On the different elements of forecast growth (for both the baseline and the NRP cases) we consider:

- Peak Growth – The Applicant's conclusions are agreed with.
- Peak Spreading – A ratio of around 1.09/1.10 for the NRP and baseline case respectively may be achievable.
- Aircraft Size - We agree with the Applicant with some reservations over the specifics of airlines up-gauging aircraft just because of Gatwick's constrained nature.
- Load Factor – A ceiling of 90-91% for load factor (as opposed to the Applicant's 92% by 2047) seems appropriate based on the evidence provided.

4.5.8. In terms of airport capacity, we have concerns over the ability of the airport's airfield infrastructure to be able to provide for the stated baseline case without issues, although such concerns are significantly less for the NRP case. Similarly, we have some doubts over the ability of 'external' infrastructure, such as surface access and hotel provision in the future baseline scenario, although we acknowledge that the behaviour of passengers in the face of such issues is difficult to gauge fully. In terms of airspace we note that airspace modernisation is in train and elements of this should be in operation prior to the predicted opening date of the NRP.

4.5.9. The ExA does not have access to the relevant modelling tools or the detailed aviation forecasting expertise of GAL or the LePAs consultants. Nevertheless, on the basis of the evidence submitted and taking all the above into account, we are of the view that a likely outcome by 2047 would be in the region of 60 to 61mppa for the future baseline and 76 to 77mppa for the NRP. This results in a delta of around 16 to 17mppa, larger than the Applicant's prediction of 13mppa.

4.5.10. This is an increase in the delta of around 23-30% higher than the Applicant's prediction. The implications of this are analysed in the individual chapters. However, it is noted that the Applicant considered similar numbers; gaps of 18mppa and 19.7mppa (from the LePAs high and low cases) and of 15mppa (from their own alternative sensitivity test) and the ExA's figures sit in the middle of such figures.

4.5.11. We consider that with the NRP Gatwick could reach 80.2mppa in due course, sometime after 2047. Similar to our conclusions above about the rate of growth in early years, we are of the view that this difference would not be significant and concur with the Stansted decision conclusions in terms of speed of growth - that if ultimately it takes the airport longer than expected to reach anticipated levels of growth, then the corresponding environmental effects would also take longer to materialise or may reduce due to advances in technology that might occur in the meantime.

4.5.12. For the Proposed Development, due to the need for aviation capacity as outlined and supported by the ANPS, and due to the fact that we have found that the need that the proposal would partially satisfy, would be additional to, and different from that which would be met by the Heathrow NWR scheme, we ascribe moderate weight to matters relating to Need and the Case for the Proposed Development in favour of the Order being made.

5. TRAFFIC AND TRANSPORT

5.1. INTRODUCTION

5.1.1. This Chapter considers the effects of the Proposed Development in relation to traffic and transport. The policy considerations relevant to the Examining Authority (ExA) consideration of traffic and transport are set out in Chapter 3.

5.1.2. In paragraph 4.5.9 of this Report, we set out our conclusion that we are of the view that a likely future baseline passenger growth by 2047 would be in the region of 60 to 61mppa and 76 to 77mppa with the Proposed Development. This results in a difference of around 16 to 17mppa, larger than the Applicant's prediction of 13mppa. In assessing the traffic and transport effects below the ExA has taken these differences into account.

5.2. THE APPLICATION

5.2.1. The Applicant's assessment of traffic and transport matters was primarily contained within the Transport Assessment (TA) [REP3-058] and Chapter 12 of the ES [APP-037]. The Applicant's Surface Access Commitments (SAC) [REP9-043] contained the assurances, which would be secured by the Development Consent Order (DCO) to deliver the surface access outcomes as described in both the TA and Environmental Statement (ES) Chapter 12.

Transport Assessment

5.2.2. The TA [REP3-058] summarises the transport network and includes the requirements set out in paragraph 5.10 of the Airports National Policy Statement (ANPS), which states that the implications of airport expansion on surface access network capacity should be assessed using Transport Analysis Guidance (TAG) methodology, and National Highways, Network Rail and highway and transport authorities, as appropriate, should be consulted on the assessment and proposed mitigation measures. The assessment distinguishes between the construction and operational stages for the Proposed Development as required.

5.2.3. The TA was supported by the following annexes:

- TA Annex A – Figures [APP-259];
- TA Annex B – Strategic Transport Modelling Report [APP-260];
- TA Annex C – VISSIM Forecasting Report [APP-261];
- TA Annex D – Station and Shuttle Legion Modelling Report [APP-262]; and
- TA Annex E – Highway Junction Review [REP3-060].

5.2.4. The TA provided the Applicant's assessment of the following:

- current transport networks – operation and performance;
- demand forecasts for both the future baseline and the Proposed Development;
- SAC for the Proposed Development;
- rail, railway station and inter-terminal shuttle operation;
- bus and coach operations;
- strategic and local highway network operation;
- construction operations;
- freight, cargo and logistics operations; and
- consideration of resilience, reliability and future trends.

Transport Modelling

5.2.5. In terms of surface access, the modelling of the transport impacts of the future baseline and the Proposed Development are considered in the TA [REP3-058].

5.2.6. The TA reported on a suite of strategic modelling tools. The suite was comprised of three core models:

- the demand model – which dealt with the distribution and travel mode of non-airport demand and the travel mode for airport demand (employees and passengers);
- assignment models – which established the likely routes taken by travellers to and from the airport; and
- simulation models – which were used for the detailed operational assessment of transport network performance.

5.2.7. The public transport assignment model included models for both the rail network and the bus and coach network. The rail model extended from the Sussex Coast to central London and northwards to locations such as Stevenage, Peterborough, and Cambridge. The bus and coach model included all bus services operating in the area around the Airport together with nationwide coach services.

5.2.8. The strategic highway assignment model used the industry standard Simulation and Assignment of Traffic to Urban Road Networks (SATURN) software and was developed from National Highways' South East Regional Transport Model (SERTM), refining that model locally to add detail to the modelled network around the Airport. The highway model covered a wide area of south and east England, with increased detail in an area bounded approximately by Brighton, Chichester, Guildford, Woking, the northern arc of the M25, Dartford, Sevenoaks, Tonbridge, Tunbridge Wells, and Hastings.

5.2.9. A highway microsimulation model was developed in VISSIM software for the network in the immediate vicinity of the Airport, extending from M23 Junction 9 to Longbridge Roundabout, including North and South Terminals, and along the A23 southwards into north Crawley. This was used to provide greater detail on the operation of the highway network in this area.

5.2.10. A Legion simulation model was also used to examine the performance of Gatwick Airport railway station. This was developed from a Network Rail model which was originally used to support the Gatwick Station Project, which was completed in early 2024.

5.2.11. The transport modelling was based on data originally collected in 2016. During the period of 2018 to 2019, the introduction of the Smart Motorways Scheme between Junctions 8-10 on the M23, and changes in railway timetabling through 2018 and 2019 led to a period of variability in access to the Airport. The year 2016 was considered the best period pre-Covid as a base for the modelling.

5.2.12. A calibrated and validated transport model was developed for a modelling baseline 2016 year. The assessment considered the performance of the transport networks in the future baseline scenario and with the Proposed Development, for the following years:

- 2029, representing the assumed first full year of operation of the new northern runway;

- 2032, representing an interim assessment year which assumes that all arrival and departure slots on the new runway have been filled in the three years since runway opening and that the highway works which form part of the Proposed Development had been completed by this year; and
- 2047, representing 15 years after the completion of the highway works, reflecting a requirement in the Design Manual for Roads and Bridges to assess the impacts of a new highway scheme at this time horizon. This scenario also reflects continued steady growth in air passenger numbers between 2032 and 2047.

5.2.13. The assessment considered the operational phases of the Proposed Development in each of these years, by comparison with the situation in the same year in the future baseline. It also considered two construction phases for the Proposed Development: one during the peak of airfield construction prior to the northern runway opening and one during the most complex phase of highway construction after the new runway has opened.

5.2.14. The assessment was based on a busy June weekday. This represented the conditions anticipated during non-school holiday periods of the year, when non-airport travel demand would be at its highest. Daily airport demand on a peak June weekday would be exceeded on fewer than 20 weekdays in a year, generally in the school summer holiday period when background non-airport traffic would be around 2% to 6% lower than in June. The Applicant considered that the use of a June weekday was an appropriate and reasonable case for the assessment.

5.2.15. The TA concluded the following:

- Rail - The rail crowding assessment undertaken indicated no mitigation was required on rail services. In terms of the recently improved Gatwick Airport railway station, it found that no further improvements would be required to mitigate the increased usage as a result of the Proposed Development.
- Bus and coach services - That some improvements to both coach and local bus services are required, and these would be secured by commitments in the SAC.
- Network performance - The TA concluded in paragraph 18.5.10 that *"Although some parts of the network would remain busy, the overall operation of the highway network with the Project and the associated highway works would be no worse than in the future baseline despite the additional demand arising from the Project.*" The highway improvement works associated with the Proposed Development were as follows:
    - South Terminal - new highway layout providing full grade separation;
    - Enhancement of the eastbound M23 Gatwick Spur as part of the South Terminal roundabout improvements.
    - North Terminal - new highway layout including partial grade-separation, improving traffic flow. The Airport Way eastbound connection from North Terminal roundabout would be removed with eastbound traffic to travel via a new signal-controlled junction on the A23 London Road and an enhanced eastbound diverge connection onto Airport Way.
    - Improvements to Longbridge Roundabout where the A23 meets the A217.
    - Active Travel - New and some enhancements to active travel routes for pedestrians and cyclists.
    - Construction - the impacts of construction traffic were not considered to create significant impacts on the highway network. Although detailed design had not yet been undertaken the Applicant submitted an outline Construction Traffic Management Plan (oCTMP) [REP9-035] and an outline Construction

Workforce Travel Plan (oCWTP) [REP9-033] that would be developed to provide management of construction traffic and workers.

ES Chapter 12 Traffic and Transport

5.2.16. In addition to the network capacity analysis presented in the TA the Applicant also submitted ES Chapter 12 [REP3-016] that examined the potential environmental effects of the Proposed Development on traffic and transport. Information from the TA was used to inform the analysis presented in Chapter 12. This chapter was additionally supported by the following documents:

- ES Chapter 12 - Traffic and Transport Figures [APP-059];
- ES Chapter 12 - Appendix 12.3.1 Summary of Stakeholder Scoping Responses Traffic and Transport [APP-152];
- ES Chapter 12 - Appendix 12.9.1 Highway Flows and Driver Delay Review [REP3-049]; and
- ES Chapter 12 - Appendix 12.9.2 Rail Passenger Flows [REP3-051].

5.2.17. The assessment shows that even given the existing high traffic flows on the strategic highway and major road network, the Proposed Development was not expected to generate substantial traffic flows beyond the network in the immediate vicinity of the Airport. The proposed highway improvements would mitigate the impacts on the adjacent highway network. Consequently, ES Chapter 12 did not identify any residual likely significant effects.

Surface Access Commitments

5.2.18. Gatwick Airport has an existing Airport Surface Access Strategy (ASAS), published in October 2022 that aims to increase sustainable travel choices for passengers and staff alike. Rather than submitting a revised ASAS the Applicant submitted the Surface Access Commitments (SAC) [REP9-043] to commit to a specific set of surface access outcomes that would have separate scrutiny, monitoring and reporting outside of the existing ASAS process. The SAC does not include the highway improvements that form part of the design of the Proposed Development which are intended to be secured by the draft DCO (dDCO).

5.2.19. The SAC contains sixteen commitments that seek to:

- Achieve specific passenger and staff sustainable travel mode shares;
- Implement certain measures and interventions which the undertaker would use to achieve the mode share commitments; and
- Implement and follow a specified monitoring and reporting process in relation to the SAC to provide assurance that the commitments are being complied with.

5.2.20. The Applicant's commitments can be summarised as:

- Mode Share commitments (by the third anniversary of the commencement of dual runway operations):
    - Commitment 1 - A minimum of 55% of air passenger journeys to and from the Airport to be made by public transport;
    - Commitment 2 - A minimum of 55% of airport staff journeys to and from the Airport to be made by public transport, shared travel and active modes;
    - Commitment 3 - A reduction of air passenger drop-off and pick-up car journeys at the Airport to a mode share of no more than 12% of surface access journeys; and

- Commitment 4 - At least 15% of airport staff journeys to and from the Airport where those staff journeys originate or conclude within 8km of the Airport (such “staff journey” being a single one-way trip to or from the Airport) to be made by active modes.

- Mode Share commitments (by the first anniversary of the commencement of dual runway operations):
  - Commitment 1A - A minimum of 54% of air passenger journeys to and from the Airport to be made by public transport; and
  - Commitment 2A - A minimum of 54% of airport staff journeys to and from the Airport to be made by public transport, shared travel and active modes.

- Intervention commitments:
  - Commitment 5 – regional express bus and coach services;
  - Commitments 6, 7 and 7A – enhanced local bus services;
  - Commitment 8 and 8A – consultation with the Transport Forum Steering Group (TFSG) about parking increases and also commitment to fund effective parking controls on surrounding streets.
  - Commitment 9 – air passenger parking charges;
  - Commitment 10 – forecourt charges;
  - Commitments 11 and 12 – staff travel;
  - Commitment 12A - Ultra-low and Zero Emission Vehicles;
  - Commitment 13 – Sustainable Travel Fund;
  - Commitment 14 – Transport Mitigation Fund;
  - Commitment 14A – Rail Enhancement Fund;
  - Commitment 14B - Rail Monitoring and Enhancement Plan; and
  - Commitment 14C - TFSG terms of reference;

- Monitoring and Reporting:
  - Commitment 15 – monitoring information;
  - Commitment 16 – Annual Monitoring Report (AMR), disputes, SAC Mitigation Action Plans (SACMAP) and role of the Secretary of State (SoS) for Transport in the process.

5.2.21. The Applicant considered that the SAC would deliver the specified mode shares that the transport modelling was based on. The Applicant also maintained this was a robust method of ensuring the traffic and transport effects would be within those assessed in the application.

5.3. ISSUES CONSIDERED DURING THE EXAMINATION

5.3.1. There were over 4800 Relevant Representations (RR) submitted of which in excess of 1800 had concerns about the traffic and transportation impacts of the Proposed Development. Having taken these into account alongside the submitted Application documents, the ExA considered that traffic and transportation would be one of the initial principal issues for the Examination. The Initial Assessment of Principal Issues (IAPI) is set out in Annex C of the Rule 6 letter [PD-009].

5.3.2. A brief summary of the RRs relating to transport is set out in Section 3 of this Report and the ExA has read and taken account of all of the representations made in both the RRs and all of the written and oral representations made throughout the Examination. In headline terms the RRs identified the following mostly general concerns:

- increased levels of traffic;
- the ability of transport infrastructure to accommodate the additional traffic associated with the Proposed Development;
- the effects of increased traffic and potential “rat running” through villages and towns near Gatwick;
- increased parking problems in the vicinity of the airport;
- access to the airport by sustainable modes of travel;
- the effectiveness of the Applicant’s proposed access solutions;
- traffic during the construction period of the Proposed Development;
- the ability of the rail services to accommodate additional passengers.
- the lack of coach and rail services to serve some communities; and
- pedestrian and cycle access to the Proposed Development.

5.3.3. In addition to these concerns expressed in the RRs, we have considered all of the issues arising from the Local Impact Reports (LIR) and all of the Written Representations (WR) submitted.

5.3.4. From all of the above and considering the Applicant’s submissions we identified that the following key issues for the Examination were:

- transport modelling and network capacity;
- environmental effects of transport in the Environmental Statement Chapter 12;
- Surface Access Commitments;
- parking;
- active travel issues; and
- construction traffic management.

Transport Modelling and Network Capacity Issues

5.3.5. Prior to and throughout the Examination the Applicant was in ongoing dialogue with National Highways (NH), local highway authorities (LHA), Network Rail (NR) and train, bus and coach operators. Prior engagement with these parties was used by the Applicant to inform development of the TA [REP3-058].

Post-Covid Transport Model Testing

5.3.6. To reflect that the Applicant’s transport modelling had been undertaken using a base year that was pre-Covid, we asked the Applicant to undertake a review of its transport modelling in consultation with relevant stakeholders [PD-006]. The Applicant’s initial response [AS-121] demonstrated that there had been both a reduction in background highway and rail demand compared with that assessed in the Application. This reduction was largely due to a reduction in business and commuting travel post-Covid.

5.3.7. Additionally, the Applicant [REP5-068] submitted a commentary of the implications for the ES assessment in terms of traffic and transport effects relating to the post-Covid changes in traffic flows. It stated that this could lead to reductions in forecast background highway and rail demand of up to 14% by 2047 compared with that assessed in the application modelling. The Applicant stated that this post-Covid assessment of the changes in traffic flows did not indicate any new or materially different significant effects.

Highway Sensitivity Testing

5.3.8. The Joint Surrey Councils (JSCs) [REP6-101] in response to a sensitivity test that the Applicant shared with them, stated that *“The results inevitably lead to more vehicles on the SRN and LRN, (approximately 7% more GAL related road traffic in*

2032)". As a result, in question ExQ2.TT.2.10 [PD-021] we asked the Applicant to submit the details of this sensitivity testing.

5.3.9. The Applicant [REP7-092] submitted some details of the sensitivity test that considered a 10% increase in airport traffic on a busy June day. The Applicant considered that this was a proxy sensitivity test for any failure to meet mode share targets in the SAC. As the Applicant asserted that failure to meet mode share targets would not necessarily mean that traffic levels would increase in the same proportion it did not evidence to what degree this 10% uplift in airport related traffic would equate to the percentage by which mode shares would change.

5.3.10. The Applicant's submitted commentary based on the sensitivity test done on the strategic highway network modelling concluded that this scenario would be unlikely to change the overall conclusions in either the TA or ES Chapter 12.

Future Baseline Sensitivity Testing

5.3.11. The Legal Partnership Authorities (LePAs) and the Applicant agreed some assessment scenarios around different growth forecasts for both the Proposed Development and the future baseline. These scenarios are discussed in paragraphs 4.3.55 to 4.3.57 of this Report.

5.3.12. The Applicant [REP7-073], on a without prejudice basis, provided a commentary of the likely effects of the differing growth scenarios on the traffic assessments undertaken as part of their original submission. Despite finding that there could be additional traffic associated with changes in the future baseline of up to 10% at peak periods, this assessment found that using any of the differing growth scenarios would not be likely to give rise to any new or different significant effects to those identified in ES Chapter 12. The ExA are concerned that this assessment was qualitative and there was no quantitative assessment of the possible changes of effects.

5.3.13. The Applicant [REP7-073] states in paragraph 5.10.5 that the reduction in demand in the post-Covid modelling tests they had undertaken was broadly similar to the uplift indicated in the sensitivity testing it had done relating to the LePAs future baseline figures, which suggested that under post-Covid conditions that the sensitivity test would be unlikely to produce magnitudes of impact materially different to those identified in the TA. The ExA does not agree that this statement can be supported. The forecast reduction in background traffic post-Covid applies to both the future baseline and Proposed Development traffic levels whereas the ES examines the change between those two levels. Thus, the ExA is not convinced by the Applicant's assertion that comparison to post-Covid traffic level changes would provide any comfort that the future baseline sensitivity commentary provided would produce any unassessed effects.

Rail Network Capacity

5.3.14. NR [REP1-090] expressed concern about the capacity and resilience of the rail network to accommodate levels of passenger growth predicted. Govia Thameslink Railways (GTR) [REP1-185], the main operator on the rail network serving Gatwick, also expressed similar concerns. During the Examination, discussions continued between the Applicant and NR about the impact on the capacity of Gatwick Airport railway station and the rail network serving the airport.

5.3.15. We asked the Applicant, NR and GTR in ExQ2.TT.2.7 [PD-021] about outstanding concerns and if any mitigation was proposed.

5.3.16. NR (jointly with GTR) [REP7-117] responded outlining concerns about the Applicant's modelling relating to amount of standing passengers/ luggage space at peak times and train service supply assumptions that were unfunded and unlikely to be reliable without further service enhancements.

5.3.17. The Applicant [REP7-092] responded saying that it was proposing the following:

- Improvements to Gatwick Airport railway station to better manage queueing at the ticket gatelines as a result of the Proposed Development.
- A commitment to provide a separate Rail Enhancement Fund (REF) to provide funding for initiatives and measures that would be aimed at improving reliability of the rail network or enhancing the rail network or rail services in support of increasing the use of sustainable transport by passengers and staff.

5.3.18. The Applicant also committed to work with NR, GTR and other rail operators to agree suitable interventions that the REF would support.

5.3.19. The Applicant [REP7-042] added Commitment 14A to the amended SAC to secure both the REF and improvements to Gatwick Airport railway station to accommodate the additional passenger demand created by the Proposed Development.

5.3.20. GTR and NR submitted a joint response at D7 [REP7-117] and after that point only NR made a representation.

5.3.21. NR in Item 3.2 of its final Principal Areas of Disagreement Summary Statement (PADSS) [REP9-163] and similarly in the signed SoCG [REP9-092] stated that "*Whilst we have been unable to fully reconcile and agree modelling outputs due to modelling complexity and uncertainty, Gatwick have proposed a number of initiatives which will support the resolution of this issue in the future, including:*

- *Rail Monitoring and Enhancement Plan (Surface Access Commitment 14B).*

Furthermore, Network Rail are preparing a Demand Forecasting Technical Note for the Brighton Main Line and will work with Gatwick in line with existing collaborative relationships, such as through the Transport Forum and Transport Forum Steering Group to come to a common understanding on route forecasts. It is also noted that the Rail Enhancement Fund, Transport Mitigation Fund and Sustainable Transport Fund (secured in the Surface Access Commitments) could support the delivery of measures in the future.

On this basis, NR considers that there is an appropriate mechanism to address the unresolved issues in the future and does not object to the proposals on technical modelling grounds."

5.3.22. NR [REP10-031] withdrew any objection to the Proposed Development.

ExA's Conclusion on Rail Network Capacity

5.3.23. We acknowledge the final position of NR with respect to the mitigation offered by the Applicant. However, the ExA has outstanding concerns relating to levels of service and available seating capacity at busy times when passengers have large amounts of luggage that would not necessarily be resolved by the interventions proposed. Given the existing passenger loadings travelling to and through Gatwick Airport railway station we remain unconvinced that the REF and Rail Monitoring and Enhancement Plan as proposed would ensure that the rail network could operate without any congestion or passenger crowding issues as a result of the Proposed Development.

Bus and Coach Network Capacity

5.3.24. In the TA [REP3-058] the Applicant reported on the outcomes of its bus and coach network modelling for both airport passengers and staff. The Applicant concluded that they would *"work with operators to develop the detail of the enhanced route network and the funding that is required to support its implementation"*. The Applicant also stated that it would *"regularly discuss progress in the Transport Forum Steering Group (TFSG) which includes the local highway and planning authorities, transport operators and agencies, business and passenger representatives and other interested parties."*

5.3.25. East Sussex County Council (ESCC) [REP1-070] and Kent County Council (KCC) [REP1-079] submitted specific comments relating to improvements to bus and coach services and associated necessary infrastructure at the airport.

5.3.26. In addition, several Interested Parties (IPs) expressed concern that the Applicant had not proposed any mitigation in the form of bus priority measures to enable improved bus and coach access to the airport. The Applicant in its closing submissions [REP9-112] in paragraph 12.3.30 stated that *"The modelling and assessment work does not show such measures to be necessary and therefore they have not been included in the SACs".*

5.3.27. Through Commitments 5, 6, 7 and 7A in the SAC [REP9-043] the Applicant proposed both regional and local bus and coach service improvements, a monitoring and reporting process and a minimum £10 million Bus and Coach Service Fund investment to support additional services.

5.3.28. ESCC in its final PADSS [REP9-138] stated that *"The Council remain disappointed that bus service improvements have not been secured. However, as a member of the TFSG ESCC is committed to work with GAL through this forum to prioritise funding to enable bus service improvements to come forward to provide sustainable surface access to the airport to/from East Sussex."*

5.3.29. KCC in its final PADSS [REP9-144] reiterated its request about further information as to the capacity of kerb space at the airport for bus and coach services.

5.3.30. The Applicant in its closing submissions [REP9-112] stated that a KCC representative would become a member of the TSFG where routes and timetables of supported bus and coach services would be discussed prior to implementation. The Applicant said that as optimisation of kerb space for pick up and drop off at the airport forecourt is within its control it would work with bus and coach operators to ensure maximum efficiency is delivered.

ExA's Conclusion on Bus and Coach Network Capacity

5.3.31. The ExA is conscious that planning effective bus and coach service interventions needs careful planning to ensure that the public transport is both well used, and accessibility is enhanced. We are satisfied that the Applicant adopted an initiative-taking approach to the necessary improvements to the bus and coach network and that this would be secured as part of the SAC in the Recommended DCO (rDCO).

Highway Network Capacity

5.3.32. Numerous IPs expressed concerns about the capacity of the strategic road network (SRN) being able to cope with the additional traffic generated by the Proposed

Development. This concern was also about the consequential effects on the local road network (LRN) resulting from a congested SRN.

5.3.33. The Applicant's TA [REP3-058] examined the capacity of the highway network in the future baseline and the Proposed Development case. These show that the highway network is busy around Gatwick in both scenarios. The TA concluded that with the proposed highway improvements and the implementation of the SAC secured by the DCO, that the Proposed Development could be accommodated without any severe harm being created.

5.3.34. We were concerned that the TA showed that parts of the highway network are congested under future baseline conditions especially in 2047. The Applicant [REP1-059] explained that in its view the levels of congestion would not constrain future baseline passenger growth at the airport. It should be noted that SCC in its final PADSS [REP9-168] reiterated the concern about the congestion on the future baseline strategic highway network and its wish to "*understand the volumes of traffic transferred on to its network and what the impacts of this traffic would be."* The ExA considers that despite the lack of controls over growth at the airport in the future baseline scenario that growing levels of congestion on the surrounding highway network may serve as a practical constraint on access and thus the airport's growth without any planned highway mitigation in the future baseline.

5.3.35. At Issue Specific Hearing (ISH) 4 [EV9-001 and EV9-002] and in ExQ1.GEN.1.30 [PD-012] we asked about the implications around the certainty of the future baseline levels reaching that assessed. From Civil Aviation Authority (CAA) data in 2023 Gatwick passenger throughput had returned to 40.9 million passengers per annum (mppa), which is less than the 2019 peak activity defined in the application of 46.6mppa.

5.3.36. Using this most recent 2023 figure, the future baseline forecast increase, without the Proposed Development to 2047 would be 26.3mppa (67.2mppa – 40.9mppa). This compares to the Proposed Development maximum assessed increase in 2047 of 13mppa (80.2mppa – 67.2mppa). The total growth in passenger numbers of the airport from the 2023 level of 40.9mppa to the 2047 level of 80.2mppa with the Proposed Development is 39.3mppa, almost double the 2023 level.

5.3.37. We find that in the submitted TA it is not possible to understand how much of the future baseline traffic levels relate to the non-airport traffic or airport traffic. In spite of the Applicant's certainty about the future baseline, the traffic impacts associated with only airport traffic growth in the future baseline were unclear. The Applicant [REP1-059] in paragraph 3.1.7 states *"In response to the ExA's comments on the expectation that the ES should consider the Project against background growth on the network in absence of the Project, the Applicant explained that the background traffic growth model assumes airport growth without the Project because there is no cap on airport growth."*

5.3.38. In its closing statement the Applicant [REP9-112] in paragraph 5.1.4 explains that *"It would not be appropriate to compare growth against a fixed airport baseline as of 2019. It is appropriate to include the 2047 future baseline in the assessment, otherwise it introduces artificial scenarios into the assessment which do not account for airport growth happening in a "without Project" scenario."*

5.3.39. The Applicant seemed to have misunderstood the reasoning for the ExA wanting to understand the reference case traffic (i.e. without any airport traffic in all scenarios). We did not want to compare all development scenarios against a fixed baseline but

wanted to obtain a picture of the overall impact of airport traffic in all assessment years when compared with traffic levels developed from all the non-airport committed development as set out in the TA Annex B [APP-259] Section 9 - Uncertainty Log used to develop the transport modelling for all scenarios. This would have allowed us to understand the impact of all airport traffic growth against all non-airport traffic growth on the whole network. In addition, we would have been better able to understand the levels of traffic growth associated with the passenger growth of 26.3mppa from the present day.

5.3.40. In addition, the Applicant [REP1-065] in section 2.3 explained why it had not considered any future baseline uncertainty in the TA because it regarded *"the Airport's continued operation as "near certain" and it would therefore be included in the future baseline based on the extent of existing consent(s) for the Airport and its associated infrastructure. Accordingly, the forecasts in ES Appendix 4.3.1: Forecast Data Book [APP-075] form the basis of the assumption about future baseline Airport growth."* ES Chapter 6 - Approach to Environmental Assessment [APP-031] states in paragraph 6.34 *"Whilst there is inherent uncertainty in predicting long term aviation growth, the forecasts presented have been prepared jointly by GAL's in-house airline relations and marketing and research teams and ICF, one of the UK's foremost experts in air traffic forecasting."* The ExA does not consider adopting an approach that the predicted airport growth was *"near certain"* in the TA accords with the stated inherent uncertainty of predicting long term aviation growth accepted by the Applicant in ES Chapter 6.

5.3.41. The ExA understands the Applicant's approach but considers that if the DCO is granted the theoretical future baseline scenario would be subsumed into the Proposed Development scenario. In that case they are not two separate scenarios one following the other, they become one scenario.

5.3.42. The ExA's view as to the future baseline and its level of certainty is discussed earlier in Chapter 4. We consider that there is insufficient evidence that the future baseline as assessed by the Applicant would be a robust picture of the level by which the airport is likely to grow without the Proposed Development. As a result, we are of the opinion that there is sufficient doubt that the TA presents an accurate comparison of the future baseline with the Proposed Development scenario. Given that the gap between the future baseline and the Proposed Development scenarios is likely to be bigger than that assessed by the Applicant, the TA could underestimate the degree of traffic changes and thus call into question some of the resulting professional judgements made between the two about the impacts on highway and junction capacities.

5.3.43. Despite indicating a number of modelling items, the signed SoCG [REP9-088] set out that ongoing discussions regarding modelling impacts would be reflected in the signed framework agreement that the Applicant and NH had entered into. This agreement was not submitted into the Examination but all matters relating to modelling impacts are shown as agreed in the SoCG [REP9-088].

ExA's Conclusion on Highway Network Modelling

5.3.44. The ExA acknowledges that the Applicant has provided some commentary on sensitivity testing in Appendix A [REP7-092] but this is limited in nature. We do not consider that the commentary provided by the Applicant on sensitivity testing gives us sufficient comfort to change our view as to the assessment in terms of the level of the future baseline growth considered in the TA.

ExA's Overall Conclusion on Transport Modelling and Network Capacity

5.3.45. The above section sets out the ExA's considerations of the implications of the transport modelling submitted into the Examination. As far as possible we have sought to establish a clear picture of the likely impacts on the transport networks. For the reasons set out above we remain uncertain as to whether the submissions made by the Applicant fully describe the likely impacts on the networks, due to there being a likely greater gap between the future baseline and the Proposed Development scenarios than considered in the assessment.

5.3.46. The ExA understands that the post-Covid transport demand is lower than the Applicant's 2016 base year level and as such the submitted assessments considered higher levels of traffic on both the highway and rail networks. In terms of the network capacity for the Proposed Development the modelling undertaken in the TA [REP3-028] is considered accurate but our concern arises when considering the future baseline position and its implications for the assessments.

5.3.47. This point is echoed in the closing statement by the JLAs [REP9-151]. Paragraph 3.73 states that, *"Queries and concerns remain around aspects of the transport modelling (see the Surrey County Council PADSS [REP5-112]) and the element of uncertainty this creates also informs the JLAs' requests for greater controls."* In addition, in the Applicant's and NR joint statement [REP9-125] paragraph 1.3.4 states that, *"The Applicant and Network Rail have been unable to fully reconcile and agree modelling outputs."* Both of these positions give further weight to the ExA's concern about the level of certainty provided by the submitted assessment.

Environmental Effects of Transport in the Environmental Statement Chapter 12

5.3.48. Unlike the TA that analyses both the network capacity and operation in the future baseline and Proposed Development scenarios, the ES only considers the effects created by the difference in traffic levels between those two scenarios. In Chapter 12 the Applicant's assessment found that there were no significant effects as a result of the Proposed Development.

5.3.49. We accept that the ES has been undertaken in the correct manner in terms of considering the impact of the Proposed Development against the traffic growth associated with the future baseline. However, the levels of passenger growth assessed in the ES are much less than the unassessed growth associated with the future baseline. In Chapter 4 we set out our concerns about the level of the Applicant's predicted future baseline and as explained above we are concerned that this could lead to the levels of traffic generated by the future baseline scenario being less than those used to inform the Chapter 12 assessment.

5.3.50. Given our concern that the Applicant has not fully justified that the future baseline passenger growth is deliverable we are left with the concern that the assessment of traffic effects set out in ES Chapter 12 may underestimate effects associated with traffic resulting from the Proposed Development. This is because of a likely lower starting point for the future baseline, so a greater gap to the Proposed Development scenario than that assessed.

5.3.51. The Applicant [REP7-073] has provided its own appraisal of what changes in the future baseline may have on their assessment. We have no understanding of how much of the traffic in the baseline scenario is related to the airport activity and taken

with the uncertainty of the future baseline growth we are left with some doubt that the Applicant's submission may underestimate effects.

Surface Access Commitments

5.3.52. The Applicant considered that the Surface Access Commitments (SAC) [REP9-043] would be a legally binding commitment secured by the DCO. The Applicant proposed that the SAC would effectively be used to control surface access to the Proposed Development. The highway improvement works on the A23, M23 and the access points to the north and south terminals are not included in the SAC as the necessary works would be specifically secured within Schedule 1 of the rDCO.

5.3.53. By way of context the 2016 public transport mode share for air passengers travelling to and from the airport was 43% (Table 135 [APP-260]), in 2019 pre-Covid this mode share was around 45% (paragraph 8.6.13 of the TA [REP3-058]) and in 2023 using the latest available CAA data it was 43.9% (Table 1 [REP6-067]). On this basis there needs to be a significant growth of passengers who use public transport to travel to and from the airport in order to reach the predicted target mode share of 54% within one year of the start of dual runway operations.

5.3.54. Paragraph 4.1.2 of the SAC [REP9-043] states that *"The preferred choice of mode is based on many behavioural factors, some of which GAL can influence but are outside GAL's control."* However, the Applicant goes on to say that it *"must achieve the following annualised mode shares by the third anniversary of the commencement of dual runway operations and on an annual basis thereafter."* Commitments 1 to 4 of the SAC are the basis of the Applicant's management of surface access and as it states in the first bullet of paragraph 3.1.1 *"will provide assurance that the surface access related environmental effects forecast through the assessment are not exceeded."*

5.3.55. We discussed modal targets and controls at ISH4 [EV2-001], in particular the nature and role of the monitoring process and how the SACMAP would control the effects of airport growth within the envelope assessed within the ES. The Applicant [REP1-059] explained that *"it considers the proposed measures are robust and will be effective. It remains the Applicant's position that there is no need for an alternative such as a passenger or emissions cap where there is general policy support for airport growth and in view of the mitigation proposed as part of the Application."*

5.3.56. The Applicant's stance was that the proposed modal targets, reporting methods and necessary action plans secured by the SAC would ensure that Commitments 1 to 4 would be met. These commitments would not directly control any additional traffic effects that may occur should the modal targets assessed in the transport modelling not be met.

5.3.57. To better understand the modal share implications for surface access and in relation to the parking provided we asked the Applicant in question R17a.3 of our letter under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (Rule 17) [PD-013] for a table showing public transport mode share and parking levels in both the future baseline and Proposed Development scenarios. The Applicant [REP4-019] responded providing this information but at ISH8 [EV17-001] the Applicant stated that the information submitted at D4 was incorrect and they would resubmit. The Applicant's revised response [REP6-067] set out the annual public transport mode shares consistent with the TA.

5.3.58. As discussed above the progress towards the originally proposed target mode share (Commitments 1, 2, 3 and 4) would be reported in an AMR. The Applicant [REP7-042] stated in paragraph 6.2.1 that, *"The first AMR will be produced no later than six months before the commencement of dual runway operations."* The Applicant explained in paragraphs 6.2.5 to 6.2.13 how the monitoring process would work. In summary the key stages would be:

- The AMR would show if targets were not met or not expected to be met. If this did occur the Applicant would prepare a plan in consultation with the TFSG and implement any identified measures;
- If two successive AMRs identify that targets are not met then the Applicant would prepare a further action plan, the SACMAP in agreement with the TFSG and implement the SACMAP;
- If the TFSG does not agree with the Applicant's SACMAP approach, then within 90 days the Applicant will submit the SACMAP to the SoS for Transport; and
- The SoS for Transport may approve or direct the Applicant to *"such additional or alternative interventions it considers reasonably necessary to achieve the mode share commitments."*

5.3.59. The JLAs [REP8-126] set out their view as to the process to address any failure to meet mode share targets at the third anniversary of the commencement of dual runway operations. It explained its view of the programme to address any implementation of a SACMAP including intervention by the SoS for Transport. It concluded that *"Clearly the Secretary of State would require time to review and decide on a course of action, it would likely be after the declaration of capacity for summer 2035 (made in September 2034). Hence, the earliest that any action could be taken by the Secretary of State to limit ATMs would be 2036. At this point, virtually all of the NRP capacity is expected to have been taken up (circa 99% based on the Applicant's forecasts)."* The Applicant has always maintained its position with respect to the structuring of the mode share commitments in the SAC. By way of summary in the SoCG with SCC [REP9-080] in final response to item 2.20.4.14 the Applicant states *"We have carefully considered the approach to growth and surface access commitments. We are confident that the commitments we are making and the way in which they are structured are appropriate in the context of the anticipated rate of growth which is forecast for dual runway operations at the airport."*

5.3.60. The ExA has considered all of the submissions made about the timing of the Applicant's mode share commitments in relation to the first use of the elements of the Proposed Development. We understand the Applicant's approach is in part meant to be forward looking, however we share the concerns expressed by IPs that this could mean that any mitigation process could only start after first use of a particular element of the Proposed Development.

5.3.61. Mode shares are the basis of the Applicant's controls over traffic effects. The ExA is aware that by the time of commencement of dual runway operations the most significant improvement in mode share must be achieved, from 43.5% in 2023 to 54% in 2029. With this in mind, in advance of ISH9 [EV20-001] in Annex B of the agenda we proposed an amendment to R20 of the dDCO. Our amendment was the addition of the following to R20:

"(2) First use of the following airport facilities shall not be permitted until the mode shares set out below have been demonstrated to have been achieved in the Annual Monitoring Report unless otherwise permitted by Crawley Borough Council

a) At least 54% of passengers travelling to the airport used public transport in the monitored year. Should this public transport mode share not be achieved then the Undertaker shall not use the following:

- *Simultaneous operational use of the northern runway; and*
- *Pier 7 and associated stands.*

b) At least 55% of passengers travelling to the airport used public transport in the monitored year. Should this public transport mode share not be achieved then the Undertaker shall not use the following:

- *The South Terminal Hotel Phase 2 on the former car park H; and*
- *The use of multi storey car park Y.*

c) Not more than 44.9% of staff travelling to the airport were car drivers in the monitored year. Should this car driver mode share be exceeded then the Undertaker shall not use the South Terminal Office (on former car park H)."

5.3.62. In our view this would introduce land use controls that would restrict first use of particular elements of the Proposed Development until such a time that the Applicant had demonstrated that they had achieved the mode shares that accord with the levels of traffic assessed in the TA and ES.

5.3.63. Following our discussion at ISH9 the Applicant [REP8-107] responded that it *"would not incur the risk of incurring the very significant capital investment spend of constructing the development to then find it was unable to commence dual runway operations because (to take an extreme example) it was 0.1% under an annual monitored passenger public transport mode share. That is not a credible position to expect a commercial developer/operator to adopt, and there is no version of that amendment which adopts the same principle which GAL would accept. The level of uncertainty it would introduce to planning and investing in the development and subsequent operation of the airport would be unacceptable, and GAL would simply choose not to invest in implementing the scheme and instead elect to maintain its current operations/growth under a single runway, where it is not subject to any such restrictions. GAL's record of progressive and industry leading sustainable transport has not needed a "stick" of this nature."*

5.3.64. In addition, in response to Action Point 1 from ISH9 the Applicant [REP8-111] confirmed that they were adding two interim mode share commitments to the SAC. These allowed for the following commitments to be achieved by the first anniversary of the commencement of dual runway operations:

- Commitment 1A - A minimum of 54% of air passenger journeys to and from the Airport to be made by public transport; and
- Commitment 2A - A minimum of 54% of airport staff journeys to and from the Airport to be made by public transport, shared travel and active modes.

5.3.65. The ExA considers that even with the additional interim mode share commitments that the underlying issues with control over the first use of elements of the Proposed Development would still remain. Understanding the Applicant's position with respect to the discharging of R20, we clarified the proposed changes in our dDCO. [PD-028]. We explained that the concern of the Applicant regarding small variances of the figures in sub paragraphs (2)(a)-(c) were noted. However, sub paragraph (2) allows for such small variances to be agreed at a local level by CBC.

5.3.66. The Applicant [REP9-111] responded *"The Applicant notes the further reasoning provided by the ExA; however, for the avoidance of doubt, the Applicant does not*

consider the ability for CBC to "waive" any "small variance" against the target mode share as providing sufficient comfort in the manner the ExA suggest in their reasoning in response to the Applicant's previous comments on this form of wording. Clearly such agreement would be discretionary on the part of CBC and so still retains the level of unacceptable uncertainty which the Applicant's initial submission addressed."

5.3.67. The ExA understands the Applicant's concern but considers that CBC as the discharging authority would act reasonably in the matter of allowing first use of the controlled elements of the Proposed Development. The Legal Partnership Authorities (LePAs) [REP9-150] expressed support for the ExA's amendment to R20. In its closing submission [REP9-151] paragraph 3.71 also explained why the Applicant's interim mode share commitment proposal did not change their view as to their support for the ExA's proposed amendment to R20.

5.3.68. The ExA is recommending the amendment to R20 using mode shares that have been provided by the Applicant [REP6-067] in Tables 1 and 2. The Applicant states that the figures in these tables are consistent with the modelled mode shares used in the TA [REP3-058]. The ExA has also used the timings for individual development elements set out in the Applicant's Indicative Construction Sequencing [REP8-051]. Mode shares and timings are therefore in accordance with the modelling undertaken by the Applicant. If adopted it would be a realistic means of ensuring that the effects assessed in the ES are not exceeded at the time of the start of dual runway operations and CBC would be discharging authority and able to provide discretion about any minor variations in meeting the targets set out. On this basis the ExA considers that the recommended amendment is necessary, directly related and fair and reasonable in terms of scale and kind to the Proposed Development.

Transport Forum Steering Group

5.3.69. Appendix A of the SAC contains the existing terms of reference of the TFSG. Currently the TFSG is consulted on the ASAS during the development phase and once the strategy is adopted, oversees its implementation and monitors progress against targets.

5.3.70. If the DCO is consented, then the TFSG would additionally take on a decision making role in the monitoring of the SAC. The terms of reference as currently drafted does not contain any definition of how a decision is made by this group.

5.3.71. Paragraph 2.5 of Appendix 4 of the Section 106 agreement [REP10-019] sets out the decision making method by majority vote for the Transport Mitigation Fund Decision Group, who oversee the grant of funding from the Transport Mitigation Fund. There is no such mechanism in the terms of reference for the TFSG.

5.3.72. The Applicant in the final SAC [REP9-043] added a Commitment 14C stating that *"Prior to the first Annual Monitoring Report being produced in accordance with Commitment 16, GAL shall carry out a review of the existing TFSG Terms of Reference (annexed at Appendix A) and propose such revised terms of reference as appropriate to reflect the role of the TFSG as set out in these Surface Access Commitments for approval of the TFSG."*

5.3.73. CBC [REP9-133] and West Sussex County Council (WSCC) [REP9-172] in the final PADSS state that, *"The Terms of Reference of this group and how decisions shall be made have not been agreed between the Highway Authorities and the Applicant.*

It is noted that in the latest version of the SACs Commitment 14C is included which requires the Applicant to update the Terms of Reference (ToR) of this group. The Highway Authority is of the view though that, as with other groups being formed as part of the DCO i.e. TMFDG, the ToR or the main principles of those ToR should be defined at examination. The decision making of the TFSG and how this takes place is a fundamental matter relating to the control of the development and it is not presently defined in the SACs."

5.3.74. Given the timing of these submissions in the Examination the ExA was unable to resolve this matter during the Examination. However, we are of the view that the wording of the proposed Commitment 14C does not resolve the issue as it requires the TFSG to make a decision and approve its own method of making decisions prior to any decision method being agreed. The ExA struggled to follow the logic of that approach and agree with CBC and WSCC on this point.

5.3.75. The monitoring process outlined in the text accompanying Commitment 16 sets out the procedure for agreeing the progress in meeting the mode shares targets and the remedial actions that may be required. If the decision making process of the TFSG is not clear prior to commencement there would be no certainty as to how any TSFG decision would be made. Consequently, we are recommending that this matter is dealt with by way of a further amendment to R20. We recommend the addition of the following:

"(3) Prior to submission of the first Annual Monitoring Report the Transport Forum Steering Group decision making process must be agreed in writing by CBC in consultation with NR, NH, SCC and WSCC."

5.3.76. This suggested R20 amendment would also mean that Commitment 14C in the SAC could be deleted.

5.3.77. The ExA has not had the opportunity within the Examination to receive the Applicant's or other IPs' comments on this amendment so we recommend that the SoS may wish to consider consulting the Applicant and relevant parties prior to making any decision on the rDCO.

ExA's Conclusion on Surface Access Commitments.

5.3.78. The Applicant promotes the SAC as its method of managing surface access for the Proposed Development. It stresses that the SAC mode share commitments will be monitored to predict any potential failure to meet mode share targets and early interventions made, if necessary, through an action planning process. Ongoing failures in meeting mode share targets will require further action plans to be developed and actions implemented.

5.3.79. Given the concerns expressed earlier in this Chapter about the robustness of the transport modelling, the ExA considers that the potentially retrospective mitigations proposed by the Applicant that could be implemented should mode share targets not be met, may not be able to ensure that the traffic and transport effects are within the envelope assessed within the TA and ES. For this reason, the ExA does not accept that the Applicant's approach, that would be secured in the final dDCO [REP10-004], would necessarily control the likely significant effects to the envelope assessed in the Applicant's submission.

5.3.80. The rDCO the ExA is recommending would apply control over first use of some of the land use elements of the development to ensure the Applicant's predicted and assessed modelled mode shares accords with its assessment in ES Chapter 12.

The ExA understands that the Applicant has some concerns about its control over the factors that may affect the mode share targets but the ExA has set out above why we consider the amended R20 in the rDCO meets the required tests.

Parking

5.3.81. Car parking supply is an important factor in trip generation, assignment, and managing traffic levels.

5.3.82. A number of RRs, WRs and submissions made in LIRs made comments relating to parking provision, management and controls. The Joint West Sussex Local Authorities (JWSLAs) LIR [REP1-068] expressed concern about the deliverability of the future baseline parking numbers. The JSCs LIR [REP1-097] expressed concerns about the management of onsite parking and the potential for on street parking problems to be exacerbated. Holiday Extras [REP1-195] (additionally [REP2-075, REP4-108, REP5-123, REP6-127, REP7-134, REP8-156 and REP9-258]) expressed concerns about the Applicant's submission accuracy and the proposed parking management strategy and its relationship to off-site parking provision.

5.3.83. At ISH4 [EV2-001] we discussed the Applicant's car parking assessment. We asked about whether analysis had been undertaken of car parking supply and demand and some specific details about parking provision including the use of permitted development rights. The existing permitted development rights could in theory be used to provide more parking at the airport to that allowed in the dDCO and assessed in the ES.

5.3.84. Immediately following ISH4 the Applicant [REP1-051] submitted its Car Parking Strategy (CPS) that provided *"information relating to existing on-airport parking at London Gatwick Airport and the approach that is proposed to be taken in support of the Gatwick Northern Runway Project, particularly in respect of parking provision and management in the context of our Surface Access Commitments. It sets out the key aspects of the car parking strategy for the Project and explains: -*

- *GAL's established approach to managing on-airport parking and the relevance of local plan policy and Section 106 agreements relating to airport parking;*
- *How the parking requirement for the Project was derived, including reference to the permanent loss of existing spaces because of Project construction;*
- *The commitments which GAL is making in relation to parking to support its mode share commitments; and*
- *The operational approaches to delivering, managing and monitoring car parking as part of the Project."*

5.3.85. The current level of parking on site is 46,700 and there are an additional 5,460 car parking spaces planned without the Proposed Development making the future baseline number of onsite parking spaces 52,160. The Proposed Development includes a net additional parking number of 1,100 spaces that would bring the total number of onsite parking spaces controlled by the Applicant once the Proposed Development is complete to 53,260.

5.3.86. The estimation of the passenger car parking requirement calculation in the CPS related only to the 2047 final requirement and the increase from the 2019 peak activity level. In response to the CPS, we asked in ExQ1.TT.1.41 [PD-012] for the Applicant to provide additional information about parking levels and predicted mode shares in 2019, 2032, 2039 and 2047 for both the future baseline and the Proposed Development.

5.3.87. The Applicant [REP3-104] provided the information in response. We considered this alongside the CPS and the Indicative Construction Sequencing [REP2-106]. To better inform our consideration we subsequently asked the Applicant in question R17a.3 in our Rule 17 letter [PD-013] to provide more detail on the changes in parking accumulation, provision and mode share for the future baseline and Proposed Development on an annual basis. The Applicant [REP4-019] provided an initial response, but at ISH8 [EV17-001] the Applicant stated that the information provided was incorrect and subsequently resubmitted its response [REP6-067].

5.3.88. Having analysed this response, we had further questions [PD-025] about parking controls, management and the use of permitted development rights to vary the parking provision of the Proposed Development. In advance of ISH9 [EV20-001] in Annex B of the agenda we proposed a new Requirement removing permitted development rights to provide additional parking at the airport without any further consent.

5.3.89. The Applicant [REP8-114] responded that *"The Applicant still resists the proposition that its parking provision as originally promoted in the draft DCO was in any way 'uncontrolled' given the need to comply with its mode share commitments and its proposed related obligations in the SACs."* The Applicant did however acknowledge the ExA's and other IPs concerns about parking provision and proposed a new R37 to cap the overall parking level to 53,260 spaces allowing for parking associated with the Proposed Development.

5.3.90. The JLAs [REP9-147] suggested incorporating the ExA's suggested new Requirement removing permitted development rights with the Applicant's new R37 to ensure that any increase of parking over and above that permitted by the dDCO would require the agreement of CBC. The Applicant [REP10-004] amended R37 but did not specify the maximum number of air passenger parking spaces that would be allowed in the total cap of 53,260, including staff parking spaces. Therefore, the ExA is proposing an amendment to R37 to specify the total number of air passenger spaces or cars parked alongside the total provision car parking cap in R37.

ExA's Conclusion on Parking

5.3.91. The ExA considers that the level and management of airport parking is an important factor in the Applicant's approach in managing sustainable surface access. Taking our recommended R37 into account, we consider that there would be suitable control of parking levels at the airport.

Active Travel Issues

5.3.92. Section 14 of the TA [REP3-058] assessed the Applicant's aim *"to make active travel an attractive and realistic choice for short journeys to and from the airport by developing and promoting accessible, safe, and well-planned active travel opportunities."* Currently only 0.5% of air passenger travel to the airport is on foot or by bicycle and it is not likely that this will change much as a result of the Proposed Development. However, there is a significant proportion of staff who live within walking and cycling distance from the airport and currently only 3% of the staff regularly walk or cycle.

5.3.93. The Proposed Development originally included the following active travel improvements, identified in the TA [REP3-058]:

- A23/ A217 Longbridge Roundabout – enhanced walking and cycling facilities;

- New pedestrian and cycle paths connecting Longbridge Roundabout and the airport along both sides of the A23;
- A new shared use ramp into Riverside Garden Park to connect to existing paths;
- A new signal-controlled crossing of the A23, northeast of the North Terminal roundabout; and
- A new pedestrian link from Balcombe Road to the airport footway network on the South Terminal ring road.

5.3.94. In question ExQ1.TT.1.27 [PD-012] we asked about the concerns expressed in item TT6 by the JSCs [REP1-097] with respect to a more direct path, through Riverside Garden Park, from the centre of Horley to connect to the proposed new crossing on the A23 and the North Terminal. The Applicant [REP3-104] responded that it was concerned about the further tree and green space loss if this was included in its proposal at this stage. The Applicant did not rule this out and discussions continued throughout the Examination. The Applicant confirmed in paragraph 5.2.6 of the final SAC [REP9-043] that it would ringfence a £500,000 contribution of the Sustainable Transport Fund to the development of a new path through Riverside Garden Park.

Public Rights of Way

5.3.95. The Applicant proposed that R22 of the dDCO [REP10-004] would control the necessary changes to the Public Rights of Way (PRoW) network by means of the submission of PRoW Implementation Plans. These Plans would be substantially in accordance with the PRoW Management Strategy [REP9-061] and approved by the relevant LHA. The PRoW Management Strategy would be a certified document listed in Schedule 14 and secured through Article 52 of the dDCO.

5.3.96. During the Examination there was no significant disagreement with the overall approach to necessary changes to the PRoW network. However, at the end of the Examination there were several concerns still outstanding about the alteration and possible improvement opportunities not realised in the Applicant's proposals. In the SoCG with WSCC [REP9-084] it is recorded there are still areas of disagreement around the lack of improvements to some elements of the PRoW network affected.

5.3.97. The ExA understands that the LHA would like to seek improvements where possible, but we consider that discussions around any improvements on particular PRoW should take place as part of the development of any PRoW Implementation Plans as set out above.

ExA's Conclusion on Active Travel Issues

5.3.98. The ExA understands that for air passengers improvements to active travel networks are unlikely to greatly affect the numbers of people travelling to the airport to fly. However, it is of much more significance for staff and other visitors to the airport. We consider that the Applicant has endeavoured to make improvements that will assist in better connecting the airport active travel routes to the local communities. These improvements will be secured by a combination of the Surface Access Works in Schedule 1 of the dDCO (Works No 35 to 37) and in the case of the contribution towards the Riverside Garden Park Path through Commitment 3 of the SAC.

Construction Traffic Management

5.3.99. The TA [REP3-058] includes an assessment of the construction impacts associated with vehicle movements for materials, workforce movements, and the management of access routes and management plans. It considers the construction of both the

airport site and highway network changes. The modelling considered both peak airfield and highway construction so as to assess highway network impacts and ensure that the proposed mitigation would be capable of managing construction traffic. The TA concluded that peak airfield or highway construction would not have a significant impact on the performance of the highway network around the Airport.

5.3.100. In order to further minimise any impact of construction traffic the Applicant proposed the following:

- Outline Construction Traffic Management Plan (oCTMP) [REP9-035] to provide an approach to manage construction traffic during the construction of the Proposed Development; and
- Outline Construction Worker Travel Plan (oCWTP) [REP9-033] which identifies potential measures to facilitate efficient and sustainable travel options for the construction workforce during the construction of the Proposed Development.

5.3.101. These proposed outline plans would be certified documents listed in Schedule 14 and secured through Article 52 of the dDCO. In accordance with R12 and 13 of the dDCO [REP10-004] no part of the development is to commence until detailed construction traffic and construction work management plans have been approved by CBC (in consultation with WSCC, SCC and NH).

5.3.102. In the JWSLAs LIR [REP1-068] the Councils expressed some detailed concerns about the construction traffic arrangements set out in both the oCTMP and the oCWTP. Despite discussion between the parties continuing throughout the Examination it was confirmed in the joint position statement between the Applicant and the JLAs [REP9-123] that there were still areas of disagreement on points in the oCTMP.

ExA's conclusion on Construction Traffic Management

5.3.103. The ExA understands the JLAs position but given that detailed travel and traffic management plans would be developed in consultation with the highway authorities and subsequently approved by CBC, we are content with this approach. The development of the detailed plans would be able to take account of local environmental circumstances as advised by the Councils and deliver what would be hoped to be a flexible approach to managing construction traffic.

5.4. ExA's CONCLUSION ON TRAFFIC AND TRANSPORT

5.4.1. In making our recommendation on traffic and transport we have taken the following into account:

- ANPS - we have focused on the compliance with the relevant paragraphs that relate to the general transport impact of development and not any specific policy relating to Heathrow;
- 2015 NNNPS;
- NPPF; and
- relevant legislation and local policy we have as set out in Appendix A.

5.4.2. The works to improve the M23/ A23, the North and South Terminal junctions and Longbridge roundabout are a Nationally Significant Infrastructure Project in their own right. Section 104 of the PA2008 applies to the highway elements of the Proposed Development although the highway works are subsidiary to the airfield works. Consequently, the NNNPS is also an important and relevant consideration in the determination of the application (where appropriate). However, the Applicants

assessment in both the TA [REP3-058] and the ES Chapter 12 [REP3-016] consider all of the Proposed Development as one entity as the highway works are only required to accommodate the additional traffic generated by airport growth associated with the Proposed Development. Consequently, we have considered the traffic and transport impact in the same manner.

5.4.3. As mentioned at the Introduction above in Chapter 4 the ExA set out our reasoning why we consider that a likely future baseline passenger growth by 2047 would be in the region of 60 to 61mppa and 76 to 77mppa with the Proposed Development. The ExA also accept that at some point after 2047 the airport will reach 80.2mppa and that level of activity has been assessed in the TA.

5.4.4. For the reasons discussed above, the Applicant's commentary relating to sensitivity tests concerning these differences does not give us suitable comfort; additional impacts could arise through any such changes. In addition, we have also considered the issues outlined above concerning the controls in respect to the SAC and parking provision. Whilst the ExA has concerns that the ES may have underestimated likely effects, due to our view that the gap between the future baseline and the Proposed Development traffic levels may be greater than assessed, the TA has assessed junction capacities up to a level of traffic associated with 80.2mppa. The ExA considers that this provides sufficient comfort that there would not be severe residual impacts beyond those assessed in the ES and aligned with the controls proposed in the rDCO. Notwithstanding this, as a result of the Proposed Development, there would be increased road traffic and public transport passenger journeys creating additional stress on already congested networks. Consequently, the ExA considers that traffic and transport carries a moderate level of weight against the making of the Order.

5.4.5. Additionally, we have considered the additional controls we are recommending in the rDCO with respect to the SAC and parking levels that would provide greater certainty that the impacts stay within those modelled in the TA. Even accounting for these additional controls, the Proposed Development would still generate additional movements across the already congested transport networks. On the basis of the additional control within the rDCO the ExA considers that the Proposed Development should attract a little weight against the making of the Order.

6. NOISE AND VIBRATION

6.1. INTRODUCTION

6.1.1. This Chapter considers the effects of the Proposed Development in relation to noise and vibration during its construction and operation.

6.1.2. This Chapter provides details regarding the effects on people, primarily when at home. In relation to effects on Landscape, Historic Environment and Ecology see Chapters 12, 13 and 14 respectively.

6.1.3. Chapter 22 details the extensive recommended changes to the Applicant's final draft Development Consent Order (dDCO) [REP10-004] that are explained in this Chapter.

6.2. POLICY BACKGROUND

6.2.1. The Airports National Policy Statement (ANPS) at paragraph 5.68 says:

"Development consent should not be granted unless the Secretary of State is satisfied that the proposals will meet the following aims for the effective management and control of noise, within the context of Government policy on sustainable development:

- *avoid significant adverse impacts on health and quality of life;*
- *mitigate and minimise adverse impacts on health and quality of life;*
- *and where possible, contribute to the improvement of health and quality of life."*

6.2.2. The ANPS paragraph 5.68 is equivalent to the "Noise Policy Aims" as set out in the Noise Policy Statement for England (NPSE). This includes an Explanatory Note which sets this in context and discusses what each aim means. A similar approach can be found in the National Planning Policy Framework (NPPF).

6.2.3. The Explanatory Note of the NPSE includes the following at paragraph 2.9:

"Unlike air quality, there are currently no European or national noise limits which have to be met, although there can be specific local limits for specific developments. Furthermore, sound only becomes noise (often defined as 'unwanted sound') when it exists in the wrong place or at the wrong time such that it causes or contributes to some harmful or otherwise unwanted effect, like annoyance or sleep disturbance. Unlike many other pollutants, noise pollution depends not just on the physical aspects of the sound itself, but also the human reaction to it."

6.2.4. With regard to the aims it says:

"There are two established concepts from toxicology that are currently being applied to noise impacts, for example, by the World Health Organisation. They are:

NOEL – No Observed Effect Level

This is the level below which no effect can be detected. In simple terms, below this level, there is no detectable effect on health and quality of life due to the noise.

LOAEL – Lowest Observed Adverse Effect Level

This is the level above which adverse effects on health and quality of life can be detected."

6.2.5. The World Health Organisation (WHO) reference is to 'Night noise guidance for Europe' (WHO 2009) and NPSE continues:

"Extending these concepts for the purpose of this NPSE leads to the concept of a significant observed adverse effect level.

SOAEL – Significant Observed Adverse Effect Level

This is the level above which significant adverse effects on health and quality of life occur."

6.2.6. The Explanatory Note goes on to say at paragraph 2.22:

"It is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. It is acknowledged that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise. However, not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available."

6.2.7. With regard to the first aim the Explanatory Note says:

"The first aim of the NPSE states that significant adverse effects on health and quality of life should be avoided while also taking into account the guiding principles of sustainable development".

6.2.8. With regard to the second aim the Explanatory Note says:

"The second aim of the NPSE refers to the situation where the impact lies somewhere between LOAEL and SOAEL. It requires that all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development (paragraph 1.8). This does not mean that such adverse effects cannot occur."

6.3. THE APPLICATION

6.3.1. The Applicant's assessment of noise and vibration matters is primarily contained within the Environmental Statement (ES) - Chapter 14 Noise and Vibration [APP-039]. This is supported by Noise and Vibration Figures – Parts 1, 2 and 3 [APP-063 to APP-065] respectively and ten appendices. An Environmental Statement Addendum – Updated Central Case Aircraft Fleet Report [REP8-011] is also provided.

6.3.2. We have set out the application under the headings of aircraft noise, construction noise and vibration, and road traffic noise.

AIRCRAFT NOISE

6.3.3. We have set out the Applicant's consideration of aircraft noise under the following headings:

- aircraft noise assessment, covered under the sub-headings of 'Daytime and night-time LOAELs' and 'Daytime and night-time SOAELs' with reference to its closing statement [REP9-112] and its ES [APP-039] to summarise its approach, which did not change during the Examination;

- receptor based mitigation, as the final and least desirable way to avoid significant adverse noise effects at receptors, in pursuit of the first policy aim in relation to noise, with reference to its final dDCO [REP10-004]; and
- air noise limits, used to minimise and where possible reduce aircraft noise, to achieve the second and third policy aims, with reference to its closing statement [REP9-112], its ES [APP-039], its ES Addendum [REP4-004] and its final dDCO [REP10-004].

Aircraft Noise Assessment

Daytime and Night-Time LOAELs

6.3.4. The Applicant's closing statement [REP9-112] at paragraph 11.4.21 made it clear that in order to reach a clear conclusion on NPSE and ANPS paragraph 5.68 it was necessary to define LOAELs and SOAELs for aircraft noise.

6.3.5. With regard to the metrics to be used to represent LOAELs for aircraft noise and the values to be assigned to them the Applicant's closing statement [REP9-112] said that it had adopted LOAELs in line with the position set out by Government in its 'Consultation Response on UK Airspace Policy: A Framework for Balanced Decisions on the Design and Use of Airspace'.

6.3.6. The Applicant stated that the Government defined aircraft noise LOAELs as the summer season LAeq 16 h of 51dB for day and LAeq 8 h of 45dB for night. The Applicant went on to say that Government had explained that the use of these metrics would ensure that the total adverse effects on people can be assessed, and airspace options compared, and that airspace decisions would be consistent with the objectives of the overall policy.

6.3.7. The Applicant concluded its discussion of LOAELs in its closing statement [REP9-112] at paragraph 11.4.24 and said that it did not consider that there was any sound evidence to suggest that different LOAELs should be adopted to those identified by Government. The Applicant went on to say that to choose different LOAELs would be inconsistent with Government's judgement and with its stated intention to bring consistency to aircraft related planning.

6.3.8. The Applicant proposes [APP-039] aircraft noise LOAELs as the summer season LAeq 16 h of 51dB for day and LAeq 8 h of 45dB for night.

Daytime and Night-Time SOAELs

6.3.9. The Applicant's closing statement [REP9-112] at paragraph 11.4.25 said that it had defined SOAELs by reference to Government expectations of compensation and noise insulation schemes, specified in the Aircraft Policy Framework 2013 (APF), and having had regard to a number of recent applications for airport development.

6.3.10. For daytime, the Applicant set a SOAEL at LAeq16h of 63 dB. The Applicant stated that this represented the exposure level at which the 'Survey of Noise Attitudes 2014: Aircraft Noise and Annoyance, Second Edition' (CAP 1506) indicated that 23% of the population would be highly annoyed.

6.3.11. The Applicant provides further information regarding the daytime level, including precedent of other projects which had adopted the same value, which is detailed at paragraphs 14.2.54 – 14.2.60 of ES Chapter 14 [APP-039].

6.3.12. At paragraph 14.2.53 the Applicant recognises that Government guidance does not explicitly define a daytime SOAEL for aircraft noise and referred to planning appeals considered under section (s) 78 of the Town and Country Planning Act 1990. These included the London Heathrow Airport planning application appeal decision ref: APP/R5510/A/14/2225774, February 2017 and the London Stansted Airport planning application appeal decision ref: APP/C1570/W/20/3256619, May 2021.

6.3.13. With regard to the London Heathrow Airport planning appeal decision the Applicant stated at paragraph 11.2.15 of their closing statement [REP9-112] that the inspector noted that the parties did not differ that the SOAEL for aircraft noise was 63 dB LAeq 16 h and that noise impacts at that level are required to be avoided.

6.3.14. With regard to the night-time SOAEL the Applicant's closing statement [REP9-112] at paragraph 11.4.27 said that its proposed value for the night period is taken from the interim target in the WHO Night Noise Guidelines 2009 of LAeq 8 h of 55 dB. The Applicant went on to say that those guidelines say that above this level *"Adverse health effects occur frequently, and a sizeable proportion of the population is highly annoyed and sleep-disturbed."*

6.3.15. The Applicant proposes aircraft noise SOAELs as the summer season LAeq 16 h of 63dB for day and LAeq 8 h of 55dB for night.

Receptor Based Mitigation

6.3.16. Having accounted for source and pathway mitigation, for example the western noise bund to mitigate elements of ground noise, secured by R32 of the Applicant's final dDCO [REP10-004], the Applicant set out its proposals for receptor based mitigation in its ES Appendix 14.9.10: Noise Insulation Scheme (NIS) [REP9-059]. The Applicant proposes an inner and outer zone, with the latter sub-divided into three sub zones.

6.3.17. At paragraph 4.1.4 of the NIS the Applicant says that the inner zone would be based on the predicted LAeq 16 h of 63dB daytime and LAeq 8 h night of 55dB summer air noise contours for 2032. The Applicant explains that the 55dB LAeq 8 h night time contour fully enclosed the 63dB LAeq 16 h daytime contour. The Applicant says that above these noise levels noise effects to health and quality of life to residents would become significant if noise insulation was not provided. The Applicant proposes that people living in these areas should be able to apply for a full package of noise insulation.

6.3.18. Paragraphs 4.1.4, 4.1.6, 4.3.9, 4.3.11, and 4.3.13 of the NIS [REP9-059] explain the inner zone, the sub zones and the contribution limits, which in summary would be:

- inner zone £26,500;
- outer zone sub zone 1 LAeq 16 hr 60 to 63 dB £10,500;
- outer zone sub zone 2 LAeq 16 hr 57 to 60 dB £6,500; and
- outer zone sub zone 3 LAeq 16 hr 54 to 57 dB £4,500

6.3.19. Paragraphs 4.2.3 to 4.2.11 of the NIS detail the physical components of the scheme and summarise these in a table.

6.3.20. The Applicant describes its proposed implementation process, including timings, communications, and the involvement of Crawley Borough Council (CBC) in section 4.3 of the NIS. In paragraph 4.3.10 the Applicant explained that where ground noise was assessed through measurement, after the commencement of dual runway

operations, it would be combined with air noise to consider eligibility for the inner zone NIS.

6.3.21. The Applicant describes how schools and home relocation assistance would be dealt with in sections 5 and 6 respectively of the NIS.

6.3.22. Some of the above aspects, for example the timing of installation, are detailed by the Applicant in Requirement (R)18 of its final dDCO [REP10-004]. With regard to the inner zone, R18(3) would require the noise insulation measures to be installed prior to the commencement of dual runway operations, whereas with regard to the outer zone sub zone 3, R18(5) would require the noise insulation measures to be installed not later than the third anniversary of the commencement of dual runway operations.

Air Noise Limits

6.3.23. The Applicant set out its proposals for noise limits in the form of a noise envelope in its ES Appendix 14.9.7: The Noise Envelope [REP10-011].

6.3.24. In Table 14.3.1 of the ES Chapter 14: Noise and Vibration [APP-039] Summary of Scoping Responses the Applicant states that the central case (CC) used in the noise assessment is based on what it considers to be the most likely rate of fleet transition. At paragraph 14.5.9 of the ES Chapter 14 [APP-039] the Applicant says that in 2019 about 13% of the aircraft operating at Gatwick were next generation which were quieter than current generation aircraft.

6.3.25. The Applicant explains [APP-039] that the CC is based on what was considered pre-Covid to be the most likely rate of fleet transition. To account for uncertainty and the financial impact on the airlines it had also carried out noise modelling for a slower transition case (STC) in which the rate of fleet transition was delayed by about five years and which would result in higher noise levels than the CC.

6.3.26. The Applicant's Environmental Statement Addendum – Updated Central Case Aircraft Fleet Report [REP4-004] shows what it refers to as an updated central case (UCC).

6.3.27. In its closing submissions [REP9-112] the Applicant provided a detailed response to the Legal Partnership Authorities (LePAs) issues, particularly around the process of monitoring, enforcing and reviewing its proposed noise envelope from 6.4.66 to 6.4.92 of the section on Environmentally Managed Growth (EMG) Framework.

6.3.28. The Applicant confirmed its proposed metrics for noise envelope purposes in its closing submissions [REP9-112] at paragraph 11.5.69 as the LAeq 16 h day 51 dB contour area (the area enclosed by the 92-day summer season average mode noise contour) and the LAeq 8 h night 45 dB contour area (the area enclosed by the 92-day summer season average mode noise contour).

6.3.29. At paragraph 11.5.75 of its closing submissions [REP9-112] the Applicant noted that following the adoption of the UCC, the noise envelope would mean that the day and night LAeq air noise contours would not exceed the equivalent contour areas with one runway in 2019 in any year of operation.

6.3.30. At paragraph 11.5.112 of its closing submissions [REP9-112] the Applicant explained that the largest LAeq contour area with the Proposed Development would be expected to occur around three years after the commencement of dual runway

operations, in about 2032. The forecast 2032 LAeq contour area had therefore been used to set the geographical boundary based on the assumed UCC, which would ensure that it is in alignment with the contour areas used for the noise envelope [REP8-084] as amended at Deadline 9.

6.3.31. The Applicant's final proposals are set out in requirements R15 and R16 of its final dDCO [REP10-004] supported by its ES - Appendix 14.9.7 The Noise Envelope [REP10-011].

6.3.32. With regard to the processes for planning, monitoring, and reviewing the noise limits the Applicant's proposals [REP10-004] and [REP10-011] include:

- the Applicant to produce an Annual Monitoring and Forecasting Report (AMFR) which looks back one year and forward five years which is submitted for approval to the *"Independent air noise reviewer"* (IANR) who is for the time being the CAA;
- the submission of the first AMFR between two and three years ahead of the anticipated start of dual runway operations;
- the Applicant to produce a Compliance Plan in the event that breeches have occurred or are forecast to occur in the next five years and submit these to the IANR;
- an initial review after nine years and then every five years thereafter, and mechanisms to initiate a review of the noise limit at times when the Applicant considers it necessary; and
- the preparation of *"noise envelope review documents"* by a *"specialist aircraft forecaster."*

CONSTRUCTION NOISE AND VIBRATION

6.3.33. The Applicant, in its ES Chapter 14: Noise and Vibration [APP-039], used BS 5288 to assess the effects of construction noise and vibration on residential and other premises.

6.3.34. With regard to significant effects, the Applicant identified the potential for significant adverse construction noise effects at approximately 37 properties during the day and approximately 10 during the night. The Applicant identified no significant adverse construction vibration effects.

6.3.35. The Applicant proposed that mitigation to minimise adverse noise effects and avoid any significant effects would be secured through the Code of Construction Practice (CoCP) [REP8-024] which followed the principles of 'Code of practice for noise and vibration control on construction and open sites – Part 1 Noise' (BS 5228), and the use of s61 of the Control of Pollution Act 1974 (CoPA 1974).

6.3.36. The Applicant stated at paragraph 14.13.10 [APP-039] that noise insulation would be offered to all properties predicted to be exposed to noise levels above SOAEL so as to mitigate all significant effects above SOAEL.

ROAD TRAFFIC NOISE

6.3.37. The Applicant, in its ES Chapter 14: Noise and Vibration [APP-039], used Design Manual for Roads and Bridges LA 111 Noise and vibration (DMRB LA 111) to assess operational road traffic noise effects on all receptors.

6.3.38. The Applicant's proposals described in the ES Chapter 14: Noise and Vibration [APP-039] to mitigate adverse road traffic noise effects included:

- a one metre high noise barrier along the North Terminal Roundabout flyover elevated section to reduce road traffic noise; and
- a one metre high noise barrier along the South Terminal Roundabout flyover elevated section, north side to reduce road traffic noise.

6.3.39. Noise barriers as a form of noise mitigation are listed as Work No.44 Ancillary or Related Development (m) in the dDCO [REP10-004]

6.3.40. No significant noise effects caused by road traffic noise were identified by the Applicant.

6.4. ISSUES CONSIDERED DURING THE EXAMINATION

6.4.1. There were over 4800 Relevant Representations (RR) submitted, with over 3000 raising concerns about the noise impacts of the Proposed Development, with most of these raising concerns about aircraft noise caused by the operation of the airport. Having taken these into account alongside the submitted application documents, we considered that noise and vibration would be one of the initial principal issues for the Examination. The Initial Assessment of Principal Issues is set out in Annex C of the Rule 6 letter [PD-009].

6.4.2. We have set out the issues considered in the Examination with regard to noise and vibration under the headings of aircraft noise, construction noise and vibration, and road traffic noise.

AIRCRAFT NOISE

6.4.3. Under aircraft noise we have set out the issues under the same headings as in section 1.3, namely, aircraft noise assessment, receptor based mitigation and noise limits.

Aircraft Noise Assessment

Daytime and Night-Time LOAELs

6.4.4. The Joint Surrey Councils (JSCs) Local Impact Report (LIR) [REP1-100] included Appendix C: Noise and Vibration – District and Borough Profiles. Within this appendix, Reigate and Banstead Borough Council (RBBC) raised concerns with reference to WHO 2009 and Environmental noise guidelines for the European Region (WHO 2018) about the Applicant's choice of noise effect thresholds for air noise during the night. RBBC also noted that the Department for Transport (DfT) is funding two domestic cross-sectional studies – an Aircraft Night Noise Effects Study and an Aircraft Noise Attitudes Study.

6.4.5. Within the same appendix Tandridge District Council (TDC) [REP1-100] considered that the day time LOAEL of 51dB LAeq 16h should be regarded as an interim figure until and unless such time as local, national, or reliable international work is completed that identifies a lower threshold and the noise insulation scheme is refined accordingly.

6.4.6. Kent County Council (KCC) in its RR [RR-2422], its LIR [REP1-079] and its closing statement [REP9-146] included that it had long argued the impacts of Gatwick's current single runway configuration were already unacceptable, and a potential increase of these impacts on local communities would be intolerable. Areas of west Kent such as Tunbridge Wells, Edenbridge, Hever and Penshurst were named as areas that it considered were adversely affected by overflight from Gatwick.

6.4.7. In its closing statement [REP9-151] the LePAs suggested at paragraph 3.26 that air noise data should be provided for a range of other metrics, in addition to the LAeq 16h and 8h metrics used to define the LOAELs and SOAELs in the ES Chapter 14: Noise and Vibration [APP-039].

6.4.8. With regard to the impact of night noise the LePAs [REP9-151] said that:

- there is already considerable evidence of adverse health impacts from sleep disturbance due to aircraft noise [REP5-094] see paragraph 8.17;
- WHO 2009 recognised 40dB Lnight as *"a health-based limit value of the night noise guidelines (NNG) necessary to protect the public";*
- WHO 2018 strongly recommended reducing noise levels produced by aircraft during night time below 40 dB Lnight, *"as night time aircraft noise above this level is associated with adverse effects on sleep.";* and
- unlike Heathrow, Gatwick does not operate a voluntary night flight ban for any part of the DfT night flight period 23:30 – 06:00 and it is therefore even more crucial that the full effects of the Proposed Development on night time noise disturbance are properly understood.

6.4.9. Gatwick Obviously Not (GON) in its Written Representation [REP1-179] made additional points including that:

- CAP 1506 shows that about 7% of people were highly annoyed by aircraft noise at levels below 51 dB LAeq 16 h;
- at Gatwick specifically there is clear evidence from complaint data that many people living in areas outside LOAEL contours regard themselves as being significantly adversely impacted. Virtually all campaign groups set up around Gatwick since 2014 have been based in areas outside LOAEL contours; and
- the field work that provided the data for CAP 1506 did not survey anyone who lived in areas below 51dB LAeq 16h. It therefore could not generate any data on levels of annoyance outside the Applicant's proposed daytime LOAEL.

6.4.10. The United Kingdom Health Security Agency (UKHSA), a statutory consultee, in its RR [RR-4687] said that the Applicant's statement at paragraph 14.9.185 of the ES Chapter 14: Noise and Vibration [APP-039] that the LOAEL contours had been chosen because they represent the lowest level of observable effects during the day contradicted paragraph 14.2.52 that said about 7% of the population in 2014 was annoyed by aircraft noise at 51 LAeq 16 h.

6.4.11. As there was disagreement between the Applicant's position and the position of the UKHSA, the Government's authority on the health effects of noise, and several Interested Parties (IPs) on this most basic noise and planning policy related question we asked questions on this at Issue Specific Hearing (ISH) 5 [EV10-002].

6.4.12. We also considered it necessary to do this to establish well founded eligibility criteria for receptor based mitigation to be used as a 'last resort' to avoid significant effects.

6.4.13. During ISH5 we drew the Applicant's attention to how the noise exposure curve, Figure 8 of CAP 1506 supported, for example, the UKHSA's and KCC's position regarding a daytime LOAEL. We also explained that it had been used to define a different quantity called a 'community LOAEL' in the Air Navigation Guidance (ANG 2017), for the purposes of considering airspace change and it was this that the Applicant was using.

6.4.14. At the hearing the Applicant seemed to accept the role of ANG 2017 in supporting the implementation of airspace change policy but considered there was no reason to change their view on the value to be assigned to the daytime LOAEL for aircraft noise that it had used in its noise impact assessment of the Proposed Development.

6.4.15. As the ANPS says at paragraph 5.53 *"Operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards and other guidance"* we asked the Applicant about this in our first written questions (ExQ1) NV.1.6 [PD-012]. In its response [REP3-101] the Applicant made reference to the British Standard 'Methods for rating and assessing industrial and commercial sound' (BS 4142) but made no reference to the British Standard 'Guidance on sound insulation and noise reduction for buildings' (BS 8233), with regard to the impact of aircraft noise on dwellings.

6.4.16. We referred to both of these British Standards during the Examination as they provide guidance on the assessment of operational, rather than construction noise, with respect to human receptors and we consider them to be important and relevant. In combination they provide:

- recommended internal and external noise limits in relation to dwellings and other premises for characterless noise based on Guidelines for community noise (WHO 1999) for night-time and daytime;
- explanation of some of the characteristics of aircraft noise and how they should be considered in the design of aircraft noise mitigation measures; and
- quantified adjustments or penalties that should be applied to specific noise that has character, including intermittency, tonal or low frequency components.

6.4.17. The unadjusted values quoted in Table 4 of BS 8233 include an internal guideline limit value 35 dB LAeq,16h 07:00 to 23:00 and a corresponding external guideline limit value of 50 dB LAeq, T. The difference of 15 has become regarded as a reasonable value for a partially open window for the most prevalent form of environmental noise, that is to say distant traffic which by its nature is characterless.

6.4.18. The adjustments recommended in BS 4142 can be as much as 9 dB with a figure of 6 dB being more commonly used in its worked examples.

6.4.19. We consider that by using the principles of these British Standards, as set out at paragraph 5.53 of the ANPS, would suggest a day-time LOAEL of around 50 minus 5 dB, given that aircraft noise has distinct characteristics, hence 45 dB LAeq 16 h.

6.4.20. The Government's airspace policy includes a collection of documents including ANG 2017. At paragraph 3.5, ANG 2017 says that *"It is possible to set a Lowest Observed Adverse Effect Level (LOAEL) that is regarded as the point at which adverse effects begin to be seen on a community basis" and that "For the purposes of assessing and comparing the noise impacts of airspace changes, the government has set a LOAEL of 51dB LAeq16hr for daytime noise and 45dB LAeq8hr for night time noise and the Civil Aviation Authority (CAA) should ensure that these metrics are considered"*

6.4.21. ANG 2017 says at paragraph 3.11:

"For communities further away from airports that will not be affected by noise above the LOAELs identified above, it is important that other aspects of noise are also taken into account where the total adverse effects of noise on people between different options are similar. Metrics that must be considered for these purposes

include the overall number of overflights and number above metrics: N65 for daytime noise and N60 for night time noise."

6.4.22. The promotion of additional metrics by the CAA and a number of IPs is consistent with evidence of adverse aircraft noise effects, for example as expressed by GON and KCC, that is below the value of the daytime LOAEL chosen by the Applicant. We consider that this would be resolved by establishing a value for the daytime LAeq based LOAEL that is consistent with such evidence. We consider that this can be achieved by using the principles of the relevant British Standards BS 8233 and 4142 as directed by the ANPS. We recognise the practical difficulties reported by the Environmental Research and Consultancy Department (ERCD) of the CAA as detailed in its 'Measurement and Modelling of Aircraft Noise at Low Levels' (ERCD 1006) which was referred to by the Applicant [REP3-101] but we consider that to be a separate issue.

6.4.23. We invited the Applicant to carry out a sensitivity test for total aircraft noise through ExQ1 NV.1.5 [PD-012] and the Applicant explained [REP3-101] the reasons why they did not consider this necessary or feasible. In summary they considered it was not required by policy and made reference to some of the material in ERCD 1006 regarding the practical difficulties in validating the aircraft noise model.

6.4.24. We have examined the evidence relied upon by the Applicant and the representations made by other IPs, regarding the value of the daytime LOAEL in terms of an LAeq.

6.4.25. We consider by inspection of Figure 8 of CAP 1506 that adverse effects, represented by % highly annoyed, remain above zero below 51 dB LAeq 16h. We note that the response against noise exposure curve has been extrapolated to show a response still above zero at 45 dB LAeq 16 h. This weighs against the Applicant's position.

6.4.26. We have noted that CAP 1506 only surveyed people exposed at or above 51 LAeq,16h for an average summer day. As it says at paragraph 4.4: *"respondents were required to live within the vicinity of a civil airport and be exposed to an average summer day noise exposure level of at least 51 dB LAeq,16h."* This confirms the point made by GON and weighs against the Applicant's position.

6.4.27. As set out in ANG 2017, the 'community LOAEL' is for the purpose of the analysis by the CAA of airspace change proposals, where one airspace design is compared with another. As the Applicant has pointed out [REP3-101], its application seeks no change in airspace design, so we consider it weighs against the Applicant's position as it calls into question the relevance of the guidance to the Proposed Development.

6.4.28. We consider that for those people, sometimes who live further away from Gatwick Airport, who perceive no benefit, but where the noise they experience is attributable both to the airport and is for others' *"leisure pleasure"* as described by Langton Green Village Society [REP9-293] the *'complex emotional reactions'* referred to in BS 8233 are also more likely to be triggered. We consider, that in addition to the physical characteristics of aircraft noise as already discussed, this further helps explain the higher sensitivity compared with other forms of transport, such as road and rail reported in WHO 2018.

6.4.29. Whilst recognising that WHO 2018 has not been transposed into guidance in the form of British Standards, we consider that WHO 2018, with its different recommended noise limit values for different forms of transport, gathered from a

large number of studies, supports the same outcomes as using the principles of BS 8233 and BS 4142. For example, WHO 2018 strongly recommends for road traffic noise an Lnight limit of 45 dB and for aircraft noise an Lnight limit of 40 dB, that is to say a 5 dB difference. This would weigh against the Applicant's position.

6.4.30. A LOAEL is unambiguously defined in Government policy as the level above which adverse effects on health and quality of life can be detected, but for the purposes of comparing proposals for airspace change, Government guidance set out in ANG 2017 says that using a community LOAEL at a value above the LOAEL may be sufficient.

6.4.31. We consider that the reasoning behind this may include the prevailing noise level caused by non-aircraft sources, often the strategic road network [REP9-112] paragraph 11.7.10, being at a similar level or above the community LOAEL value at all areas affected by the proposed airspace change, and the increasing unreliability of predictive noise modelling at lower aircraft noise levels [REP9-112] paragraph 11.7.4 and ERCD 1006 which identifies the difficulties in validating the aircraft noise model below 54 dB LAeq 16h.

6.4.32. We have included this detail to explain why we disagree with the Applicant's final sentence on LOAELs at paragraph 11.4.24 of its closing submission [REP9-112] where it says: *"To choose a different LOAEL would be inconsistent with the government's judgement but also with its stated intention to bring consistency to aircraft related planning."*

6.4.33. With regard to a night-time LOAEL, the 'Survey of Noise Attitudes 2014: Aircraft Noise and Sleep Disturbance' (CAP 2161) did survey people below the Applicant's proposed night-time LOAEL of 45 dB LAeq 8h and Figure 4 includes data points down to 39 and 44 dB LAeq 8h. These data points are a direct indication of a night-time LOAEL lower than 45 dB LAeq 8h.

6.4.34. By applying the same principles set out in British Standards, already described in relation to daytime, an appropriate value for night-time LOAEL would be 40 dB LAeq 8h.

6.4.35. With regard to further research that is underway the CAA confirmed [REP3-111] that their peer reviewed report would likely be published early 2026, so would not be evidence available to the Examination.

ExA's Conclusion on Daytime and Night-Time LOAELs

6.4.36. For its choice of metrics to be used as daytime and night-time LOAELs, we conclude that the Applicant has used noise exposure in the form of LAeq, T as defined in the Glossary to Aircraft Strategy: Noise Forecast and Analysis (CAP 1731) as:

- *"LAeq16h Equivalent sound level of aircraft noise in dBA for the 16 hour annual day. For conventional historical contours for a particular year this is based on the daily average movements that take place between 0700 and 2300 local time during the 92-day period 16 June to 15 September inclusive"; and*
- *"LAeq8h Equivalent sound level of aircraft noise in dBA for the 8 hour annual day. For conventional historical contours for a particular year this is based on the daily average movements that take place between 2300 and 0700 local time during the 92-day period 16 June to 15 September inclusive"*

6.4.37. For reasons of historical continuity and the UK evidence base, at least in terms of response against noise exposure in the form of CAP 1506 and CAP 2161, we see no reason to disagree with these choices for the LOAEL noise metrics.

6.4.38. With regard to the values to be assigned to the LAeq 16h and LAeq 8h metrics to represent the daytime and night-time LOAELs respectively, we consider there is consistency between:

- the views of the UKHSA;
- using the principles and guideline values of British Standards BS 8233 and BS 4142;
- the response against noise exposure survey information published by the CAA as CAP 1506 and CAP 2161;
- the recommendations based on many responses against noise exposure surveys published as WHO 2018; and
- the views expressed by KCC [REP9-146] and GON [REP1-179].

6.4.39. We conclude that a daytime LOAEL value of 45 dB LAeq 16h and a night-time LOAEL value of 40 dB LAeq 8h are well supported by the evidence put before us in the Examination.

6.4.40. We conclude that they provide a sound foundation for the assessment of aircraft noise that would be caused by the operation of the Proposed Development and would inform both the consideration of eligibility criteria for receptor based mitigation and the setting of noise limits to achieve the aims of noise policy as set out in the ANPS and the NPPF.

Daytime and Night-Time SOAELs

6.4.41. The Joint Local Authorities (JLAs) concerns [REP5-094] in relation to night-time SOAELs included that the Applicant had not addressed the use of an awakenings metric as supported by research in the 'Survey of Noise Attitudes 2014: Aircraft Noise and Sleep Disturbance, Further Analysis' (CAP 2251), and that they should be used to cumulatively assess the impact of both air noise and ground noise.

6.4.42. Communities Against Gatwick Noise and Emissions (CAGNE) raised concerns [REP2-070] that the Applicant had not considered secondary metrics in its determination of significant effects and that the Applicant had not proposed values for Unacceptable Adverse Effect Levels as they had been set by other airport expansion schemes, which the Applicant relied heavily on for its choice of SOAELs.

6.4.43. The APF says at paragraph 3.17 that it considers the 57dB LAeq 16 hour contour as the average level of daytime aircraft noise marking the approximate onset of significant community annoyance, but subsequently CAP 1506 indicates that significant community annoyance is likely to occur at a lower noise level, as the same percentage of respondents said by the 'UK Aircraft Noise Index Study' to be highly annoyed at 57 dB LAeq,16h now occurs at 54 dB.

6.4.44. By inspection of CAP 1506 Table 25 we can see that the term 'significant community annoyance' is the noise exposure corresponding to 9% of the surveyed sample of people becoming highly annoyed.

6.4.45. At the same time, we consider that it could be regarded as the point where someone who is highly annoyed at the daytime LOAEL, becomes significantly adversely affected with reference to the descriptions given in the noise exposure hierarchy table included in the Government's Planning Practice Guidance on noise.

6.4.46. Paragraph 35 of the London Stansted Airport planning appeal decision described that the Council and the appellant agreed that the 54 dB LAeq 16 hour contour should be the basis for future daytime noise restrictions to limit and, where possible, reduce the number of people significantly affected by aircraft noise, consistent with the APF, and that the metric corresponded to that used by the CAA in CAP 1731.

6.4.47. With regard to the London Heathrow Airport planning appeal decision, which the Applicant relies upon for its choice of 63 dB LAeq 16 h as the daytime SOAEL. We note that when the appeal was heard in 2015 the parties did not have the benefit of CAP 1506. CAP 1506 was first published in 2017 so on that basis we give little weight to this evidence.

6.4.48. With regard to a night-time SOAEL and the Applicant's choice of the WHO 2009 interim target for night-time, the WHO do not recognise or define the concept of a SOAEL, within WHO 2009, and NPSE recognised that it was introducing and defining the concept for the first time.

6.4.49. We consider that the proposed WHO 2009 interim target for night-time applies to noise that is not from a specific source and is without character, so we would follow the same line of reasoning as for the daytime LOAEL. Therefore the 55 dB level would attract a penalty for aircraft noise character according to the principles of BS 4142. This would suggest a night time SOAEL of below (55-5) dB, hence below 50 dB LAeq 8h.

6.4.50. We considered the information included in CAP 2251, referred to by the LePAs [REP5-094]. We consider there is reasonable alignment between one additional aircraft induced awakening, 10% of the sample reporting being 'highly sleep disturbed' and an LAeq 8h value of 48 dB. This would be consistent with the position of CAP 1506 with regard to the onset of significant effects during the day being at 9% highly annoyed.

6.4.51. At paragraph 14.2.54 of ES Chapter 14 [APP-039] the Applicant referred to the London Stansted Airport planning appeal decision. Paragraph 36 of that decision states that the onset of significant annoyance at night is at 48dB LAeq 8 h.

ExA's Conclusion on Daytime and Night-Time SOAELs

6.4.52. We consider that the policy, guidance, and evidence available to the Examination support SOAEL values of 54 dB LAeq 16 h for the daytime and 48dB LAeq 8 h for the night-time which is consistent with the conclusion reached in the London Stansted Airport planning appeal decision.

ExA's Overall Conclusion on Aircraft Noise Assessment

6.4.53. Regarding which metrics should be used as indicators of noise effects on human receptors, for reasons of historical continuity and the available evidence base, at least in terms of CAP 1506 and CAP 2161, we see no reason to disagree with these being the LAeq 16 h and the LAeq 8h for the average summer day as defined in CAP 1731 providing that the values assigned to these metrics are consistent with the available evidence.

6.4.54. Given their importance in the consideration of aircraft noise effects we propose that the CAP 1731 definitions, as reproduced at paragraph 1.4.36 of this Chapter, are included in our recommended DCO (rDCO) as detailed in Chapter 22 of this Report.

6.4.55. We agree with the Applicant that values need to be assigned to these metrics corresponding to LOAELs and SOAELs so that adverse and significant adverse effects on human receptors would be identified and addressed as required by policy at ANPS paragraph 5.68.

6.4.56. The ANPS is clear at paragraph 5.53 that the principles of relevant British Standards should be used to assess effects on human receptors caused by the operation of the airport so the Applicant's use of the 'Consultation Response on UK Airspace Policy: A Framework for Balanced Decisions on the Design and Use of Airspace' was therefore inappropriate and led to inaccuracy. We also consider that the Applicant did not pay due regard to the other evidence made available to it before or during the Examination.

6.4.57. For clarity we set out in Table 6.1 a summary of the Applicant's position on aircraft noise effect assessment thresholds which did not alter during the Examination.

Table 6.1: Applicant's Aircraft Noise Effect Assessment Thresholds

LOAEL LAeq 16h	LOAEL LAeq 8h	SOAEL LAeq 16h	SOAEL LAeq 8h
51	45	63	55

6.4.58. Aircraft noise effect assessment thresholds as concluded by us at the end of the Examination are summarised in Table 6.2.

Table 6.2: ExA's Aircraft Noise Effect Assessment Thresholds

LOAEL LAeq 16h	LOAEL LAeq 8h	SOAEL LAeq 16h	SOAEL LAeq 8h
45	40	54	48

6.4.59. For the remainder of this Chapter, we will refer to these aircraft noise effect thresholds as LOAEL LAeq 16h (L16), LOAEL LAeq 8h (L8), SOAEL LAeq 16h (S16) and SOAEL LAeq 8h (S8).

Receptor Based Mitigation

6.4.60. The JSC's LIR [REP1-100] Appendix C: Noise and Vibration – District and Borough Profiles included that:

- Mole Valley District Council (MVDC) raised concerns about operational air and ground noise. It considered that further information and discussion were required regarding the NIS. This included the lowering of the thresholds, the use of additional metrics to identify eligible dwellings, provision of heating and cooling equipment and support with costs for its operation and maintenance. It considered that an air noise management plan should be provided where all air noise mitigation and management measures would be secured;
- RBBC raised concerns over the NIS, with reference to the Heathrow Airport expansion: noise insulation policy (2019), including lowering the threshold for the inner zone, the use of metrics related to additional awakening, the use of full single mode easterly and westerly operation, the provision of an independent over heating assessment and support with both operating and maintenance costs of active methods aimed to provide sufficient ventilation and cooling;
- With reference to the Overarching Aviation Noise Policy Statement (OANPS), the NPPF, WHO 2009 and WHO 2018 and CAP 2161, TDC considered that air

noise mitigation for effects at night should start at 40dB LAeq 8h and with the largest mitigation package starting at 48 dB LAeq 8h;
- Regarding effect thresholds for awakenings TDC considered that the LOAEL for awakenings should be set at 0.5 additional awakenings for the average summer night and SOAEL for awakenings set at 1 additional awakening for the average summer night, and the thresholds for noise mitigation would take account of these; and
- TDC considered that improvements to the Applicant's NIS were required generally and also in the context of specific locations.

6.4.61. With regard to the Applicant's NIS the Joint West Sussex Local Authorities (JWSLAs) in their LIR [REP1-068] raised concerns including:

- qualification for the maximum protection should be extended to 60 dB LAeq for the maximum extent of the single mode contour in the worst-case year;
- the threshold at which the maximum qualifying amount for insulation and cooling should be extended from the 55 LAeq to 48 LAeq for night;
- the maximum level of insulation and home adaptation for cooling needs to be set at one additional awakening for the total impact of all flights not solely those that are said to be from the Northern Runway Project;
- any buildings qualifying for noise insulation shall be assessed for overheating;
- where noise insulation or cooling or both are applied to a property, the Applicant shall be responsible for the initial capital, running costs, maintenance costs and future replacement costs; and
- there shall be an ongoing process to determine the effectiveness, durability and satisfaction with the noise insulation, ventilation and cooling measures.

6.4.62. The JWSLAs considered that corresponding changes would be reflected in the DCO and the noise insulation control document. Overheating and ventilation issues are considered in Chapter 15 Health and Wellbeing of this Report.

6.4.63. The LePAs in their closing statement [REP9-151] stated at paragraph 3.67 that they were supportive of the ExA's proposed substantial changes to the dDCO R18 dealing with the NIS and paragraph 1 of schedule 2 on interpretation. In particular they were supportive of the reduction in the eligibility thresholds to 54dB LAeq 16 and 48dB LAeq 8h, the provision for local authority involvement in the design of the scheme, and the new home relocation scheme proposed at sub-paragraph 5 of R18.

6.4.64. At paragraph 3.68 in their closing statement [REP9-151] the LePAs added that they still thought the NIS ought to be offered to residents living within the one additional awakening contour and that Appendix 3 [REP8-168] explained in detail why they thought it should be a SOAEL and why it would not necessarily coincide with the 48dB LAeq 8hr contour proposed by the ExA.

6.4.65. CAGNE raised concerns [REP2-070] and [REP5-121] about the Applicant's NIS in addition to those raised by the LePAs. These included that:

- unless the noise insulation measures were installed at the premises before the operation that caused the significant effect it could only be regarded as compensation as the significant effect would not be avoided, and this concern applied both to air noise and ground noise;
- the Applicant needed to clarify how it would deal with schools given the different criteria that would apply;

- there was uncertainty as to whether bungalows and static caravans would be included because the way the Applicant had referred to bedrooms being "upstairs"; and
- increases in the acoustic performance of windows from 15 dB reduction to 20 dB had not been justified.

6.4.66. Many IPs raised concerns about the adequacy of the financial contribution proposed by the Applicant for example Rusper Parish Council [REP1-259] considered that there should be a significant expansion of double and triple glazing funding. Later on [REP6-133] they noted that as Gatwick Airport Limited (GAL) proposed cost caps on individual properties this would enable the appointed contractor to unfairly exploit the system.

6.4.67. We asked the Applicant about its NIS in ExQ1 NV.1.12 to NV.1.19 [PD-012] and in their response [REP3-101] the Applicant confirmed its NIS would be adjusted so as to include nurseries and pre-schools that had teaching rooms. In other respects, their responses relied upon material considered under the assessment section of this Chapter and that elements of the NIS would be initiated after dual runway operations had commenced.

6.4.68. The ANPS includes the general statement at paragraph 5.240 that:

"In addition to controlling and reducing aircraft noise impacts, the applicant will be required to commit appropriate resources to mitigate the impacts of aircraft through noise insulation programmes for both private homes and public buildings such as schools."

6.4.69. We again considered ANPS paragraph 5.53 and whether British Standards could provide guidance. BS 8233 has detailed recommendations about receptor based mitigation of aircraft noise at paragraph 6.3.2 which in particular explain how due account should be taken of the characteristics of aircraft noise and the operating modes of the airport.

6.4.70. Whilst technological advances have led to quieter aircraft, for example as described in ERCD 2302, we can see from the Applicant's noise predictions [APP-039] and ERCD 2302 that homes and other premises are still likely to be above a SOAEL.

6.4.71. We have concluded at Table 6.2 what the S16 and S8 thresholds should be for aircraft noise, so in this Section we consider how could receptor based mitigation achieve the first aim of noise policy as set out in the ANPS at paragraph 5.68 to *"avoid significant adverse impacts on health and quality of life"* in the context of sustainable development.

6.4.72. With the exception of where temporal criteria may be relevant, as detailed in BS 5228, because of the temporary nature of construction noise, we consider that SOAEL values for continuous operations define the point at which, having accounted for all reasonable source and pathway measures, receptor based mitigation needs to be considered and may need to be offered by the Applicant in pursuit of the first aim of noise policy as presented in the ANPS.

6.4.73. We consider that homes that already have a good standard of glazing, ventilation, and measures to reduce solar gain, that would be predicted to be exposed slightly above S8 or S16 may require little if any additional mitigation measures to meet the BS 8233 guidelines. Whilst this may be a reasonable working assumption, we think it should be tested.

6.4.74. With regard to ground noise, the Applicant has proposed the same criteria for assessment as air noise, and subject to the amendments we have detailed for S8 and S16 we see no reason to disagree with this. We consider that for the purposes of assessing whether a premises needs to be considered for receptor based mitigation air noise and ground noise should be combined before comparison with these thresholds, and consider that assessment, design and installation should be completed in a timely manner so that significant adverse noise effects would be avoided.

6.4.75. For those who take up the Applicant's offer at the earliest opportunity, through R18 of the Applicant's final dDCO [REP10-004], we consider the Applicant's approach to phasing make it likely that those who would be considered significantly adversely affected, because of night-time aircraft noise would not have the mitigation installed in a timely manner and may not be considered at all.

6.4.76. We consider that as the Applicant has applied contribution limits to the package there is a lack of certainty as to whether significant effects on occupants would be avoided as the designs would be unduly constrained by these.

6.4.77. We consider there is substantial overlap between the Applicant's R18 in the dDCO [REP10-004] and its NIS [REP9-059]. We consider that the performance of glazing systems would not be as suggested in the context of homes and other premises affected by aircraft following departure routes, as discussed at ISH9 [EV20-007] in the context of BS 8233.

6.4.78. We consider that a design led approach based on the principles of the relevant British Standard would be consistent with the ANPS at paragraph 5.53. The design of the mitigation package would be adapted to achieve the guideline internal noise levels as set out in BS 8233 for the particular premises. This would aim to avoid significant noise effects within a dwelling both during the daytime and the night-time during the range of operating modes as detailed in BS 8233. For other types of premises, for example schools, hospitals and places of worship we consider that relevant guidance should be used in addition to BS 8233 as detailed in R18 of the rDCO.

6.4.79. With regard to the LePAs submission on linking a noise insulation scheme to one additional awakening [REP8-168], in addition to a SOAEL of 48 dB LAeq 8h, we recognise that this relies on airport specific mapping. Whilst we may speculate on the correlation between one additional awakening and the 48 dB LAeq 8h and how this might change with dual runway operations we are not sufficiently persuaded to propose this additional eligibility criterion.

ExA's Conclusion on Receptor Based Mitigation

6.4.80. We conclude that the Applicant's proposals set out in R18 of the dDCO [REP10-004] and its NIS [REP9-059] are insufficient to achieve the first aim of the ANPS at paragraph 5.68 to *"avoid significant adverse impacts on health and quality of life"* in the context of sustainable development.

6.4.81. We have set out our proposals in a new R18 in the rDCO, which we consider would, without reference to the Applicant's NIS [REP9-059], be sufficient to define a process for the consideration and implementation of receptor based mitigation that would achieve the first aim of the ANPS at paragraph 5.68 to *"avoid significant adverse impacts on health and quality of life"* in the context of sustainable development.

Air Noise Limits

6.4.82. The JSC's LIR [REP1-100] at Appendix C: Noise and Vibration – District and Borough Profiles included that:

- MVDC considered the proposed noise envelope was not fit for purpose as it did not align with policy requirements and the whole framework needed to be re-assessed to address their concerns over the limit values, the use of additional metrics, enforcement, monitoring, reporting, review and sanctions for breaches;
- MVDC considered air traffic movement (ATM) limits for the airport's operation need to be preserved to prevent further creeping expansion. These would include the night noise regime of all aircraft movements of 11250 (summer) and 3250 (winter) period and total movement cap of all aircraft movements of 389,000 pa to align with the predicted capacity for 2047;
- RBBC wished to see the existing movement cap in the core (23:30 to 06:00) night period of 11,200 movements over the 218 day summer period and 3,250 movements in the winter period retained;
- RBBC were concerned about a number of aspects including that envelopes need to be based on central case rather than STC, improvements need to be locked in at each envelope review stage, the daytime contour needs to be based on 54 dB rather than the 51 dB, a primary control noise contour at night based on annual average (Lnight) night contours needs to be included in addition to the 92 day summer period, and that additional event based metrics should be included. In addition, RBBC had concerns over GAL forecasting and the enforcement mechanism, including the role of the CAA and local authorities, and that enforcement should be linked to compensation in the event of a breach; and
- TDC raised concerns regarding the air noise envelope and considered that it needed to be substantially redesigned, to achieve the aims set out in 'Noise envelopes' (CAP 1129) and thereby offer a degree of protection. TDC considered that the noise envelope as proposed would allow the noise climate around the airport to deteriorate whilst growth occurs which TDC considered was contrary to the ANPS policy at paragraph 5.60 of sharing the benefit of the improvements in technology with the local community and the International Civil Aircraft Organization (ICAO) Balanced Approach. TDC also raised concerns over how noise in the area could increase as well as the approach to enforcement.

6.4.83. The JWSLAs in its LIR [REP1-068] considered that the Applicant should consider implementing an approach similar to the Green Controlled Growth (GCG) Framework offered by London Luton Airport. JWSLAs considered that under this mechanism noise limits and controls would be set by the noise envelope and the airport's performance would be measured and monitored, by an independent group, against a number of noise metrics, controls and limits. JWSLAs considered that growth at the airport would be contingent on the experience of noise by communities being lower than the baseline, allowing the benefits of new technology to be shared between the airport and communities. JWSLAs considered that failure to adhere to these agreed limits would result in the cessation of further expansion (i.e. release of aircraft slots) until action has been taken.

6.4.84. With regard to noise envelopes the JWSLAs raised concerns in their LIR [REP1-068] which included that they considered it:

- needed a clear objective aligned with policy;
- must be based on noise metric contours for the area to provide certainty;
- must not increase with any successive envelope period;

- needed appropriate limits across all times of the year and during periods of the day;
- needed to adapt where evidence emerges that effects occur at lower thresholds or where new metrics are identified as explaining an adverse effect;
- would seek to reduce the overall exposure during the 8 hour night period;
- would ensure that improvement in one metric does not result in a deterioration in another;
- must be based on central case fleet not slow transition fleet; and
- needed to define an appropriate role for the local authorities and the Luton GCG Framework's proposal for a scrutiny board is supported with the option to escalate matters to the LPA.

6.4.85. The JWSLAs considered that corresponding changes should be reflected in the DCO and the control document for the noise envelope.

6.4.86. In response to the Applicant's Environmental Statement Addendum – Updated Central Case Aircraft Fleet Report [REP4-004] which showed a UCC, the JLAs response [REP5-094] at Appendix 1 included:

- that easyJet may deploy a greater proportion of its new aircraft at Gatwick;
- the rate of fleet transition by other airlines could accelerate;
- GAL could adopt pricing strategies, as adopted at other airports, to incentivise the use of next generation aircraft;
- the use of forward looking quota count budgets could be used to incentivise airlines to transition to next generation aircraft more quickly;
- new slots could be reserved for next generation aircraft only, as proposed in the London City Airport Planning application currently under consideration.

6.4.87. The JLAs concluded [REP5-094] that taking into account these factors:

- the Applicant's CC fleet transition of 59% next generation aircraft by 2029 looked eminently attainable;
- setting limits by reference to the UCC would be too lax; and
- their analysis confirmed their provisional view that the Applicant's UCC should rather be considered as a revised STC, with the most likely case still being represented by the CC.

6.4.88. The JLAs later confirmed in paragraphs 8.2 and 8.3 of their Response to the Applicant's Deadline 6 Submissions [REP7-103] that they considered the CC as the appropriate basis for setting the noise contours.

6.4.89. Throughout the Examination the LePAs maintained their position that aircraft noise should be controlled alongside other environmental impacts as part of their proposals on EMG as confirmed in their closing statement [REP9-151].

6.4.90. CAGNE carried out some detailed analysis [REP5-121] of the Applicant's UCC and STC and concluded that based on forecasts provided by the Applicant [REP4-004] and [REP3-071] comparing numbers of night-time arrivals for the STC and the UCC for specific next generation aircraft meant that the *"Applicant's position cannot be correct."*

6.4.91. CAGNE pointed out [REP8-144] the importance of using a core growth case with reference to the letter from the Department for Transport dated 2 August 2024 with regards to the recent London Luton Airport Expansion DCO application. Section 11 made it clear that the noise limit requirement it was requesting should be based on the core growth predictions set out in the application.

6.4.92. Gatwick Area Conservation Campaign (GACC) [REP7-132] responded to our further written questions (ExQ2) [PD-021] NV.1.10 with proposals that they considered would address Government policy in relation to noise limits, these included:

- an LAeq 16 h 51 dB peak summer season noise envelope limit of 108.8 km^2 for the period to 2038;
- a ban on night flights between 23.00 and 07.00;
- a noise envelope limit for the remainder of the British Summer Time period that requires noise to reduce materially in that period;
- a noise envelope limit for the winter day period that requires noise to reduce materially in that period;
- limits on aircraft movements between 22.00 and 23.00, a period of high community impact and sensitivity, to no more than operated in 2019; and
- limits on the noisiness of individual aircraft.

6.4.93. At paragraph 3.12 the APF says:

"The Government's overall policy on aircraft noise is to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise, as part of a policy of sharing benefits of noise reduction with industry."

6.4.94. At paragraph 3.29 the APF explains that the benefits of future technological improvements should be shared between the airport and its local communities to achieve a balance between growth and noise reduction with the objective of incentivising airlines to introduce the quietest suitable aircraft as quickly as is reasonably practicable.

6.4.95. The ANPS explains at paragraph 5.60 that an applicant should put forward proposals for a noise envelope and it should be tailored to local priorities developed in consultation with relevant stakeholders and include clear noise performance targets. It goes on to re-iterate the underlying principle of the APF that the benefits of future technological improvements should be shared between the applicant and its local communities, hence helping to achieve a balance between growth and noise reduction.

6.4.96. We include for completeness what the OANPS says:

"The government's overall policy on aircraft noise is to balance the economic and consumer benefits of aircraft against their social and health implications in line with the International Civil Aircraft Organisation's Balanced Approach to Aircraft Noise Management. This should take into account the local and national context of both passenger and freight operations, and recognise the additional health impacts of night flights.

The impact of aircraft noise must be mitigated as much as is practicable and realistic to do so, limiting, and where possible reducing, the total adverse impacts on health and quality of life from aircraft noise."

6.4.97. With regard to what the APF, ANPS and OANPS mean in total we consider that the OANPS confirms that all aircraft noise is included within the aims of policy as set out in the ANPS, not just 'significant aircraft noise'. We do not consider that the OANPS changes the APF and ANPS position that Government expect that the benefits of technological progress are to be shared between operators and those affected. We see this as being consistent with the general principles of pollution control.

6.4.98. We consider that guidance exists as CAP 1731 with the relevant conclusion being that a locally set noise contour area limit at a particular noise level for both day and night for an airport would be a way of addressing the APF policy and by implication the ANPS second and third noise policy aims.

6.4.99. We consider that the Applicant's summary of how it set the limit as described in paragraph 11.5.112 of its closing submission [REP9-112] *"The forecast 2032 Leq contour area is therefore used to set the geographical boundary"* does not make it clear as to how the limit was derived from a sharing of benefits.

6.4.100. The Applicant introduced its revised noise limit values at ISH8 [EV17-015] which as confirmed at paragraph 11.5.75 of its closing submission [REP9-112] would mean that in terms of the 51/45 dB noise contour area values the 2019 value would not be exceeded. This comparison is shown in Table 6.3.

Table 6.3: Noise Contour Area Values

Noise contour	Enclosed area actual 2019 [REP4-004]	Enclosed area limit dDCO [REP10-004]
51 dB LAeq 16 h	136 km^2	135.5 km^2
45 dB Leq 8 h	159.4 km^2	146.9 km^2

6.4.101. Given the policy position indicated an airport could grow and should get quieter at the same time we considered it necessary to test whether we considered these noise limit values would be consistent with "sharing the benefits" so at ISH8 [EV17-018] we asked:

"How much quieter would the updated fleet be between 2019 and 2029 in dB for the day and night time?"

6.4.102. The Applicant responded at paragraph 3.1.1 of The Applicant's Response to Actions ISH 8: Noise [REP6-087].

6.4.103. We consider the response provided us with the predicted noise outcome from what the Applicant referred to as its UCC rather than the source levels that had been assumed in that case.

6.4.104. We asked a very similar question in ExQ2 NV.2.5 [PD-021] in an attempt to clarify this point further:

"Comparing 2029 with 2019 how much quieter is the aircraft fleet expected to be in terms of source noise levels? Please provide sufficient details to support the response provided."

6.4.105. In its response [REP7-089] the Applicant referred us to its previous response [REP6-087].

6.4.106. We could see that the APF summarised the effect of technological improvements in reducing in noise levels under test measurement conditions where it explains under "Key Facts" that ICAO required new types of smaller aircraft to be about 7 dB quieter in 2020.

6.4.107. We considered that this was consistent with the Applicant's Supporting Noise Technical Notes to Statements of Common Ground Version 2 [REP6-065] Appendix

E which described trends in engine noise in relation to engine ground running and concluded with *"the majority being around 7-9dB quieter."*

6.4.108. We concluded that these underlying improvements were consistent with the supporting detail under *"Reduction of Noise at Source"* and *"Figure 2. The progression of the ICAO Noise Standards for aeroplanes."* This identifies a 7 dB improvement between Chapter 4 (current generation) and Chapter 14 (next generation) aircraft of ICAO's most recent publication.

6.4.109. In this publication ICAO says that four scenarios were developed for the noise trends assessment, with scenario 3 accounting for a post-Covid delay, with no noise technology improvements for aircraft entering the fleet from 2019 to 2023, and technology improvements of 0.2 EPNdB per annum for all aircraft entering the fleet from 2024 to 2050.

6.4.110. Assuming the ICAO scenario 3 reduction of 0.2dB per annum between 2024 and 2029 would imply a total reduction of 1 dB, suggesting 0.5 dB would be available as growth with 0.5 dB available as noise reduction. By comparing 2029, the forecast first year of dual runway operation with 2019, the last representative pre-Covid comparator year, and using the ICAO assumption that no reduction occurs between 2019 and 2023 implies that in overall noise terms 2029 could be 0.5 dB quieter than 2019 whilst at the same time the airport grows by an increase in ATMs equivalent to 0.5 dB.

6.4.111. Despite being aware that these reductions would only apply to aircraft entering the fleet, we considered that this way of expressing the limit would assist with progressing the Examination. Hence the following draft requirement was published ahead of ISH9 as Annex B of the Agenda for Issue Specific Hearing 9 Environmental Matters and was discussed at the hearing [EV20-001]:

"From the commencement of dual runway operations, the operation of the airport shall be planned to achieve a predicted air noise level LAeq that: for an average summer day is at least 0.5 dB less than the value calculated for an average summer day in 2019; and for an average summer night is at least 0.5 dB less than the value calculated for an average summer night in 2019. Five years after the commencement of dual runway operations, and every fifth year thereafter until 2049, the operation of the airport shall be planned to achieve a predicted air noise level LAeq that: for an average summer day reduces by at least a further 0.5 dB; and for an average summer night reduces by at least a further 0.5 dB."

6.4.112. The Applicant disagreed with our proposed limits and in closing [REP9-112] said at paragraph 11.6.11 in summary that the airport's growth would be restricted broadly to that forecast in the future baseline up to about 2038, that aircraft numbers after that would need to be reduced, the limits would be unworkable, and it would give all the benefits of future technology to the communities and none to the airport which was at odds with Government policy.

6.4.113. The LePAs analysed our proposals [REP9-148] and with regard to the 51 dB LAeq 16h contour the LePAs indicated that our proposals broadly followed the CC but to meet it would be challenging after the limit drops in 2034 unless account is taken of ICAO's expectation for ongoing noise reductions with further new aircraft types being met.

6.4.114. With regard to the 45 dB LAeq 8h contour the LePAs indicated [REP9-148] that our proposal was less demanding than the CC until 2039 but with compliance beyond then becoming more challenging.

6.4.115. The LePAs conclusions [REP9-148] included that it remained their position, as stated in paragraphs 8.2 and 8.3 [REP7-103], that the CC is the appropriate basis for setting the noise contours and it can be seen that for the period to 2035 our proposal tracks this reasonably well.

6.4.116. The Applicant explained how it created its UCC forecast [REP4-004]. From our inspection of Diagram 2.3 of that document we note that it shows the percentage of aircraft that had transitioned to next generation for the whole operating year, and we have presented this in Table 6.4.

6.4.117. We have compared this with the same analysis for the average summer day, as it is that which would determine the noise exposure compared with any daytime limit set. The information can be found in the ERCD reports for 2019 until 2022. Since 2016 these noise contour reports have been produced by the ERCD commissioned directly by GAL. This comparison is shown in Table 6.4.

Table 6.4: Noise Contour Reports - 2019 to 2022

% LGW aircraft transitioned to next generation	2019	2020	2021	2022
Summer day ERCD reports	62	63	65	69
Whole year [REP4-004]	13	21	26	20

6.4.118. This shows that the transition rate for aircraft that fly in the summer has continued to trend upwards including the Covid years and has followed a different trend to that reported by the Applicant [REP4-004] for the whole of the same years. We consider that this tends to favour the position of the LePAs that the CC should be used as the basis of any noise limits that would only apply to the peak summer months as discussed in the assessment section.

6.4.119. Considering CAGNE's submission regarding the Applicant's UCC [REP5-121] we can see with reference to Graph 1 for 2032 summer arrivals, that the STC has a much higher number of next generation aircraft, than the UCC. This we consider is at odds with the Applicant's characterisation of the UCC and tends to support the JLAs view that the UCC is a revised STC [REP5-094].

6.4.120. In its closing statement [REP9-112] at 6.4.73 the Applicant listed nine different interventions under the headings of *"Pre-emptive management", "Season-ahead controls"* and *"In-season controls"* that it could bring into play to manage compliance with its proposed noise limit.

6.4.121. We understand the general point made by all IPs that the rate at which airlines transition their fleet determines the rate at which quieter technology is realised. We have though not seen any revised forecasts, based on the assumption that the Order was made with reducing noise limits, as to how this might accelerate.

6.4.122. We have noted the LePAs general support [REP8-168] for our initial proposal of 0.5 dB reduction for day and night and given that the ANPS states at paragraph 5.60 that the *"design of the envelope should be defined in consultation with local*

communities" we consider that it would be consistent with the outcome of such a consultation.

6.4.123. Given that the OANPS refers to total aircraft noise effects we see no reason to disagree with the use of the 51 LAeq 16 h and 45 dB LAeq 8 h noise contours on the basis they are the values, referred to in ANG 2017 as community LOAELs, as described elsewhere in this Chapter. We note that the London Stansted Airport planning appeal decision, sought to limit only significant aircraft noise effects in accordance with the APF position as modified by CAP 1506, and set a condition in relation to the 54 dB LAeq 16 h and 48 dB LAeq 8 h noise contours.

6.4.124. As we have concluded in Chapter 4 of this Report that the Applicant's forecast rate of growth has probably been overstated, we consider this would assist GAL in achieving a lower noise limit than they have proposed, because there would likely be fewer ATMs.

6.4.125. Taking all important and relevant matters into consideration we have amended our initial proposals [EV20-001]. This would make it more flexible and workable through conversion of the 0.5 dB reduction to a % area reduction which we consider is consistent with advice provided in CAP 1731. The % area contour change has been aligned to the value of 8% provided in the LePAs analysis [REP9-148]. We also propose to limit any further reduction to the night-time period only to recognise the uncertainty in further noise reductions being achieved as new aircraft types are introduced as shown in their analysis.

6.4.126. We consider that the LePAs EMG Framework proposes to integrate noise alongside other environmental topics with the involvement of the LePAs in its implementation through a tiered committee structure. As each topic is dealt with separately in the ANPS it is not clear to us how this would achieve policy consistency with regard to noise. We consider there is the possibility that an impact in one topic or geographical area may be offset against an impact elsewhere, with the result that the policy position is compromised with regard to noise. We consider that noise impacts would be felt in geographical areas potentially not represented on the committees that would implement the EMG Framework. We do not consider that this approach is consistent with the approach to environmental noise management set out in the ANPS.

6.4.127. The IP submissions already referred to included concerns about how any limit would be achieved, how to monitor compliance, what happens if a breech occurs, when and how to review the limit, under what circumstances might the limit need to be changed outside of any planned review process, and who should be involved in these processes. These included the JLAs proposed changes to the Applicant's controls should EMG Framework not be accepted [REP7-102] paragraphs 7.23-7.25 on how the Applicant could use various methods to plan their operation to achieve any noise limits set.

6.4.128. We consider that the approach adopted in the London Stansted Airport planning appeal decision is a relatively good comparator in terms of the scope of any proposed Requirement. It is about airport modifications to achieve passenger growth and it is at a designated airport, so has Government controls in place. It was also a recently decided (2021) case and the aircraft policy framework was set by APF and 'Beyond the horizon The future of UK aircraft Making best use of existing runways June 2018'. We consider that Condition 7 of the London Stansted Airport planning appeal decision secured the aircraft noise limits for that expansion, and the

monitoring arrangements, so we see no good reason to go beyond it in terms of scope, for any corresponding Requirement in the rDCO.

ExA's Conclusion on Air Noise Limits

6.4.129. We conclude that the Applicant's proposals set out in R15 and R16, and Schedule 11 Part 2 of its final dDCO [REP10-004] supported by its Environmental Statement - Appendix 14.9.7 The Noise Envelope [REP10-011] would not sufficiently share the benefits as set out at paragraph 5.60 of the ANPS and paragraph 3.29 of the APF. As a result, we conclude that the Applicant's proposals are insufficient to achieve the second aim of the ANPS at paragraph 5.68 to *"mitigate and minimise adverse impacts on health and quality of life"* in the context of sustainable development.

6.4.130. We have set out our proposals for a new requirement in the rDCO that replaces R15 and R16 of the of the Applicant's final dDCO, which we consider would share the benefits of quieter aircraft as set out at paragraph 5.60 of the ANPS and paragraph 3.29 of the APF. We consider that this would achieve the second aim of the ANPS at paragraph 5.68.

CONSTRUCTION NOISE AND VIBRATION

6.4.131. In the JSCs LIR [REP1-100] RBBC raised concerns with regard to construction noise and proposed changes to the CoCP, including restrictions to some construction methods, reduced construction working hours, changes to mitigation thresholds, specific mitigation in the form of noise barriers, and the offer of respite when heatwave conditions coincided with adverse noise impacts at night.

6.4.132. In the JSCs LIR [REP1-100] MVDC raised concerns about noise and vibration during construction and considered that the proposed mitigation was insufficient.

6.4.133. By the close of the Examination the LePAs in their closing statement [REP9-151] stated that the CoCP had been updated [REP8-025] but concerns remained over percussive piling, complaint reporting, working hours, and temporary noise barriers. The LePAs considered that noise control measures accounted for in the construction noise and vibration assessments in Chapter 14 [APP-039] cannot be relied upon if the mitigation measures are not secured.

6.4.134. Paragraph 5.53 of the ANPS explains that for the prediction, assessment and management of construction noise, reference should be made to British Standards and other guidance which give examples of mitigation strategies, and the British Standard that provides guidance on construction noise and vibration, in relation to human receptors, is BS 5228.

6.4.135. We consider that the Applicant's approach, which follows that recommended in BS 5228, has been consistent with the ANPS and has used the appropriate guidance in its assessment and mitigation proposals. We recognise that any construction noise and vibration assessment and mitigation design carried out at this stage of the Proposed Development has to be regarded as having a high degree of uncertainty. We consider that the designs are at a rudimentary level and construction methods have yet to be confirmed.

6.4.136. Construction noise and vibration is regulated by the statutory regime detailed in CoPA 1974 s60 and s61. Whilst those undertaking construction works would apply to the relevant LPA for prior consent under s61, to the extent this is secured by R7 of the final dDCO [REP10-004] and the CoCP [REP8-024], we see no reason why any LPA could not impose conditions, potentially in addition or different to any

commitments included in the CoCP, that they regarded as necessary to achieve the policy aims.

6.4.137. In situations where a s61 prior consent application was not made the relevant LPA can use its powers under s60 to specify measures that it considers necessary to achieve the policy aims.

ExA's Conclusion on Construction Noise and Vibration

6.4.138. We conclude that the Applicant's approach to assessment and mitigation is in line with the ANPS at paragraph 5.53.

6.4.139. We conclude that the regulatory regime outlined above is sufficient to address the outstanding concerns of the LePAs, to the extent that this would be necessary to achieve policy compliance, and we see no reason to recommend any changes to the final dDCO [REP10-004] with respect to construction noise and vibration.

ROAD TRAFFIC NOISE

6.4.140. The Proposed Development includes proposals to modify the strategic road network to the extent that the 'National Networks National Policy Statement 2015 (NNNPS) is important and relevant.

6.4.141. The NNNPS explains that the Proposed Development should demonstrate good design through optimisation of scheme layout to minimise noise emissions and, where practicable and sustainable, the use of landscaping, bunds or noise barriers to reduce noise transmission.

6.4.142. Guidance relevant to the road network sector is set out in DMRB LA 111 which sets out operational noise effect threshold levels in Table 3.49.1.

6.4.143. In the JSC's LIR [REP1-100] Appendix C: Noise and Vibration – District and Borough Profiles RBBC asked that a low noise surface be used on A23 London Road (as a minimum), A23 Airport Way, and out to Junction 9 with the M23 and the installation of a noise barrier (2m minimum) from the Longbridge Roundabout to the proposed new junction with the A23 London Road.

6.4.144. We consider that the Applicant's approach has been consistent with the NNNPS and has used the appropriate guidance in its assessment and mitigation proposals.

6.4.145. We found nothing in the LePAs closing statement [REP9-151] to suggest to us that they disagreed with the Applicant's approach to road traffic noise, their assessment, and proposals for mitigation.

ExA's Conclusion on Road Traffic Noise

6.4.146. We conclude that the Applicant's approach to assessment and mitigation is in line with NNNPS policy at paragraphs 5.235 to 5.242 and uses relevant guidance.

6.4.147. We conclude there are no outstanding issues between the Applicant and other IPs, and we see no reason to recommend any changes to the final dDCO [REP10-004] with regard to road traffic noise to achieve policy compliance.

6.5. ExA's CONCLUSION ON NOISE AND VIBRATION

6.5.1. With regard to aircraft noise, we conclude that the Applicant has not met the requirements of ANPS paragraph 5.53 with respect to the assessment of aircraft noise and ANPS paragraph 5.60 with respect to the avoidance of significant noise effects and the minimisation of adverse noise effects from aircraft noise. As a result, we ascribe moderate weight to the issue of noise and vibration against the making of the Order in the form represented by the Applicant's final dDCO [REP10-004].

6.5.2. Subject to our proposed modifications to Requirements R1, R15, R16, and R18, and Schedules 11 and 14 in the rDCO as detailed in Chapter 22 being accepted, having had due regard to the ANPS the NNNPS and other important and relevant matters, we conclude that neutral weight should be given to the issue of noise and vibration in the overall planning balance of the Proposed Development.

7. AIR QUALITY

7.1. INTRODUCTION

7.1.1. This Chapter considers the effects of the Proposed Development in relation to air quality during its construction and operation.

7.1.2. This Chapter provides details regarding the effects on people. In relation to effects on ecology see Chapter 14 of this Report.

7.2. POLICY BACKGROUND

7.2.1. Paragraph 5.33 of the Airports National Policy Statement (ANPS) says that the Environmental Statement (ES) should assess:

- existing air quality levels for all relevant pollutants referred to in air quality regulations;
- the baseline position for all relevant air quality pollutants at the time of opening, without the Proposed Development, and the impact of the Proposed Development, including when at full capacity; and
- any likely significant air quality effects of the Proposed Development, their mitigation, and any residual likely significant effects, during its construction and operation, including impacts arising from road and other surface access traffic.

7.2.2. With regard to decision making the ANPS says at paragraph 5.42 that the Secretary of State would need to be satisfied that, with mitigation, the Proposed Development would be compliant with legal obligations that provide for the protection of human health.

7.2.3. At paragraph 5.43 the ANPS goes on to explain that air quality considerations are likely to be particularly relevant where the Proposed Development:

- is within or adjacent to Air Quality Management Areas (AQMAs) or roads identified as being above limit values;
- would bring about the need for new AQMAs or change the size of an existing AQMA, or bring about changes to exceedances of the limit values; and
- after taking into account mitigation, would lead to a significant air quality impact or to a deterioration in air quality in a zone or agglomeration.

7.2.4. A similar approach can be found in the National Planning Policy Framework (NPPF) so that planning decisions sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of AQMAs and Clean Air Zones, and the cumulative impacts from individual sites in local areas.

Local Air Quality Management

7.2.5. As set out in the ES - Chapter 13 - Air Quality [REP3-018] legislation imposes statutory duties on local authorities with regard to air quality. These include that they have to:

- carry out a process of local air quality management and declare AQMAs where necessary; and
- for each AQMA, produce an action plan to ensure standards are met for air quality management areas.

7.3. THE APPLICATION

7.3.1. The Applicant set out in the ES - Chapter 13 - Air Quality [REP3-018], five sets of figures [APP-066 to APP-070] and fourteen appendices its approach to and assessment of effects on air quality.

7.3.2. The Applicant set out the air quality standards for the pollutants of most relevance to its assessment for the protection of human health and ecosystems, obtained from the Air Quality Standards Regulations 2010 (amended in 2016) (UK Government, 2016).

7.3.3. During the construction of the Proposed Development the Applicant considered the potential for:

- dust generation causing annoyance due to dust soiling and human health impacts due to increased particulate matter less than 10 micrometres in diameter (PM_{10}) concentrations;
- emissions from construction vehicles and non-road mobile machinery causing human health impacts from increased Nitrogen Dioxide (NO_2), PM_{10} and Particulate matter less than 2.5 micrometres in diameter ($PM_{2.5}$) concentrations; and
- emissions from construction road traffic causing human health impacts due to increased NO_2, PM_{10} and $PM_{2.5}$ concentrations.

7.3.4. During the operation of the Proposed Development the Applicant considered the potential for:

- emissions from road traffic causing human health impacts from increased NO_2, PM_{10} and $PM_{2.5}$ concentrations;
- aircraft emissions causing human health impacts from increased NO_2, PM_{10} and $PM_{2.5}$ concentrations;
- emissions from airport operations/ combustion plant causing human health impacts due to increased NO_2, Nitrogen Oxides (NO_x), PM_{10}, and $PM_{2.5}$ concentrations; and
- increased emissions of odours from operations (eg aircraft fuel, other airport operations/plant) causing annoyance.

7.3.5. For construction and operation, the Applicant used relevant Environmental Protection UK and Institute of Air Quality Management guidance to determine:

- the study area;
- the identification of sensitive receptors; and
- significance criteria.

7.3.6. The Applicant used the Atmospheric Dispersion Modelling System (ADMS) ADMS - Airport and ADMS 5 dispersion models to predict annual mean concentrations for the pollutants of concern at sensitive human receptors.

7.3.7. The Applicant described the measures that would be taken to minimise air quality impacts during construction in its Code of Construction Practice (CoCP) [REP9-031].

7.3.8. During operation the Applicant compiled an emissions inventory by considering sources including:

- aircraft main engines in the landing and take-off period both at ground level and at height;
- ground support equipment and other airport sources;
- aircraft auxiliary power units;
- road vehicles on the local highway network (split into airport and non-airport related emissions); and
- vehicles at car parks.

7.3.9. The assessment periods considered by the Applicant included:

- 2024-2029 construction period for airfield works;
- 2029-2032 construction period for surface access improvements;
- 2029 first full year of the Proposed Development opening; and
- 2032, 2038 and 2047 as interim, design, and final assessment years respectively.

7.3.10. The Applicant explained that the future baseline conditions for the respective assessment years have been established taking into account committed developments in the area and anticipated emissions from the airport's operation and road traffic without the Proposed Development, as set out in ES Chapter 4: Existing Site and Operation [APP-029].

7.3.11. The Applicant noted that the Hazelwick AQMA was declared by Crawley Borough Council in 2015 and the Horley AQMA was declared by Reigate and Banstead Borough Council in 2002. The Applicant stated that both of these are within the 11 km by 10 km domain centred on the airport.

7.3.12. The Applicant noted that the largest emission source for NO_x, PM_{10} and $PM_{2.5}$ would be non-airport road vehicles for all of the years assessed. The Applicant considered this was because of the large extent of the road network modelled, encompassing the Affected Road Network for all modelled scenarios.

7.3.13. The Applicant described airport related traffic in Appendix 13.4.1: Air Quality Assessment Methodology [APP-158] as including passenger cars, light and heavy goods vehicles related to the airport's operations, buses, coaches and staff cars.

7.3.14. The Applicant concluded [REP3-018], based on its air quality impact assessment undertaken for the ES, and accounting for the mitigation measures secured within its draft Development Consent Order (dDCO) [REP10-004] that the construction and operation of the Proposed Development would not cause any significant residual air quality effects.

7.4. ISSUES CONSIDERED DURING THE EXAMINATION

7.4.1. The Joint Surry Councils (JSCs) raised concerns in their Local Impact Report (LIR) [REP1-097] and the Joint West Sussex Local Authorities in their LIR [REP1-068] including:

- the lack of dust and odour management plans;
- the lack of an air quality action plan;
- changes in concentrations of $PM_{2.5}$ not being considered to be a good indicator of the general risk associated with exposure to fine and ultrafine particulates (UFPs);
- the use of the interim target of 12 micrograms per cubic metre ($\mu g/m^3$) rather than the 2040 target of $10\mu g/m^3$ when determining the impacts of $PM_{2.5}$;

- Article 49 of the dDCO [REP10-004] providing a defence to proceedings in respect of statutory nuisance (including odour) going beyond the precedent set in recent development consent orders;
- how the assessment would look if a 20 µg/m^3 annual limit value for nitrogen dioxide was adopted rather than the existing limit value of 40 µg/m^3;
- the lack of air quality modelling for 2047; and
- the lack of confirmed funding for local authority pollutant monitoring (NO_x, NO_2 and PM_{10} and $PM_{2.5}$) beyond 2038.

7.4.2. Through our first written questions (ExQ1) [PD-012] we asked:

- what impact the delay to the proposed ban on petrol and diesel cars would have on the Applicant's assessment;
- whether the impact of the Proposed Development would be sufficient to bring about the need for new AQMAs or change the size of the existing AQMAs; and
- for the Applicant to add air quality, dust and odour management to the list of topic specific plans identified as annexes of the CoCP [REP9-031].

7.4.3. The Applicant's response [REP3-083] included confirmation to the effect that:

- their assessment conclusions would not change in light of the delay in the ban on petrol and diesel cars;
- the Proposed Development would not result in any new exceedances of the national air quality standards, and as such no local authority would be required to consider extending any existing AQMA or creating any new AQMAs; and
- measures for odour management and for managing emissions from vehicles and machinery during construction would be based on best practice industry guidance but they would include a dust management plan as an annex to the CoCP.

7.4.4. The Legal Partnership Authorities (LePAs) response [REP3-135] wished to see the Applicant's CoCP include more detail on air quality matters including dust monitoring and management measures.

7.4.5. In response to the Applicant's answers to ExQ1 the LePAs [REP4-069] raised several detailed technical queries regarding ongoing monitoring, the variability of air quality readings and the potential for 'hot spots, which showed measured values that did not always align with the Applicant's predictions.

7.4.6. Matters relating to air quality were discussed at Issue Specific Hearing 7 (ISH7) [EV11-001]. The Applicant's response to actions [REP4-037] included a detailed technical response on UFPs and clarifications on other matters raised.

7.4.7. The Applicant in its closing statement [REP9-112] confirmed that:

- an air quality action plan, support for air quality monitoring and support for work on UFPs, was included in Schedule 1 of its final s106 agreement with the LePAs [REP10-019];
- an odour monitoring and management plan (OMMP)[REP9-108] would be secured by Requirement (R) 35 of the dDCO [REP10-004]; and
- a revised construction dust management strategy [REP10-009] annex 9 to the CoCP would be secured by R7 of the dDCO [REP10-004].

7.4.8. With regard to forecasting for 2047 the Applicant considered that the results of the detailed modelling for scenarios 2032 and 2038 showed no significant impacts with conservative assumptions applied. The Applicant considered that national efforts to

reduce emissions combined with its conservative assumptions justified the omission of detailed modelling for 2047.

7.4.9. The LePAs closing statement [REP9-151] maintained their position that:

- the air quality assessment should have included forecasts of the levels of all relevant pollutants when the scheme would be operating at full capacity;
- air quality needed to be included in the controls delivered by its Environmentally Managed Growth (EMG) Framework; [REP7-102 and REP7-103], or by some similar measures requiring remedial action to be taken (with the detail of any such measures being for approval by the local authority prior to commencement);
- the OMMP should have been strengthened as detailed in the Requirement proposed by the ExA in its Annex B to ISH9 agenda [EV20-001]; and
- the exclusions from statutory nuisance proceedings in Article 49 went too far as explained in their consolidated submissions on the dDCO [REP8-163].

7.4.10. With regard to the LePAs proposal for an EMG Framework, as there has been no disagreement with the Applicant's conclusion that operation of the Proposed Development would not cause significant air quality effects, we consider that the need for an EMG Framework secured by the DCO to achieve the policy requirements does not exist and we agree with the Applicant's closing statement [REP9-112] at paragraph 6.5.11 that there is no precedent for it in made consent decisions.

7.4.11. We are mindful that the Applicant and the LePAs have concluded a s106 agreement [REP10-019] which includes air quality arrangements, hence with regard to measures that would have been similar to those that would have been introduced in the EMG Framework, we were not persuaded that there was a need to add to the draft dDCO [REP10-004].

7.4.12. We recognise the practical difficulties in the measurement and monitoring of odour during construction and operation and in the context of the consideration of air quality issues against the ANPS we consider the Applicant's proposals to be sufficient.

7.4.13. In its final version of the dDCO [REP10-004] the Applicant reduced the number of exclusions from statutory nuisance proceedings in Article 49, removing nuisances arising from the emission of fumes or gases from the list. With regard to air quality, we consider the Applicant's revised Article 49 to be appropriate.

7.5. ExA's CONCLUSION ON AIR QUALITY

7.5.1. The Applicant's conclusion was that the construction and operation of the Proposed Development would not cause any significant adverse air quality effects. This conclusion had not changed during the course of the Examination. No substantive evidence was put before us that challenges this conclusion.

7.5.2. As reported in Chapter 5, we have concerns over the reliability of the Applicant's transport assessment because of concerns over the baseline. We consider that a larger change in traffic would cause a larger change in air quality. As the predicted total concentrations would not change from the values reported in the ES, we conclude that the Applicant's assessment of no significant residual effects on air quality would be unaltered.

7.5.3. During the course of the Examination the Applicant modified its proposals for odour and construction dust management and we recognise that the Applicant and the LePAs have reached a s106 agreement [REP10-019] on a range of measures that would support local air quality monitoring and further work in relation to UFPs. UFPs are considered in further detail in Chapter 15 Health and Wellbeing of this Report.

7.5.4. With regard to the outstanding areas of disagreement between the Applicant and the LePAs we do not consider they are sufficient to compromise the Proposed Development when compared with the requirements of the ANPS, so do not consider it necessary to recommend changes to the Requirements in Schedule 2 of the dDCO [REP10-004] with respect to air quality.

7.5.5. Having had due regard to the ANPS the NNNPS and other important and relevant matters, we conclude that neutral weight should be given to the issue of air quality in the overall planning balance of the Proposed Development.

8. GREENHOUSE GAS EMISSIONS

8.1. INTRODUCTION

8.1.1. This Chapter addresses greenhouse gas (GHG) emissions. The Environmental Statement (ES) contained Chapter 15: Climate Change [APP-040] and Chapter 16: Greenhouse Gases [APP-041]. Chapter 15 concerns the potential effects of current and future climate change on the Proposed Development. ES Chapter 16 provides an assessment of the effects of the Proposed Development on the global atmosphere resulting from the generation of GHG emissions. Chapter 9 of this Report addresses climate change.

8.1.2. Climate change, and particularly issues related to GHG emissions, was the second most common issue raised in Relevant Representations (RRs) with over 1700 comments. 'Climate Change and Greenhouse Gas Emissions' was identified within the Initial Assessment of Principal Issues (Annex C [PD-009]).

8.2. LEGISLATION AND POLICY

LEGISLATIVE CONTEXT

8.2.1. Legislation specific to the assessment of GHG emissions as described in the ES Chapter 16 [REP4-005] comprises the Infrastructure Planning (Environmental Impact Assessment) Regulations, 2017; the Climate Change Act, 2008 (CCA2008); the Air Navigation (Carbon Offsetting and Reduction Scheme for International Aviation) Order, 2021 (CORSIA) and the Greenhouse Gas Emissions Trading Scheme Order, 2020 as amended by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order, 2022.

8.2.2. The amended Section 1 of the CCA2008 sets a legally binding GHG emissions reduction target for the UK of 100% by 2050, compared to a 1990 baseline (the 'net zero' target). This revised target was introduced in 2019 as a change from the previous 80% reduction target. The Committee on Climate Change (CCC) recommends five-year national carbon budgets to achieve this target.

8.2.3. The most recent UK carbon budget recommendation is the Sixth Carbon Budget (2022) covering the period 2033-37 which was the first to fully reflect the revised net zero target for 2050. This was adopted by the UK Government in The Carbon Budget Order, 2021. Following recommendations by the CCC, the Sixth Carbon Budget formally includes emissions from international aviation. Prior to this, UK carbon budgets included only domestic aviation emissions and left 'headroom' within the budget for international aviation (and shipping) emissions.

NATIONAL PLANNING POLICY

8.2.4. Paragraphs 5.69 to 5.83 of the Airports National Policy Statement (ANPS) relate to carbon emissions. Paragraph 5.70 states that the Government's key objective on aviation emissions, is to ensure that the aviation sector makes a significant and cost-effective contribution towards reducing global emissions. Paragraph 5.77 requires the assessment to consider worst-case scenarios.

8.2.5. Paragraph 5.76 requires the applicant to provide evidence of the carbon impact of the project such that it can be assessed against the Government's carbon obligations, including but not limited to carbon budgets. It states that the applicant

should quantify the GHG impacts before and after mitigation to show the impacts of the proposed mitigation.

8.2.6. Any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project *"is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets"* (ANPS para. 5.82). This policy test is repeated in paragraph 5.18 of the National Networks National Policy Statement (NNNPS) (2015) although paragraph 5.17 of the NNNPS states that it is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets.

8.2.7. The Secretary of State (SoS) will need to be satisfied that the mitigation measures put forward by the applicant are acceptable, and the applicant is expected to limit the carbon impact of the project (ANPS paragraph 5.78) while paragraph 5.83 requires evidence of appropriate mitigation measures. The ANPS notes that the SoS's view of the adequacy of the mitigation measures relating to design, construction and operational phases will be a material factor in the decision-making process. This requirement also occurs in paragraph 5.19 of the NNNPS.

8.2.8. The National Planning Policy Framework (NPPF) (2023) also recognises that there is a need to move to a low carbon economy. Section 14 of the NPPF states that the planning system should help to *"shape places in ways that contribute to radical reductions in GHG emissions"* (paragraph 157). Paragraph 159 states that new development should be planned in ways that reduce GHG emissions while paragraph 162 states that new development should comply with policies or local requirements for decentralised energy supply.

OTHER RELEVANT POLICY

8.2.9. Other national policy of relevance to the issue of GHGs includes the Aviation Policy Framework (APF) (2003), Flightpath to the Future (2022), Beyond the Horizon -The Future of Aviation: Making Best Use of Existing Runways (MBU) (2018), the Jet Zero Strategy: Delivering Net Zero Aviation by 2050' (JZS) (2022) and the Transport Decarbonisation Plan (TDP) (2021). ES Chapter 16 (Table 16.2.2) [REP4-005] also sets out local planning policies of relevance to GHG emissions covering such matters as sustainable design, construction and development.

8.3. THE APPLICATION

INTRODUCTION

8.3.1. ES Chapter 16 [REP4-005] provides an assessment of the likely significant effects of the Proposed Development on GHG emissions during the construction and operation of the Proposed Development. GHG emissions were identified from four sources: construction, airport buildings and ground operations (ABAGO), surface access and air traffic movements. ES Chapter 16 is supported by a range of Appendices [APP-189 to APP-194] which include assessments of GHG emissions for each of these four sources [APP-191 to APP-194].

8.3.2. At Deadline (D) 4 the Applicant submitted a revised version of ES Chapter 16 [REP4-005]. This corrected a discrepancy within the values at ES Table 16.9.11 of ES Chapter 16 [APP-041] but did not impact on the overall conclusions within Chapter 16.

ASSESSMENT METHODOLOGY

8.3.3. Paragraph 16.4.4 of the ES [REP4-005] notes that the assessment seeks to understand the scale of changes in GHG emissions and the materiality of these on the ability of the UK Government to meet its climate obligations. It considers the context and impact of changes in GHG emissions with reference to the mitigation as part of the Proposed Development and the guidance in the Institute of Environmental Management and Assessment (IEMA) Environmental Impact Assessment Guide to: Assessing Greenhouse Gas Emissions and Evaluating their Significance 2nd Edition (2022) (the IEMA Guidance).

8.3.4. Recognising the Government's commitment to GHG reduction targets and the aim to ensure that the trajectory of downward emissions from aviation is met, the assessment adopts the High-Ambition scenario within the JZS. This is predicated on measures to reduce aircraft emissions to achieve residual emissions of 19.3 million tons of carbon dioxide equivalent ($MtCO_2e$) in 2050 which are to be offset or removed. A sensitivity case also considered the Slow Fleet Transition (SFT) scenario under which newer aircraft are not brought into service as quickly as in the core-case scenario. The assessment assumes that transport related GHGs will follow the commitment to decarbonise transport in the UK by 2050 in the TDP.

8.3.5. The assessment considered where the Applicant had proposed measures to reduce future GHG emissions associated with the Proposed Development (and in some cases with existing airport operations). The commitments are set out in ES Appendix 5.4.2: Carbon Action Plan (CAP) [APP-091] which includes measures to limit or reduce GHG emissions associated with construction, ABAGO and aviation and ES Appendix 5.4.1: Surface Access Commitments (SAC) [APP-090] which includes measures associated with surface transport.

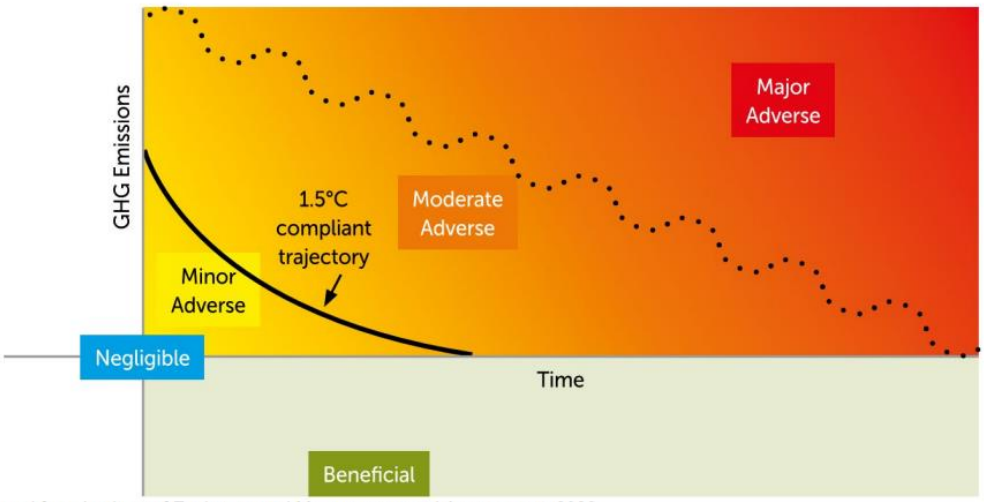
8.3.6. The baseline year against which future GHG emissions would be evaluated is 2018. The future baseline GHG emissions were established using current GHG projections drawn from national and international sources (ES Table 16.6.2 [REP4-005]). These reflect the opening year of the altered northern runway (2029), design year (2038), future year (2047), and the net zero year (2050). Predicted GHG emissions were compared against baseline and future baseline to evaluate the impact of the Proposed Development with respect to GHG emissions.

8.3.7. The ES acknowledges that while guidance on assessments is presented in the IEMA Guidance and the ANPS there is no single consolidated approach to assessing the impact and significance of GHG emissions. Nevertheless, the Applicant has adopted the methodology and approach recommended in the IEMA Guidance. It recognises that all new carbon emissions cause a negative environmental impact, but the significance of impacts should be based on the net impact over time. Where GHG emissions cannot be avoided the goal of the Environmental Impact Assessment (EIA) process should be to reduce the project's residual emissions at all stages. (IEMA Guidance paragraph 6.1). Impacts should be seen in the context of wider policy initiatives and particularly the staged reductions in emissions through the UK carbon budgets.

"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." (IEMA para. 6.2).

8.3.8. ES Diagram 16.4.1 shows different levels of future emissions to support the appraisal of significance compared to the UK's net zero compatible trajectory and is reproduced from the IEMA Guidance below as Figure 8.1.

Figure 8.120: Different Levels of Significance Plotted Against the UK's Net Zero Compatible Trajectory



Reproduced from Institute of Environmental Management and Assessment, 2022

8.3.9. ES Table 16.5.1 [REP4-005] sets out the main assumptions that informed the development of GHG estimates including the commitments made in the CAP and SAC. The assumptions reflect the Government's target to achieve net zero by 2050 and the strategies to achieve that outcome.

8.3.10. Through the CAP [APP-091] the Applicant committed to achieving net zero for Scope 1 and 2[11] emissions by 2030, and zero emissions for Scope 1 and 2 by 2040. The CAP commitments were assessed as part of the GHG assessment because they provide committed goals in accordance with the IEMA Guidance. Through the SAC [APP-090] the Applicant committed to achieving specific levels of lower emission transport modes for passengers and staff accessing the airport.

ASSESSMENT OF EFFECTS

8.3.11. The assessment of effects from the Proposed Development are presented under each of the four emissions areas. In line with the IEMA Guidance the evaluation of significance considered:

- the scale of emissions resulting from the Proposed Development, after embedded mitigation, and how these add to future baseline emissions; and
- the extent to which future annual emissions levels reduce over time, contextualisation of the extent to which these support wider efforts to reach net zero, and whether emissions trajectories render emissions as significant.

[11] Scope 1: direct emissions of GHGs from plant, equipment and vehicles owned by the reporting corporate entity. Scope 2: indirect emissions of GHGs associated with purchased electricity, steam, heating and cooling. Scope 3: other GHG emissions arising from the activities of the organisation including those associated with construction, transportation, waste, water, business travel and employee commuting.

8.3.12. The assessment of each emissions area compared the overall magnitude of emissions for future assessment years against the UK carbon budgets. The assessment also considered how each area increases/ reduces GHG emissions relative to a comparable baseline consistent with a trajectory toward net zero by 2050. ABAGO emissions are contextualised against the CCC Balanced Pathway trajectory for non-domestic buildings; surface access emissions are contextualised against the CCC Balanced Pathway trajectory for UK surface access; and aviation emissions are contextualised against the UK Jet Zero trajectory for national emissions from aviation.

Construction

8.3.13. Carbon losses through land use changes were estimated to change by less than 1% and were therefore not considered further in the GHG assessment. Construction emissions reflect the commitments set out in the CAP which would deliver a 17% reduction in emissions from typical construction practices. Aggregated estimated emissions from construction between 2024 and 2038 would be 1.55MtCO_2e while planned construction up to 2026 (representing the future baseline) would be 0.045MtCO_2e. Contextualisation of construction emissions against UK carbon budgets is presented in ES Table 16.9.4 [REP4-005]. This shows that for all periods construction emissions are higher than those in the future baseline but do not exceed 0.1% of total emissions in any period. Reflecting the commitments to mitigate emissions, the Applicant concluded that construction impacts would result in a minor adverse not significant effect [REP4-005].

Airport Buildings and Ground Operations

8.3.14. ES Table 16.9.6 [REP4-005] shows that ABAGO emissions increase from the baseline position under the with-Project scenario. From baseline year GHG emissions of 0.065MtCO_2e emissions would be 0.005MtCO_2e in 2029 and 0.001MtCO_2e in each other assessment year. Comparison of ABAGO emissions to the carbon budget show that they are very small for all periods, not exceeding 0.01% of the total emissions for any budget period. Comparisons of net emissions changes arising from the Proposed Development are even smaller. ES Diagram 16.9.1 shows that under the CAP, emissions increase at a more rapid rate than the net zero trajectory. The trajectory presented is for the full with-Project GHG emissions rather than only the net gains from the Proposed Development. On this basis the Applicant concluded that ABAGO would result in a minor adverse not significant effect.

Surface Access

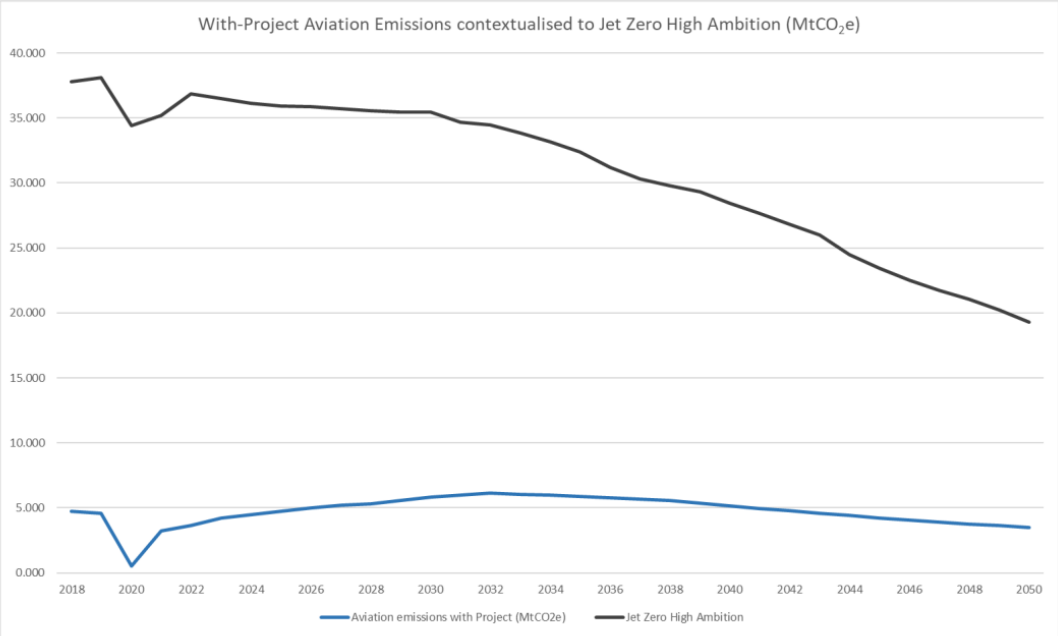
8.3.15. The ES [REP4-005] stated that residual surface access emissions would be greater for the Proposed Development than in its absence. From baseline year GHG emissions of 0.368MtCO_2e emissions would be 0.273MtCO_2e in the opening year falling back to 0.016MtCO_2e in the net zero year. Comparison of surface access emissions to the carbon budgets indicate that they do not exceed 0.1% of the total emissions for any budget period. Estimation of the rates at which transport will decarbonise from 2018 to 2050 are based on projections within the TDP. Surface access emissions increase from the baseline position, but broadly align with a decarbonising trajectory out to 2050 from the CCC Balanced Pathway for surface transport. Additionally, the trajectory presented is for the full with-Project GHG emissions rather than only the net gains from the Proposed Development. On this basis the Applicant concluded that surface access would result in a minor adverse not significant effect.

Aviation Emissions

8.3.16. Baseline year (2018) GHG emissions would be 4.756MtCO_2e rising to 5.888MtCO_2e in the opening year (2029) before declining to 3.476MtCO_2e in 2050 [REP4-005]. Modelling is based on forecast flight destinations and aircraft types for the with-Project scenario, changes in aircraft fleet to 2038, average annual engine efficiency improvements beyond 2038, Sustainable Aviation Fuels (SAF) uptake and forecast uptake of zero emission aircraft out to 2050 in line with the Jet Zero High-Ambition scenario.

8.3.17. The ES [REP4-005] concluded that the overall contribution of Gatwick aviation emissions in the with-Project scenario for the Sixth Carbon Budget period (3.038%) reflected the scale of Gatwick and was based on the entire airport. The net increase between with-Project and baseline aviation emissions during the Sixth Carbon Budget period would be 5,555MtCO_2e. Diagram 16.9.3 (reproduced below as Figure 8.2) compares residual emissions on a with-Project basis (comprising all airport aviation) including Jet Zero assumptions, with the Jet Zero High-Ambition scenario trajectory. This shows emissions from Gatwick flights increase out to 2032 under the with-Project scenario before emissions begin to decrease on a downward trajectory to 2050. In light of the contextualisation of emissions from Gatwick compared to UK carbon budgets, the Applicant concluded that the assessment of aviation would result in a minor adverse not significant effect.

Figure 8.221: Comparison of Project Aviation Emissions with Jet Zero Residual Emissions Trajectory



8.3.18. Under the SFT, aviation emissions peak by 2032, at a level approximately 3.6% higher than under the core-case scenario (ES Table 16.9.11 [REP4-005]). This is prior to the Sixth Carbon Budget period from 2037 leading the Applicant to see the impact when contextualised as very small. Under the SFT the contribution of aviation from the airport to the Sixth Carbon Budget would be 3.132%.

8.3.19. The difference in net aviation emissions arising from the with-Project scenario is an 0.584% increase in the Sixth Carbon Budget period under the SFT, compared to an 0.576% increase under the main scenario.

8.3.20. Given the minor scale of change arising from the SFT the Applicant considered that future emissions from aviation would align with the UK Government trajectory as presented in the JZS. On this basis the Applicant concluded that the SFT scenario would result in a minor adverse not significant effect.

Aggregating Appraisal of GHG Emissions

8.3.21. In accordance with ANPS paragraph 5.77 the ES includes a GHG 'worst-case' assessment. The Applicant interpreted worst-case as both the year of highest aggregated emissions, and the year in which emissions differ to the greatest extent from the baseline. The worst-case emissions are shown in ES Table 16.9.12 [REP4-005].

8.3.22. ES Table 16.9.13 [REP4-005] compares the aggregate impacts against the carbon budgets for the relevant periods which shows that in the Sixth Carbon Budget the contribution of the total future airport emissions to the carbon budget is 3.136%. This contribution reflects the increased scope of the budget to include international aviation. Of the total emissions value of 30.265MtCO_2e in the Sixth Carbon Budget period, approximately 95% is attributable to aviation impacts (ES Chapter 16 paragraph 16.9.93 [REP4-005]).

8.3.23. The Applicant viewed the with-Project scenario as very small for all periods except for the Sixth Carbon Budget, where it assumes the application of policy to deliver net zero aviation by 2050, and support for the decarbonisation of the aviation sector to achieve this.

CUMULATIVE EFFECTS

8.3.24. The ES stated that an assessment to examine how the impacts arising from the Proposed Development might cumulatively impact upon individual receptors is not appropriate for the assessment of GHG emissions. Impacts arising from GHG emissions have the same impact whether they are located near to Gatwick or in another region/ country. The impacts on a given location arise from the aggregated GHG levels in the atmosphere, not from the magnitude of GHG emissions in the local area.

8.3.25. The inappropriateness of undertaking a cumulative appraisal is reflected in the IEMA Guidance. The comparison of each emissions category to the UK carbon budgets, and to a sector-based net zero trajectory, provides the cumulative assessment. Additionally, the overall comparison of emissions from all aggregated sources to the carbon budgets provides a cumulative appraisal.

THE APPLICANT'S CONCLUSION

8.3.26. The GHG assessment assessed the emissions arising from the Proposed Development and contextualised these both individually within emissions categories and in aggregate compared to the UK carbon budgets. ES Table 16.12.1 [REP4-005] summarises the residual effects, while Table 16.12.2 shows the assessment of significance of each emissions category. The Applicant concluded that the overall impacts arising from the Proposed Development are not so significant that the Proposed Development would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets. On this basis the overall assessment concludes that the Proposed Development has a minor adverse not significant effect.

8.4. ISSUES CONSIDERED DURING THE EXAMINATION

INTRODUCTION

8.4.1. Many of the RRs on climate change/ GHG issues made general comments about the effect the Proposed Development would have at a time of climate emergency. The Proposed Development was seen as leading to an increase in carbon emissions/ CO_2 with additional flights being particularly harmful. Many Interested Parties (IPs) argued that air travel should be reduced, not increased. Other IPs suggested that any new proposals should be contingent upon zero emission flights. Examples of RRs opposed to the Proposed Development because of GHG emission concerns included but are not limited to Ms Bramley [RR-3677], Ms Clarke [RR-1195], Mr Humphreys [RR-4193], Councillor Essex [RR-0896] and Mr Lloyd [RR-2126].

8.4.2. A small number of RRs related to climate change/ GHGs indicated support for the Proposed Development suggesting that it would align with the broader ambitions of the UK aviation sector to achieve net zero aircraft emissions.

8.4.3. The vast majority of local authorities and Parish Councils which submitted RRs made submissions relating to climate change and GHG emissions. Submissions on GHG emissions by groups with local connections to the airport included those made by Communities Against Gatwick Noise Emissions (CAGNE) [RR-0556], CPRE Sussex [RR-0927], Gatwick Airport Consultative Committee (GATCOM) [RR-1494], Gatwick Area Conservation Campaign (GACC) [RR-1495], Gatwick Obviously Not (GON) [RR-1502], Plane Wrong [RR-3661] and Surrey Climate Commission [RR-4396].

8.4.4. Other groups and organisations making substantial submissions on the issue of GHGs included the Aviation Environment Federation (AEF) [RR-0407], Bristol Airport Action Network [RR-0527], Flight Free UK [RR-1419], the New Economics Foundation (NEF) [RR-3251], No Airport Expansion [RR-3348] and Stay Grounded UK Chapter [RR-4247].

8.4.5. At Open Floor Hearing (OFH) 1 [EV4-001 to EV4-004], OFH2 [EV5-001] and OFH3 [EV15-001 to EV15-003] many speakers addressed the issue of climate change and GHGs and spoke passionately and with great authority and experience in opposition to the Proposed Development, commenting on the damage which GHG emissions were doing to the planet.

8.4.6. All Local Impact Reports (LIRs) addressed GHG emissions. The Joint West Sussex Local Authorities' (JWSLAs) LIR [REP1-068], Joint Surrey Councils'(JSCs) LIR [REP1-097] and the East Sussex County Council (ESCC) LIR [REP1-070] all identified the impacts associated with GHG emissions and the required mitigation. The Kent County Council (KCC) LIR [REP1-079] and the Sevenoaks District Council's LIR [REP1-095] highlighted the challenge of compliance with national targets and the cost to society of GHG emissions.

8.4.7. In addition to the general points raised by IPs at OFHs, we asked written questions about GHG emissions through first written questions (ExQ1) [PD-012], second written questions (ExQ2) [PD-021] and procedural decisions [PD-027]. Issue Specific Hearing (ISH) 6 [EV11-001] was specifically focused on GHG matters. The following issues remained in dispute at the end of the Examination.

THE POLICY CONTEXT

8.4.8. In respect of the CCC's call for a capacity management framework in its Annual Report 2023, an issue raised by many IPs, the Government subsequently determined that demand management is not necessary. The Applicant's response [REP3-086] to ExQ1.CC.1.1 also referenced the Government's response to Environmental Audit Committee in March 2024 and *"Supporting the transition to Jet Zero: Creating the UK SAF Mandate"* (April 2024) in highlighting the role of new fuels and technology to address net zero targets.

8.4.9. Noting that the determination of the DCO application was not the appropriate forum to challenge the Government's approach, the NNNPS 2024 states that the SoS for Energy Security and Net Zero regularly assesses whether the UK has sufficient policies and proposals overall to meet the UK carbon budgets, with a view to meeting the net zero target: *"It would not be feasible or sensible for such an assessment to be done at the time of taking individual development decisions, and there is no legal requirement to do so".*

8.4.10. While we asked IPs at ISH6 [EV11-001] about the extent, breadth and relevance of policy documents relating to GHGs, paragraph 3.61 of the JZS confirms that the Government's existing planning policy frameworks, along with the JZS and Flightpath for the Future have full effect and are material considerations in the statutory planning process for proposed airport development.

8.4.11. It can also be expected that IPs concerns about the uncertainty surrounding the means to achieve the objectives in the JZS can be addressed through proactive monitoring and intervention commitments in the JZS and Jet Zero Strategy: One Year On (July 2023) with multiple solutions provided to achieve objectives. Moreover, while the modelling on which the JZS is based was subject to detailed interrogation from IPs the policy itself is robust. Consequently, there is no reason why the weight given to the JZS trajectory should be reduced.

8.4.12. The JZS must also be seen in the context of the CCA2008, and the need to meet national GHG emission reduction targets. Notwithstanding the uncertainties inherent in the JZS, MBU and the delivery of the Carbon Budget Delivery Plan (CBDP), as the control regime is operated by the Government it is reasonable to conclude that the means for achieving its net zero obligations under the CCA2008 would be met.

8.4.13. Many of the issues raised by IPs during the Examination which questioned how GHG emissions generated by the Proposed Development should be addressed in policy terms were in fact questioning Government policy itself. These are matters which extend beyond the Applicant's DCO application and on which it is not necessary or appropriate for the ExA to reach a conclusion.

NON-CO_2 EMISSIONS

8.4.14. As set out in Table 14.6.1 of the Applicant's RR Report [REP1-048] various IPs noted the lack of consideration of non-CO_2 emissions in the GHG assessment. The Applicant's position was that the approach to non-CO_2 emissions reflected the guidance in the JZS and as discussed in section 16.4 of ES Chapter 16 [REP4-005].

8.4.15. ES Chapter 16 [REP4-005] notes that while the likelihood of non-CO_2 emissions contributing to changes in climate is acknowledged, given that there is no well-established methodology for quantifying non-CO_2 emissions impacts, and uncertainty on how to identify the magnitude of impact, the assessment does not attempt to quantify them.

8.4.16. NEF [REP1-241] cited research which suggested that non-CO_2 GHGs made up the majority of the aviation sector's climate impact. Consequently, NEF was critical of the assessment and noted that no mitigation measures were proposed for the non-CO_2 impacts. Similarly, the JZS notes that the best estimate is that *"roughly two thirds of aviation's historical climate impacts are due to non-CO_2 and that whilst non-CO_2 emissions can have both warming and cooling effects, the net warming effect is likely to be around three times that of CO_2"*.

8.4.17. NEF noted that ES Chapter 16 [REP4-005] acknowledges that non-CO_2 climate impacts from aviation are recognised in corporate reporting guidance in the UK. NEF refers to the Department for Energy Security and Net Zero (DESNZ) publication "*Government Greenhouse Gas Conversion Factors for Company Reporting*" which states that *"consideration of the non-CO_2 climate change effects of aviation can be important in some cases, and there is currently no better way of taking these effects into account than applying an aggregate multiplier. A multiplier of 1.7 is recommended as a central estimate, based on the best available scientific evidence*".

8.4.18. NEF also noted [REP1-241] that the Department for Transport (DfT) aviation unit suggest that this multiplier can also be applied as a sensitivity test in a scheme's core socioeconomic assessment. Consequently, NEF recommended that the Applicant should present the cost of non-CO_2 emissions using the DESNZ recommended multiplier.

8.4.19. GON [RR-1502], AEF [REP1-114] and GACC [REP7-132 and REP9-247] shared NEF's view that the Applicant should have modelled the non-CO_2 impacts of the Proposed Development using the multiplier for company reporting. CPRE Sussex [REP9-224] noted that it could push increased emissions into the range where they must be taken into account and that failing to use the multiplier weakened the Applicant's case. Bristol Airport Action Network [RR-0527] argued that the former Department of Business, Energy and Industrial Strategy (BEIS) used a multiplier of 1.9 in their decisions but there was a case for the multiplier to be closer to 3.

8.4.20. CAGNE [REP9-223] argued that the judgment of the High Court in Bristol Airport Action Network v SSLUHC [2023] EWHC 171 (Admin) did not conclude that non-CO_2 emissions should be ignored by decision-makers. Rather, the Court held that because only the BEIS 1.9 multiplier had been relied upon and given other technical evidence in non-CO_2 emissions before the Inquiry, it was rational in those circumstances for the Panel to conclude that it was not appropriate to apply the multiplier. CAGNE argued that the multiplier proposed by AEF, can lawfully and rationally be used to provide an indication of the scale of non-CO_2 emissions that would be caused by the Proposed Development. The lack of a settled methodology does not prevent the use of a valid methodology to provide helpful information.

8.4.21. NEF [REP1-241] applied the multiplier of 1.7 to the carbon emissions data provided in ES Appendix 16.9.4 [APP-194], only to departing flights. This highlighted that the total CO_2 equivalent emissions would rise from approximately 18.5m tonnes to 31.5m tonnes over the period to 2050.

8.4.22. The Applicant [REP4-036] noted the uncertainty over the magnitude of non-CO_2 impacts and that a multiplier is not a straightforward CO_2 equivalent metric which does not reflect accurately the different relative contributions of emissions to climate change over time. Consequently, the use of a 1.7 multiplier had to be seen in the context of significant and acknowledged uncertainties in this area.

8.4.23. Furthermore, the Applicant [REP9-112] argued that a modified emissions estimate could not be contextualised as directed by the IEMA Guidance as there is no recognised benchmark against which to compare the impact of non-CO_2 emissions. Additionally, the uncertainties about their assessment mean that modelling is not part of the information that is reasonably required in the ES. As knowledge develops the Applicant has committed within the CAP [APP-091] to monitor and respond to emerging policy relating to non-CO_2 emissions as this comes forward.

8.4.24. Turning to the Bristol Airport case the Applicant [REP9-112] also referenced that the Panel had acknowledged that non-CO_2 effects had the potential to bring about climate change but recognised the uncertainty as to their effect and longevity. As such they concluded that it would be unreasonable to weigh this matter in the balance against the proposal. The Applicant quoted the High Court judgment which stated that in respect of the BEIS multiplier of 1.9 *"there is very far from being any scientific consensus that it is a relevant tool in determining non-CO_2 emissions from aviation other than in company reporting"*. The judgment also questioned how the multiplier could assist in considering whether the airport's proposals would materially affect the ability of the UK to meet its carbon budgets and net zero target.

8.4.25. NEF [REP1-241] also indicated that the benefit-cost assessment had not included non-carbon GHG emissions which delivered most of aviation's negative impacts on the climate and would significantly increase the scheme's costs. At D10 NEF [REP10-049] identified that the cost of non-CO_2 emissions would increase the environmental cost of the scheme from £5.1 billion (bn) to £9bn. This assessment was based on adjustments which took account of DfT Transport Analysis Guidance (TAG) and DESNZ guidance on GHG emissions company reporting. In NEF's view the failure to make such an adjustment significantly underestimates the scheme's impact. As this evidence was submitted at the final deadline the Applicant did not have an opportunity to respond to it.

8.4.26. The Applicant's response [REP3-076] to NEF referenced the Needs Case Appendix 1 – National Economic Impact Assessment [APP-251] which addresses the rationale behind the exclusion of non-CO_2 effects from environmental costs modelled. This recognises that "*Due to significant uncertainty around the magnitude of these impacts, the costs arising from non-CO_2 pollutants are not quantified in this assessment"*. The Applicant noted that this approach followed the latest DfT guidance which suggests that a qualitative approach was appropriate.

ExA's Conclusion on Non-CO_2 Emissions

8.4.27. The non-CO_2 impacts from aviation are recognised and referenced in the Sixth Carbon Budget and the JZS as well as the Applicant's own ES. The likelihood of non-CO_2 emissions contributing to changes in climate is also acknowledged but there is no agreed methodology for quantifying impacts or the magnitude of impact. There is also no agreement between parties about whether any multiplier appropriately addresses the magnitude of impact let alone what multiplier should be applied. Difficulties also occur in contextualising impact as directed by the IEMA Guidance.

8.4.28. In spite of these challenges, we are not convinced that the issue should be left in the 'too difficult' category and not included in the overall assessment given its potential scale. While acknowledging that the JZS and the CAP recognise the possibility of further research and action, this does not assist in determining the impact of non-CO_2 emissions on climate change in the extant case. When taking

account of the costs of non-CO_2 emissions presented by NEF, we also have concerns that the full impact of non-CO_2 emissions has not been addressed.

8.4.29. We agree with CAGNE's comment that the lack of a settled methodology does not prevent the use of a valid methodology, but any methodology must produce plausible outcomes and too many uncertainties create problems for quantifying results. To consider the effect of non-CO_2 emissions caused by the Proposed Development a qualitative judgment would be more appropriate and in line with DfT advice. Consequently, we consider that these emissions would mean that the Proposed Development would add to the magnitude of impacts and likely have a net warming effect.

THE FINCH CASE AND DOWNSTREAM EFFECTS

Context

8.4.30. The Supreme Court judgment in the case of R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2024] UKSC 20 (Finch) was handed down on 20 June 2024. Through ExQ2.CC.2.1 [PD-021] we invited all parties to comment on the relevance or otherwise of the judgment to the Applicant's DCO application.

8.4.31. In responding to ExQ2.CC.2.1, the Applicant, [REP7-079], Legal Partnership Authorities (LePAs) [REP7-110] and CAGNE [REP7-129] all provided their own summaries of the key issues from the Supreme Court ruling.

8.4.32. The Applicant's approach to the implication of Finch [REP9-112] took the view that representations on this matter covered three areas: the need to assess carbon emissions from inbound flights; the relationship between indirect economic effects and the assessment of carbon effects; and the need to include well-to-tank (WTT) emissions, related to the creation of aircraft fuel, within the carbon assessment. This section covers the first two of these issues with the issue of WTT emissions primarily covered in the following section.

Emissions from Inbound Flights

8.4.33. The Applicant's position at the start of the Examination was that the ES [REP4-005] had appropriately assessed the emissions from outbound aircraft (both domestic and international) but not inbound flights. In their Written Representations various IPs including GACC [REP1-173] had argued that the Applicant's assessment should include inbound international flights and that it was disingenuous to treat these as zero. At ISH6 [EV11-001] we also asked the Applicant whether additional in-bound flights occurring as a result of the Proposed Development should be included as they would generate increases in emissions elsewhere in the world that would not occur in the absence of the Proposed Development.

8.4.34. The Applicant [REP3-072 and REP4-032] indicated that the standard international approach was for aviation emissions to be accounted for at the source location. Inbound flights had been excluded to provide contextualisation against the UK GHG inventory and against the Jet Zero trajectory, and to be consistent with the methodology used to calculate and set the carbon budgets. The Applicant noted that whilst it could theoretically calculate a number to account for the GHG emissions from arrivals, that number could not practically be contextualised.

8.4.35. The Finch judgment was handed down after D5. Commenting on its relevance to the Applicant's DCO application, the LePAs [REP7-110] took the view that climb,

cruise and descent (CCD) emissions for inbound flights ought to be assessed as part of the EIA process. Given that CCD emissions from outbound flights were deemed to be effects of the project by the Applicant, the necessary relationship of legal causation between the CCD emissions from inbound flights also exists.

8.4.36. The LePAs also considered [REP7-110] that while aviation emissions are allocated to the country of departure for the purposes of carbon budgeting this does not alter the requirement for all indirect effects of the Proposed Development on climate to be assessed. Post-Finch emissions for inbound flights should be assessed as these are indirect effects of the Proposed Development on climate and their quantification could still be contextualised.

8.4.37. The Applicant confirmed ([REP7-079] and Appendix D: Response to Submissions on CC.2.1 [REP8-119]) that in the light of the Finch judgment it acknowledged that the EIA Directive does not impose any geographical limitation on the scope of the environmental effects of a project although a reason not to assess carbon emissions could be that they are judged not to be significant.

8.4.38. In respect of inbound emissions, the Applicant confirmed that it had provided an assessment of total inbound emissions [REP7-079] based on a simple doubling of the emissions associated with outbound flights. At 2050 this shows that the aviation emissions would double from 0.512MtCO_2e to 1.022MtCO_2e (excluding WTT emissions). When WTT emissions are included for these flights (total WTT) this figure rises to 1.234MtCO_2e. However, the Applicant [REP4-036 and REP7-079] explained that considering these doubled emissions against the Jet Zero trajectory would not allow for an appropriate contextualisation given that inbound international emissions are not within the scope of the JZS and trajectory. The suggestion that total aviation emissions should be contextualised against UK carbon budgets was also inconsistent with the IEMA Guidance. Nevertheless, the Applicant contextualised total aviation emissions against an International Civil Aviation Organisation (ICAO) sector-based scenario that aligns with the JZS High-Ambition scenario.

8.4.39. Carbon emissions from domestic inbound flights, are extremely small and would reduce substantially over time as a result of the JZS but they fall within the scope of UK carbon budgets [REP8-119]. Nevertheless, the Applicant produced updated aggregate emissions [REP9-120].

8.4.40. At D8 the LePAs [REP8-161] commented that the Applicant needed to update the ES to present and contextualise the figures for inbound flights in a comparable way to how outbound aviation emissions were originally assessed. GACC [REP8-152 and REP9-247] and the LePAs [REP8-161] argued that in-bound flights should be within the scope of the ES and quantified for all years, as has been provided for departing flights with and without the Jet Zero assumptions applied. The LePAs also questioned why the Applicant had contextualised figures for inbound flight emissions against the total anticipated figure for 2050 global international aviation emissions when in respect of the assessment of outbound aviation emissions the IEMA Guidance had been used.

8.4.41. CAGNE [REP8-143] noted that the Applicant argued that contextualisation of emissions from international flights cannot be undertaken against UK carbon budgets. However, this failed to recognise that assumptions regarding fleet improvement, SAF uptake and zero emission aircraft were not applied to carbon budgets and in particular to the Sixth Carbon Budget yet the Applicant applied the assumptions itself and still contextualised against the Sixth Carbon Budget.

8.4.42. CAGNE [REP8-143] and GACC [REP8-152 and REP9-247] highlighted concerns about how reporting within the UK GHG inventories against carbon budgets is different from what is required to be assessed as part of the ES if the implications of causation from Finch are applied to the DCO application. Also, the dismissal of inbound domestic emissions as small while excluding inbound international flights is illogical given that the Finch case rules that location of emissions should in no way limit what is considered in the ES.

8.4.43. The Applicant rejected [REP8-119] the suggestion from KCC [REP7-106] that the assessment covers only the landing stage of an outward flight but not the consequential GHGs incurred at destination airports, particularly where airports expand capacity to accommodate additional air traffic from Gatwick. Difficulties in establishing reliable evidence to contribute to a properly reasoned conclusion on the GHG emissions arising were also identified by the Applicant.

8.4.44. The LePAs [REP7-110] recognised that there may be potential issues about the substitution of emissions if modelling indicates that inbound flights would likely have flown anyway without the Proposed Development, just to a different airport. In this context they referenced the case of Friends of the Earth and South Lakeland Action on Climate Change v the SoS for Levelling Up, Housing and Communities and others [2024] EWHC 2349 (Admin) rightly assuming that judgment was unlikely to be handed down before the Examination concluded. In the judgment issued on 13 September 2024, the High Court held that the decision to grant planning permissions without first assessing the effect of downstream combustion emissions from the burning of coal was an error in law. The judgment also found that the SoS's approach to the issue of substitution was inconsistent and irrational in accepting that the Whitehaven coal mine would not cause any increase in global GHG emissions because the coal mined would replace or substitute coal that would otherwise have been extracted elsewhere.

Indirect Economic Effects and the Assessment of Carbon Effects

8.4.45. The Applicant [REP5-072 and REP7-079] regarded concerns from GACC [REP6-124] and others that the EIA should identify and assess economic effects which generate carbon effects that can be identified and assessed as misplaced and far removed from the situation in Finch. It acknowledged there would be direct economic effects that produce carbon effects which can be assessed. However, while indirect and induced economic effects, may involve a range of activities which can be assessed financially, in relation to potential carbon emissions they were beyond any realistic assessment.

8.4.46. The Applicant's view [REP7-079] was that even if further economic activity as measured in financial terms in the local economic assessment could generate further carbon emissions, the nature of the indirect, induced and catalytic economic effects was considered such that there was insufficient evidence that a possible environmental effect is likely. The national economic assessment was not designed to consider economic benefits in a way which translated into carbon emissions. The Applicant considered that as set out in its response to ExQ2.CC.2.1 [REP7-079] and the Greenhouse Gases Technical Note [REP9-120] it did not envisage that any further assessment of emissions resulting from economic activity would lead to a conclusion of any significant effect.

8.4.47. In the light of the Finch judgment, the Applicant concluded [REP9-112] that the scope for indirect effects to arise *"which are not a direct result of the Project, often produced away from the Project site or as a result of a complex pathway"* as set out

in ES Chapter 6 [APP-031] was consistent with the approach in Finch. The Applicant did not consider that Finch required the assessment of any effects which had not already been addressed in the ES or any other Examination information.

ExA's Conclusion on the Finch Case and Downstream Effects

8.4.48. In response to the Finch judgment the Applicant accepted that the Proposed Development may give rise to significant downstream GHG emissions in respect of inbound flights and provided evidence for consideration alongside its original ES. The evidence in respect of inbound flights was sufficient to base a reasoned conclusion as to whether a potential effect was likely. The revised assessment disregarded geographic boundaries by including international emissions, thereby ignoring the potential for double counting of emissions. The Applicant's revised assessment, on which IPs had an opportunity to comment, also took account of WTT emissions which is also appropriate in terms of the downstream effects identified through the Finch decision. In doing so the assessment recognised a clear causal link between the Proposed Development and GHG emissions. The effects themselves and the approach to contextualisation is considered below.

8.4.49. In respect of substitution, it would be unreasonable to conclude that there was not at least some element of aviation emissions associated with growth at Gatwick which is generated by the Proposed Development and not from the transfer of flights from other airports.

8.4.50. In respect of the indirect economic effects, we consider that while there may be effects which can be assessed financially, potential carbon emissions would not be capable of meaningful assessment and the possibility of an environmental effect being demonstrated is not likely. Consequently, we agree with the Applicant that no further assessment, beyond that which had already been carried out, is required.

APPROACH TO WHOLE LIFE CARBON AND WELL-TO-TANK EMISSIONS

8.4.51. Various RRs and LIRs commented that the carbon assessment should adopt a whole life carbon approach. Following discussion at ISH6 [EV11-001] the Applicant explained [REP4-036] how a whole life carbon assessment had been applied in the submission through *Supporting Greenhouse Gas Technical Notes: Appendix A – Whole Life Carbon Considerations* [REP4-020]. It confirmed that the assessment took account of the extent of available information, and that the assessment was aligned with the IEMA Guidance in informing the assessment of significance which remained unchanged.

8.4.52. Responding to the CPRE Sussex [REP9-224] comment that different types of fuels were treated differently in terms of life cycle analyses, the Applicant stated [REP9-112] that the ES had applied the whole life carbon accounting guidance issued by the Royal Institution of Chartered Surveyors (RICS) to inform the quantification of activity and the selection of carbon factors.

8.4.53. The Applicant also committed through the CAP [APP-091] to become certified under PAS2080 which would require a full life carbon assessment of each part of the Proposed Development. The requirement of the PAS2080 process would require a substantially more detailed and comprehensive approach to the consideration of whole life carbon, thereby providing an effective mechanism for its mitigation throughout the design and delivery of the Proposed Development [REP3-107 and REP4-020].

8.4.54. In their RRs, ESCC [RR-1252], Mid Sussex District Council [RR-3043], RBBC [RR-3734] and West Sussex County Council [RR-4773] commented that WTT emissions had not been calculated which was not compliant with the GHG Protocol Corporate Accounting Standard and the UK Government's carbon accounting methodology (BEIS 2022). Using WTT emissions methodology would raise GHG emissions associated with aviation by approximately 20%. The carbon accounting methodology recommends that "*WTT fuels conversion factors should be used to account for the upstream Scope 3 emissions associated with extraction, refining and transportation of the raw fuel sources to an organisation's site (or asset), prior to combustion"*.

8.4.55. The Applicant [REP1-048 and REP4-020] did not dispute that WTT emissions arise in the supply chain for fuels and that methodologies for estimating these are well established. The exclusion of WTT emissions from the quantification of carbon emissions in the ES [REP4-020] was to avoid inconsistency in the reporting of GHG emissions across the four emission topics. Carbon assessment methodologies are not fully consistent with RICS guidance indicating that WTT emissions could be included but IEMA Guidance makes no reference to WTT. Moreover, the JZS does not include WTT within the main emissions calculation methodology.

8.4.56. In response to ExQ2.CC2.1 [PD-021] the Applicant [REP7-079] confirmed that it had quantified WTT emissions for all four GHG sources as explained in *Supporting Greenhouse Gas Technical Notes – Appendix B Well-to-Tank Emissions* [REP4-020]. As WTT emissions sit outside the contextualisation against UK carbon budgets for ABAGO, surface access and aviation they were not included within the trajectories used to contextualise these sources. However, a review was undertaken to include WTT emissions from inbound flights on the same basis as the Appendix B calculations as well as allowing for WTT emissions associated with production outside the UK.

8.4.57. When WTT emissions are added to those for construction, ABAGO, surface access and aviation for the Project between 2018 and 2050 an increase from 20.063MtCO_2e to 24.041MtCO_2e would occur, equating to an increase of 19.83% [REP4-020]. With 64% of WTT emissions associated with aviation fuel produced outside the UK in 2022 and therefore outside of the scope of UK carbon budgets, the increase in the portion of WTT emissions from aviation fuel produced within the UK was 7.55%. When contextualised against UK carbon budgets the effect of including domestic WTT emissions increased the contribution of the Project to the Sixth Carbon budget from 0.604% to 0.649%. This was considered by the Applicant to be not significant [REP4-020]. Additionally, with the inclusion of inbound flight emissions incorporating WTT emissions there would be no material difference to the contextualisation against global aviation emissions. The Applicant therefore concluded that aviation emissions with WTT emissions would not be significant.

ExA's Conclusion on Approach to Whole Life Carbon and Well-to-Tank Emissions

8.4.58. Although neither the ANPS nor the NNNPS 2015 refer to whole life carbon the NNNPS 2024 which is capable of being an important and relevant matters does address the issue. It confirms that national networks infrastructure projects should include a whole life carbon assessment at critical stages in the project lifecycle, referencing both TAG and PAS2080. Taking account of this recent advice from the DfT we conclude that having now clarified its position, the Applicant's approach to whole life carbon to date, and going forward, is both appropriate and proportionate.

8.4.59. In respect of WTT emissions we acknowledge that the Applicant's position has evolved through the Examination and that evidence has been provided which clarifies the effect of including WTT emissions for domestic aviation fuel while noting that it has not been applied to the much larger proportion of imported fuel. The effect of including WTT emissions on the overall assessment is addressed below.

MITIGATION AND AVIATION EMISSION CONTROLS

The Carbon Action Plan

8.4.60. Various concerns were raised about the effectiveness of the measures in the CAP including through the JSC' LIR [REP1-097], the JWSLA' LIR [REP1-068] and by GON [REP1-179]. CAGNE [REP8-143] was also of the opinion that the CAP lacked enforcement powers with no immediate consequences in terms of airport growth if targets were not met while resources for local authorities were inadequate. Through ExQ1 we asked numerous questions (ExQ1.CC.1.3, ExQ1.CC.1.4 and ExQ1.CC1.6 to ExQ1.CC.1.10 [PD-012]) about the CAP's scope and effectiveness.

8.4.61. The Applicant's responses [REP3-086 and REP9-112] confirmed that the CAP had been developed to commit to specific climate mitigation 'outcomes' for construction, ABAGO and aviation rather than any of the underlying potential measures that are referenced beneath each committed outcome. The measures are not prescriptive and provide flexibility to ensure the most effective are implemented. In respect of aviation the primary action to reduce emissions from aircraft would arise from Government strategy at a sectoral scale rather than directly through the influence of individual airport operators. The CAP would be secured through Requirement (R) 21 of the Applicant's final dDCO [REP10-004] which provides certainty as to the outcomes, regardless of how they are achieved.

8.4.62. At D6 the Applicant noted [REP6-093] that its commitments as part of the CAP were in line with Government policy, particularly its commitments in respect of Scope 1 and 2 ABAGO emissions to be net zero by 2030 and to achieve zero emissions by 2040.

8.4.63. At ISH6 [EV11-001] the Applicant explained that the CAP has a different conceptual basis to that of the SAC, in that the impacts of GHG emissions are global and are considered on a national basis. It is therefore reasonable that the local authorities have a lesser role in enforcement of the CAP as compared to the SAC.

8.4.64. At D9 the Applicant [REP9-112] addressed concerns about whether the CAP commitments were clear enough and enforceable, noting that the IEMA Guidance requires assessments to consider the certainty of mitigation proposals and whether they are realistic and achievable. The Applicant explained that the CAP requires the publication of annual monitoring reports. If CAP commitments are not being met or insufficient progress is being made towards compliance, the Applicant must prepare an action plan to detail the additional interventions it proposes with a timescale for their implementation. This would be submitted to Government and if considered to be inadequate there is no limitation on the scope or effect of the Government's potential response to ensure that the objectives of the JZS are addressed. A failure to comply with the outcomes committed in the CAP would represent an impediment to the Government's implementation of the JZS and other carbon reduction commitments. Consequently, the Applicant considered it was not necessary or appropriate to impose a more prescriptive process than that set out in the CAP.

8.4.65. R21 [REP5-005] stated that: *"From the date on which the authorised development begins, the authorised development and the operation of the airport must be carried*

out in accordance with the carbon action plan unless otherwise agreed in writing with the Secretary of State."

8.4.66. Our suggested amendment to R21 (within Annex B to the Agenda for ISH9 [EV20-001]) where we proposed the addition of *"(following consultation with CBC [Crawley Borough Council])"* at the end was supported by various IPs including CAGNE [REP8-143]. Subsequently, the Applicant amended R21 on this basis [REP8-005].

Environmentally Managed Growth

8.4.67. The Joint Local Authorities (JLAs) proposed an Environmentally Managed Growth (EMG) Framework through various submissions including [REP4-050 and REP5-093] with details of a requirement provided at D6 [REP6-100]. One aspect of the Framework was in relation to GHG emissions. The JLAs' case was based on the perceived inadequacies of controls proposed by the Applicant to ensure that the growth of the airport is managed in line with its impacts. It was based on the concept of Green Controlled Growth (GCG) as proposed through the London Luton Airport Expansion DCO application.

8.4.68. The JLAs proposed that the EMG Framework should manage the environmental effects of GHG emissions in relation to ABAGO and surface access transportation. The Applicant addressed the JLAs' EMG Framework through their response to Action Point 8 from ISH8 [REP4-036], *Appendix B: Response to the JLAs' Environmentally Managed Growth Framework Proposition* [REP5-074]; *Response to JLA's EMG Framework Paper* [REP6-093] and *Appendix C Response to the JLAs' EMG Framework Paper* [REP8-118]. The Applicant considered the EMG Framework in respect of control over GHG emissions at a local authority level to be unjustified and unnecessary. With Government responsibility to meet carbon reduction commitments, and policies in place for that purpose, the Applicant saw no need or justification for an additional regime.

8.4.69. The Applicant also noted that the JLAs had acknowledged [REP7-102] that aviation emissions would be controlled by Government policy (primarily the JZS) and like the GCG proposals, there was no intention to include them within the EMG Framework. This was a reflection that an external offsetting mechanism exists in the form of the UK Emission Trading Scheme (ETS) and given that compliance with it is a legal requirement for airlines and that the commitment in the JZS is to fully implement CORSIA the provision of such a mechanism through the Framework would not be necessary. The Applicant [REP9-112] also noted that without aviation emissions, approximately 96% of the airport's GHG emissions would not be subject to the EMG Framework. Recognising that climate change is a global issue the Applicant argued that it would not be appropriate to overlap the reporting/ enforcement regime which Government has in place to meet carbon reduction targets with a system involving local authority regulation.

Aviation Emission Controls and Carbon Cap

8.4.70. The Applicant [REP9-112] rejected GACC's concern [REP8-152] about the lack of Government controls over emissions at Gatwick if the airport exceeds the number of ATMs and GHG emissions it envisages would occur. It rejected the idea that emissions should be subject to the CAP.

8.4.71. AEF [REP3-158] noted that while aircraft emissions were beyond the airport's direct control there was a parallel with aircraft noise which is also subject to planning conditions and limits on capacity. In response, the Applicant [REP4-032] noted the different approach to these topics in the ANPS where there is no expectation that an

applicant would commit to mitigation measures in relation to aircraft in flight (paras 5.78 – 5.81). In relation to noise the ANPS is clear that an applicant should put forward plans for a noise envelope as part of a range of mitigation measures (para 5.60).

8.4.72. AEF proposed [REP1-114 and REP3-158] limits for maximum annual CO_2 levels for all departing flights. It suggested that the CO_2 limits should follow a trajectory reflecting the Applicant's forecast levels of emissions. Through a request under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (R17d.10 [PD-027]) we asked all IPs for their comments on a new requirement proposed by CAGNE at D8 [REP8-143] to address carbon emissions through a carbon cap scheme, building upon AEF's proposals.

8.4.73. Responding to arguments (including CAGNE at [REP4-093]) in favour of a binding set of annual emission caps aligned with the Government's CO_2 trajectory for aviation the Applicant considered that such a requirement would fail normal planning tests as it would not be "*necessary to make the development acceptable in planning terms*". This was because the ES had concluded that the climate change impacts would not be significant, national aviation emissions would be managed in line with the Government's trajectory and replicating an approach through a DCO would not be appropriate.

8.4.74. CAGNE [REP10-039] countered the Applicant's position that there is no policy basis for a carbon cap requirement. Through the CAP and R21 of the dDCO [REP10-004] the Applicant had accepted as a matter of principle that there is a need to reduce carbon emissions and that this should be controlled through the DCO. CAGNE also noted [REP10-039] that the ANPS (para 5.70) in referring to the APF, identifies the Government's key aviation emissions objective being to ensure that the aviation sector makes a significant and cost-effective contribution to reducing global emissions. In CAGNE's view the carbon cap would help to achieve that goal.

8.4.75. CPRE Sussex [REP9-224] supported a restriction on GHG emissions if the High-Ambition scenario for emission reductions were not achieved. It suggested that if the Applicant wished to depend on the High-Ambition scenario inherent in the JZS to meet its climate change obligations it should be willing to accept the need to operate within the emissions reduction pathway indicated.

8.4.76. GACC [REP9-247] also questioned the Applicant's assertion [REP8-118] that *"aviation emissions will be controlled by government"* as the scale of expansion sits outside that envisaged by Government and it had not been explained how Government could control emissions if the ATM and GHG emissions envisaged were exceeded.

8.4.77. The Applicant's response [REP9-121] noted that CAGNE's proposed carbon cap requirement envisaged a scheme to be approved/ regulated by local authorities with maximum annual carbon emissions, annual monitoring reports and growth restrictions where monitoring indicates an exceedance of the specified limits. However, that was considered more onerous than the EMG Framework through including aviation emissions and the JLAs [REP9-151] acknowledged that these are matters for Government.

ExA's Conclusion on Mitigation and Aviation Emission Controls

8.4.78. Many IPs considered that the CAP lacked clear actions and had limited formal enforcement powers and little opportunity for local authority involvement. However,

given the uncertainties with the JZS which we have already identified, we accept that the approach of not having prescriptive measures and allowing flexibility is appropriate. This is particularly so with the CAP being secured through R21 of the recommended DCO and the SoS having a major role in overseeing its effectiveness.

8.4.79. The JLAs' EMG Framework proposed to control GHG emissions in respect of ABAGO and surface access but would largely duplicate the Applicant's approach which would be secured through the CAP and R21. In respect of aviation emissions, the JLAs accepted that these are matters for Government and none of the positions put forward by other IPs have provided a cogent reason why aviation emissions should be controlled at a local level. We accept that controls at a national level are appropriate as is the CAP.

CARBON TRADING AND OFFSETTING SCHEMES

8.4.80. Responding to representations which questioned whether CORSIA and the UK ETS should be relied upon as mechanisms to control aviation emissions including from Safe Landing [REP1-261], GACC [REP1-173] and AEF [REP1-114], the Applicant [REP9-112] noted that modelling of aviation carbon emissions does not discount emissions on the basis of trading or offsetting. The forecasts of likely passenger levels and ATMs is based on the market effect on pricing of aviation travel carbon impacts, as a mechanism to constrain demand. Emissions modelled in the ES use the same assumptions for CORSIA and the UK ETS as in the JZS assumptions.

8.4.81. The Applicant [REP9-112] noted that the UK ETS and CORSIA are widely recognised as appropriate measures to mitigate impacts. The ETS which covers UK domestic flights and departures to European Economic Area states and Gibraltar, would cap aviation while CORSIA would manage international aviation on a similar basis. CORSIA's operation would be reviewed post-2035 but the JZS commits the UK Government to work closely with other states to maintain and strengthen CORSIA. These regimes should be seen as sitting within the strategy to meet Jet Zero in the aviation sector which itself sits within the broader legal obligation to meet net zero by 2050. The JZS commits to *"creating successful carbon markets and investing in greenhouse gas removals to compensate for residual emissions in 2050".* The Government will still be required to comply with its statutory duties in relation to any roll forward, or replacement of the current CORSIA scheme.

8.4.82. The Applicant noted [REP3-072] that the GHG assessment considered emissions from the Project in the context of residual emissions modelled from the JZS which included the cost impacts upon demand arising from ETS and CORSIA rather than the carbon benefit attributed to the CORSIA scheme offsets themselves. On this basis the Applicant contextualised the resultant aviation emissions against the Jet Zero residual emissions trajectory.

ExA's Conclusion on Carbon Trading and Offsetting Schemes

8.4.83. While there is uncertainty about the future of CORSIA the Government has committed to its roll forward or replacement and has a legal obligation to do so. As separate pollution control regimes, the UK ETS and CORSIA can be assumed to operate effectively and therefore in accordance with the NPPF. It is not necessary or appropriate for this Report to do more than reflect that position and acknowledge that Government policy is to meet Jet Zero within the legal obligation to meet net zero by 2050. Carbon trading and offsetting schemes as a means of addressing aviation carbon emissions must be viewed in this context.

THE SIGNIFICANCE OF EMISSIONS

Assessment Criteria and Significance

8.4.84. The IEMA Guidance notes *"…it is essential to provide context for the magnitude of GHG emissions reported in the EIA in a way that aids evaluation of these effects by the decision maker"*. Table 1 of the IEMA Guidance presents a range of potential contextualisation sources with the Applicant noting that not all would be applicable to all parts of the Proposed Development.

8.4.85. Section 6.3 of the IEMA Guidance states that *"a project that is compatible with the budgeted, science based 1.5°C trajectory in terms of rate of reduction…has a minor adverse effect that is not significant"*. The Applicant also confirmed [REP9-112] that assessing the Proposed Development against carbon budgets necessarily means that it is assessed against the Paris Agreement treaty obligation to limit global temperature increases to 1.5°C, as this is the objective that the carbon budgets are based on.

8.4.86. The IEMA Guidance (section 6.3) also proposes that *"An indicative threshold of 5% of the UK or devolved administration carbon budget in the applicable time period is proposed at which the magnitude of GHG emissions irrespective of any reductions is likely to be significant"*. It continues *"A project that meets this threshold can in itself materially affect achievement of the carbon budget"*.

8.4.87. The Applicant considered [REP4-032 and REP9-112] that contextualisation could be carried out by examining the percentage contribution to the UK's national carbon budgets as undertaken through Table 16.9.13 of ES Chapter 16 [REP4-005]. This compares total with-Project emissions to UK carbon budgets. The Applicant noted that comparing airport/ project emissions against national carbon budgets was an approach adopted in previous decisions at Stansted and Luton airports. Moreover, contextualising emissions against the JZS is consistent with the IEMA Guidance. The Applicant [REP9-112] rejected a suggestion by RBBC [REP5-110] that contextualisation should be against the CCC's Net Zero Pathway on the basis that Government has set out its policy in the JZS and that this provides appropriate contextualisation.

8.4.88. CAGNE [REP4-093] noted the importance of interrogating the Applicant's information about the scale of GHG emissions to make an informed judgment on their significance and materiality. It argued that in the light of paragraphs 5.82 and 5.18 of the ANPS it is necessary to evaluate the extent to which the Applicant has provided evidence to measure whether the increase in GHG emissions is so significant as to have a material effect on achieving the obligations in national carbon budgets and any other relevant trajectories and in-sector targets. CAGNE stated that the carbon assessment needed to take account both of the increase from the Proposed Development compared to the future baseline and the total emissions of the Proposed Development operating in the context of the existing airport.

8.4.89. Commenting on the criteria the LePAs [REP4-057] noted the 5% threshold of carbon budgets as capable of being significant and that simply considering the Government's legal obligations is not sufficient. They also noted that the IEMA Guidance advised that contextualisation should consider *"sector-based strategies and budgets"* which relates to the JZS. The LePAs were unclear whether sufficient information had been provided to ensure that all emissions associated with the Proposed Development could be assessed.

8.4.90. National Highways [RR-3222] also questioned how the Applicant could conclude that the emissions would result in a minor adverse effect in terms of alignment with the NNNPS. In response the Applicant [REP10-017] referenced Table 16.2.1 of the ES [REP4-005] which summarises the relevance of the NNNPS and whether the Proposed Development would have a material impact on the Government's ability to meet its carbon reduction targets. This was presented in terms of alignment with the IEMA Guidance. The appraisal of overall significance is then presented in terms of the ANPS and NNNPS tests in the Planning Statement [APP-245].

Local Contextualisation

8.4.91. Various IPs suggested that emissions from the Proposed Development should be contextualised at a local level and that carbon emissions would not be consistent with local policies or declarations of climate emergencies. However, the Applicant noted [REP9-112] that no IP had demonstrated how any local budget could meaningfully be applied to the emissions of an airport designated for its strategic importance at a national level, or how the Proposed Development would conflict with such policy.

8.4.92. Table 1 of the IEMA Guidance identifies limitations with local budgets, noting that a geographical budget below a national budget prescribed by law is not meaningful given that carbon emissions are not geographically circumscribed. It is also unclear whether emerging local budgets would add up coherently to the UK budget. The Applicant noted that there is nothing in law which sets a local budget and national policy does not require an assessment of carbon budgets at a local level.

8.4.93. In respect of locally declared climate emergencies, the Applicant's view was that it had set itself a more demanding carbon target than those which various local authorities consider it necessary to impose on themselves or other development in their areas [REP4-036].

The Significance of Emissions

8.4.94. Responding to the suggestion from the Nutfield Conservation Society [REP7-146] that the Proposed Development would lead to an increase in Scope 3 GHG emissions at waste incinerators the Applicant noted that this represents an increase of around 0.25% in the total net additional GHG emissions arising from the Project in the Sixth Carbon Budget period. This would increase the contribution of the Project to the Sixth Carbon Budget from 0.604% to 0.605%. As such the conclusions of the assessment would be unaffected.

8.4.95. At ISH6 [EV11-001] we asked IPs whether, in the light of paragraph 5.82 of the ANPS, the increase in carbon emissions resulting from the Proposed Development would be so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets, including carbon budgets, thereby providing a reason to refuse development consent.

8.4.96. GACC [REP4-106 and REP9-248] stated that the application understated the likely increased carbon emissions and underplayed their significance. In their view the Proposed Development would have a material impact on the ability of the UK to meet its carbon reduction targets, and future carbon budgets. It set out its own upper and lower bounds on the likely trajectory for GHG emissions and estimated that Gatwick Airport would be responsible for between 4.4% and 5.9% of the UK carbon budget in 2038 and around 20-25% of all aviation emissions forecast in the CCC's Balanced Net Zero Pathway. It argued that significance should be assessed against the 1.5°C compliance trajectory as in the IEMA Guidance as well as against

the JZS's allocation of ATMs and GHG emissions to Gatwick Airport. KCC [REP9-146] also commented that by 2050 with the Proposed Development in place, Gatwick Airport would be responsible for 20% of the overall aviation carbon budget.

8.4.97. In its closing submission the Applicant rejected GACC's analysis (footnote 486 [REP9-112]) because in part the assessment had been based on: information published prior to the publication of the ES; through the inclusion of inbound flights and a multiplier to reflect non-CO_2 emissions; the whole airport emissions as the primary test; and an estimation of the total airport impacts against the CCC Balanced Pathway scenario which does not have any formal status. The Applicant noted that the approach to contextualisation is a matter of judgment, and it is appropriate in an aviation context to adopt the JZS given it represents a committed UK government position and up to date policy.

8.4.98. GACC [REP9-247] contended that the significance of the Proposed Development should be assessed against the size of the sector's carbon budget for the UK, not the global aviation industry. Consequently, the scale of emissions based on causation as now required by the EIA based on Finch would equate to around 14-19% of all 2038 aviation emissions forecast in the CCC's Balanced Net Zero Pathway, when they will become a legally binding part of the UK carbon budget.

8.4.99. CAGNE [REP8-143] commented that were the Applicant to contextualise against UK carbon budgets with updated figures it would show that revised emissions would amount to over 6% of the Sixth Carbon Budget. CAGNE also questioned the appropriateness of contextualising inbound aviation emissions against aviation emissions alone. Its final position [REP9-223] was that the Proposed Development would have a material effect on achieving the obligations both in national carbon budgets and in other relevant trajectories and in-sector targets.

8.4.100. The Applicant [REP4-036 and REP7-079] explained that contextualising total aviation emissions against an ICAO sector-based scenario that aligns with the JZS High-Ambition scenario shows that Proposed Development only emissions would account for 0.11% (no WTT) or 0.13% (with WTT) of projected global aviation emissions in 2050 which the Applicant regarded as "*plainly insignificant*".

8.4.101. Table 2 from the Greenhouse Gas Technical Notes [REP4-020] was not updated in the later version [REP9-120] because the original had provided a scope of emissions which aligned with UK carbon budgets. It was noted that by including all inbound international aviation the scope extends globally and no longer represents the scope of UK carbon budgets.

8.4.102. At D8 the LePAs [REP8-161] noted that the Applicant's global contextualisation with inbound aviation emissions accounting for 0.11% of all global aviation for a single project, would not in their view result in a characterisation as plainly insignificant. CAGNE [REP9-223] also argued that no matter which contextualisation is used, for a single project to amount for 0.11% or 0.13% of the global ICAO international aviation emissions trajectory is significant.

8.4.103. When aggregate emissions are considered, the ES concluded (Table 16.9.13 [REP4-005]) that the highest contribution of the Proposed Development would be 0.604% to the Sixth Carbon Budget. Where the contribution to the Sixth Carbon Budget for whole airport with the Proposed Development was considered (3.136%), the conclusion remained the same. These figures were amended during the Examination to 0.657% and 3.459% and are included in a revised Table 19.9.13 included in the Greenhouse Gases Technical Note [REP9-120]. Contributions to the

fourth and fifth carbon budgets would be 0.032% and 0.055% respectively. The explanatory text notes that the Table provides *"an updated contextualisation of With-Project emissions against UK carbon budgets, incorporating the changes arising from consideration of inbound domestic flights, well-to-tank emissions for fuel production in the UK, and emissions from waste incineration*".

ExA Conclusion on the Significance of Emissions

8.4.104. The Applicant's assessment criteria are based on IEMA Guidance and contextualised against national carbon budgets; there is therefore no reason to contextualise against the CCC Balanced Net Zero Pathway. Additionally, assessing the Proposed Development against UK carbon budgets means that an assessment is made against Paris Treaty obligations as carbon budgets are linked to those obligations.

8.4.105. The test of significance is not governed by an increase in emissions but by alignment with net zero. However, the indicative 5% threshold of UK carbon budgets raises the possibility of an effect being significant at this level. The assessment against carbon budgets is separate from a conclusion against policy but there is no reason to assess effects at a local level: this is not a requirement of legislation or national policy.

8.4.106. Throughout the Examination the Applicant has revised its findings about the contribution which the Proposed Development makes to UK carbon budgets. The contribution has increased with the addition of domestic inbound flight emissions, WTT emissions and emissions from waste incineration. The Applicant's revised assessment indicates a contribution of 3.459% to the Sixth Carbon Budget. This does not include inbound international flights (which as the Applicant has acknowledged would double emissions from 0.512MtCO_2e to 1.022MtCO_2e (excluding WTT emissions)), fuel produced outside of the UK or non-CO_2 emissions as these elements cannot be contextualised against UK carbon budgets. It also covers the entire airport rather than just the Proposed Development but on the other hand addresses the period only as far as the end of the Sixth Carbon Budget in 2037 and not the period up to 2050.

8.4.107. The Applicant's evidence also shows that direct aviation emissions are doubled to 44.689MtCO_2e when inbound flights and WTT are included and that the inclusion of WTT emissions increases the total emissions by over 20% between 2018 and 2050 which is a substantial change.

8.4.108. Contextualising international inbound aviation emissions against an ICAO sector-based scenario indicated a contribution of 0.13% (with WTT) which for a single project does not appear to be insignificant but doubts about using ICAO are not unreasonable.

8.4.109. No definitive evidence has been provided by IPs to demonstrate that the indicative threshold of 5% has been reached (and they are not required to do so). Nevertheless, IPs have raised considerable doubts about the Applicant's assessment that the Project would result in a 3.459% contribution in the Sixth Carbon Budget. Our judgment is that when other elements which cannot be contextualised against UK carbon budgets are considered, the 5% threshold is likely to be reached for the Project as a whole and a rise beyond 2037 could push the Proposed Development to being a significant adverse effect in EIA terms.

8.5. ExA's CONCLUSION ON GREENHOUSE GAS EMISSIONS

8.5.1. GHG emissions and the wider issue of climate change were the focus of many RRs and WRs for obvious reasons. Some of the most passionate contributions to the Examination both orally and in writing were made on these issues and we acknowledge and respect the heartfelt pleas to prevent further airport development. We also recognise that there is no dispute that the Proposed Development would increase GHG emissions.

8.5.2. Aviation policy does not impose a capacity limit on UK airports to achieve climate change objectives and the Government's key objective on aviation emissions as set out in the APF, and repeated at paragraph 5.70 of the ANPS, is to ensure that the aviation sector makes a significant and cost-effective contribution towards reducing global emissions. MBU also emphasises that growth should be subject to environmental issues being addressed.

8.5.3. The NPPF notes that the planning system should support the transition to a low carbon future and as set out in paragraph 157 should contribute to radical reductions in GHG emissions while paragraph 159 requires new development to be planned in ways to help reduce GHG emissions.

8.5.4. Paragraph 194 of the NPPF also states that the focus of planning policies should be on whether proposed developments are an acceptable use of land, rather than the control of processes or emissions, where these are subject to separate emission control regimes. Carbon emissions are subject to the CCA2008, carbon budgets, the UK ETS and CORSIA.

8.5.5. The Applicant has undertaken an assessment of the likely significant climate factors, assessing the carbon impact both from construction and operation and assessed this against the Government's carbon obligations. This has been done before and after mitigation as required by paragraph 5.76 of the ANPS. The assessment has quantified impacts from four sources and assessed worst-case scenarios in accordance with paragraph 5.77.

8.5.6. As required by paragraph 5.78 of the ANPS the Applicant has put forward mitigation measures to limit the carbon impact of the Proposed Development through the CAP and SAC which seek to reduce emissions with controls to be exercised by the SoS and local authorities and secured by DCO requirements.

8.5.7. The Applicant has assessed the likely significant climate factors of the surface access elements of the Proposed Development in line with paragraph 5.17 of the NNNPS, providing evidence of the carbon impact of the project and an assessment against carbon budgets. It has also set out, in accordance with paragraph 5.19, evidence of appropriate mitigation measures primarily through the SAC but also through DCO requirements which would appropriately manage the carbon footprint. The Applicant has adopted the approach set out in the NNNPS 2024 to address a whole life carbon assessment. Appropriate regard has also been had to local policy requirements.

8.5.8. Approximately 95% of the emissions from the Proposed Development are attributable to aviation impacts. These are regulated at national and international levels with potential reductions driven by a range of national aviation policy statements and activities. Among them is the JZS with its High-Ambition trajectory seeking to ensure that Government meets its legal duties including UK carbon

budgets and the achievement of net zero by 2050. Decarbonisation of the aviation sector to achieve these targets would also include measures in the TDP.

8.5.9. In line with paragraph 3.5 of the JZS we find no reason why ABAGO emissions arising from the Proposed Development as part of wider airport operations cannot be managed to achieve a zero-emission airport by 2040. Nevertheless, their contribution to the total GHG emissions in the short term would be considerable.

8.5.10. We accept that the approach to sustainable growth which envisages no need for direct intervention to limit aviation growth, as described in paragraph 3.57, is a matter for Government. Given legal obligations and taking account of the approach to other recent airport expansion decisions there is no reason to believe that Government will not introduce measures to ensure that the Jet Zero trajectory is achieved. While accepting the economic importance of the aviation sector paragraph 3.61 reiterates support for airport growth within the Government's environmental obligations. Given our doubts regarding the Applicant's assessment of the contribution of the Proposed Development to the Sixth Carbon Budget and carbon targets, we consider that the Proposed Development would be contrary to this requirement.

8.5.11. The Applicant concluded that the Proposed Development would have a minor adverse not significant effect and that the impacts were not so significant that they would have a material impact on the ability of the Government to meet its carbon reduction targets, including carbon budgets because it is in line with the trajectory to net zero.

8.5.12. The Applicant has adopted the methodology of the IEMA Guidance and contextualised emissions accordingly while acknowledging the difficulties about contextualisation. Paragraphs 5.82 of the ANPS and 5.18 of the NNNPS note that any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets including carbon budgets. We have no clear evidence that the indicative 5% threshold of a carbon budget has been met, while the Applicant's own assessment indicates an effect of over 3.4% but we note that the effects of non-CO_2 emissions, international inbound flights and fuel produced outside the UK were not included. Additionally, this figure relates to the entire airport and covers the period to 2037, not 2050. Nevertheless, our judgment is that were these other factors included the threshold is likely to be reached and a significant adverse effect in EIA terms should be recorded.

8.5.13. We have found that the scale of emissions would be such that it is likely that there would be a material impact which would weigh against the Proposed Development in the planning balance. The increase in GHG emissions as part of the Proposed Development would also be contrary to paragraph 5.70 of the ANPS. Consequently, the mitigation measures cannot be considered acceptable contrary to the requirement of paragraph 5.83. While the trajectory of emissions would be towards net zero by 2050, based on the JZS, the Proposed Development would not contribute to radical reductions in GHG emissions as required by the NPPF.

8.5.14. We have reviewed recent airport expansion decisions and legal challenges including those at Stansted, Bristol, Luton and London City airports. We also note that the SoS's decision in respect of Manston Airport concluded that carbon emissions should be given neutral weight. However, in the light of the Finch and West Cumbria cases as well as the CBDP we find that the landscape in respect of

GHG emissions has changed. Accordingly, GHG emissions is afforded moderate weight against the Proposed Development in the planning balance.

9. CLIMATE CHANGE

9.1. INRODUCTION

9.1.1. This Chapter considers the effects of the Proposed Development in relation to climate change resilience (CCR) and in-combination climate change impacts (ICCI). CCR is the resilience of the design, construction and operation of the Proposed Development to projected future physical impacts of climate change. ICCI are the combined effects of the Proposed Development and potential future climate change impacts on the receiving environment and community.

9.1.2. Climate change was raised in over 1700 Relevant Representations (RR) and was identified in the Examining Authority's (ExA) Initial Assessment of Principal Issues alongside greenhouse gas (GHG) emissions [PD-009].

9.2. THE APPLICATION

OVERVIEW

9.2.1. Environmental Statement (ES) Chapter 15: Climate Change [APP-040] assessed the potential effects of current and future climate change on the Proposed Development, receiving environment and community. A number of supporting figures and appendices to ES Chapter 15 were also submitted. A full list can be found in Table A1 of Appendix A of this Report.

9.2.2. The potential effects on, and the contribution of the Proposed Development to, the climate was reported in ES Chapter 16: Greenhouse Gases [APP-041] and is discussed separately in the preceding Chapter 8 of this Report.

9.2.3. ES Chapter 15 and its associated figures and appendices should be read as part of the wider ES with particular reference to ES Chapter 9: Ecology and Nature Conservation [APP-034], ES Chapter 11: Water Environment [APP-036] and ES Chapter 13: Air Quality [APP-038].

Policy Context

9.2.4. The Applicant set out how the requirements of the Airports National Policy Statement (ANPS) and National Networks National Policy Statement (NNNPS) are addressed in Table 15.2.1 of ES Chapter 15 [APP-040].

9.2.5. The Applicant confirmed (Table 15.2.1, [APP-040]) that the range of impacts of climate change was considered using the latest UK climate projections, UK Climate Projections 2018 (UKCP18) in accordance with paragraph 4.46 of the ANPS and paragraph 4.41 of the NNNPS.

9.2.6. A sensitivity analysis using the latest UKCP18 Probabilistic Projections of Climate Extremes (PPCE) is detailed in ES Appendix 15.5.1: Sensitivity Analysis – Climate Extremes [APP-185]. Critical features of infrastructure were assessed against PPCE in the CCR Assessment [APP-187] and ICCI Assessment [APP-188] in accordance with paragraph 4.48 of the ANPS.

9.2.7. The Applicant states (Table 15.2.1, [APP-040]) that elements of the design have been developed to account for climate change adaption and would be implemented at the time of construction in accordance with paragraph 4.51 of the ANPS. These are captured within the Design and Access Statement (DAS) (para 6.6.5, [AS-156]) as outline climate resilience design principles and measures.

CLIMATE CHANGE RESILIENCE

9.2.8. The Applicant's CCR Assessment [APP-187] differs from many other Environmental Impact Assessment (EIA) topics in that it considered how the resilience of the Proposed Development may be affected by an external factor (climate change), not how environmental receptors may be affected by the Proposed Development's impacts. The Applicant undertook a risk analysis-based approach using a combination of likelihood and consequence to determine the level of risk.

Construction Phase

9.2.9. The potential impacts as a result of climate change are detailed in ES Chapter 15 [APP-040] and the CCR Assessment [APP-187]. The hazards identified that may affect the geographical location of the Proposed Development in the construction phase are:

- an increased number of extremely hot days; and
- climate change in the 2024-2047 time period and increased probability of extreme weather events.

9.2.10. The Applicant outlines the embedded mitigation measures in Table 15.8.4 [APP-040]. Those relevant to the construction phase are:

- adherence to the latest Gatwick Airside Operations Airside Weather Plan as required by UK Civil Aviation Authority (CAA) regulation; and
- adverse weather measures during construction in the Code of Construction Practice (CoCP) [REP9-031].

Operational Phase

9.2.11. The hazards identified that may affect the geographical location of the Proposed Development in the operational phase are:

- an increased number of extremely hot days;
- extreme cold weather;
- an increased frequency of flooding from river, surface and groundwater sources;
- an increased risk of drought;
- extreme wind speeds; and
- an increased risk of lightning strikes.

9.2.12. The Applicant outlines the embedded mitigation measures in Table 15.8.4 [APP-040]. Those relevant to the operational phase are:

- outline CCR design principles and example measures for heating and cooling in the Design and Access Statement (DAS) [REP9-062], supported by the Carbon Action Plan [APP-091] which commits to net zero by 2030 for Scope 1 and 2 emissions[12];
- adherence to the latest Gatwick Airside Operations Airside Weather Plan as required by UK CAA regulation;
- landscape and ecology mitigation measures in the outline Landscape and Ecology Management Plan (oLEMP) [REP9-047];

[12] Scope 1: direct emissions of GHGs from plant, equipment, vehicles owned by the reporting corporate entity. Scope 2: indirect emissions of GHGs associated with purchased electricity, steam, heating and cooling. Scope 3: other GHG emissions arising from the activities of the organisation including those associated with construction, transportation, waste, water, business travel and employee commuting.

- measures to ensure there is no adverse impact on flood risk in the Flood Resilience Statement [Annex 6, REP9-055] and Surface Access Drainage Strategy [Annex 2, REP8-080]; and
- outline CCR design principles [REP9-062] and example measures for water stress in the Water Management Plan [REP8-026].

Applicant's Conclusion

9.2.13. The CCR assessment [APP-187] identified that there would be no high or very high risks (which would be considered significant) in either the construction or operational phases. The assessment therefore states that no further mitigation is required. No monitoring was proposed as the existing and embedded mitigation identified was considered by the Applicant to be sufficient (para 1.1.3, [APP-187]).

IN-COMBINATION CLIMATE CHANGE IMPACT

9.2.14. The Applicant's ICCI Assessment [APP-188] followed the same approach to assessing impacts and determining significance as for each of the other individual ES topics, in addition to the consideration of future climate change projections.

9.2.15. The ICCI Assessment assesses the extent to which climate change exacerbates a potential effect of the Proposed Development on an environmental receptor. Phase 1 of the assessment considered the effects already identified by ES topics based upon their own impact assessment methodologies, and screened out any ICCIs that were considered unlikely to occur.

9.2.16. An extensive list of embedded mitigation and monitoring measures for both the construction and operational phase is set out in Table 15.9.1 of ES Chapter 15 [APP-040] including how the various measures are secured in the control documents.

9.2.17. Phase 2 assessed the consequence of the likely ICCIs identified in Phase 1 and determined the significance of each taking into account the embedded mitigation measures.

Applicant's Conclusion

9.2.18. The ICCI Assessment concluded that no significant impacts were identified during the construction or operational periods given the mitigation identified. The assessment therefore states that no further mitigation is proposed. As with the CCR Assessment, no monitoring was proposed as the existing and embedded mitigation identified was considered by the Applicant to be sufficient (para 1.1.8, [APP-188]).

REVIEW OF EMBEDDED MITIGATION MEASURES

9.2.19. The Applicant explained in both the CCR and ICCI Assessments (para 1.1.4, [APP-187] and para 1.1.10, [APP-188]) that it has procedures to check the efficacy of embedded mitigation measures and keep them under review. The Applicant states that, during the operational phase, these procedures could be formalised and aligned with its Task Force for Climate-Related Disclosures mandatory reporting and its 5-year review cycle for the Climate Adaptation Risk Assessment reporting to the Government under the Adaptation Reporting Power (ARP). All major airport and infrastructure operators currently report under the ARP (as part of the 2008 Climate Change Act (CCA2008)), and this reporting may become mandatory in the future.

9.3. ISSUES CONSIDERED DURING THE EXAMINATION

9.3.1. The Examination featured the following matters relating to CCR and ICCI:

- Assessment methodology in the climate impact statements.
- Wildfire and fog.
- The Applicant's Adverse Weather Plan (AWP).
- Drainage, flood resilience and Water Environment.
- Overheating relating to noise insulation scheme.

9.3.2. Apart from the issues addressed in this Section, no other Interested Parties (IPs) specifically addressed the content of ES Chapter 15 or its associated figures and appendices.

CLIMATE CHANGE TECHNICAL NOTES

9.3.3. The Applicant produced a series of Supporting Climate Change Technical Notes to Statements of Common Ground (SoCG) [REP4-039] at Deadline (D) 4. The technical notes provided responses to concerns raised by some of the local planning authorities (LPAs) as set out in the following paragraphs.

Assessment Methodology in The Climate Impact Statements

9.3.4. Concern was raised in the Principal Areas of Disagreement Summary Statement (PADSS) of some LPAs including Crawley Borough Council (CBC) and West Sussex County Council (WSCC) [AS-061 and AS-072] regarding the methodology of the climate impact statements. The concern specifically was that the climate impact statements (Table 15.8.5 and Table 15.8.6 of ES Chapter 15 [APP-040]) were lacking in consistency in that some were missing an 'impact'. They had a cause but no end 'impact'.

9.3.5. Whilst other LPAs considered the matter resolved by D4, WSCC and CBC felt that further detail and clarity around impact statements was required. The Climate Change Technical Note concerning climate impact statements (Appendix B, [REP4-039]) provided clarification that the end 'impact' is presented as an overall combined consequence rating along with its justification and the technical note included a diagram to show how the assessment breaks down the impact chain for each identified risk.

9.3.6. The D5 SoCGs between the Applicant and both CBC [REP5-037] and WSCC [REP5-055] record that this issue was considered addressed.

Wildfire And Fog

9.3.7. CBC and WSCC raised concern in their PADSS [AS-061 and AS-072] that wildfire was not mentioned as a possible climate hazard in the Applicant's assessment and that risks associated with fog were also not included in the assessment.

9.3.8. The Climate Change Technical Note concerning wildfire and fog [Appendix A, REP4-039] submitted by the Applicant concluded that as the CCR Assessment did not identify any high or very high risks (considered significant in EIA terms) for wildfire during construction or operation, no further mitigation would be required.

9.3.9. The D5 SoCGs between the Applicant and both CBC [REP5-037] and WSCC [REP5-055] record that the Climate Change Technical Note (Appendix A, [REP4-039]) is considered to address this issue.

Adverse Weather Plan

9.3.10. CBC, WSCC, Reigate and Banstead Borough Council (RBBC) and Surrey County Council (SCC) [AS-061, AS-068, AS-070 and AS-072] raised concern in their PADSS that the identification of construction risks was limited. These LPAs stated that the Applicant should undertake a more detailed identification and assessment of construction related climate risks and distinguish areas that are particularly vulnerable and may require specific adaptation measures to be in place.

9.3.11. The Climate Change Technical Note concerning the AWP (Appendix C, [REP4-039]) provided a review of the Applicant's AWP against good practice documents and specifically what measures were considered during construction by the Applicant and how these measures could be enhanced and cover the full range of climate hazards and extreme events. The review concluded with a number of recommendations which the Applicant confirmed would be included in the next update of the AWP which was expected to be published in October 2024.

9.3.12. The D5 SoCGs between the Applicant and CBC [REP5-037], WSCC [REP5-055], RBBC [REP5-049] and SCC [REP5-051] record that this issue was considered to be addressed.

DRAINAGE, FLOOD RESILIENCE AND WATER ENVIRONMENT

Communities Against Gatwick Noise Emissions

9.3.13. Communities Against Gatwick Noise Emissions (CAGNE) raised concerns in its Written Representation [REP1-150] about increased rainfall as result of climate change and how this will affect flooding in the area. The Applicant's Response to Written Representations [REP3-072] explained that the Proposed Development is not expected to increase future flood risk and that this was demonstrated in the Applicant's Flood Risk Assessment [AS-078].

9.3.14. Further discussion on flood risk, including general comments and concerns of IPs regarding increased risk of flooding, is contained within Chapter 11 of this Report, Water Environment.

National Highways

9.3.15. National Highways (NH) raised concern [RR-3222] that there was little evidence in the ICCI Assessment in terms of operational preparedness or embedded mitigation in place. In the D1 SoCG between the Applicant and NH [REP1-036], it was clarified that NH's interest in this matter was to understand whether any resilience measures intended for its network complied with its standards, including allowances required for climate change in drainage infrastructure and flood resilience.

9.3.16. It was confirmed by NH in the signed SoCG between the Applicant and NH [REP10-017] that the Framework Agreement signed between both parties affords NH the necessary level of protection to ensure that its concerns regarding drainage infrastructure and flood resilience can be agreed for the purposes of the Examination.

Environment Agency

9.3.17. The SoCG between the Applicant and the Environment Agency (EA) [REP10-015] recorded no issues relating to climate change. In respect of the water environment all issues were agreed.

OVERHEATING RELATING TO NOISE INSULATION SCHEME

9.3.18. The Joint West Sussex Local Authorities (JWSLAs) raised concern in their Local Impact Report (LIR) (para 14.248, [REP1-068]) that no provision was made to prevent overheating in residential properties subject to noise insulation measures as part of the Noise Insulation Scheme. Mole Valley District Council (MVDC) requested in its PADSS (row MV12, [REP5-101]) that an 'Overheating Assessment' be undertaken by the Applicant.

9.3.19. The Applicant was asked in the ExA's second written questions (ExQ2) ExQ2 HW.2.12 [PD-021]) whether an Overheating Assessment was necessary. The Applicant stated in response [REP7-084] that due to the diverse range of housing stock, it would not be feasible to carry out any meaningful assessment of the risk of overheating to all affected properties. The Applicant explained that the potential for internal rooms to overheat as a result of noise insulation measures is reduced due to the ventilation measures provided within the acoustic package for properties where overheating is a concern. The Applicant's approach to reducing overheating is set out in the Noise Insulation Scheme [REP8-086]. It provides for thermal insulation to loft spaces and acoustic ventilators. However, the Applicant stated in its closing submissions [REP9-112] that ventilators do not completely negate the need to open windows in certain circumstances.

9.3.20. MVDC maintained in its final PADSS [REP9-154] its position that an 'Overheating Assessment' is required to demonstrate adequacy of the ventilation scheme. Chapter 6 of this Report, Noise and Vibration addresses the adequacy of the Applicant's Noise Insulation Scheme. Chapter 15 of this Report, Health and Wellbeing addresses the issue of overheating in more detail. We consider that our recommended requirement (R18) in our Recommended Development Consent Order (rDCO) would ensure that concerns about overheating would be addressed. However, based on the Applicant's final draft DCO then we cannot be certain that the concerns about overheating would be adequately addressed because ventilators would not address the wish or need for occupants to open windows in certain circumstances.

9.4. ExA's CONCLUSION ON CLIMATE CHANGE

9.4.1. We are satisfied that the Applicant has undertaken its assessment in accordance with the approach proposed in the ANPS and taken account of other relevant legislation and policy requirements. We agree with the Applicant's conclusion that there are unlikely to be any significant effects associated with climate change. Moreover, we are satisfied that there are not features of the design critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected.

9.4.2. We have taken account of concerns about overheating arising from the noise insulation scheme and while we do not consider that the Applicant's preferred approach would overcome these concerns, R18 in the rDCO would address this matter.

9.4.3. Consequently, we conclude that the requirements in respect of climate change set out in the ANPS and NNNPS are met. Our overall conclusion is that climate change would have a neutral effect in the planning balance and does not weigh for or against the making of the Order either as applied for or with the rDCO in place.

10. SOCIOECONOMICS

10.1. THE APPLICATION

10.1.1. The Applicant's assessment of socioeconomics was primarily contained within Chapter 17 of the Environmental Statement (ES) [APP-042]. For the purposes of this Report, the assessment included:

- construction phase;
    - economy, labour market, disruption, population, community, sports, and open space; and
- operation phase;
    - economy, labour market, disruption, population, community.

10.1.2. ES Chapter 17 [APP-042] was also supported by the following documents:

- ES Appendix 17.2.1: Summary of Local Plan Policies [APP-195];
- ES Appendix 17.3.1: Summary of PEIR Responses for Socio-Economics [APP-196];
- ES Appendix 17.6.1: Socio-Economic Data Tables [APP-197];
- ES Appendix 17.8.1: Employment, Skills and Business Strategy [APP-198];
- ES Appendix 17.9.1: Gatwick Construction Workforce Distribution Technical Note [APP-199];
- ES Appendix 17.9.2: Local Economic Impact Assessment [APP-200]; and
- ES Appendix 17.9.3: Assessment of Population and Housing Effects [APP-201].

10.1.3. A list of supporting figures is detailed at paragraph 17.1.5 of ES Chapter 17 [APP-042].

10.1.4. The Applicant confirmed [APP-042] that the scope of the socioeconomic assessment was developed in consultation with relevant statutory and non-statutory consultees. The assessment analysed potential socioeconomic effects of the Proposed Development on receptors in up to five separate study areas, depending on the nature of the effect being assessed. The study areas were:

- project site boundary;
- local study area (LSA);
- northern west Sussex functional economic market area (FEMA);
- labour market area (LMA); and
- six authorities area (SAA).

10.1.5. The effects were then set out separately for the indicative construction and operational periods across five assessment periods or individual years comprising:

- initial construction period (2024 - 2029);
- first full year of opening (2029);
- interim assessment year (2032);
- design year (2038); and
- final assessment year (2047).

10.1.6. Table 17.4.1 of ES Chapter 17 [APP-042] provides detail of the potential effects and receptors considered within the socioeconomic assessment. With Table 17.4.2 of ES Chapter 17 [APP-042] providing detail of those effects which were scoped out of the assessment.

10.1.7. The Applicant also confirmed [APP-042] that a desktop review was undertaken to identify existing and future socioeconomic conditions within each of the study areas listed above. The main baseline data sources used for the assessment were listed at paragraph 17.4.15 of ES Chapter 17 [APP-042] and it was confirmed that as most of the baseline data used is updated on an annual basis, the Applicant considered that the baseline analysis presented the latest available evidence.

10.1.8. No residual significant adverse effects were identified by the Applicant. As such, no specific mitigation measures were proposed in relation to socioeconomic receptors. However, the following residual significant beneficial effects were reported [APP-042]:

Table 10.1: Initial Construction Period - 2024 to 2029

Receptor	Study Area	Impact	Significance of Effect
Construction business and activity	LSA	Direct employment	Significant moderate beneficial
	FEMA		
	LMA		

Table 10.2: First Full Year of Opening - Construction 2030 to 2032

Receptor	Study Area	Impact	Significance of Effect
Construction business and activity	LSA	Direct employment	Significant moderate beneficial
	FEMA		
	LMA		

Table 10.3: First Full Year of Opening - Operation 2029

Receptor	Study Area	Impact	Significance of Effect
Business and commercial activity	FEMA	Indirect, induced and catalytic employment	Significant moderate beneficial
	LMA		

Table 10.4: Interim Assessment Year - 2032 to Operation

Receptor	Study Area	Impact	Significance of Effect
Business and commercial activity	LSA	Direct employment	Significant major beneficial
Business and commercial activity	LSA	Indirect, induced and catalytic employment	Significant moderate beneficial
	FEMA		
	LMA		

Table 10.5: Design Year - 2038

Receptor	Study Area	Impact	Significance of Effect
Business and commercial activity	LSA	Direct employment	Significant major beneficial
Business and commercial activity	LSA	Indirect, induced and catalytic employment	Significant moderate beneficial
	FEMA		
	LMA		

Table 10.6: Long-Term Forecast - 2047

Receptor	Study Area	Impact	Significance of Effect
Business and commercial activity	LSA	Direct employment	Significant major beneficial
Business and commercial activity	LSA	Indirect, induced and catalytic employment	Significant moderate beneficial
	FEMA		
	LMA		
Labour market	LSA	Availability of labour	Significant moderate beneficial
	FEMA		

10.1.9. In terms of the actual economic benefits the Proposed Development is anticipated to deliver, ES Appendix 17.9.2 Local Economic Impact Assessment [APP-200] reached the following conclusions contained in the below tables:

Table 10.7: Direct Effects[13]

Type of effect	Increase in employment at Gatwick Airport	Increase in GVA
Direct effects	By 2029 - employment would increase by 1000 jobs By 2038 - employment would increase by 3200 jobs By 2047 - employment would increase by 3100 jobs	By 2029 - GVA would increase by £73 million By 2038 - GVA would increase by £263 million By 2047 - GVA would increase by £286 million

[13] Direct effects - Economic activity of firms on site at the airport. Examples include air crews or airport management staff.

Table 10.8: Indirect Effects[14]

Type of effect	Increase in employment	Increase in GVA
Indirect effects in terms of the Gatwick Diamond Area	By 2029 - employment would increase by 200 jobs By 2038 - employment would increase by 700 jobs By 2047 - employment would increase by 700 jobs	By 2029 - GVA would increase by £14 million By 2038 - GVA would increase by £51 million By 2047 - GVA would increase by £55 million
LMA indirect effects	By 2029 - employment would increase by 300 jobs By 2038 - employment would increase by 1000 jobs By 2047 - employment would increase by 1000 jobs	By 2029 - GVA would increase by £21 million By 2038 - GVA would increase by £77 million By 2047 - GVA would increase by £84 million
SAA indirect effects	By 2029 - employment would increase by 600 jobs By 2038 - employment would increase by 2100 jobs By 2047 - employment would increase by 2000 jobs	By 2029 - GVA would increase by £43 million By 2038 - GVA would increase by £156 million By 2047 - GVA would increase by £170 million
UK indirect effects	By 2029 - employment would increase by 900 jobs By 2038 - employment would increase by 2800 jobs By 2047 - employment would increase by 2700 jobs	By 2029 - GVA would increase by £58 million By 2038 - GVA would increase by £212 million By 2047 - GVA would increase by £230 million

[14] Indirect effects - Economic activity in the supply chain of Gatwick and other firms located at Gatwick airport, such as aircraft parts manufacturers or maintenance firms. These firms in the supply chain are not based at the airport. The estimated indirect impacts are restricted to those occurring within the UK.

Table 10.9: Induced Effects[15]

Type of effect	Increase in employment	Increase in GVA
Gatwick Diamond Area induced effects	By 2029 - employment would increase by 300 jobs By 2038 - employment would increase by 900 jobs By 2047 - employment would increase by 800 jobs	By 2029 - GVA would increase by £18 million By 2038 - GVA would increase by £66 million By 2047 - GVA would increase by £72 million
LMA induced effects	By 2029 - employment would increase by 400 jobs By 2038 - employment would increase by 1200 jobs By 2047 - employment would increase by 1100 jobs	By 2029 - GVA would increase by £24 million By 2038 - GVA would increase by £88 million By 2047 - GVA would increase by £96 million
SAA induced effects	By 2029 - employment would increase by 400 jobs By 2038 - employment would increase by 1300 jobs By 2047 - employment would increase by 1300 jobs	By 2029 - GVA would increase by £27 million By 2038 - GVA would increase by £98 million By 2047 - GVA would increase by £106 million
UK induced effects	By 2029 - employment would increase by 1100 jobs By 2038 - employment would increase by 3500 jobs By 2047 - employment would increase by 3400 jobs	By 2029 - GVA would increase by £73 million By 2038 - GVA would increase by £263 million By 2047 - GVA would increase by £286 million

[15] Induced effects - Economic activity due to workers, both on site and in the supply chain, spending their wages on activities that are not necessarily associated with, or located close to, the airport, such as barbers and restaurants.

Table 10.10: Total Catalytic Effect in the SAA

	2029 (no. of jobs)	2038 (no. of jobs)	2047 (no. of jobs)
Total net employment impact	4500	13700	12800
Combined footprint	2000	6600	6400
Catalytic effect	2500	7200	6500

10.1.10. In respect of Table 10.10, the catalytic effect is estimated as the difference between the total net employment impact of the Proposed Development in the SAA and the combined direct, indirect, and induced footprint of the Proposed Development in the same area.

Table 10.11: The Proposed Development's Catalytic Effects: Disaggregation

	2029	2038	2047
Catalytic GVA			
Gatwick Diamond	£40 million	£128 million	£131 million
Labour Market Area	£97 million	£311 million	£318 million
Six Authorities	£168 million	£538 million	£550 million
Catalytic employment	**Number of jobs**		
Gatwick Diamond	600	1700	1500
Labour Market Area	1400	4100	3700
Six Authorities	2500	7200	6500

10.1.11. In addition to the above, the Applicant also stated that other benefits would also be realised because of the Proposed Development, but these had not been captured in the assessment [APP-251]. These included the potential impact on tourism, competition, resilience, and freight.

10.1.12. In respect of tourism, the Applicant further stated that there would be a potentially positive effect, through increased services and reduced fares, as well as an increase in expenditure in the UK by inbound tourists as well as overseas by outbound tourists. However, these effects had not been quantified given the lack of available evidence on how tourism could generate welfare impacts on the UK economy [REP9-112].

10.2. ISSUES CONSIDERED DURING THE EXAMINATION

10.2.1. Over 890 Relevant Representations (RR) provided comment in respect of socioeconomic effects of the Proposed Development. Having taken these into account, alongside the submitted application documents, we considered that socioeconomics should be one of the initial principal issues for the Examination. The Initial Assessment of Principal Issues is set out in Annex C of the Rule 6 letter [PD-009].

10.2.2. We further considered that the following issues should be examined in greater detail:

- the socioeconomic assessment methodology;
- economic effects and benefits;
- effects on the housing market;
- Section 106 agreement - Schedule 5: Employment, Skills and Business Strategy (ESBS) and Appendix 6: Draft ESBS Implementation Plan; and
- Gatwick Community Fund.

Socioeconomic Assessment Methodology

10.2.3. The Applicant confirmed in ES Chapter 17 [APP-042] that there was currently no UK legislation or guidance that specified the detailed content required to prepare a socioeconomic assessment. Whilst the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) identify population as a factor to be considered within the assessment process, it does not provide any definitive guidance on the approach, process, or methodology to follow.

10.2.4. The Airports National Policy Statement (ANPS) provides general guidance on the approach to considering the socioeconomic effects of development and the Applicant confirmed at paragraph 17.4.1 of [APP-042] that this has informed the methodology used.

10.2.5. As such at paragraph 17.4.2 of [APP-042] the Applicant confirmed that the methodology used for the socioeconomic assessment was based on accepted industry practice, a review of socioeconomic assessments from other relevant projects and feedback from the Planning Inspectorate (the Inspectorate) and local authorities during the pre-application consultation process.

10.2.6. Despite this, throughout the Examination concern was raised by several of the local authorities that given the absence of an impact assessment at the local authority district level, there was a risk of impacts at the local authority level which may not have been assessed.

10.2.7. This concern was detailed in several of the Local Impact Reports (LIRs), examples include but are not limited to:

- Joint West Sussex Local Authorities (JWSLAs) LIR [REP1-068] – at paragraph 18.2 the authorities encouraged the Applicant to undertake an assessment of potential effects on employment at a local level, as it had only been undertaken using an aggregated approach at the LSA, FEMA, LMA and SAA levels. At paragraph 18.37, the JWSLAs stated that whilst the findings contained within the assessment were important, they were not appropriate substitutes for an impact analysis at the local authority level especially given potential shortfalls in labour supply in some of the local areas.
- Joint Surrey Councils (JSCs) LIR [REP1-097] – in respect of the assessment findings regarding affordable housing, at paragraph 15.94 it was stated that "*If this exercise were done at a local authority level however, the figures would be very different and the true impacts at local authority level are being hidden*".

10.2.8. This matter was also discussed during Issue Specific Hearing (ISH) 3 - Socioeconomics [EV8-001 and EV8-002] where we asked both the Applicant and the Legal Partnership Authorities (LePAs) to comment on whether it was considered that the socioeconomic assessment had been undertaken at an appropriate level.

10.2.9. In response, the Applicant explained [REP1-058] that the approach taken was to define a series of assessment areas that related to the nature of the different potential effects being considered within the socioeconomic assessment. The Applicant did not consider that defining and assessing such effects at the individual local authority level was the most appropriate basis for assessment purposes for the following three reasons:

- The need for different assessment areas across a number of spatial scales to reflect the different type and range of sub-topics included within the socioeconomic assessment, which ranged from employment, labour market, population and housing, to business and resident disruption.
- The approach had regard to national planning practice guidance (NPPG) where relevant, for example the use of the FEMA in the case of planning for the economy, or housing market areas in the case of preparing housing need assessments.
- That in dynamic, highly interrelated and inter-connected local economies such as those that existed around Gatwick Airport, as well as government support for labour market flexibility more generally, impacts should not be confined to individual local authority boundaries.

10.2.10. The assessment areas were considered appropriate and proportionate [REP1-058] and that they assessed significance at the most relevant and meaningful study area level relative to the type of impact being assessed. The Applicant further considered it neither necessary nor appropriate to base assessments on local authority areas in circumstances where impacts would not reflect local government administrative boundaries.

10.2.11. The Applicant also stated that '*ES Appendix 17.6.1 – Socio-Economic Data Tables'* [APP-197], set out some data at local authority level. The Applicant considered that this data would enable local authorities to contextualise the potential impacts of the Proposed Development within their specific administrative boundaries.

10.2.12. However, the LePAs considered [REP1-213] that the Applicant's '*one size fits all assessment area or areas*' was not an appropriate approach for the socioeconomic assessment. Whilst the LePAs agreed that multiple study areas were necessary, an assessment on local areas to recognise and determine impact and implications at the local authority level was also required. As such, it was found that the aggregated approach to the assessment adopted by the Applicant had failed to capture such subtleties.

10.2.13. It was acknowledged [REP1-213] that although the Applicant had added some '*local*' data within the appendices supporting the assessment, it was incorrect to say the Applicant had tabulated the impact that could arise at the relevant local authority level. The LePAs also noted that there was no assessment or analysis of local authority baseline, which would set the context and understand local need and constraints, nor was there any assessment and interpretation of the included '*local data'*.

10.2.14. In addition to the discussions held during ISH3 – Socioeconomics [EV8-001 and EV8-002], we also asked a further question at the second round of written questions (ExQ2). Given that it was evident that agreement had not been reached by ISH3 in respect of this issue, we asked for an update regarding the position of the parties at ExQ2.SE.2.12 [PD-021].

10.2.15. Both parties provided an update, confirming that the position had not changed from ISH3. The LePAs [REP7-110] remained concerned that the lack of local impact analysis was a major issue as it meant that the assessment had not considered socioeconomic consequences at the local level.

10.2.16. In contrast, the Applicant considered [REP7-091] that as it had assessed significance at the relevant functional economic and/ or housing market area level, this complied with the Inspectorate's guidance '*Annex to Advice Note 7: Environmental Impact Assessment: Process, Preliminary Environmental Information and Environmental Statements*'. The Applicant considered that the different study areas used within the socioeconomic assessment complied with the requirements detailed in the Inspectorate's '*Annex to Advice Note* 7' as well as NPPG on defining economic and housing market areas more generally.

10.2.17. Additionally, the Applicant also noted that some of the local authorities had indicated that there would be effects at the local authority level that would not be apparent at the functional market area level, and that when considered at local authority level these may require mitigation. The Applicant stated that it did not consider this to be the case and had not seen any evidence from the authorities in their submissions to suggest that there would be significant adverse effects that would require mitigation [REP7-091].

10.2.18. Considering these responses, at ISH9 - Socioeconomics [EV20-015 and EV20-017] we asked the Applicant and LePAs to comment on compliance with paragraph 4.5 of the ANPS, in the context of paragraph 4.4, which referred to impacts being considered at national, regional, and local levels.

10.2.19. The Applicant [REP8-109] commented that paragraph 4.5 was not prescriptive and did not refer specifically to local authority areas. As such, the Applicant did not consider that the ANPS specifically required an assessment to be carried out at local authority level.

10.2.20. The LePAs acknowledged that disagreement between the parties remained in respect of the issue of the socioeconomic assessment [REP8-167]. Whilst the LePAs accepted that the Applicant had provided raw data at the district/ borough level in the ES chapter [APP-042], as previously stated it had not analysed or assessed the data to determine possible implications at the local authority level. The LePAs believed that the omission was significant in terms of assessing economic effects and suggested that this must go to the weight that could be given to economic benefits. This was because if there were aspects of the economic assessment which had not adequately considered negative effects, that would temper weight that could be given to any positive impacts.

10.2.21. The position of both parties remained unchanged at the end of the Examination and was reflected in the Applicant's Closing Submissions [REP9-112] and the LePAs Closing Statement [REP9-151].

ExA's Conclusion on the Socioeconomic Assessment Methodology

10.2.22. We have taken into consideration the guidance detailed in the Inspectorate's '*Annex to Advice Note 7'* and the policy within the ANPS. Whilst we note the concerns raised by various local authorities regarding the scale of the socioeconomic assessment, we are satisfied that the ANPS did not specifically state the assessment should be undertaken at a local authority level.

10.2.23. We are therefore satisfied that the Applicant has undertaken an appropriate assessment in terms of socioeconomics and that the assessment has adequately identified the effects of the Proposed Development.

Economic Effects and Benefits

Catalytic Employment Assessment

10.2.24. We note that in the Applicant's Closing Submissions [REP9-112] it was stated that it was common ground with the JLAs by the end of the Examination that the estimates of direct, indirect, and induced employment figures were robust and that these were considered beneficial and that the worst-case scenario regarding employment benefits had been adequately addressed.

10.2.25. However, the main issue which remained unresolved was the likely scale of catalytic employment, and specifically the methodology used to assess catalytic employment benefits.

10.2.26. It was confirmed by the Applicant that catalytic effects were considered by estimating the total net impact of the Proposed Development using an elasticity of traffic to net employment in the SAA, from which the direct, indirect, and induced footprint would be subtracted to give catalytic effects. The Applicant stated that this issue was a relatively small part of the socioeconomic assessment and that it remained confident that its assessment was robust and accurate [REP9-112].

10.2.27. However, the following local authorities, in their Principal Areas of Disagreement Summary Statements (PADSS) all reported levels of concern regarding the methodology by which the catalytic effects of the Proposed Development had been assessed:

- Crawley Borough Council (CBC) [REP9-133];
- East Sussex County Council (ESCC) [REP9-136]
- Horsham District Council (HDC) [REP-139];
- Mid Sussex District Council (MSDC) [REP9-152];
- Mole Valley District Council (MVDC) [REP9-154];
- Reigate and Banstead Borough Council (RBBC) [REP9-166];
- Surrey County Council (SCC) [REP9-168];
- Tandridge District Council (TDC) [REP9-171]; and
- West Sussex County Council (WSCC) [REP9-172].

10.2.28. In Kent County Council's (KCC) Closing Statement [REP9-146], it was also stated that the wider economic benefits of the Proposed Development had been overstated.

10.2.29. This issue was widely discussed throughout the Examination, and was also identified as an issue with the following LIRs:

- JWSLAs LIR [REP1-068];
- ESCC LIR [REP1-070]; and
- JSCs LIR [REP1- 097].

10.2.30. Appendix A of [REP1-070] contained a *'Needs Case Review'* which had been undertaken by York Aviation (YA) on behalf of ESCC. Within this review, YA concluded that the methodology by which the wider catalytic impacts in the local area had been assessed was not robust and that little reliance could be placed on

this assessment. Consequently, we requested at ExQ1.SE.1.20 [PD-012] that the Applicant provide a response to this concern.

10.2.31. In its response [REP3-103], the Applicant accepted that there were certain aspects of the catalytic impact methodology that may benefit from clarifications. These were discussed in more detail in the Applicant's '*Response to the Local Impact Reports'* [REP3-078]. The Applicant confirmed that the methodology applied was robust and was superior to estimates that would otherwise be generated using multipliers on additional air traffic, and much more likely to inform discussions around the Proposed Development's impact on employment rates in affected local authorities [REP3-103].

10.2.32. At ExQ2.SE.2.16 [PD-021] we asked whether the Applicant would be preparing any further submissions in respect of this issue. At [REP7-077] the Applicant provided an '*Explanatory Note on Catalytic Employment*' which concluded that a statistical approach was used to identify the magnitude of the total impact on employment from the Proposed Development. The statistical approach was chosen to address two challenges, firstly displacement, that is some of these jobs would exist locally even without the Proposed Development and secondly causality which is the impact specific to employment generated by additional airport activity, not the opposite. The Applicant contended that if these two challenges were left unaddressed, a major over-estimate of the impact on local employment of the increase in traffic arising from the Proposed Development would occur.

10.2.33. The Applicant also stated that there were several issues with the approach suggested by YA, including the following:

- That it would fail to address the displacement issue and focuses on catalytic employment and implies that only the footprint of the airport's own activity would be reflected without taking account of wider consequent effects and would therefore overstate impacts.
- The relationship measured would be overly time dependent, it would be very dependent on the definition of the catchment area used, and the share of local demand in the baseline year.
- It would require a disproportionate data collection and data cleaning exercise.
- If Civil Aviation Authority (CAA) data was used it would not be possible to separate out the share of the demand that was stimulated by airport activity from the share that itself stimulates airport activity. This would raise the causality issue that the Applicant's assessment seeks to avoid.
- It would be necessary to develop a new analytical framework which would not be proportionate.

10.2.34. At ISH9 – Socioeconomics [EV20-015 and EV20-17], following the submission of the '*Explanatory Note on Catalytic Employment*' [REP7-077], we asked the LePAs whether the information contained within the note had alleviated their concerns in respect of this issue.

10.2.35. The LePAs confirmed [REP8-167] that discussions had been held with the Applicant regarding this issue, however their concern had shifted, insofar as they now considered that the methodology used may have understated employment. This in turn could exacerbate housing and labour market issues in the local areas around Gatwick Airport.

10.2.36. YA, on behalf of the LePAs, stated [REP8-167] that the fundamental issue was that they did not consider the Applicant's methodology to be robust as it was based on a

theoretical academic approach from a 2010 Italian academic paper. This approach, in the absence of real data, was based on general assumptions about the number of air passengers in a given area, independent of whether an airport existed there, and assessed the relationship between this number and local employment.

10.2.37. YA, on behalf of the LePAs, stated [REP8-167] that whilst this may be reasonable in theory, the problem lay in the availability of real data in the UK, which the Applicant had declined to use despite it being pointed out to them in 2022. The UK data, such as CAA survey data, would allow for a more accurate estimation of passenger numbers in any given area and their relationship with all airports serving any given area.

10.2.38. Furthermore, for West Sussex, the Applicant's area of analysis for Gatwick Airport and for which data was then extrapolated to the SAA, only about 72% of the passenger demand from West Sussex used Gatwick Airport, with a substantial portion using Heathrow Airport, which is not projected to grow under the Applicant's forecast. Therefore, applying the uplift in traffic at Gatwick to the total passenger volume in West Sussex is inaccurate. As such, YA suspected that the methodology, if properly applied with real UK data, might understate local employment rather than overstate it [REP8-167].

10.2.39. YA submitted a further response to [REP7-077] at [REP8-126] which set out additional reasoning as to why the methodology was not considered robust in the UK context.

10.2.40. In summary [REP8-126], YA questioned why a theoretical approach to estimating air passenger potential rather than using real data to calibrate the model had been utilised. If CAA data had been used this would have enabled the identification of how many air passengers in any given area derived from each airport regardless of which airport they used. YA further stated that it could not be the case that using a theoretical estimate of air passenger potential could be preferred to using actual data.

10.2.41. Furthermore, YA stated [REP8-126] that the Applicant's methodology took no account of the actual local relationship between passenger demand and employment and assumed that airport catchment areas would remain static. If this was not the case it was the only airport that could grow which would necessarily give rise to it drawing from a wider area across the southeast of England meaning that its impacts would be more dispersed. In parallel, constraints at Heathrow meant that this would not be contributing equivalently to future economic growth. YA considered that these two factors needed to be properly disaggregated before the impact of growth at Gatwick could be fully assessed.

10.2.42. YA concluded [REP8-126] that it seemed likely that the local effects could be understated with consequential implications for the local housing market, particularly as impacts in West Sussex had been arbitrarily spread across the whole of the SAA. However, because of the opaqueness of the Applicant's methodology, they felt that they were in a position of not being able to fully understand the possible effect of the Proposed Development.

10.2.43. Following ISH9 – Socioeconomics [EV20-015 and EV20-17], further discussions were held between the Applicant and the JLAs regarding the catalytic employment benefits and its assessment methodology [AS-163]. Whilst the outstanding areas of difference between the parties were discussed, the Applicant confirmed that a fundamental difference remained regarding whether it was better to take the

Applicant's approach to seek to measure total employment changes and therefore to infer what the catalytic jobs would be or seek to measure catalytic jobs directly.

10.2.44. We also note that the New Economics Foundation (NEF) made a representation regarding the catalytic assessment methodology at [REP8-173]. Overall, NEF stated that they supported the Applicant's approach in respect of the catalytic employment assessment as it was a more academically robust and cautious approach than that suggested by YA. However, NEF did identify two issues with the Applicant's approach:

- that the displacement/ spillover impacts were not adequately described; and
- that the catalytic employment impacts rely on new business passengers.

10.2.45. NEF concluded [REP8-173] that whilst it accepted that there would be some likely employment growth resulting from the Proposed Development, the assessment approach used by the Applicant meant that there would be no certainty that there would be any net employment benefit at the national level.

10.2.46. This was because [REP8-173] by attributing catalytic growth to the Proposed Development it would rely on the use of new capacity by new business passengers created. NEF further stated that it was far from clear whether there would be any net additional business passenger growth at all arising from the Proposed Development. As such, if the inputs used by the Applicant in their assessment were wrong, regardless of the robustness of the internal workings of the model, the outputs would be incorrect.

10.2.47. The Applicant provided a response to the issues raised by NEF at [AS-163]. In terms of displacement, the Applicant commented that the assessment was undertaken at the West Sussex County level and displacement was reflected which would occur between the counties which make up the SAA.

10.2.48. In respect of the second issue raised by NEF, the Applicant stated [AS-163] that it agreed that in principle catalytic employment was driven partly by business passenger connectivity. However, in the approach used, the relationship derived is between air traffic and total employment and not between air traffic and specifically catalytic employment. This is considered by the Applicant to be an important point as in this case air traffic is not used as a proxy but is in fact the main driver for the impact the Applicant sought to measure. While catalytic employment may be specifically driven by air travel demand, the Applicant further stated that other types of employment related to airport activity are instead driven by the magnitude of airport activity i.e. the more traffic at the airport, the more employment. In the assessment, catalytic employment was derived as a residual when subtracting the separately calculated direct/ indirect /induced from the total local employment estimated, that is the impact of airport activity on local employment, which includes direct, indirect, induced, and catalytic employment.

ExA's Conclusion on the Catalytic Employment Assessment

10.2.49. We note that catalytic effects arise from the wider benefits that the government, consumers, employees, and other industries gain from the services the airport would provide. For example, increased flights and capacity that could provide links connecting UK residents and businesses to destinations and markets around the world.

10.2.50. We are mindful of the differences of opinions between the Applicant and the JLAs in respect of the assessment of catalytic employment effects. However, we are content

that the Applicant has adequately justified the methodology it has followed to assess catalytic effects. We are therefore satisfied that the approach adopted addresses the issues of displacement and causality.

Sensitivity Analysis

10.2.51. The Technical Note on the Future Baseline [REP1-047] contained details of the 'make up' of the future baseline forecast and outlined the four elements of growth that the Applicant considered would take the airport from 47 million passengers per annum (mppa) in 2019 to 67mppa in 2047. These were:

- Peak growth +2mppa;
- Peak spreading +5mppa;
- Aircraft size +9mppa; and
- Load factor +4mppa.

10.2.52. Although specifically related to the future baseline, it was confirmed by the Applicant at ISH1 [EV6-001 to EV6-003] that the same principles of growth also applied to the Proposed Development, that in effect it included the baseline growth, plus that attainable from the specified use of the northern runway.

10.2.53. Further detail in regard of this issue is discussed in Chapter 4 of this Report. However, under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (Rule 17) [PD-018], we requested that the JLAs confirmed their own future baseline figure or a range that they would be content with the Applicant assessing. Following the provision of this data, we requested that the Applicant undertake a sensitivity analysis based on the JLAs future baseline or if a range was provided, an analysis on the minimum and maximum of the range. This was requested to establish whether the sensitivity analysis would give rise to any change in the magnitude of impact considered within the Transport Assessment.

10.2.54. The JLAs provided this data at D4 [REP4-049] and a range of forecasts were provided:

- the York Low case, which proposed a 56.8mppa future baseline and a 74.8mppa with-Project case in 2047; and
- the York High case proposed a 60.5mppa future baseline and an 80.2mppa with-Project case in 2047.

10.2.55. As requested, the Applicant provided a '*Future Baseline Sensitivity Analysis*' at [REP5-081]. In summary, the Applicant did not consider either of the York low or high case to be plausible but undertook the assessments on a without prejudice basis. It also provided its own further scenario to test which consisted of a 60.1mppa baseline and a 75.3mppa with-Project case in 2047.

10.2.56. Looking specifically at socioeconomics, the Applicant's assessment found that, in terms of the York scenarios, the forecasts would imply a slower initial increase in employment numbers in 2029 and 2032. However, direct employment figures for 2038 and 2047 would be higher than the figures in the Applicant's assessment contained in ES Chapter 17 [APP-042].

10.2.57. Again, in the Applicant's assessment, if the York figures were applied, a minor beneficial effect would be experienced, rather than a moderate beneficial effect resulting from the original assessment forecasts in 2029 and 2032. However, for the 2038 and 2047 assessment years the overall impact would remain as major beneficial, and the actual employment impacts would be higher.

10.2.58. In terms of the alternative scenario provided by the Applicant, this demonstrated that the incremental employment increase would be higher than both the York scenarios for 2029 and 2032, but this would be reversed for 2038 and 2047 where the Applicant's scenario would be lower than the York low scenario.

10.2.59. As an overall high-level summary, the Applicant reported that the assessments found that the differences in environmental effects between the scenarios would be relatively limited.

ExA's Conclusion on the Sensitivity Analysis

10.2.60. We note that we do not have access to relevant modelling tools or the detailed aviation forecasting expertise of the Applicant or YA on behalf of the JLAs. Nevertheless, and as discussed in detail in Chapter 4 of this Report, based on the evidence submitted and taking all the above into account, we are of the view that a likely outcome by 2047 would be in the region of 60 to 61mppa for the future baseline and 76 to 77mppa with the Proposed Development. This results in a delta of around 16 to 17mppa, larger than the Applicant's prediction of 13mppa.

10.2.61. We consider that with the Proposed Development in place, Gatwick Airport could reach 80.2mppa in due course, sometime after 2047. We are of the view that this difference would not be significant and concur with the Stansted decision conclusions in terms of speed of growth, that if ultimately it takes the airport longer than expected to reach anticipated levels of growth, then the corresponding effects would also take longer to materialise or may reduce due to advances in technology that might occur in the meantime. Further detail in respect of the Stanstead decision is discussed at paragraph 4.3.75 in Chapter 4 of this Report.

Effects on the Housing Market

10.2.62. The Applicant acknowledged at paragraph 17.9.16 of ES Chapter 17 [APP-042] that the introduction of a temporary construction workforce could lead to a temporary increase in the need for housing. This would most likely be in the form of temporary accommodation, as some construction workers may choose to live locally while working on the Proposed Development.

10.2.63. In terms of the assessment undertaken by the Applicant for the construction phase, to test the maximum housing impact, it was assumed that 80% of the workers would be home based and a maximum of 20% would be non-home based (NHB) workers, and they would require temporary accommodation (para 17.9.17 of [APP-042]).

10.2.64. In respect of the operational phase of the Proposed Development, the Applicant stated (para 17.9.65 of [APP-042]) that it was unlikely that additional pressure would be placed on the housing supply across the study area. Additionally, it was also noted that more housing would be unlikely to be required to increase the labour supply in response to the operational employment generated by the Proposed Development.

10.2.65. In summary, the assessment reported that there would be no significant adverse effects in respect of housing supply, including the provision of temporary accommodation [APP-042]. As such, no specific socioeconomic mitigation was considered necessary by the Applicant.

Construction Phase

10.2.66. Paragraph 8.1.9 of ES Appendix 17.9.3 [APP-201] concluded that the construction workforce would peak at approximately 1,400 workers in February 2027, of which it was estimated that up to 20% may be NHB and therefore would require temporary accommodation, with the vast majority being in Crawley and Reigate and Banstead areas. The Applicant further stated that the workers would be accommodated in several ways, depending on their role, and therefore income available to spend on housing, and duration working on the Proposed Development would be variable.

10.2.67. Paragraph 8.1.10 of Appendix 17.9.3 [APP-201] stated that the demand for temporary accommodation during the construction phase from NHB workers would be unlikely to give rise to significant housing effects as the number of NHB workers, even at its peak, would represent a very small proportion of the potential sources of supply which might meet this demand. The amount of affordable housing need associated with the Proposed Development was also considered unlikely to place any further upward pressure on affordable housing delivery in the future beyond pressures that already existed.

10.2.68. Despite this, concern was raised in respect of the potential effects of the Proposed Development on housing by the JLAs and Communities Against Gatwick Noise and Emissions (CAGNE).

10.2.69. In respect of CAGNE's concerns, it produced a report regarding job creation and the housing market [REP1-149] which stated that the Applicant's assessment of both housing and population relied on old data sources. As such, CAGNE requested that up-to-date information should be used given that it would impact on both labour supply and housing conclusions.

10.2.70. In addition, at [REP1-137] CAGNE commented that the jobs offered would not enable workers to afford to live locally without the assistance of local authorities and would require affordable housing, of which there is a definite lack in areas surrounding the Airport.

10.2.71. Similar concerns in respect of the use of out-of-date data sources in respect of the assessment was also detailed in the JWSLAs LIR [REP1-068] and JSCs LIR [REP1-097].

10.2.72. As discussed earlier within this Chapter, the issue of the age of data used was also commented on during ISH3 – Socioeconomics [EV8-001 and EV8-002]. We asked the Applicant whether any further up to date data was available and if so, whether this would have any implications for the results of the socioeconomic assessments.

10.2.73. In response the Applicant confirmed [REP1-058] that it considered the age of the baseline data and the range of sources used to be a robust and proportionate starting point. We did however request that the Applicant reviewed the implications of using 2021 Census data for the assessment of housing need during construction as opposed to the 2011 data which was used in the assessment [EV8-005].

10.2.74. At [REP2-005] the Applicant confirmed that a review of the 2021 Census data had been undertaken and provided equivalent 2021 data. In conclusion, it stated that overall, the impacts and conclusions of the socioeconomics assessment would be unchanged, if not strengthened, if the 2021 Census data was considered in place of the previous 2011 data.

10.2.75. In respect of temporary accommodation, the Applicant also stated that the 2021 Census data confirmed the demand for temporary accommodation during the construction phase of the Proposed Development from NHB workers would not be likely to give rise to significant housing demands [REP2-005]. This was because the number of NHB workers, even at its peak, would represent a very small proportion of the potential sources of supply available to meet the demand.

10.2.76. Row 2.19.1.5a of the Statement of Common Ground (SoCG) with CBC [REP9-066] confirmed that it considered that the matter in respect of outdated data sources for economic activity to be resolved. However, at row 2.19.1.5a, CBC confirmed that they remained concerned that the 2021 Census data reflected temporary and unprecedented changes to the housing market arising from the Covid pandemic, when there was a greater than normal availability of private rented sector (PRS) accommodation, which would represent a deviation from long-term trends.

10.2.77. As such, CBC contended [REP9-066] that the supply of available bedspaces measured at the 2021 Census would be higher than in today's more normal operating market if measured again. This was stated as being reflected in CBC's own experience, where there had been a significant worsening in the availability of short and medium-term accommodation in the years since the 2021 Census was undertaken.

10.2.78. Alongside of the above issue regarding the age of the data sources used in the assessment, the following housing related concerns were also identified:

- any increased demand for PRS housing and hotels arising from the construction phase of the Proposed Development could make the homelessness position worse (JWSLAs LIR [REP1-068]);
- CBC was already unable to meet its affordable housing need in the absence of the Proposed Development, and as such the JWSLAs disagreed with the Applicant's assessment that there was unlikely to be impacts on affordable housing beyond what was already planned for (JWSLAs LIR [REP1-068]);
- the conclusion that the Proposed Development was unlikely to have any impact on affordable housing demand beyond what is planned for did not appear well founded (JSCs LIR [REP1-097]); and
- a Housing Fund is requested to address impacts on availability of affordable housing in particular (JSCs LIR [REP1-097] and JWSLAs LIR [REP1-068]).

10.2.79. In its response to the LIRs [REP3-078], the Applicant considered that within ES Appendix 17.9.3 [APP-201] the issue of affordable housing had been sufficiently addressed. It also stated that the potential tenure demands associated with the Proposed Development would be unlikely to have any impact on affordable housing demands beyond what had already been planned for. On that basis, the Applicant commented that no further mitigation measures were necessary.

10.2.80. Regarding the PRS, the Applicant responded [REP3-078] stating that it should be noted that the PRS represented just one source of potential supply which may be used by temporary construction workers. In '*The Applicant's Response to Local Impact Reports Appendix D – Construction Labour Market and Accommodation Impacts*' [REP3-082], the Applicant's previously established position was reiterated insofar as that the temporary construction workforce was not expected to place significant additional pressure on the demand for PRS accommodation. As such, the duration of construction workers' time on site, and hence the length of stay of NHB workers in the local area, would not create a surge in demand.

10.2.81. In addition to the above concerns, during ISH3 – Socioeconomics [EV8-001 and EV8-002], CBC confirmed a recent declaration of a 'housing emergency' had been made by the authority [REP1-213]. The LePAs confirmed that CBC had a significant and rising temporary accommodation and homelessness problem. It was not suggested by the LePAs that NHB workers would directly add to this problem in terms of CBC's responsibility to house them. However, it was considered that there would clearly be implications if NHB workers contributed to the demand for short-term rented accommodation including bed and breakfasts, hotels and single room lets in the local area, and this could foreseeably impact the cost of existing temporary short-term accommodation by increasing demand.

10.2.82. At [REP2-005], the Applicant confirmed that it did not consider that the housing emergency declared by CBC had a direct bearing on the nature of the assessment of population and housing effects. This was because several of the issues that had contributed to CBC's decision to declare a housing emergency were not considered to be relevant to the submitted application.

10.2.83. The Applicant concluded that it did not consider that the relatively limited number of NHB construction workers who were likely to reside in the Crawley Borough would materially impact CBC's position in relation to the declaration of a housing emergency, if CBC still maintained its housing emergency up until commencement of construction of the Proposed Development. Any increase in housing demand in the area attributable to temporary construction workers would be negligible and transitory in nature and would not impact the demand for temporary, emergency accommodation.

10.2.84. In respect of affordable housing concerns, at ExQ1.SE.1.15 [PD-012], we asked the LePAs to provide further detail in respect of the need for additional funding. The LePAs confirmed [REP3-135] that whilst it was not the role of the Applicant to resolve problems with the delivery of affordable housing, it felt that the Proposed Development would put additional pressure on affordable housing demand. The LePAs further stated that it therefore followed that the Applicant should be taking some action to mitigate the additional pressure the Proposed Development would put on demand for affordable housing.

10.2.85. In terms of mitigation, the LePAs suggested a Housing Mitigation Fund [REP3-135], which could be used to create more temporary accommodation in the adjacent area to the Proposed Development, both by working with and incentivising Houses in Multiple Occupation and PRS operators to expand their rental stock. Also, funding could be used to expand temporary accommodation stock, and this could free-up bed and breakfasts and hotels that were being used as emergency accommodation and these would then be available to go back to the market. Alternatively, the Applicant could directly negotiate block bookings with existing hotels and/ or build one of the airport hotels early for construction workforce, and then later use for aircrew.

10.2.86. In response to this, the Applicant [REP4-031] stated that it did not consider there to be any justification for a Housing Mitigation Fund, in either the construction or operational phases. Furthermore, the Applicant considered that the Proposed Development would only increase demand for affordable housing if it attracted significant numbers of additional people to the area who needed, and were eligible for, such housing.

10.2.87. The Applicant confirmed that CBC's eligibility for affordable housing was a five-year connection to the area and it would be unlikely that potential construction workers in

need of affordable housing would migrate to the area for those jobs as they would not be eligible for affordable housing for a further five years. The Applicant considered it would be more likely that the Proposed Development would provide jobs for people who were already living locally, including those in affordable housing [REP4-031].

10.2.88. In advance of ISH9 - Mitigation, we issued an agenda for the hearings [EV20-001] and this contained a table of our potential amendments to Schedule 2 (Requirements) of the Applicant's draft Development Consent Order (DCO) which was submitted into the Examination at D7 [REP7-005]. Included in the table was drafting for a new Requirement for a Housing Fund. We considered the inclusion of the draft Requirement necessary given the concerns raised by the LePAs in respect of their issues regarding the lack of affordable, temporary, and emergency housing.

10.2.89. During ISH9 – Mitigation [EV20-003 and EV20-005], the LePAs commented that [REP8-165] the draft wording of the Requirement would require further elaboration to ensure that all parties could understand the content and expectations of the plan to be submitted for approval. The LePAs suggested that the Requirement would need to specify the content of the required housing fund plan to ensure its deliverability to adequately mitigate the pressures on affordable and temporary housing, and it would also need to address timescale issues.

10.2.90. The Applicant also commented on the draft wording during ISH9 - Mitigation [REP8-106], stating that any discussion on the wording would be entirely academic as it did not accept the rationale for the housing fund. The Applicant also noted as a general observation that the wording as drafted did not provide any details regarding a financial limit or quantification of a sum, nor guidance of how a figure would need to be reached.

Homelessness Prevention Fund

10.2.91. In its Closing Submissions [REP9-112] the Applicant maintained its position that as no significant adverse impacts were identified, at either the construction or operational stages, no specific socioeconomic mitigation was identified as being necessary within ES Chapter 17 [APP-042]. However, the Applicant submitted an updated version of the s106 agreement which included a new schedule, Schedule 8 Homelessness Prevention Fund [REP9-102].

10.2.92. We issued a Rule 17 letter [PD-029] which requested the Applicant provide a justification for the Fund and to explain why this was not included as part of the original submitted application. In response [REP9-122], the Applicant confirmed that the Fund was aimed at providing housing support if needed where there was an insufficient supply of short term and nightly paid accommodation for those on the waiting list for affordable housing and on which the NHB workers associated with the Proposed Development could increase demand.

10.2.93. Whilst the Applicant acknowledged that there was some uncertainty in terms of the Census data it remained confident in the assessment and that impacts would be unlikely. However, it did recognise the change in circumstances with respect to homelessness that had occurred since the start of the Examination [REP9-102].

10.2.94. The Fund would be set at a maximum of £1 million and would only be used if evidence of increased homelessness because of additional demand from NHB construction workers was provided. The Fund would only be available during the construction phase as agreement had been reached between the JLAs and the

Applicant that no housing impact would occur during the operational phase [REP9-066]. Also, the JLAs confirmed that the funding offered would be sufficient to address their concerns regarding housing raised during the Examination [REP9-123].

10.2.95. The Applicant considered that the Fund would provide a safety net that should impacts arise, the JLAs would have access to funding to avoid incurring additional costs. With this Fund in place, CBC accepted that the potential issues arising from the lack of uncertainty in respect of housing would be adequately managed [REP9-066].

10.2.96. In respect of the Fund, CAGNE, in its Closing Statement [REP9-223], stated that the provision of a housing fund would not resolve the fundamental problem that there is a lack of land available to build on in Crawley.

Operational Phase

10.2.97. In respect of the operational phase of the Proposed Development, as detailed above, in its SoCG [REP9-066] CBC confirmed that it agreed that any housing impacts experienced during the operational phase would not result in any significant adverse effects and no mitigation was necessary.

ExA's Conclusion on Effects on the Housing Market

10.2.98. We are satisfied that the Applicant has adequately addressed the concerns raised in respect of the use of out-of-date data and that the additional data submitted into the Examination confirmed that the impacts and conclusions of the socioeconomics assessment would be unchanged based on the 2021 Census data.

10.2.99. Turning to the issue of the potential effects of temporary construction workers on the availability of both affordable housing and PRS accommodation, we are satisfied that, given the very small proportion of NHB workers who would require accommodation, significant adverse effects would not be experienced as a result.

10.2.100. Nevertheless, we are also mindful of the housing emergency faced by CBC. As such we have considered the Homelessness Prevention Fund contained within the s106 agreement in the context of both the policy and legal tests relevant to planning obligations and the housing issues currently being experienced by CBC. We also note that the local authorities who were signatories to the s106 agreement have agreed to the monies proposed.

10.2.101. We are therefore satisfied that the provision of the Homelessness Prevention Scheme and associated funding could provide a mechanism for the mitigation of potential housing effects. In addition, given the agreement reached between both the Applicant and the local authorities, we are satisfied that the use of a s106 agreement is an appropriate mechanism rather than that of a Requirement.

10.2.102. Furthermore, we consider that the provision of the Homelessness Prevention Scheme complies with the objectives within the ANPS, insofar as the Applicant has identified an appropriate measure to compensate for potential adverse effects.

Section 106 Agreement – Schedule 5: Employment, Skills and Business Strategy and Appendix 6: Draft ESBS Implementation Plan

10.2.103. As part of the suite of application documents, an ESBS [APP-198] was submitted into the Examination. The executive summary confirmed that the purpose of the

ESBS was to set out *"how Gatwick Airport Limited (GAL) would maximise economic benefits for communities and businesses generated by the proposal to make best use of Gatwick's existing runways and infrastructure, referred to within this Strategy as 'the Project'. GAL's underpinning approach would be to create the conditions for:*

- *sustainable employment, skills development and career progression for communities; and*
- *enhancements to the productivity and growth of businesses".*

10.2.104. Schedule 5 of the s106 agreement [REP10-019] related to Employment, Skills and Business, with Appendix 5 detailing the ESBS and Appendix 6 included a draft Implementation Plan.

10.2.105. Within the ESBS, the Applicant set out six activity themes [REP10-019], which were proposed to cover both the construction and operational phases of the Proposed Development. They were listed as:

- inspire and motivate;
- construction;
- employment and skills (non-construction);
- adding value through procurement;
- innovation; and
- regional promotion.

10.2.106. In its Closing Submissions [REP9-112], the Applicant confirmed that the ESBS would *"enhance the beneficial employment and labour market impacts of the Project that are expected to result from both the construction and operational periods. In addition, they would open up a wider range of opportunities than those that would be derived exclusively from the Project."*

10.2.107. The delivery of the proposed measures would be through ESBS Implementation Plans which would be approved by an ESBS Steering Group, which would consist of local authorities and relevant stakeholders. Section 5 of the ESBS set out the information that must be included in each ESBS Implementation Plan and they are to be in general accordance with the ESBS [REP10-019].

10.2.108. In addition to the strategy the Applicant proposed an accompanying ESBS fund of £20 million which aimed to enhance the benefits outlined in the ESBS and to also increase the significance of the effects through support for local businesses and residents [REP9-112]. It was proposed to secure the ESBS and associated funding through the s106 agreement [REP10-019].

10.2.109. During the Examination, in respect of the ESBS, the following three main issues were examined:

- how the ESBS Implementation Plan was to be secured;
- the content of the ESBS and Implementation Plan;
- how the ESBS would be beneficial in respect of health and wellbeing; and
- justification for the size of the fund.

Securing Mechanism

10.2.110. In respect of the proposed securing mechanism, in the ESCC LIR [REP1-070], it was suggested that should the Proposed Development be granted consent, then the ESBS Implementation Plan should be secured via a Requirement.

10.2.111. The issue of the securing mechanism was discussed throughout the Examination, with questions being asked at ISH 3 – Socioeconomics [EV8-001 and EV8-002], ISH9 – Mitigation [EV20-003 and EV20-005], ISH9 – Socioeconomics [EV20-015 and EV20-017], ExQ1.SE.1.6 [PD-012] and ExQ2.SE.2.8 and SE.2.9 [PD-021].

10.2.112. During ISH3 [EV8-001 and EV8-002], the Applicant was asked to comment on whether the ESBS should be secured by a Requirement, rather than via a s106 agreement. In response the Applicant [REP1-058] stated that it considered ESBS details would be best dealt with via a s106 agreement as a financial contribution was proposed and in connection with the contribution there would be detailed implementation mechanisms, all of which would be better set out in the fuller text of a s106 agreement. The Applicant further stated that it understood that there was no disagreement with the local authorities on this approach at this stage. In response [REP3-078] to the ESCC LIR the Applicant again stated that it was appropriate for the ESBS to remain secured as a s106 agreement obligation rather than as a Requirement.

10.2.113. In response to ExQ2.SE.2.8 [REP7-091] the Applicant provided further detail as to why it considered a s106 agreement was an appropriate securing mechanism. It explained that structure of the ESBS Implementation Plan had been set up to involve numerous third parties, many of whom who would be in the public sector, in delivering the objectives of the ESBS. Through this approach the Applicant would not have control over the activities of these parties as it will have its own contractors. The Applicant and the ESBS Steering Group would agree key performance indicators for each third-party delivering activities under the ESBS, but it would be inappropriate for the Applicant to hold these parties to the same standard that it would require of its contractors. If the ESBS Implementation Plan was secured by a Requirement, the Applicant would assume the responsibility for the delivery of all the activities with the associated criminal liability for breach. As such, the risk to the Applicant of involving these third parties would be much higher.

10.2.114. The Applicant further stated [REP7-091] that if the ESBS and Implementation Plan was secured via s106 agreement obligation, whilst it would still be responsible for the delivery, it would be able to work more dynamically with the stakeholders and third parties to ensure effective delivery. Additionally, as the associated funding would be secured through the s106 agreement, the Applicant considered that this would allow for active discussions and collaboration in a way that a formal submission and approval process via a Requirement would not. Were the ESBS Implementation Plan to be secured through a Requirement the Applicant noted that the ring-fencing of the fund would be secured through compliance with the ESBS itself which would make it less visible to all parties. In conclusion, the Applicant considered the use of a Requirement would not be conducive to collaborative working and it would in turn hamper the delivery of the ESBS.

10.2.115. In response to comments made by KCC in its PADSS (row 17 of [REP5-096]), we asked the Applicant at ExQ2.SE.2.8 [PD-021] to provide draft wording for a Requirement to secure the ESBS and Implementation Plan. At [REP7-091] the Applicant provided such wording but reiterated that it considered it preferrable that the ESBS and Implementation Plan would be secured via a s106 agreement. Additionally, should a Requirement be used as the securing mechanism the Applicant also noted that this would also require the ESBS and draft Implementation Plan to be significantly restructured.

10.2.116. In advance of ISH9 – Mitigation [EV20-003 and EV20-005], we issued an agenda for the hearings [EV20-001] and this also contained a table of our potential

amendments to Schedule 2 (Requirements) of the Applicant's draft DCO which was submitted into the Examination at D7 [REP7-005]. Included in the table was drafting for a new Requirement in relation to the 'Employment, Skills and Business Implementation Plan', the wording of which was based loosely on the drafting provided by the Applicant at [REP7-005], although some small amendments had been made.

10.2.117. During ISH9 – Mitigation [EV20-003 and EV20-005] we invited comments on the drafting of the Requirement. The Applicant [REP8-106] advised that significant progress had been made in respect of progressing the s106 agreement with the relevant local authorities.

10.2.118. The LePAs [REP8-165] stated that the proposed wording would meet the relevant tests in the National Planning Policy Framework and, to the extent relevant, in the ANPS for the imposition of Requirements. Nevertheless, they identified that there were circumstances where certain matters might be dealt with more flexibly or efficiently through a s106 agreement rather than as a Requirement. However, they stated that so long as the resolution of the s106 matters remained uncertain, they would welcome the drafting provided by the ExA.

10.2.119. Despite these remaining concerns, at D9 in the 'Joint Position Statement between Gatwick Airport Limited and the Joint Local Authorities' [REP9-123], it was concluded that in respect of Schedule 5 to the s106 agreement that "*For the avoidance of doubt, all parties agree that provision for the ESBS is most appropriately contained within this Section 106 Agreement, rather than separately through a requirement to the draft DCO".*

10.2.120. We also note that at D10, the Applicant submitted a final s106 agreement into the Examination, which had been signed by all relevant parties [REP10-019].

Content

10.2.121. During ISH3 – Socioeconomics [EV8-001 and EV8-002], the LePAs raised several concerns in respect of the ESBS. Specifically, it was not considered that the initial iteration of the ESBS provided adequate information on the baseline of the local area to inform the strategy. Also, it was not evident whether the Applicant had conducted an adequate review of the current baseline or arrangements for skills and training within local areas and therefore may not have picked up on existing skills gaps. This issue, relating to the scope and content of the ESBS, is something which the LePAs considered required further work [REP1-213].

10.2.122. Additionally, the LePAs raised concern [REP1-213] regarding the absence of a coherent and fully formed Implementation Plan. This was considered necessary so that the final version could be something which would be capable of being implemented at an early stage, in line with the delivery of the Proposed Development, should it be consented. This was deemed particularly important so to ensure that, when the Applicant was dealing with supply chains and skills bases, benefits could be secured by local labour force and local businesses. To ensure that the ESBS would secure the delivery of these benefits from the very outset of the Proposed Development, the LePAs requested that the implementation strategy was in operation at a very early stage. The absence of such a strategy was seen to be a cause for concern.

10.2.123. Similar concerns were raised in LIRs and SoCG in respect of the content of the ESBS. Overall, the concerns related to the following issues:

- the lack of detail regarding specific initiatives tailored to local need, targets, arrangements for deliverables and monitoring and no information to identify how the strategy would address current issues affecting the different local authorities (JWSLAs LIR [REP1-068], ESCC LIR [REP1-070] and JSCs LIR [REP1-097]);
- the ESBS should provide more detail on potential tailored initiatives that would specifically align with and support the communities within the local authorities in close proximity to the airport (JSCs LIR [REP1-097]);
- the ESBS failed to provide a baseline analysis of existing education and training providers. This would be required in order to identify what additional provision would be required (JWSLAs LIR [REP1-068] and JSCs LIR [REP1-097]);
- a need to set clear and measurable targets for engagement around apprenticeships, work experience and training schemes (JWSLAs LIR [REP1-068]); and
- a shortage of skills, rather than a shortage of workers, was identified. The skills shortage needs to be addressed through the ESBS (CBC SoCG [REP9-066]).

10.2.124. In response to the above matters, at [REP3-078], the Applicant confirmed that a draft Implementation Plan had been shared with ESCC and that it was continuing to work with ESCC and other local authorities to develop the draft. The draft would include the tailoring of delivery to local needs and would include specific measures such as work with career hubs and benefits would therefore be locally targeted.

10.2.125. The Applicant also confirmed that workshops were planned with local authorities and key stakeholders to continue to develop the draft Implementation Plan and would focus on issues such as monitoring, evaluation, milestones, and targets [REP3-078]. Confirmation was also provided that the proposed ESBS Fund would be allocated through the Implementation Plan, which would be approved by the ESBS Steering Group. The draft Implementation Plan was submitted into the Examination at [REP3-069].

10.2.126. During ISH9 – Socioeconomics [EV20-015 and EV20-017], we asked the Applicant and the LePAs to provide an update in respect of progress of the ESBS and draft Implementation Plan. The Applicant confirmed that [REP8-109] they had recently shared thematic plans with the LePAs and these were currently subject to further review and discussions. It was also confirmed that the approval process for the Implementation Plan wasunder review and subject to further discussions.

10.2.127. The LePAs acknowledged that discussions were ongoing [REP8-165], however they considered that the current Implementation Plan was seen as being an outline and they had requested a more detailed Implementation Plan. Whilst it was accepted that the Applicant had commented that this information would be provided at D8, the LePAs stated that the plan would need to define the following:

- which activities would sit outside of the ESBS fund, and which would sit within it;
- to specify the fund's intended coverage period;
- to provide clarity on spatial areas;
- to ensure alignment with thematic plans;
- to provide information on the need for specific beneficiaries, potential activities, and net additional impacts;
- how funding would be secured and how it would be spent; and
- how hard-to-reach groups would be engaged.

10.2.128. Despite these areas of concern, we note that several of the local authorities, in their PADSS [REP9-136], [REP9-166] and [REP9-172], concluded that the content and role of the ESBS and Implementation Plan was satisfactory. Accordingly, in the Joint Position Statement between Gatwick Airport Limited and the Joint Local Authorities

[REP9-123], it was stated that in respect of Schedule 5 to the s106 agreement "*Through the agreement of such terms, the parties agree that all issues raised/submissions made in relation to Employment, Skills and Business elements of the socio-economics topic area during the examination have been adequately addressed*".

Health and Wellbeing

10.2.129. At paragraph 18.8.408 of ES Chapter 18 [APP-043] the Applicant confirmed that the ESBS would assist in reducing adverse population health effects for vulnerable groups, particularly in areas such as Crawley where a baseline of poorer health outcomes was identified. Through the ESBS a commitment would be made to advertise and interview for jobs within the LSA and specifically promote opportunities for employment through channels accessible to vulnerable groups.

10.2.130. Paragraph 18.8.410 of ES Chapter 18 [APP-043] further stated that with the ESBS measures in place, inequalities for vulnerable groups would be improved. With a sustained intervention targeting those with existing disadvantages in the LSA, particularly young adults who were not in education, employment, or training and those in long-term unemployment, the assessment concluded that in 2032, 2038 and 2047 the residual operational benefits would be significant beneficial.

Funding

10.2.131. The initial level of funding proposed by the Applicant regarding the ESBS was set at £14 million [REP2-004]. This figure was initially questioned in the JWSLAs LIR [REP1-068] and JSCs LIR [REP1-097] in respect of how the figure had been arrived at, how it related to the ESBS and how the Fund related to the draft Implementation Plan.

10.2.132. In response [REP3-078], the Applicant confirmed that the Fund would be allocated through the Implementation Plans which would be approved by the ESBS Steering Group. In terms of the £14 million figure, the Applicant responded confirming that a response had been provided to the local authorities and that discussions were on-going.

10.2.133. During ISH9 - Socioeconomics [EV20-015 and EV20-017] we asked the Applicant to provide justification for the figures for the financial contributions in the draft s106 agreement schedules and additional information was provided by the Applicant at [REP8-111].

10.2.134. However, the detail provided in [REP8-111] was minimal, and only confirmed that the £14 million was required to deliver significant activities across the region to support the delivery of the objectives set out in the ESBS. However, the Applicant confirmed that the updated s106 agreement Explanatory Memorandum to be submitted at D9 would include justification for the final values of the financial contributions.

10.2.135. At D9 the '*Section 106 Agreement – Explanatory Memorandum'* [REP9-106] was submitted into the Examination. However, this did not provide a justification for the final financial contributions, other than stating that the value of the fund was based on agreement by the Applicant and the JLAs about the sums required to maximise the benefits of the Proposed Development in accordance with the ESBS.

10.2.136. It should also be noted that at D9 [REP9-102], the ESBS Fund increased from £14 million to £20 million with no justification for the £6 million increase being provided.

ExA's Conclusion on the Section 106 Agreement – Schedule 5: Employment, Skills and Business Strategy and Appendix 6: Draft ESBS Implementation Plan

10.2.137. As detailed above, the Applicant has demonstrated that there would be significant employment opportunities created by the Proposed Development. We note that the Applicant has been working with the local authorities and regional stakeholders to maximise the benefits of the opportunities that would be created.

10.2.138. As such, we consider that the initiatives which would be secured by the ESBS and Implementation Plan would assist in maximising the employment and skills development opportunities created by the Proposed Development.

10.2.139. We note that the availability of employment lies at the heart of inclusive economic growth and the alleviation of poverty. It is also widely accepted that good quality employment can have positive influences on an individual's overall health and wellbeing.

10.2.140. As such, with specific regard to health implications, we are content that the initiatives set out in section 8.6 of the ESBS at Appendix 5 of the s106 agreement [REP10-019] would both promote and increase health equity by enabling greater accessibility to employment for local vulnerable groups. The measures included within the ESBS would, through training, employment and procurement initiatives, aid in removing barriers to employment.

10.2.141. Furthermore, we consider that the provision of the ESBS complies with objectives in the ANPS, insofar as the Applicant has identified an appropriate measure to compensate for potential adverse health effects.

10.2.142. We are therefore satisfied that the provision of the ESBS, Implementation Plan and associated funding could provide a mechanism to maximise economic benefits for communities and businesses. We are satisfied that, given the amendments and additional provisions made to the ESBS and Implementation Plan by the Applicant, that it could provide suitable conditions to deliver sustainable employment, skills development and career progression for communities and enhancements in the productivity and growth of business.

10.2.143. Given the agreement reached between both the Applicant and the JLAs, we are satisfied that the use of a s106 agreement is an appropriate mechanism rather than that of a Requirement.

Gatwick Community Fund

10.2.144. The purpose of the proposed Gatwick Community Fund (GCF) was stated by the Applicant [REP9-112] as being to "*mitigate the intangible and residual impacts of the Proposed Development so as to improve the quality of life of those impacted by the operation of Gatwick Airport including the advancement, provision and/or relief of their economic, environmental, social, health, educational, employment and financial circumstances".*

10.2.145. The GCF would be secured via Schedule 4 of the s106 agreement [REP10-019] and would be administered through the existing Community Foundations operating in Sussex, Surrey, and Kent. To achieve this, the total fund would comprise three distinct funds with governance through a decision-making panel comprising representatives of GAL, the Community Foundations and the relevant county authority.

10.2.146. During the Examination concerns were raised, mainly by the LePAs, in respect of the justification for the level of proposed funding. Such concerns were highlighted at the beginning of the Examination in the below LIRs:

- JWSLAs LIR [REP1-068] at paragraph 18.98 concern was raised in respect of whether the size of the community compensation fund would be proportionate to the environmental harm caused by expansion of the airport; and
- JSCs LIR [REP1-097] at paragraph 1.12 the local authorities commented that major changes would be required to the scope and scale of payments, including to the Community Fund, considering the significant impacts of growth of the Airport as proposed by the Applicant.

10.2.147. The issue of the proposed GCF was also discussed at ISH3 - Socioeconomics [EV8-001 and EV8-002]. As with comments made in the LIRs, the LePAs [REP1-213] commented that whilst discussions between the parties were on-going, concern remained that the proposed approach would be inadequate in terms of resources and that the Applicant's suggestion to 'scale up existing arrangements' would not be appropriate to deal with the residual impacts of the Proposed Development.

10.2.148. Further to these on-going concerns at ExQ1. DCO.5.3 [PD-012] we asked CBC, HDC, MSDC and WSCC to detail what level of funding was identified by the Airports Commission and how this was comparable to the sums in the proposed GCF. In response, the LePAs [REP3-135] identified that in comparison to the figures suggested by the Airports Commission, the level of funding proposed by the Applicant was significantly less. Comparison was also drawn to the proposed Luton Airport Community Fund obligation and again, the proposed funding suggested by the Applicant would also fall short of the proposed funding offered by the Applicant for the London Luton Airport Expansion DCO application.

10.2.149. The Applicant responded to the concerns in respect of funding throughout the Examination. In response to the comments made in the LIRs [REP3-078], the Applicant confirmed that the level of funding would be linked to passenger numbers to ensure funding is scaled according to passenger volumes and is therefore directly linked to the impacts of airport growth. The size of the proposed GCF was considered to be fairly and reasonably related in scale and kind to the Proposed Development.

10.2.150. In particular, the Applicant noted [REP3-078], that the incremental increase in contribution from 50mppa upwards would reflect the increase in revenue that would be received as a result of the increased number of passengers and therefore the Applicant considered it appropriate to increase the contributions towards the community accordingly.

10.2.151. Turning to ExQ1.DCO.5.3, in response the Applicant [REP4-031] noted that the Airports Commission Final Report related to an entirely different development proposal in comparison to the Proposed Development. The Applicant maintained that it had proposed a figure which, when all other mitigation was considered, represented an amount which it believed was proportionate to the environmental impacts and would address any residual and intangible effects. The level of funding had also been designed to increase in steps which would reflect the trajectory of growth and any associated effects.

10.2.152. At the close of the Examination, in the Applicant's Closing Submission [REP9-112], it was stated that the proposed GCF reflected a significant amount of money being

made available to the local community. Additionally, that the GCF was proportionate to the number of passengers and further detail in respect of the level of funding was detailed in '*Appendix 1 of the Section 106 Agreement – Explanatory Memorandum*' [REP9-106].

10.2.153. Appendix 1 of [REP9-106] also provided a justification for the amendment to the level of funding proposed. In summary, the Applicant confirmed that following feedback from the JLAs, rather than having a fixed payment for each passenger number bracket, it had committed to making a contribution on the basis of 2p per passenger above 50mppa. This approach reflected the approach outlined by the Airports Commission. The Applicant also confirmed its commitment to increase the proposed GCF by the value of any fines from exceeding the specified noise thresholds via any noise supplements received by GAL.

10.2.154. At [REP9-112], the Applicant also referenced the Joint Position Statement with the JLAs [REP9-123], referring to paragraph 2.1.7 which stated "…*the parties agree that all issues raised/submissions made in relation to the terms of the Community Fund during the examination have been adequately addressed. For the avoidance of doubt, all parties agree that provision for the Community Fund is most appropriately contained within this Section 106 Agreement, rather than separately through a requirement to the draft DCO".*

ExA's Conclusion on the Gatwick Community Fund

10.2.155. We have reviewed the key principles of the proposed GCF and consider them to be appropriate. The proposed governance arrangements would allow for any affected communities to be part of the process in delivering the benefits that would come from the fund and this would respond directly to the effects of the development over a prolonged period.

10.2.156. In line with paragraph 5.247 of the ANPS, we are satisfied that the proposed GCF is a proportionate response to the potential community effects identified in these circumstances.

10.3. ExA's CONCLUSION ON SOCIOECONOMICS

10.3.1. In terms of the socioeconomic assessment, we note that there is not a standardised methodology which specifies the detail required to prepare socioeconomic assessments, or that provides defined standards or thresholds for assessing the significance of socioeconomic effects.

10.3.2. Whilst accepting that uncertainties exist within the socioeconomic assessment, we are satisfied that the Proposed Development would provide significant beneficial effects in terms of the availability of labour, due to the airport attracting additional staff, and direct, indirect, and induced employment. Gatwick Airport is already an important employer in the area and currently supports a significant level of local employment and the potential economic benefits from the Proposed Development, if realised, would undoubtedly result in both local and national economic growth.

10.3.3. As such, we consider that the Applicant has adequately assessed the effects of the Proposed Development in line with both paragraph 4.4 and 4.5 of the ANPS and has provided sufficient evidence to support its conclusions on those effects.

10.3.4. We are satisfied that the Proposed Development would support economic development in both the local area and nationally. Such effects would not be affected by the conclusions of the ExA with regard to the forecast traffic levels for

the future baseline and the Proposed Development, as found in Chapter 4 of this Report.

10.3.5. In conclusion, we find that the Proposed Development in respect of socioeconomics, would accord with the ANPS and other relevant legislation and policy requirements.

10.3.6. Accordingly, we ascribe moderate weight to matters relating to socioeconomics in favour of the Order being made.

11. WATER ENVIRONMENT

11.1. INTRODUCTION

11.1.1. This Chapter considers the effects of the Proposed Development in relation to the water environment.

11.2. THE APPLICATION

11.2.1. The Applicant's assessment of the water environment was primarily contained within the Environmental Statement (ES) Chapter 11 [APP-036]. For the purposes of this assessment, the water environment constituted:

- Surface water (comprising geomorphology and water quality);
- Groundwater;
- Flood risk (including surface water drainage); and
- Water infrastructure (comprising wastewater and water supply).

11.2.2. Chapter 12 was supported by the following documents:

- Water Environment Figures [APP-057];
- Appendix 11.2.1 - Summary of Local Planning Policy [APP-140];
- Appendix 11.3.1 - Summary of Stakeholder Scoping Responses [APP-141];
- Appendix 11.9.1 - Geomorphology Assessment [REP5-023];
- Appendix 11.9.2 - Water Framework Directive Compliance Assessment (WFDCA) [APP-143];
- Appendix 11.9.3 - Water Quality "Highways England Water Risk Assessment Tool" (HEWRAT) Assessment [REP8-078];
- Appendix 11.9.4 - Water Quality De-Icer Impact Assessment [APP-145];
- Appendix 11.9.5 - Groundwater Assessment [APP-146];
- Appendix 11.9.6 - Flood Risk Assessment (FRA) [REP9-053];
- Appendix 11.9.6 - FRA Annexes 1-2 [REP8-080];
- Appendix 11.9.6 - FRA Annexes 3-6 [REP9-055];
- Appendix 11.9.7 - Wastewater Assessment [APP-150]; and
- Appendix 11.9.8 - Water Supply Assessment [APP-151]

11.2.3. In addition, to mitigate potential adverse impacts during construction the Applicant also submitted the Water Management Plan [REP8-027] which is Annex 1 of the Code of Construction Practice.

11.2.4. Several measures were proposed as part of the Proposed Development to mitigate the potential impacts on the water environment during construction and operation. These are detailed in paragraph 7.6.6 of the ES Non-Technical Summary [REP3-052] and include:

- the naturalisation of the River Mole and the proposed new channel to provide additional floodwater storage and biodiversity enhancements;
- the provision of a new water treatment system for water originating from the long term storage lagoons;
- the creation of floodplain compensation areas at Museum Field and multi-storey Car Park X and additional storage within the existing airfield surface water drainage network;
- the installation of airfield surface water drainage storage beneath multi-storey Car Park Y and new syphons to connect the floodplain on both sides of taxiways and a noise mitigation feature;

- the development of a Surface Access Drainage Strategy for the proposed highway improvements, including Sustainable Drainage Systems (SuDS);
- a new section of River Mole channel at the existing runway culvert exit;
- upgrades to the existing wastewater system, including improvements in wastewater capacity; and
- geomorphological mitigation including realignment, re-naturalisations and other engineering works at targeted locations.

11.2.5. Considering the mitigation measures described above, the Applicant concluded no significant adverse effects were likely to occur. However, the Applicant (paragraph 7.6.9 [REP3-052]) considered that the following significant beneficial effects were likely to occur with respect to the water environment:

- Long term beneficial effects on the water quality of the River Mole and Gatwick Stream during construction and operation of the Proposed Development.
- Long term beneficial effects on the geomorphology (physical characteristics) of the River Mole during construction and operation of the Proposed Development. Benefits would include River Mole renaturalised channel works, including re-meandering and restoration of natural channel morphology and improved floodplain coupling.
- Long term beneficial effects on flood risk from rivers within the Proposed Development site and surrounding area during construction and operation of the Proposed Development.

11.3. ISSUES CONSIDERED DURING THE EXAMINATION

11.3.1. In excess of 220 Relevant Representations (RR) submitted expressed concerns about the water environment impacts of the Proposed Development. Having taken these into account alongside the submitted application documents, the ExA considered that water environment would be one of the initial principal issues for the Examination. The Initial Assessment of Principal Issues (IAPI) is set out in Annex C of the Rule 6 letter [PD-009].

11.3.2. We considered that the following issues needed to be examined in greater detail:

- flood risk;
- wastewater;
- water supply; and
- water quality.

Flood Risk

11.3.3. Numerous RR expressed concern that the Proposed Development would increase the amount and frequency of flooding especially along the River Mole. In addition, concern was expressed that the impacts would be greater when taking into account climate change.

11.3.4. Seventeen RR also expressed concern that the Proposed Development would increase flood events on the River Arun. The Applicant however confirmed in its response [REP3-105] to our question ExQ1.WE.1.3 [PD-012], that the Proposed Development would not affect the River Arun. Gatwick Airport lies wholly within the catchment of the River Mole (including the Mole's tributaries) that drains northwards to the River Thames. Given we had no further submissions on this matter we consider that the Proposed Development would not result in any change to flood risk in the River Arun catchment.

11.3.5. Gatwick is in the Thames River Basin District and within the Upper Mole catchment. The Proposed Development site coincides with areas classified as Flood Zone 2 and Flood Zone 3. There are also several areas at high, medium, and low risk of surface water flooding within the Proposed Development site. These areas are primarily associated with the River Mole and connected tributaries, including Crawter's Brook, Gatwick Stream, and Westfield Stream, which pass through or near the Proposed Development site. There are additionally, some areas within the Proposed Development site that are susceptible to groundwater flooding. However, only two occurrences of groundwater flooding have been recorded in the area, which were not near the Proposed Development site (para 5.5.8 FRA [REP9-053]).

11.3.6. In terms of paragraph 5.154 of the ANPS, the FRA [REP9-053] sets out the Applicant's evidence in sections 5.10 and 7.6, that both the Sequential and Exception tests have been applied in relation to the Proposed Development. The FRA included fluvial, surface water and groundwater flooding, as well as flooding due to reservoir failure, flood defence failure and sewer/ water distribution infrastructure flooding. The assessment utilised site-specific hydraulic modelling that has been developed by the Applicant (surface water drainage and wastewater) and in partnership with the Environment Agency (EA) (fluvial).

11.3.7. The Applicant and the EA developed the Upper Mole Fluvial Modelling Study to develop a better understanding of the flood risk in the catchment area. At the start of the Examination the EA [RR-1374] stated that they were still reviewing the Applicant's 'with scheme' flood risk modelling. Discussions continued throughout the Examination between the Applicant and the EA. In the signed SoCG [REP10-015] all matters relating to the Water Environment are shown as agreed.

11.3.8. Surrey County Council (SCC), one of the Lead Local Flood Authorities (LLFA), in the Joint Surrey Councils (JSCs) Local Impact Report (LIR) [REP1-097] stated that it would like the Applicant to justify why a 40-year design life had been used for the airfield as opposed to the 100 years used for highway elements. In the Joint West Sussex Local Authorities (JWSLAs) LIR [REP1-068] a similar concern was expressed about the resultant difference in climate change allowances used if the design life for airfield works at forty years was different to the one hundred years design life for highway works.

11.3.9. In terms of fluvial flood risk, we asked the Applicant about the differential lifetimes of the Proposed Development airfield and highway elements in question ExQ1.WE.1.6 [PD-012]. The Applicant [REP3-105] responded *"Through SoCG discussions the Environment Agency has requested sensitivity testing of a longer assumed design-life for the airfield works. However, it should be noted that as the Project has developed a combined fluvial flood mitigation strategy for both airfield and surface access elements, mitigation is provided to ensure no increase to other parties up to the 1 per cent (1 in 100) AEP [Annual Exceedance Probability] event, plus the Central allowance of +20 for climate change event. This is equivalent to assuming a 100-year design life for the airfield elements."* The Applicant goes on to explain its fluvial flood risk mitigation strategy does not differentiate between the two design lives and provides additional mitigation beyond that required for the airfield elements.

11.3.10. In terms of surface water flood risk, in question ExQ1.WE.1.4 [PD-012] we asked the LLFAs about climate change allowances used in the Applicant's assessment. The Legal Partnership Authorities (LePAs) [REP3-135] responded that the LLFAs (SCC and West Sussex County Council (WSCC)) consider that an adopted design

life of 100 years should be used for the airfield works, and as such the climate change allowance for the airfield works should be increased from 25% to 40%.

11.3.11. The Applicant [REP3-105] responded *"As the adopted lifetime for the airfield works of 40 years (up to 2069) the airfield surface water drainage has adopted the Central allowance of + 25% for the 2070s epoch (2061 to 2125) the 1 per cent (1 in 100) AEP event for rainfall intensity in accordance with the EA guidance. A 40% climate change allowance has also been tested as a credible maximum scenario (as a sensitivity analysis) for the airfield surface water drainage, in order to test the impact of a larger potential change as a result of climate change."* The Applicant concluded that when taking into account the mitigation measures that the Proposed Development would not adversely impact surface water flood risk or increase surface water flooding elsewhere in the credible maximum scenario.

11.3.12. We discussed progress on agreement of flood modelling at ISH7 [EV11-001]. The Applicant [REP4-033] outlined a similar response to its previous above statement and in the post hearing note at paragraph 4.1.10 stated it was still discussing the post development run off rates with the LLFAs.

11.3.13. In the signed SoCG [REP9-084] with WSCC Item 2.22.2.3 records that all matters relating to the assessment methodology are agreed, although Item 2.22.4.4 still shows WSCC disagreement with the climate change allowances. There is however no mention of outstanding disagreement in the WSCC PADSS [REP9-172]. The SoCG [REP9-080] with SCC Item 2.22.2.1 records that the issues relating to climate change allowances are no longer being pursued.

ExA's Conclusion on Flood Risk

11.3.14. The ExA is satisfied with the confirmation from the EA in relation to fluvial flood risk and the final positions of the LLFAs (WSCC and SCC) in relation to surface water flooding that the Applicant has demonstrated compliance with the requirements of the ANPS and also 2015 NNNPS in relation to the highway improvement elements of the Proposed Development.

Wastewater

11.3.15. Thames Water Utilities Limited (TWUL) in paragraph 2.3 of its WR [REP1-103] stated that *"TWUL is working with the Applicant on its modelled foul water flows to understand the impact of the change in these (as a result of the proposed development) on TWUL's network. The programme for delivering the likely strategic upgrade works as a result of the Applicant's proposal should not be underestimated and will be significant (in the order of 3-5 years from when the appropriate information is supplied). TWUL requests a requirement be included within the DCO if made specifying that no additional foul water flows from the development can be discharged until the modelled flows have been agreed by TWUL and the network upgrades implemented."*

11.3.16. In addition, in paragraph 9.47 of the JSCs LIR [REP1-097] the Councils express concerns about the capacity limits at the Horley Wastewater Treatment Works (WTW) and the need to deliver flow improvements from the airport to the Crawley WTW. Similar concerns about the Proposed Development adding to existing sewerage problems were expressed in paragraph 142 of the Communities Against Gatwick Noise and Emissions (CAGNE) WR [REP1-138].

11.3.17. Chapter 11 of the ES [APP-036] Table 11.3.4 indicates that TWUL will be undertaking its own assessment of impact upon its network. We asked in question

ExQ1.WE.1.8 [PD-012] about progress on the necessary assessment required to understand the impact on TWUL infrastructure.

11.3.18. The Applicant [REP3-015] responded stating that they were still in discussions with TWUL about the necessary modelling work to assess the public sewer network (PSN) and Horley and Crawley WTW. The Applicant, cognisant of the potential delivery risk to the Proposed Development in delays to the infrastructure capacity assessment, stated that it was considering an onsite WTW to treat all foul water flows from the airport.

11.3.19. TWUL [REP3-149] responded to WE.1.8 that it did not anticipate that detailed assessments of its public infrastructure would be completed until early 2025. This timescale would be outside of the Examination period and potentially beyond the period that the SoS would make any decision on the DCO.

11.3.20. Discussions continued between the Applicant and TWUL. The Applicant subsequently submitted its second change request [REP6-072] to construct and operate an onsite WTW as an alternative option in the DCO. The Applicant wanted this as an option due to TWUL's inability to confirm infrastructure capacity in the Examination timescales. It was concerned as TWUL requested a Requirement be included in the dDCO that specifies that no airport growth arising from the Proposed Development can be implemented (and wastewater flows discharged) until modelled wastewater flows have been agreed by TWUL and any necessary upgrade works to TWUL's network and processing facilities have been implemented. The Applicant considered that its onsite WTW alternative option would mean there would be no adverse impact on TWUL infrastructure and there would be a potential benefit as all airport foul water flows would be treated onsite.

11.3.21. We asked both the Applicant and the EA in question ExQ2.WE.2.4 [PD-021] about the environmental permit that would be required for any onsite WTW to discharge treated water to the River Mole. The EA responded [REP7-100] stating that any discharge from a new facility would require full modelling of the proposed discharge to consider potential impacts on the receiving watercourse with appropriate permit limits set accordingly to protect the environment.

11.3.22. In the signed SoCG with the EA [REP10-015] Item 2.22.3.13 related to the onsite WTW. The matter is recorded as agreed but the EA comments make it clear that there is still information required about the design and operation of the WTW and also *"if a permit application was successful, options include the inclusion of an improvement condition stating that connection to the sewerage network would be required at the point at which capacity became available or if Thames Water adopt the facility in the future."* We concluded from this that where there is the possibility of the Applicant providing an onsite WTW, there needs to be further work done on the detailed design and that the EA indicate a preference for eventual connection to the TWUL PSN.

11.3.23. In the unsigned SoCG with TWUL [REP9-064] Item 2.22.52 related to the TWUL infrastructure capacity. The matter is shown as under discussion but in bold is *"engagement and the information that GAL has provided to Thames Water has thus far failed to yield a coherent and holistic assessment from Thames Water and consequently no report from Thames Water on the likely scale and feasibility of any upgrades required which would enable either the Applicant or the Examining Authority to understand this."*

11.3.24. The Applicant in its final dDCO [REP10-004] has included R36 (Thames Water phasing plan) that states –

"36.— (1) Prior to the commencement of the authorised development, the undertaker must prepare and provide to Thames Water Utilities Limited a passenger throughput phasing plan which will include forecast passenger growth numbers for the period up to the commencement of dual runway operations and five years after the commencement of dual runway operations.

(2) The details in the plan provided pursuant to sub-paragraph (1) must not materially exceed the forecast annual passenger numbers shown for the equivalent time periods for the airport with the authorised development in Table 9.2-1 of the forecast data book"

11.3.25. TWUL [REP9-358] reiterated its earlier request for the addition of the following to R10 (Surface and foul water drainage) –

"(7) The authorised development is not to discharge additional foul water flows to Thames Water Utilities Limited's public sewer network until written details of the foul water discharge from the authorised development (including expected flow rates; any required hydraulic modelling results and a development phasing plan) have been submitted to and approved in writing by Thames Water Utilities Limited.

(8) Pursuant to sub-paragraph (7), no additional discharge of foul water flows is to take place other than in accordance with the approved development phasing plan unless otherwise agreed in writing with Thames Water Utilities Limited."

11.3.26. CAGNE in its closing statement [REP9-223] reiterated its view that it considered that it would be entirely appropriate and necessary for the ExA to impose a phasing requirement in the DCO for no additional growth until the upgrades are carried out.

11.3.27. We understand the general sewerage drainage duty TWUL have with respect to Section 94 of the Water Industry Act 1991 but consider this has particular reference to the future baseline position and any resultant growth in foul water flows. The Applicant has applied for development consent for works that will lead to a significant increase in passenger numbers at the airport over the growth anticipated in the future baseline. In the Proposed Development scenario, we consider it is reasonable that TWUL ought to have the ability to ensure it can plan for and accommodate the additional flows associated with the application.

11.3.28. We understand that the Applicant and TWUL are working towards a solution to understand any necessary upgrades required to TWUL infrastructure. The EA has also expressed its preference for the airport sewer network to be connected to the PSN. The provision of an onsite treatment works (Works No 44 dDCO [REP10-004]) is being proposed by the Applicant as an alternative should an agreed position about the PSN and Crawley and Horley WTWs not be in place at the time of first dual runway operation.

11.3.29. The Applicant has proposed a new R36 that states that the undertaker would provide TWUL with a passenger growth phasing plan to provide comfort as to the anticipated passenger throughput trajectory and thus enable TWUL to understand the maximum wastewater flows and plan accordingly. There is no cross reference in the dDCO [REP10-004] between this new R36 and R31(3) concerning the construction sequencing of the onsite WTW.

ExA's Conclusion on Wastewater

11.3.30. We were unable to ascertain the final position between the Applicant and TWUL as the last submitted SoCG [REP9-094] remained unsigned at the end of the Examination with matters relating to wastewater recorded as still under discussion.

11.3.31. Taking all of these matters into account we consider that TWUL should be able to plan for and deliver any necessary improvements required to facilitate the additional foul water flows associated with the Proposed Development. We also consider that:

- The Applicant's final dDCO [REP10-004] R36 does not allow any control by the statutory sewer undertaker (TWUL) of the additional increased foul water flows resulting from the Proposed Development in order for proper planning of its network infrastructure and possible improvements that may be required;
- The Applicant's final dDCO [REP10-004] does not have any linkage between the two alternative wastewater solutions in R31 and R36; and
- The TWUL [REP9-358] proposed additional wording to R10 is not precise as it would not be possible to understand the point at which additional foul water flow was as a result of the Proposed Development rather than the future baseline growth.

11.3.32. Taking these factors into account we are recommending in the rDCO an amended R31, which combines R36 and clarifies the approach with respect to the alternative wastewater options proposed by the Applicant. Our suggested revision to R31 would be to delete the existing paragraph 3 and replace it with the following –

(3) Prior to the commencement of the authorised development, the undertaker must prepare and provide to Thames Water Utilities Limited a development phasing plan which will include forecast passenger growth numbers for the period up to the commencement of dual runway operations and ten years after the commencement of dual runway operations.

(4) The details in the plan provided pursuant to sub-paragraph (3) must not materially exceed the forecast annual passenger numbers shown for the equivalent time periods for the airport with the authorised development in Table 9.2-1 of the forecast data book.

(5) The commencement of Work No 44 (wastewater treatment works) must not take place until and unless Thames Water Utilities Limited confirm in writing within two years of the making of this Order that following review of the development phasing plan it's infrastructure will not be able to accommodate the additional foul water flows for the ten-year period after the commencement of dual runway operations.

(6) The commencement of dual runway operations must not take place until either —

(a) The development phasing plan has been approved in writing by Thames Water Utilities Limited, or;

(b)(i) Work No. 44 (wastewater treatment works) has been completed; and

(ii) an application has been submitted for an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 for the operation of Work No. 44 (wastewater treatment works).

11.3.33. We consider that this amended R31 would ensure that priority was given to the agreement between the Applicant and TWUL concerning the impact on and

necessary upgrades to the PSN and WTW. From the evidence submitted to the Examination this did appear to be the preferred solution for the Applicant, TWUL and the EA.

11.3.34. As this matter was not concluded at the end of the Examination and the SoCG remained unsigned we are recommending this amendment for the rDCO to resolve the issue. Normally we would have consulted the relevant parties on this pre-commencement Requirement, but this was not possible on this occasion. We would recommend that the SoS may wish to consult the relevant parties about this amended R31 prior to making any decision on the making of the Order.

11.3.35. The ExA, taking into account our proposed amendment to R31, considers that the wastewater solution would be acceptable and that there would be no likely significant effects relating to wastewater arising from the Proposed Development.

Water Supply

11.3.36. Thirty-three RR expressed concerns about the supply of water. The concern was that any additional water supply demands created by the Proposed Development would create additional stress on water abstraction.

11.3.37. The Water Supply Assessment (WSA) [APP-151] sets out that Gatwick's water is supplied by Sutton and East Surrey Water (SES Water). In paragraph 0.1.3 of the WSA the Applicant states that *"Sutton and East Surrey water has not identified any impediment to their meeting the increase in demand."* Table 11.3.4 of ES Chapter 11 [APP-036] stated that SES Water will be undertaking its own assessment of the impact on water supply.

11.3.38. We asked in question ExQ1.WE1.9 [PD-012] both the Applicant and SES Water about progress on the water supply assessment. The Applicant [REP3-105] confirmed that they had recent communication from SES Water that they did not consider it needed to make a representation to the Planning Inspectorate relating to the Proposed Development as a consequence of ensuring its operation as a water undertaker. At that time SES Water did not respond directly to our written question.

11.3.39. Before the end of the Examination, we wanted to be certain that the water supply required for the Proposed Development could be delivered. We asked in question ExQ2.WE.2.1 [PD-021] for confirmation directly from SES Water. SES Water [REP7-118] responded that *"we provide this correspondence to confirm we are satisfied we will be able to meet the proposed development's water supply requirements."*

11.3.40. With this reassurance the ExA is satisfied that the water supply required for the Proposed Development can be met.

Water Quality

11.3.41. Twelve RR expressed some concern that the Proposed Development would lead to a deterioration of the water quality especially in the River Mole.

11.3.42. The Applicant's ES Chapter 11 provided two appendices relating to the assessment of water quality and one relating to the status of water bodies. These are outlined above.

11.3.43. The Applicant submitted Change 3 [AS-139] during the Examination regarding the treatment of runoff from the airport that is potentially contaminated with de-icer.

Currently this is discharged to TWUL's Crawley WTW for treatment prior to discharge to the Gatwick Stream. The Applicant's original submission was to provide a Moving Bed Biofilm Reactor (MBBR) treatment plant, to cease discharge to the Crawley WTW and instead to send treated outflows directly to the Gatwick Stream. Change 3 was to replace the MBBR treatment plant with an engineered wetland (reed bed) process to treat the potentially contaminated runoff and still discharge to the Gatwick Stream.

11.3.44. WSJLAs [REP6-116] in Item 3.1 raised concerns that the SuDS manual approach the Applicant adopted for the car park assessment within the Water Quality HEWRAT Assessment should also be used for the assessment of the proposed highways works. The Applicant [REP7-095] responded that the adoption of HEWRAT for the water quality assessment during the operational phase of the proposed highways works is in line with Design Manual for Roads and Bridges and reflective of the influence of highway traffic volumes. Therefore, the Applicant considered the use of the HEWRAT method appropriate to assess the risks associated with routine runoff from the highway components of the Proposed Development. Additionally, the Applicant explained that it considered the application of separate assessment methods to different elements of the Proposed Development to be appropriate and proportionate for potential significant effects to be identified. We see no reason to disagree with the Applicant's position in this respect.

11.3.45. The Water Framework Directive (WFD) Compliance Assessment [APP-143] concluded *"that it is anticipated that the Project would not lead to deterioration in the current status or prevent the WFD water bodies from achieving "Good" Status/Potential in the future and is therefore considered compliant with the WFD legislation."* There were no representations during the Examination to contradict that conclusion and we are satisfied that the Applicant has demonstrated compliance.

11.3.46. At the end of the Examination there were no outstanding issues identified in either the SoCG or PADSS relating to water quality between the relevant parties. Given this and the findings of the Applicant's assessment outlined above, the ExA is satisfied that the Proposed Development would not have any likely residual significant adverse effects on water quality.

11.4. ExA's CONCLUSION ON WATER ENVIRONMENT

11.4.1. The ExA is satisfied that there are no outstanding construction and operational issues relating to flood risk, water supply and water quality that would not be satisfactorily controlled by the following rDCO Requirements:

- R7 Code of Construction Practice, in particular Annex 1 Water Management Plan [REP8-027];
- R23 Flood compensation delivery plan [REP8-096]; and
- R24 Flood Resilience Statement [REP9-055].

11.4.2. In terms of the effects created by the Proposed Development on the water environment, the impacts relating to wastewater remained unresolved at the end of the Examination. The Applicant's Wastewater Assessment [APP-150] focused on the onsite wastewater network as the PSN is the responsibility of TWUL. It did not find any issues relating to the proposed onsite infrastructure. However, it is clear that the ongoing discussions between the Applicant and TWUL had not resolved whether the additional wastewater flows associated with the Proposed Development can be accommodated by TWUL public infrastructure.

11.4.3. The Applicant, understanding the importance of this issue, proposed an alternative wastewater solution to provide an onsite WTW that would mean all wastewater from the airport would be treated onsite and not be added to the PSN. That said, the preference demonstrated from the Applicant and the EA in item 2.22.3.13 of the SoCG [REP10-016] was for wastewater flow to be discharged into the PSN rather than enter into a separate discharge permit into the River Mole for the onsite WTW.

11.4.4. We conclude that there needs to be some certainty as to the ability of TWUL infrastructure to accommodate the additional wastewater flows before any consideration that an alternative onsite WTW should be constructed. We are therefore recommending that an amended R31 that would allow for both alternative options, but first preference would be given to the connection to the PSN under TWUL's control.

11.4.5. The ExA considers that on the basis of the flood risk, wastewater, water supply and water quality considerations set out above that the Proposed Development accords with the relevant sections on the ANPS, the 2015 NNNPS and other relevant legislation and policy requirements . Therefore, should the SoS accept the amended R31 as drafted in the rDCO the ExA considers that the Proposed Development should be given neutral weight in the overall planning balance. If the SoS was not minded to accept the ExA's amended R31 and the wastewater issues remain unresolved, the overall conclusion would be that it would attract a little weight against making the Order.

12. LANDSCAPE AND TOWNSCAPE

12.1. INTRODUCTION

12.1.1. This Chapter considers the effect of the Proposed Development in relation to landscape and townscape.

12.1.2. On 22 November 2023 all Areas of Outstanding Natural Beauty (AONBs) in England and Wales were re-named as National Landscapes (NL). For ease of reference and reporting all the references to these designated areas are as NLs.

12.2. THE APPLICATION

12.2.1. The Applicant's assessment of matters relating to Landscape and Townscape is largely contained within Chapter 8 of the ES [APP-033] and accompanying appendices.

STUDY AREAS

12.2.2. The ES describes various study areas for landscape and townscape assets, as follows:

- existing and proposed Zones of Theoretical Visibility (ZTV) within 5km radius of the Proposed Development;
- existing and proposed ZTV within the wider landscape (extending beyond 15km radius following feedback); and
- a wider study area to coincide with overflying aircraft at height profiles up to 7,000ft to consider effects on the perception of tranquillity. Such an area includes the NLs of the High Weald, Surrey Hills, Kent Downs, and the South Downs National Park (SDNP).

12.2.3. The 5km radius was chosen following assessment of the Proposed Development from Leith Hill, 11.3 km from the site and the highest hill in the southeast of England. The Applicant considered that the proposal was barely perceptible from this viewpoint and that the ZTVs show that the vast majority of land that may be potentially intervisible with the Proposed Development lies within 5km.

BASELINE

12.2.4. The Applicant notes that the baseline was ascertained from a desk study of a review of relevant planning policy and relevant background documents, such as aerial photography, maps and local publications including landscape character assessments. A series of daytime summer and winter views and wider nighttime views were identified, based on the ZTV, landscape designations and the public rights of way (PRoW) network. The results of these views are shown in the accompanying figures to the ES chapter [APP-060 to APP-062].

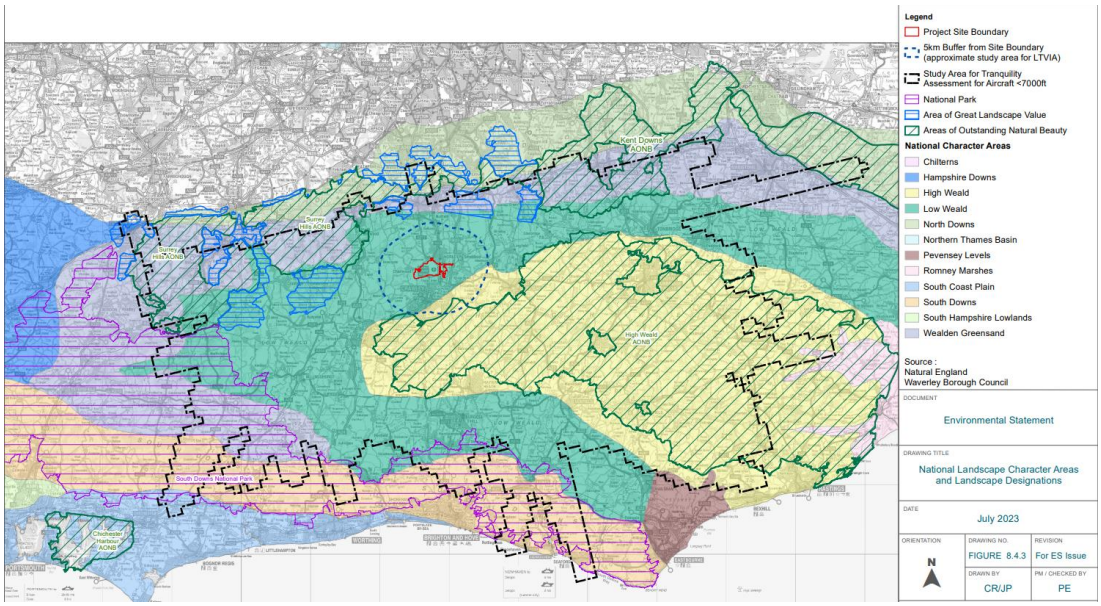
12.2.5. The Applicant noted that due to the scale (over 850 hectares) and the nature of development at Gatwick that the airport forms its own distinctive and well-defined urban landscape. Much of the land in the boundary of the Proposed Development is flat and open, occupied by runways, taxiways, stands, surface car park and mown grassland, with the main built form at the north and south terminals. Architectural treatments and materials vary throughout the site. It also stated that the airport is also well lit in the vicinity of the terminals, stands and car parks and around the internal roads.

12.2.6. Green infrastructure around the project site is associated with the River Mole to the north west of the site and areas to the north west and east of the railway line. Open areas of grassland can be found at Pentagon Field to the east. Mature hedgerows/ shrubs and planting define the perimeters of car parks and many of the site roads and connecting roads. Important landscape features on the boundary of the project site include Brockley Wood east of the River Mole and the Riverside Garden Park, to the north of the airport and the south of Horley. Church Meadows lies to the north of the Longbridge Roundabout.

12.2.7. The closest point of the High Weald NL (HWNL) is located some 3km to the south-east of the project site, separated from the airport by Crawley. It is noted that the Management Plan states that 'Other Qualities' of the HWNL include *"People value the wonderful views and scenic beauty of the High Weald with its relative tranquillity", and a key issue for the plan is "Development including traffic, noise and light pollution, degrading the AONB's tranquil and dark qualities", with an objective "to protect and promote the perceptual qualities that people value", to ensure that the "special qualities people value, such as tranquillity, dark skies, sense of naturalness and clean air, are recognised and taken account of in AONB [now NL] management."*

12.2.8. Surrey Hills NL (SHNL) lies to the west and north-west of the airport. Eleven features that define the special character of SHNL include views, tranquillity and dark skies. The Kent Downs NL (KDNL) lies to the north-east of the airport, covering a large swathe of land heading south-east. Special qualities of the KDNL include tranquillity and remoteness. The SDNP lies to the south-west and south of the airport. One of the special qualities of the SDNP are tranquil and unspoilt places.

Figure 12.122: National Landscape Character Areas and Landscape Designations in the Vicinity of the Airport



12.2.9. Gatwick Airport and its immediate landscape context are located within the Low Weald National Character Area (NCA) 121; other NCAs within the wider study area include High Weald NCA 122, Wealden Greensand NCA 120 and North Downs NCA 119 (see Figure 12.1 above [APP-060]). Local (District) Landscape Character Assessment areas within the area are shown below:

- Crawley:

- Upper Mole Farmlands (between Crawley and the airport);
- North East Crawley High Woodland Fringes; and
- Manor Royal (Northgate) Townscape.

- Mole Valley:
  - Open Weald;
  - Charlwood Townscape; and
  - Hookwood Townscape.
- Reigate and Banstead:
  - Low Weald; and
  - Horley Townscape.
- Horsham:
  - Warnham and Rusper Wooded Ridge; and
  - Upper Mole Farmlands.
- Mid Sussex:
  - High Weald;
  - High Weald Plateau; and
  - Worth Forest.

12.2.10. Following a review of the various landscape and townscape character assessments the Applicant considered that the distinct character of the airport itself had not been adequately described, and hence an assessment was undertaken. A summary of this can be found in paragraph 8.6.109 of the ES [APP-033]:

"The overall value of the Gatwick Airport Urban character area is considered to be low. The extensive built development and infrastructure at Gatwick are typical of an international airport. They are largely dictated by the function of the airport and are not highly valued with regard to any of the nine criteria above. The green and blue infrastructure associated with the River Mole and Gatwick Stream, blocks and belts of mature woodland, hedgerows and trees have a greater value and will be protected and enhanced, where possible, within or adjacent to the Project. This green infrastructure links into the surrounding Low Weald, providing a transition from the urban character of the airport and the largely agricultural character of the landscape and makes a positive contribution to the wider area."

12.2.11. The Applicant selected 33 representative viewpoints largely from within the 5km radius study area, with a further viewpoint chosen from Leith Hill (11km from the site). Viewpoints were assessed in summer, winter, and at night (winter). Locations of the representative viewpoints can be found in Figure 8.4.1 of [APP-060] with the baseline photography found in the same document [APP-060] and wireframe massing images found in [APP-061 to APP-062].

12.2.12. Various developments that are proposed/ consented (as described in ES Chapter 4, Existing Site and Operation [APP-029]) are included in the future baseline conditions, including the extension to Pier 6 and multi storey car parks (MSCP) at the South and North Terminal. Air Traffic Movements (ATMs) and consequential noise in the future baseline are also included for tranquillity assessments, taken from the ES Chapter 14: Noise and Vibration [APP-039]

CONSTRUCTION PHASE

Initial construction period 2024 to 2029

12.2.13. The works are predicted to have a significant effect during the initial construction period to the following receptors:

Table 12.1: Significant Landscape/ Townscape Effects Construction 2024 to 2029

Location/Receptor	Significance of Effect	Notes
Mole Valley Open Weald Character Area	Negligible to Major adverse	Significant effects north of Longbridge Roundabout
Occupiers of Hilton Hotel	Major to moderate adverse	Significant effects during construction phase reducing to not significant when neighbouring developments operational

12.2.14. Users of public open space at Riverside Garden Park and Church Meadows in Horley are predicted to be subjected to moderate to negligible adverse effects during the day and moderate to minor adverse at night from the works, although these are not assessed as significant.

CONSTRUCTION AND OPERATIONAL PHASE

2030 to 2032

12.2.15. The works are predicted to have a significant effect during the initial combined construction and operation period to the following receptors:

Table 12.2: Significant Landscape/ Townscape Effects Construction and Operation 2030 to 2032

Location/Receptor	Significance of Effect	Notes
Mole Valley Open Weald Character Area	Major adverse (day) and moderate adverse (night)	-
Users of public open space at Riverside Garden Park and Church Meadows Horley	Major adverse (locally), moderate to negligible (generally)	-
Occupiers of number 74 Longbridge Road Horley	Major adverse	Views from rear garden in summer when the change would be most noticeable
Occupiers of Hilton Hotel	Moderate to Major adverse	Significant effects during construction phase reducing to not significant when neighbouring developments operational

2033 to 2038

12.2.16. The works are predicted to have a significant effect during this construction and operation period to the following receptors:

Table 12.3: Significant Landscape/ Townscape Effects Construction and Operation 2033 to 2038

Location/Receptor	Significance of Effect	Notes
Occupiers of number 74 Longbridge Road Horley	Major adverse	Views from rear garden in summer when the change would be most noticeable

12.2.17. During this period adverse effects on the Mole Valley Open Weald Character Area and users of Riverside and Church Meadows were predicted to be partially offset by the beneficial effects of new public open green space adjacent to Church Meadows.

Design Year 2038 and Beyond

12.2.18. No significant effects are predicted beyond 2038, where landscape mitigation is assumed to have matured.

12.2.19. An Outline Landscape and Ecology Management Plan (oLEMP) was submitted prior to the Examination [APP-113 to APP-116], as well as a Design and Access Statement (DAS) [APP-253 to APP-257], which included Design Principles as Appendix A1 to this document. Requirement (R) 8 of the draft Development Consent Order (dDCO) submitted prior to the commencement of the Examination [AS-004] stated that prior to commencement of any part of development a Landscape and Ecology Management Plan (LEMP) for that part must be submitted and approved by the relevant planning authority. Detailed design was covered by R4. The oLEMP and Design Principles were also certified documents under Schedule 12 of the dDCO.

Cumulative Effects

12.2.20. Cumulative effects of the Proposed Development are assessed together with nineteen developments (residential and commercial) on the Landscape and Townscape character of the North East Crawley High Woodland Fringes, Horsham Upper Mole Farmlands, Low Weald, Mole Valley Open Weald, and the Mid Sussex District High Weald Plateau Character Areas. Significant effects are considered likely across all character areas, with significant visual effects on mid to long distance views from elevated locations. Such effects would extend across all time periods (from 2024 to 2038 and beyond). The ES considers that the Proposed Development would make a negligible to medium contribution to such significant effects.

Mitigation

12.2.21. Table 8.8.1 of Chapter 8 of the ES [APP-033] summarises the mitigation and enhancement measures adopted as part of the Proposed Development. This table is further summarised below.

Table 12.4: Summary of Table 8.8.1

Measure	Justification	How secured
Mitigation		
Vegetation retention where possible	To ensure green infrastructure assets are retained wherever possible and minimise adverse impacts	ES Appendix 8.8.1 oLEMP
Proposed public open space	Replacement areas of public open space with links to existing Riverside Garden Park at Car Park B and Church Meadows Extension to River Moles footpath and new publicly accessible land at Museum Field and Brook Farm	oLEMP and ES Appendix 19.8.2 PRoW Management Strategy, and secured through dDCO
Proposed planting	To provide replacement/compensation planting and ensure a high-quality environment	oLEMP, and secured through dDCO
Proposed earth shaping and bunds	To ensure visual screens are provided to minimise visual effects and provide habitats.	oLEMP, and secured through dDCO
Proposed fences/walls/barriers	To ensure visual screens are provided to minimise visual effects and replace removed features	oLEMP, and secured through dDCO
Proposed hard landscaping	To ensure a high-quality environment	oLEMP, and secured through dDCO
Lighting	Lighting framework prepared with measures to minimise adverse impacts on biodiversity, local residents and users of PRoW and open space.	ES Appendix 5.2.2 Operational Lighting Framework, and secured through dDCO
Enhancement		
Management or implementation of mitigation to enhance green infrastructure	To enhance character, visual quality and biodiversity of the airport and surrounding landscape/townscape	oLEMP, and secured through dDCO

12.3. ISSUES CONSIDERED DURING THE EXAMINATION

12.3.1. Relevant Representations (RR) concerning landscape and townscape largely considered light pollution in dark sky areas and any effects from the proposed increase in flights over NLs and the SDNP on tranquillity. The point was made that flights affect places set at higher altitudes, such as Leith Hill, due to the topography of the land, and conditions were requested to ensure no additional flights took place over the existing Surrey Hills NL [RR-4400].

12.3.2. Replying to the RRs, the Applicant [REP1-048] noted the study within the ES concerning tranquillity and the effect of increase of overflying aircraft up to 7,000ft above ground level, which concluded that an increase of 20% overflights would result in minor adverse effects, which is not significant. It also stated that the special qualities that people living within and visiting nationally designated landscapes experience, including distant scenic views and the landscape's relative tranquillity and dark skies, whilst affected to some extent as a result of an increase in the number of overflying aircraft, would still be positive qualities.

12.3.3. In response to concerns over the loss of community green space, the Applicant noted that replacement green space would be provided at Car Park B and adjacent to Church Meadows, and that landscape planting proposals would be secured by the dDCO. A Code of Construction Practice (CoCP) would manage and minimise disturbance from construction.

12.3.4. The joint Crawley Borough, Horsham and Mid Sussex Districts and the West Sussex County Councils Local Impact Report (LIR) (the West Sussex LIR) [REP1-068] noted that the airport is already a large and established feature within the landscape and that the current level of ATMs is such that there is no perception of tranquillity in the vicinity of the airfield. Given this baseline they considered that a key objective should be to limit the visual impact as far as possible within the existing site boundary. Concerns were also raised over increased overflights over the HWNL. In its summary of impacts the LIR raised the following impacts:

- visual impact of construction compounds;
- lack of control over landform/ visual appearance of Pentagon Field (a proposed spoil deposition area);
- increased visual impact from tree loss (car parks);
- increased visual impact from highway works;
- visual impact of the Central Area Recycling Enclosure (CARE) facility and larger scale buildings (the CARE facility was reduced in height significantly during the Examination); and
- noise from increased overflight over NL, loss of tranquillity and the use of the 'WIZAD' flight path over the HWNL.

12.3.5. The East Sussex LIR [REP1-070] raised concerns over the impact of an increase in night flights on dark skies, particularly over the HWNL and the SDNP, and stated that any effect should be appropriately mitigated.

12.3.6. The LIR of Surrey County, Mole Valley, Tandridge Districts and Reigate and Banstead Borough Councils (the Joint Surrey Councils (JSCs) LIR) [REP1-097] states that the viewpoints are agreed. During the construction phase principal concerns were raised over the following works and those associated with them:

- Longbridge Roundabout: Would have a very significant detrimental impact and would undermine visual amenities (including on walkers, cyclists and the

occupiers of residential properties) for many years. The loss of approximately 25m of the woodland belt between Riverside Garden Park and the roundabout would change the character of the area resulting in a major adverse effect during the day and night on the landscape character. Would also have an urbanising effect of the area (including on Church Meadows) which would take 20-30 years to recover.

- South Terminal contractor compound: Adverse impact on Low Weald Landscape and on the occupiers of a nearby residential property.
- Construction compound Car Park B: Moderate adverse effect on walkers using the Sussex Border Path 362a and minor impact on cyclists on National Cycle Route 21 through vegetation and mature woodland removal.
- M23 Spur: Adverse impact on walkers using the Sussex Border Path 368 and upon the occupiers of residential properties through removal of highway planting and increase in engineering features, such as flyovers, retaining walls and noise barriers.

12.3.7. Concerns were raised over the following issues during operation:

- Additional flights over the SHNL and protected Area of Great Landscape Value would harm the tranquillity of this area. The SHNL is also undergoing a boundary review which may increase the size of the area affected.
- Timescales stated by the Applicant for landscape restoration significantly underestimate the time it takes for a tree to reach maturity. The green buffer between Horley and the M23 Spur/A23 provides an important visual and tranquillity barrier and would be substantially diminished. Road and bridge construction impacts would be "*brutal*" and not until the late 2050s would new tree lines be fully matured to reduce such impacts.
- Tranquillity and noise effects of increased traffic and of the new Juliet holding spur bringing taxiing aircraft closer on Charlwood.
- Effects of increased air flights on Capel, six km to the west of the airport.
- Substantial amounts of new built form, such as the new hangar, hotels, decked car park, Pier 7 and the fire training ground would have an effect on local landscape character and on receptors, particularly in winter. This represents a significant adverse overall effect on visual receptors in Surrey.
- Wireframe visualisations rather than full photomontages are potentially misleading, as is the choice of development timescales chosen for the visualisations.

12.3.8. The LIR states that mitigation is required (and is required to be agreed) at the following locations:

- from Longbridge Roundabout to the junction of the M23;
- Church Meadows;
- Sussex Border Paths 362 and 368, National Cycle Route 21;
- residential occupiers on Longbridge Road and at Meadowcroft House;
- within SHNL to compensate for loss of tranquillity;
- noise bund at western runway end; and
- Open space land to be removed as part of the construction should be replaced prior to them being acquired.

12.3.9. A Statement of Common Ground (SoCG) was submitted at D1 between the Applicant and Natural England [REP1-037]. This noted ongoing discussions between the two parties in relation to the tranquillity of HWNL, but also noted agreement that:

"the increase in overflights in the Kent Downs AONB [NL], Surrey Hills AONB [NL] and South Downs National Park is negligible in terms of magnitude, resulting in a minor adverse impact upon the designated landscapes, and will not require mitigating".

12.3.10. In response to the Surrey LIR, the Applicant noted [REP3-078] that the CoCP sets out general methodologies and mitigation measures for construction compounds, including for the Longbridge Roundabout contractor compound and works along the A23/ M23 Spur. Mitigation measures include monitoring and mitigating obtrusive light at night and retaining visually significant vegetation wherever possible. Mitigation and design measures in the oLEMP include replacement native tree and scrub species. The CoCP includes an Outline Arboricultural and Vegetation Method Statement [REP9-037 to REP9-042] including tree removal and protection plans which has been revised at Deadline (D)3. They considered that vegetation removal adjacent to Church Meadows would only have a short-term impact and that the oLEMP shows the overarching vision for the Proposed Development.

12.3.11. The Applicant further stated [REP3-078] that general measures within the CoCP and in the Public Rights of Way Management Strategy [REP9-061] included management measures and mitigation for public footpaths during construction. A new 2.4m high closed board fence would be erected along the boundary of the works area in the vicinity of residential properties on Longbridge Road. In relation to the SHNL it noted that the boundaries are yet to change but noted that the ZTV analysis in the ES indicated that any change in view in these areas is likely to be negligible or minor adverse, similar to the identified views from Leith Hill. Further justification referring to Civil Aviation Authority (CAA) Guidance was provided relating to any effect on the SHNL. Effects relating to Charlwood are assessed in the ES and visualisations are provided according to guidance from the Landscape Institute. Finally, the Applicant stated that the approach taken towards replacement open space is consistent with several recently made DCOs.

12.3.12. Similar comments were made by the Applicant [REP3-078] in response to the West Sussex LIR. It noted that the CoCP set out typical measures to minimise impact on landscape and visual resources from construction compounds, including such methods as appropriate positioning of infrastructure within compounds, types and location of lighting and boundary treatments. Landscape design for Pentagon Field is set out in the oLEMP and illustrated in the photo montages. In relation to the WIZAD flight path, it noted that the route is a tactical routing allocated by air traffic control to alleviate airspace congestion and may be offered at a late stage of taxiing to aircraft, but that the route should not be used for flight planning purposes. The Applicant stated that under the baseline and the Proposed Development, the use of WIZAD would be based on the current airspace route structure and operated in accordance with any existing restrictions or requirements.

12.3.13. Questions were asked in the ExA's first written questions (ExQ1) [PD-012] concerning the following topics:

- details of construction compounds;
- Pentagon Field;
- landscaping proposals for proposed car parks X, Y, purple parking, and north terminal;
- effects on residents of Longbridge and Balcombe Roads and those identified within the LIRs;
- mitigation for vegetation loss during highway works;
- usage of WIZAD/Noise Preferential Route 9;

- effects upon National Landscapes and the proposed extension to the Surrey Hills NL.

12.3.14. In response, further details were provided by the Applicant [REP3-097] for construction compounds and for the use of Pentagon Field, including management of public footpath 359/Sy and mitigation proposals. In response to the request for landscaping proposals, the Applicant drew attention to the DAS and accompanying Design Principles, and reference was drawn to Chapter 8 of the ES concerning the living conditions of local residents where minor to moderate effects were identified to various residents during construction. Mitigation for highway works was detailed in the oLEMP and the ES Appendix 8.10.1: Tree Survey Report and Arboriculture Impact Assessment.

12.3.15. In relation to WIZAD (which routes aircraft between Crawley and Horsham, and then across the HWNL), the Applicant noted that no new flight paths were proposed as part of the Proposed Development and that WIZAD should not be used for flight planning purposes under the UK Aeronautical Information Publication. It noted that as a worst-case the use of WIZAD would increase to around 32 movements per day under the Future Baseline and that this would increase to around 39 movements under the Proposed Development. It noted that the ES provides a summary of representative assessment locations and overflight numbers, which includes assessment at Wakehurst Place. At this location, in 2032 flights would increase to 33.8 per day from 28.2 under the future baseline.

12.3.16. The Applicant states that people generally experience a relatively high level of tranquillity in nationally designated landscapes of high scenic quality and that overflying aircraft at less than 7,000 feet above local ground level currently form a regular visible or audible feature that forms a slightly discordant aspect when experiencing the landscape. It considers that the special qualities that people living within and visiting the HWNL (and the SHNL), whilst affected to some extent as a result of an increase in the number of overflying aircraft, would still be positive qualities that would continue to be experienced.

12.3.17. In relation to the proposed SHNL extension, the Applicant noted that the proposed extension would significantly increase the area of the NL. An assessment was undertaken as part of the response with new locations to test for visibility, concluding that effects on visual receptors of the Proposed Development would be of negligible magnitude and that previous assessments of overflying aircraft would remain valid.

12.3.18. The ExA's second written questions (ExQ2) [PD-021] asked further questions over WIZAD, the Surrey Hills NL proposed extension, the detail and appropriateness of visualisations, and vegetation loss along the A23. Questions relating to WIZAD were also examined in ISH9 [EV20-007 to EV20-014].

12.3.19. In response, [REP7-087] the Applicant largely referred to their previous answer to ExQ1.LV1.6 and ExQ1.LV1.8 confirming that that no new flight paths were proposed as part of the Proposed Development and that an increase in the number of overflying aircraft over the HWNL and SHNL (and proposed extension) of up to 20% (worst-case scenario) would occur. In response to a question concerning the adequacy of the visualisations, the Applicant noted that these were prepared to a specification set out by Reigate and Banstead Borough Council (RBBC) in May 2024 and set out the documents which covered landscape and ecological proposals:

- ES Landscape, Townscape and Visual Resources Figures [REP2-006 to REP2-008];
- landscape concept sketches and cross sections in the oLEMP [REP9-047] to [REP-052], provided at D6, as well as the indicative and illustrative landscape proposals contained within this document; and
- DAS [AS-154 to AS-156], [REP7-059], [REP7-061] and the accompanying Design Principles [REP9-062], showing the master plan for the Proposed Development, analysis of landscape character and visual resources, as well as detailed landscape design principles and built form design principles for individual works within the Proposed Development.

12.3.20. In relation to the question concerning the A23 mitigation proposals, the Applicant noted the update of the following documents at D6 providing further details of trees and vegetation that would be lost, those that would be retained, protection and replacement plans:

- ES Appendix 8.10.1 Tree Survey Report and Arboriculture Impact Assessment [REP8-064 to REP8-075];
- Code of Construction Practice Annex 6 – Outline Arboricultural and Vegetation Method Statement [REP9-037 to REP9-042]; and
- Note on Project Wide Habitat Loss and Replacement [REP6-071].

12.3.21. At D8 the Applicant submitted a revised dDCO [REP8-005], including a new requirement R39, entitled 'Tree balance statement'. This requirement stated that on or before the ninth anniversary of the commencement of dual runway operations, a tree balance statement (TBS) would be submitted to CBC for approval. The purpose of the TBS is to show the number of trees that would be removed as part of the Proposed Development and the total number of replacement trees that have been required to replace these under the terms of Crawley Borough Council (CBC) Policy CH6[16]. A provision for a contribution to CBC should the number of replacement trees be deficient is also included.

12.3.22. On 14 August 2024 the ExA published a request under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (Rule 17) for further information [PD-027]. The Applicant and the Surrey Hills AONB Board were asked about amendments made to section (s) 85 of the Countryside and Rights of Way Act 2000 in terms of altering the duty on the relevant authority to "*further the purpose of conserving or enhancing the natural beauty*" of a NL as opposed to 'having regard' to the purpose of a NL, as was stated previously.

12.3.23. In response to the Rule 17 request, the SDNP Authority [REP9-351] drew the attention of the ExA to the similar s245 duty within the Levelling Up and Regeneration Act 2023 relating to National Parks. They noted that the duty is important and pro-active and strengthens the previous duty of 'to have regard to'. The SDNP Authority acknowledged that the new duty does not preclude decisions that are 'harmful' to the National Park, but that the new duty requires positive evidence that the relevant authority has, in all circumstances, sought to further the purposes and that this should not merely be through the mitigation of any harm but by taking all reasonable steps to further the statutory purposes. It notes that Natural England's advice states:

[16] Policy CH6 (Tree Planting and Replacement Standards), Crawley 2030: Crawley Borough Local Plan 2015-2030 (16 December 2015)

- *'the new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose,' and*
- *'the proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development.'*

12.3.24. The SDNP Authority considered that the Applicant failed to give 'great weight' to the National Park and mitigate the harm caused and that it cannot be said the proposal has taken all reasonable steps to further the statutory purpose.

12.3.25. In response to the Rule 17 request, the Applicant [REP9-121] stated that the duty is to 'seek to further' the statutory purposes, not to further the purposes and that compliance with the duty does not mean that the Secretary of State (SoS) must achieve a furthering of these purposes. It also notes that the duty is a general one and needs to be applied in context and that the Proposed Development would result in an increase in overflying over the nationally designated landscapes (as assessed in the ES) of between 6% and 20%, when compared to the future baseline. It concludes that this would be a negligible change with only minor affects, and notes that Natural England agree that no mitigation measures would be required [REP1-037].

12.3.26. Relevant to landscapes and townscapes, at the same deadline SoCGs with CBC [REP9-066], Mid Sussex District Council (MSDC) [REP9-074], Mole Valley District Council (MVDC) [REP9-076], RBBC [REP9-078], Surrey County Council (SCC) [REP9-080], West Sussex County Council (WSCC) [REP9-085] were submitted. Relevant Principal Areas of Disagreement Summary Statement [PADSS] were also submitted for CBC [REP9-133], HDC [REP9-139], KCC [REP9-144] MSDC [REP9-152], RBBC [REP9-166], SCC [REP9-168]. and WSCC [REP9-172]. In summary the outstanding areas of disagreement in these documents were:

- Vegetation loss and tree balance:
    - R39 requires refinement to fully address CBC Policy CH6 and to secure replanting earlier in the project – leaving the tree balance statement until nine years after commencement of dual runway operations is too late [REP9-133].
    - Detail of extent of vegetation loss inadequate in the application and loss of broadleaved woodland not mitigated for by the Proposed Development (SCC, [REP9-168]).
- Design control of specific elements of the proposed development:
    - Lack of control over key project sites in sensitive locations (CBC, [REP9-133]).
    - Adequate safeguarding required for Charlwood House and Park Farmhouse (CBC, [REP9-133]).
    - Detail requested for Car Park B construction compound (location and appearance) (RBBC [REP9-166]).

- Nationally designated landscapes:
    - Lack of detailed data and assessment of the impacts of the intensified use of WIZAD (HDC, [REP9-139], MSDC [REP9-152]) on sensitive receptors, including tranquil landscapes and NLs (and Historic Parks and Gardens).
    - The Proposed Development should seek to further the purposes of the NL (KCC, [REP9-144], WSCC [REP9-172].
    - Assessment of the potential for noise impact on the HWNL and Historic Parks and Gardens therein (MSDC [REP9-152].

12.3.27. In a similar vein, closing submissions from the Legal Partnership Authorities (LePAs) [REP9-151] highlighted four key concerns:

- lack of detail on the visual impacts of large parts of the built development;
- lack of effective controls to be confident that those shortcomings can be satisfactorily addressed post-consent through the discharge of requirements in particular given that the Applicant proposes a consultation process rather than a design approval process for many works based on compliance with its control documents;
- specific concerns about the impacts of particular elements, notably the visual impacts of construction compounds, the land-raising works at Pentagon Fields, and the visual impacts of the works at Car Park X (Work No. 31), Car Park Y (Work No. 30), North Terminal Long Stay Car Park (Work No. 32), Purple Parking (Work No. 33) and along the A23 corridor due to the loss of tree screening and wider impacts on the surrounding countryside; and
- lack of control over landscaping, the level of tree loss, and confidence that suitable replacement tree planting can be provided.

12.4. ExA's CONCLUSIONS ON LANDSCAPE AND TOWNSCAPE

12.4.1. Paragraphs 5.214 to 5.2.16 of the ANPS describe the considerations that should be included in an applicant's assessment of landscape and visual impacts. This includes an assessment of any likely significant landscape and visual impacts, referencing against any landscape character assessment and associated studies, as well as relevant policies based on these assessments in local development documents.

12.4.2. The assessment should include any significant effects during construction and the significant effects of the completed development and its operation on landscape components and landscape character, including assessment of any landscape and visual impacts as a result of the development, for example surface access proposals or aviation activity. The assessment should also include the visibility and conspicuousness of the preferred scheme during construction and the presence and operation of the preferred scheme and potential impacts on views and visual amenity. Paragraphs 5.144-5.146 of the National Networks National Policy Statement (NNNPS) contain similar text.

12.4.3. The ExA considers that the Applicant has provided an adequate ES assessing such impacts, and as such, has met the requirements of the ANPS and the NNNPS.

12.4.4. The ExA is of the view that the initial visualisations provided in the ES were somewhat lacking in detail and quality, presenting fairly simple 'block' plans of the Proposed Development. However, further information submitted during the Examination, such as improved details in the oLEMP, DAS (and Design Principles) largely overcame such issues.

Construction/ Contractor Compounds

12.4.5. ExQ1.LV1.1 [PD-012] asked for further details on proposed construction/ contractor compounds, including likely lighting details, heights and colours of site cabins, stockpile heights and areas where the compounds may be visible from. Appendix A to the Applicant's response [REP3-098] provided a signposted table detailing the requested details for each of the seven identified compounds.

- Lighting – found in the ES Appendix 5.3.2 Code of Construction Practice [REP9-031], which details lighting principles and practices for all compounds. Longbridge Roundabout compound is singled out for particular consideration due to its location partially within the Church Road (Horley) Conservation Area.
- Heights (including stockpiles) – 6m or 25m depending on whether batching plans are required (Main compound and South Terminal Roundabout compound).
- Colours – not available but would be standard.
- Visibility – details provided for each compound. Car Park B compound likely to be visible from walkers on the Sussex Border Path, occupiers of vehicles on A23/ M23 Spur and staff and visitors to the airport.

12.4.6. The RBBC PADSS [REP9-166] appear to suggest that further details on the site layout of the proposed Car Park B compound are still sought (although the table entry is marked green). However, the information provided by the Applicant in [REP3-098] and associated documents (including R2, Phasing scheme) of the dDCO [REP10-004]) provides sufficient comfort on this issue in the view of the ExA.

Pentagon Field

12.4.7. Pentagon Field (see Figure 12.2 below [AS-154]) lies on the eastern edge of the airport site and is surrounded on its northern and western sides by airport car parking areas. There is woodland to the south, and the B2036, Balcombe Road, on the east.

Figure 12.223: Pentagon Field

12.4.8. The field (Work No. 41) is proposed to be used as spoil receptor site, which would be subsequently landscaped. ExQ1.LV.1.1 asked for further details concerning the level of fill, footpath management, vegetation loss and mitigation, and maturity rates for planting belts. Details in response to these questions were provided in the answers to ExQ1 [REP3-097] with a scheme of landscape mitigation provided within the oLEMP [REP9-047].

12.4.9. The LePAs consider that there remains uncertainty and inconsistency around the proposals for the field [REP8-163], considering that while the Applicant's Note at D5

[REP5-078] was useful, fundamental concerns over the lack of control for soil deposition remain in the absence of parameter plans and details on final landform [REP6-116]. Concerns were also voiced over estimates of soil volume or where the 4m stated high re-profiling is being measured from given the 8.8ha size of the field, as well as flood risk and effects on Footpath 359Sy.

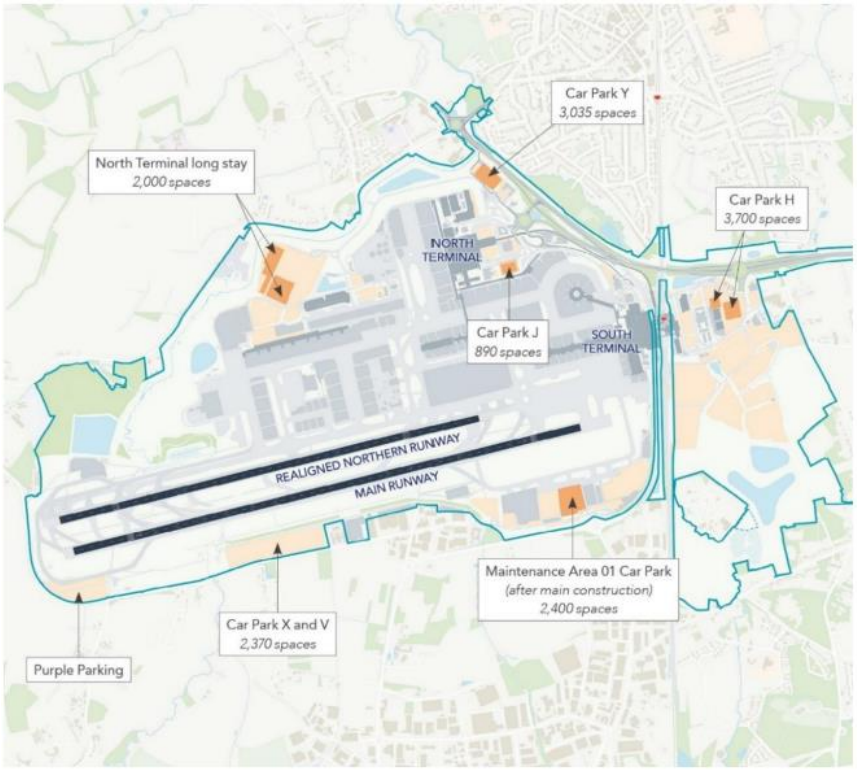
12.4.10. It was confirmed that 4.6ha of the 8.8ha field would be used for spoil arisings [REP5-078], to take account of existing utilities, flood risk and other environmental considerations. During construction temporary stockpiles would be created on the site not exceeding 3m for topsoil and 5m for subsoils (specified in the Soil Management Strategy, [APP-086], and secured under R29 of the dDCO [REP10-009] to be submitted to and approved by CBC). The final landform would be up to 4m higher than present (above ground levels) and detailed design would be secured under R8 of the dDCO [REP10-009]. The Design Principles document [REP9-062] provides parameters for the field, and would be secured as a certified document under Schedule 14 of the dDCO [REP10-004].

12.4.11. Given the above details, the ExA is content that there would be sufficient control for the relevant authorities through the dDCO to manage the use of Pentagon Field for spoil deposition and to ensure that the field is appropriately landscaped post construction. However, harm would be caused to the landscape character of the area while construction works were progressing, and mitigation measures such as reseeding and the proposed tree belt would take time to establish.

Purple Parking, North Terminal Long Stay Car Park, Car Park X, Car Park Y

12.4.12. We requested further information on landscaping details for the above car parks in our first written questions (ExQ1.LV.1.3). Car Park X and the North Terminal Long Stay Car Park (NTLSCP) are proposed to be decked car parks; purple parking would be a surface car park, and Car Park Y a Multi Storey Car Park (MSCP). Their general location is shown below [AS-154]:

Figure 12.324: Location of Car Parks



12.4.13. Indicative plans are contained within the DAS [AS-154], [REP7-059], [AS-155]. An example of one such indicative plan from [AS-155] is shown below.

Figure 12.425: Indictive Plans Car Park Y

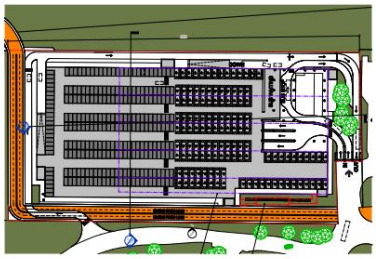


Figure 80. *Indicative Site Plan of Multi-Storey Car Park*

Figure 81. *Airfield View of Car Park Y Multi-Storey Car Park and Flood Storage*

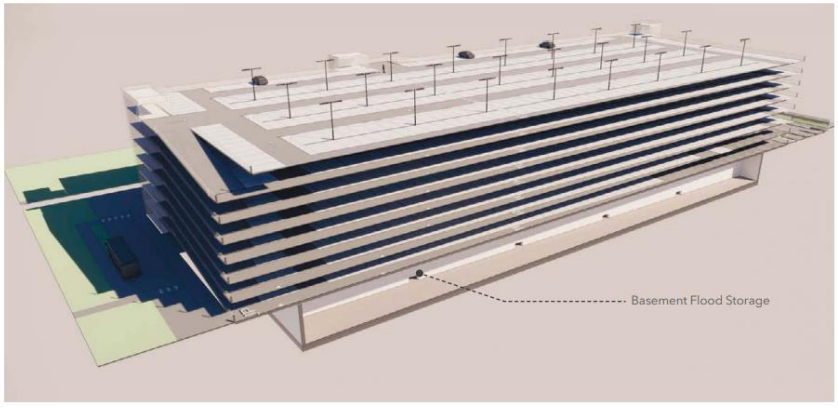


Figure 82. *Indicative Massing of Car Park Y Multi-Storey Car Park and Flood Storage*

12.4.14. The Design Principles appendix [REP9-062] to the DAS evolved through the Examination to provide further details on these car parks and the landscaping proposals for them. These are contained in Detailed Built Form Principle 43-55 and in summary cover the following details:

- Design of the car parks, including basic materials detail and open nature of the proposed design. Additional façade cladding to be considered at detailed design stage.
- Car Park X to limit visibility to the listed Charlwood House would locate decked area in eastern section of site to the north of a retained hedgerow and retain other vegetation where possible, with re-planting proposed to southern boundary.
- Car Park Y design would consider its prominent location and visibility. Detailed design would include soft landscaping provisions and retention/replacement of trees.
- Lighting for decked and surface car parks.
- Surface car parking designed to limit the extent of tree and vegetation along the site's southern boundary and incorporate new landscaping provisions.

12.4.15. The Applicant notes that all elements of the Proposed Development are subject to design control, through R4 of the dDCO. R4 states that no part of the development is to commence until CBC have been consulted on the design of that part, and that the design must be carried out in accordance with the Design Principles. Such consultation has a timescale of 8 weeks, although there is no compunction on the Applicant to amend their plans based on the results of that consultation or seek approval from CBC. However, the design (layout, siting, scale, and external appearance) of certain works, listed in Schedule 12, has to be approved by the relevant planning authority prior to their commencement. Schedule 12 of the dDCO does not include any car parks.

12.4.16. Design matters, including control, are considered further in Chapter 18, Good Design, where we conclude, subject to certain provisos, that the design of specific elements of the Proposed Development are adequately covered by the various design based principles and other documents.

Purple Parking

12.4.17. The Purple Parking area is set on the southwest fringe of the airport. At present this area is also an area for car parking, which has both surface and a decked area of car parking. The construction of the proposed 'end around west' taxiway as part of the Proposed Development would reduce this area fairly significantly. Lost car parking spaces would be accommodated within the Car Park X proposals and the reconfigured Purple Parking area would be surface parking only. We consider that the design controls within the Design Principles [REP9-062] and the consultation requirements under R4 of the dDCO would be adequate to control the design of this car park and ensure that no landscape or townscape harm would arise from this aspect of the Proposed Development.

North Terminal Long Stay Car Park

12.4.18. The NTLSCP is located towards the north-west edge of the airport and is an existing surface car park. The Proposed Development seeks to turn this car park into a decked car park with two levels. The car park is bordered by the River Mole on its north and west sides, and a reasonably thick tree belt and partial raised land/bund lies between the car park and the river valley. Concern is raised over the potential visual effect of the decked car park, including any effect on Charlwood Park

Farmhouse, a Grade II* listed building. In Chapter 13, the Historic Environment, we have concluded that the Proposed NTLSCP would cause harm to this listed building, and harm would equally be caused to the landscape. Such effects would lessen over time as landscaping matures, but it is likely that harm from higher level lighting would largely endure.

Car Park X

12.4.19. Car Park X lies on the southern edge of the airport site and is an existing reasonably substantial linear surface level car park. The Proposed Development would retain surface level parking on the western side of the car park, with the eastern end having two levels of decked car parking. There is currently a thin line of landscaping between the car park and Charlwood Road to the south and it is proposed to retain this aside from some removal for access. Charlwood House, a Grade II* listed building lies to the south of the western end of the car park, and additional planting is proposed to bolster the existing landscaping in the area closest to this heritage asset.

12.4.20. In Chapter 13, the Historic Environment, we have concluded that the Proposed Car Park X would cause harm to the setting of this listed building, and harm would equally be caused to the landscape, particularly from the height of the proposed decked car park and associated lighting.

Car Park Y

12.4.21. Car Park Y is located toward the northern fringes of the airport site and is a surface car park. The car park is surrounded by landscaping, with the A23 to the north and north east and residential housing beyond this. The proposed Car Park Y would be a substantial multi-storey car park, with indicative plans in the DAS [AS-155] showing a structure with around six levels of car parking above ground floor. As such, the structure would be highly visible not only to staff and visitors to the airport site, but also to people travelling on the A23 and potentially to the residential areas beyond. The scale and size of the car park would cause harm to the local landscape and townscape.

Schedule 12 Developments

12.4.22. At Issue Specific Hearing 8 (ISH8) we explored the list of developments contained within Schedule 12 of the dDCO [REP10-004]. As detailed above, such works would be subject to design approval from CBC, giving the local planning authority design control over the developments within this schedule. Given the harm that may be caused by some of the above car parks to character and appearance of the area, we suggested that the following car park developments should be added to this list:

- Car Park X; and
- Car Park Y.

12.4.23. These car parks were subsequently included in the final dDCO [REP10-004]. Due to the above reasons, we have recommended one additional site in the rDCO – that of the NTLSCP (Work no 32). The Applicant was of the view that lighting of this site would be adequately controlled via the Design Principles [REP7-096]; however, the ExA note the proximity of the site towards the boundary of the site which we consider warrants extra control. Its inclusion within Schedule 12 would help to ensure that any adverse effect was minimised through good design.

12.4.24. All three car parks are on the fringes of the airport site and given the increases in height proposed are likely to have an adverse effect on the landscape and townscape of the area. While effects of the NTLSCP and Car Park X may lessen over time due to landscaping proposals (both those within the Design Principles and as would be imposed by virtue of being within Schedule 12) the scale of Car Park Y is such that landscaping would only soften views at a local level.

Living Conditions of Nearby Residents

12.4.25. The ExA's first written questions [PD-012] requested (LV.1.4) an assessment of the visual effects of the Proposed Development upon the living conditions of residents on the residential edges of Horley. The Applicant's response [REP3-097] provided such an assessment for the following areas:

- Gatwick Dairy Farm;
- apartment buildings, Longbridge Road, Horley;
- even numbers 74-80 Longbridge Road, Horley; and
- 275 Balcombe Road.

12.4.26. The assessment concludes that there would be moderate to minor adverse effect to all properties during the period 2024-2038 and largely negligible effects after this period. The exception to this was for No 74 Longbridge Road, for which the residents of are forecast to experience major adverse effects between 2024 and 2038.

12.4.27. Given the proximity of some elements of construction work of the Proposed Development, the ExA agrees with such conclusions. While provisions within the CoCP would assist in mitigating such effects, residual harm would remain.

A23 Margins, Replacement Planting and Crawley Borough Council Policy CH6

12.4.28. The ExA's first written questions [PD-012] required (LV.1.5) further information on mitigation from loss of vegetation caused by highway works. In response the Applicant [REP3-097] referred to the oLEMP [REP9-047 to REP9-052] and the Tree Survey Report and Arboriculture Impact Assessment. At D8, a note on Project Wide Habitat Loss and Replacement was submitted [REP8-098]. This aimed to provide a "*a single point of reference with respect to the types of habitat (including vegetation) that are anticipated to change as a result of the Project*".

12.4.29. The Applicant was of the view that the replacement woodland, scrub and tree planting proposed within the surface access improvements would in time reinstate, to a large extent, the existing character of the road corridor.

12.4.30. With regards to CBC Policy CH6 and the tree balance, this matter has been covered within the Ecology Chapter of this Report (Chapter 14). In that Chapter we have concluded that, as the Applicant has acknowledged, there would be a net loss of area of woodland arising from the Proposed Development and that IPs concerns about the time delay between the loss of habitat and subsequent reprovision because of the length of the construction period are both justified and accepted.

12.4.31. We consider that with a revised version of R39 as proposed by the LePAs and as included in the rDCO, an appropriate response to replacement tree planting has been provided which would also be in accordance with CBC Policy CH9.

12.4.32. Notwithstanding the above matters, the ExA agrees with the views of SCC that tree planting and other vegetation-based mitigation would take time to establish. In the meantime, landscape harm would be caused as a result of the highway works proposed as part of the Proposed Development. The revised R39 would assist to a certain degree on this matter but harm would remain until landscaping matured.

Effects on Nationally Designated Areas

12.4.33. The ANPS notes that the duty to have regard to the purposes of nationally designated areas applies when considering applications for projects outside the boundaries of nationally designated areas which may have impacts within them, noting that the development should aim to avoid compromising the purposes of designation (para 5.222). The National Planning Policy Framework (NPPF) states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks and NLs.

12.4.34. The Applicant's evidence, both in the ES and in response to written questions (ExQ1.LV.1.8 and ExQ2.LV.2.2) makes it clear that, on a worst-case basis, the Proposed Development would result in 20% in overflights over both the HWNL and the SHNL. Such a level would also be expected over the proposed extension to the SHNL. Flights would also increase over the SDNP, although planes would be at a higher level at this point. The ExA viewed the effect of planes currently over both NLs during its USIs [EV18-001].

12.4.35. A 20% increase in not insignificant and would likely be noticeable for receptors, particularly residents of the respective NLs. The effect may be less pronounced for visitors who would be less familiar with current levels of flights. The noise and visual effect of the increased planes would adversely affect the tranquillity of the NLs, albeit that such an effect would be reasonably limited, due to the height of the planes in general and the frequency of them.

12.4.36. Linked with this issue was the increased use (or otherwise) of WIZAD. Although it is clear that the Proposed Development would not lead directly to any new flight paths, there is the potential for new flight paths in the future depending on the results of Future Airspace Strategy Implementation South and more general Airspace modernisation in the South East. This issue is considered in more detail in Chapter 4, where we note that the CAA airspace change process is a separate regulatory regime to the DCO application and that this will consider the environmental implications of any such changes.

12.4.37. WIZAD would be used more as a result of the Proposed Development; with the Applicant acknowledging that as a worst-case flights would increase from around 32 flights per day under the Future Baseline in 2032, to some 39 flights per day under the Proposed Development. This is an increase of around 22% (rounded up) and would inevitably have an effect on the tranquil and dark qualities of the HWNL and on people's perception of sense of naturalness and clean air, particularly in those areas of the HWNL closest to the Airport and therefore where planes may be lower.

12.4.38. The ExA agrees that the duty under s85 of the Countryside and Rights of Way Act 2000 (and s245 of the Levelling Up and Regeneration Act), which in this case falls to be considered by the SoS, is important and pro-active. We also note the acknowledgment from the SDNP Authority [REP9-351] that this duty does not preclude decisions that are harmful to the National Park (or NLs).

12.4.39. The final SoCG between the Applicant and Natural England [REP9-090] confirms the following matters:

- that the methodology of the tranquillity assessment undertaken to consider effects upon nationally designated landscapes, including the HWNL, is satisfactory;
- that a robust assessment of the impacts of noise arising from the Proposed Development (including the worst-case scenario) upon the HWNL has been undertaken; and
- that the increase in overflights in the KDNL, SHNL and SDNP is negligible in terms of magnitude, resulting in a minor adverse impact upon the designated landscapes, and would not require mitigating.

12.4.40. In drawing all these points together, we conclude the following in relation to nationally designated areas:

- The increase in overflights that the Proposed Development would generate in the KDNL, SHNL and the SDNP is low. Additional harm would be minimal and does not require mitigation. This also applies to those areas within the proposed extension to the SHNL.
- Effects on the HWNL are slightly higher, given the proximity of this NL and the projected increase in flights from flight paths including WIZAD. However, adverse effects would still be low. The same conclusion applies to Historic Parks and Gardens within this NL.
- The Proposed Development would not compromise the purposes of designation of the relevant nationally designated areas. With respect to the duty under s85 of the Countryside and Rights of Way Act 2000 (and s245 of the Levelling Up and Regeneration Act 2023), the Proposed Development would conserve such areas, but would not enhance them.

ExA's Overall Conclusion on Landscape and Townscape

12.4.41. In reaching our conclusion we have considered the relevant sections of the ANPS, the NNNPS, the NPPF, Planning Practice Guidance, and relevant legislation and local policy as set out in Appendix A.

12.4.42. The ANPS and the NNNPS note that landscape effects depend on the nature of the existing landscape likely to be changed and the nature of the effect likely to occur. Development should aim to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. Great weight should be given to conserving landscape and scenic beauty in nationally designated areas, and the duty to have regard to the purposes of nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The development should aim to avoid compromising the purposes of designation.

12.4.43. Schemes should be designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation, and the SoS will judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development.

12.4.44. The NPPF contains similar wording and states that planning decisions should protect and enhance valued landscapes and that great weight should be given to conserving and enhancing National Parks and NLs.

12.4.45. The ExA agrees with the conclusions of the ES in relation to the adverse effects of the Proposed Development. These are summarised in the table below.

Table 12.5: Significant Landscape/ Townscape Effects

Location/ Receptor	Significance of Effect	Notes
Construction 2024-2029		
Mole Valley Open Weald Character Area	Negligible to Major adverse	Significant effects north of Longbridge Roundabout
Occupiers of Hilton Hotel	Major to moderate adverse	Significant effects during construction phase reducing to not significant when neighbouring developments operational
Construction and Operational 2030-2032		
Mole Valley Open Weald Character Area	Major adverse (day) and moderate adverse (night)	-
Users of public open space at Riverside Garden Park and Church Meadows Horley	Major adverse (locally), moderate to negligible (generally)	
Occupiers of number 74 Longbridge Road Horley	Major adverse	Views from rear garden in summer when the change would be most noticeable
Occupiers of Hilton Hotel	Moderate to Major adverse	Significant effects during construction phase reducing to not significant when neighbouring developments operational
2033-2038		
Occupiers of number 74 Longbridge Road Horley	Major adverse	Views from rear garden in summer when the change would be most noticeable

12.4.46. In addition to the above, the ExA has found that harm would be caused to landscape/townscape as a result of the proposed works at:

- Pentagon Field;
- NTLSCP;
- Car Park X;
- Car Park Y; and
- A23 highways works.

12.4.47. All such levels of harm would be moderate to minor and would lessen over time, with the exception of Car Park Y. The inclusion of the car parks into Schedule 12 would provide further control to the local planning authority and would enable harm caused in those areas to be managed and mitigated effectively.

12.4.48. In addition, some harm would be caused to the SHNL (and its proposed extension areas), the KDNL, and the SDNP. However, such harm would be minimal. Slightly higher, but still minor, levels of harm would be caused to the HWNL. Such levels of harm would not be affected by the conclusions of the ExA with regard to the forecast traffic levels for the future baseline and the Proposed Development, as found in Chapter 4. While our conclusions in this respect widen the delta between the future baseline and the Proposed Development, the increased effect on the relevant nationally designated areas would be minimal and our conclusions on nationally designated areas remain.

12.4.49. In relation to cumulative effects, the ExA agrees that the contribution of the Proposed Development to the identified effects would be negligible to medium and would lessen over time. This is due to the minor nature of the elements of the Proposed Development which would contribute to the wider effects (primarily Pentagon Field and the contractor's compound for the South Terminal roundabout) when compared to the other contributory developments outlined in the ES.

12.4.50. The ExA ascribes a little harm on matters relating to Landscape and Townscape against the making of the Order.

13. HISTORIC ENVIRONMENT

13.1. INTRODUCTION

13.1.1. This Chapter considers the effect of the Proposed Development in relation to the historic environment, including designated and non-designated heritage assets.

13.2. POLICY BACKGROUND

13.2.1. The Infrastructure Planning (Decisions) Regulations 2010 state that when deciding an application which affects:

- a listed building or its setting;
- a conservation area;
- or a scheduled monument or its setting,

the relevant Secretary of State (SoS) must have regard to the desirability: of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses; of preserving or enhancing the character or appearance of the conservation area; or of preserving the scheduled monument or its setting respectively.

13.2.2. The Airports National Policy Statement (ANPS) states that the construction and operation of airports and associated infrastructure has the potential to result in adverse impacts on the historic environment above and below ground, noting that this could be as a result of the scale, form and function of the development, and the wider impacts it can create in terms of associated infrastructure to connect the airport to existing transport networks, changes in aircraft movements on the ground and in the surrounding airspace, additional noise and light levels, and the need for security and space to ensure the airport's operation (para 5.187).

13.2.3. Paragraph 5.198 states that in considering the impact of a proposed development on any heritage assets, the Secretary of State will take into account the particular nature of the significance of the heritage asset and the value that they hold for this and future generations. Paragraph 5.200 notes that when considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State will give great weight to the asset's conservation. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting - given that heritage assets are irreplaceable, any harm or loss should require clear and convincing justification (para 5.201).

13.2.4. Paragraph 5.203 states that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss.

13.2.5. Where the proposed development will lead to substantial harm to or the total loss of significance of a designated heritage asset, the Secretary of State will refuse consent unless it can be demonstrated that the substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm, and where the proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use (paras 5.204-205).

13.2.6. Similar advice can be found in the National Networks National Policy Statement (NNNPS). National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG).

13.3. THE APPLICATION

13.3.1. The Applicant's assessment of matters relating to the Historic Environment is largely contained within Chapter 7 of the Environmental Statement (ES) [APP-032] and accompanying appendices.

STUDY AREAS

13.3.2. The ES describes various study areas for heritage assets, as follows:

- for buried archaeological remains, a zone 1km in all directions from the boundary of the Proposed Development;
- for the setting of heritage assets, a zone 3km in all directions; and
- to examine the impact of air noise and changes in flight routes on heritage assets, a methodology was prepared based on English Heritage advice [now Historic England] and as referred to in the ANPS. This assesses areas where there will be a predicted change of 1 decibel (dB) or more in the average summer daytime (Leq 16 hr) noise levels and where there will be a 25% change in the daytime N60 contour (flights where the maximum outdoor noise level is likely to exceed 60dB on an average summer day)
    - the output of this provides a 'negative noise change footprint' for areas where the predicted average summertime Leq 16 hr noise level change will increase by 1dB or more and where there will be a predicted 25% increase in the number of daytime flights for which the maximum outdoor noise level is likely to exceed 60dB, and a 'positive noise change footprint' where the opposite occurs.

BASELINE

13.3.3. The baseline was ascertained from the Historic Environment Records for West Sussex and Surrey, the National Heritage List for England, the Historic England Archive, by various archaeological geophysical surveys and two phases of archaeological trial-trenching at similar locations within the Proposed Development site. All of these are detailed within the ES Appendix 7.6.1: Historic Environment Baseline Report [APP-101].

13.3.4. The current airport was developed within a historic landscape comprising dispersed farmsteads with small, irregular fields bounded by hedges that were often heavily wooded. The London and Brighton Railway opened in 1841. This cut through the historic landscape on a north/south alignment and a station was provided at Horley. To the west of the railway, the former Gatwick Farm was replaced by a large house known as "Gatwick" or "Gatwick Manor", with land to the south-east of this house purchased in 1890 by the Gatwick Race Course Company. A racecourse was opened in 1891 along with a new station on the adjacent railway. An airfield was licensed at Gatwick in 1930, with the runway adjacent to the racecourse.

13.3.5. In 1935 a new railway station was opened further to the south and the following year the world's first circular passenger terminal was opened, linked to the new station by a subway. The terminal and part of the subway are still present but are outside the current operational airport – the former is a Grade II* listed building known as The Beehive. During World War Two the airfield and part of the racecourse was

requisitioned by the Air Ministry and used by the RAF. The country house known as Gatwick was demolished in 1950, and in the same decade Gatwick Airport was substantially expanded to become the newest airport for London.

13.3.6. There is one Conservation Area (ConsA) partially within the boundary of the Proposed Development; the Church Road ConsA on the southwest edge of Horley, to the north of the airport. The table below details the heritage assets (Listed Buildings (LB) at Grade II* and above, ConsAs, and Scheduled Monuments (SM)) within 1km of the Proposed Development.

Table 13.1: Heritage Assets Within 1km of the Proposed Development (CAs, SMs and LB at Grade II* and Above)

Name	Asset description
Church Road Horley	ConsA
Church of St Bartholomew, Horley	Grade I LB
Tinsley Green	SM
Thunderfield Castle	SM
Church of St Nicholas, Charlwood	Grade I LB
Church of St Bartholomew, Burstow	Grade I LB
Charlwood House	Grade II* LB
Gatwick Manor Inn	Grade II* LB
Church of St Michael and All Angels, Lowfield Heath	Grade II* LB
Rowley Farmhouse	Grade II* LB
The Beehive	Grade II* LB
Charlwood Park Farmhouse	Grade II* LB
The Providence Chapel, Charlwood	Grade II* LB
Manor House, Charlwood	Grade II* LB
Burstow	ConsA
Charlwood	ConsA
Massetts Road, Horley	ConsA

13.3.7. There are some 79 Grade II listed buildings within 1km of the Proposed Development, and around 135 Grade II listed buildings within 3km, with many of these within Charlwood or Horley. Within these are Wing House and Edgeworth House, two Grade II (but interlinked) buildings within the airport site. A further three Grade II* buildings lie between 1 and 3 km of the site boundary, and there are a number of locally listed buildings within 1km of the site, including Gatwick Manor Lodge on the northwestern edge of the Proposed Development.

13.3.8. Archaeological works have taken place within the boundary of the site in recent years in the northwest of the airport and during construction of flood and pollution lagoons to the south-east. West Sussex areas of enhanced archaeological interest

are known as Archaeological Notification Areas (ANAs) and are classed as red or amber depending on their perceived importance. Similar areas in Surrey are named Areas of High Archaeological Potential (AHAPs) and County Sites of Archaeological Interest (CSAIs). Within the boundary of the site there are four Red ANAs and one AHAP. There are several additional red and amber ANAs within 1km of the site boundary and two AHAPs at Charlwood, four to the south-west of Horley and two at Burstow, as well as a CSAI around the SM of Thunderfield Castle.

13.3.9. Three noise sensitive designated heritage assets within the area where noise is expected to increase further afield (under the negative noise footprint) were identified:

- Grade II listed Church of St John the Baptist, Capel
- Grade II listed Quaker Meeting House with attached cottage, Capel
- Grade II listed Lowfield Heath Windmill south-east of Charlwood

13.3.10. Noise is expected to decrease at the following sites:

- Grade II* listed Church of St Michael and All Angels, Lowfield Heath
- Grade II Lowfield Heath War Memorial

13.3.11. Consented/permitted development works under the future baseline are not expected to result in any change to the historic environment.

CONSTRUCTION PHASE

Initial Construction Period 2024 to 2029

13.3.12. The following works in the ES [APP-032] are predicted to have a significance of effect higher than negligible:

Table 13.2: Significance of Effect to Heritage Assets During Construction 2024 to 2029

Location/Receptor	Significance of Effect	Notes
Museum Field flood compensation area (Archaeological remains)	Major Adverse	To be offset through programme of archaeological investigation
Car Park X flood compensation area (Archaeological remains)	Moderate Adverse	To be offset through programme of archaeological investigation
Removal of pond A and creation of new section of River Mole valley (Deposits of geoarchaeological interest)	Minor Adverse	-
New water treatment works (Archaeological remains)	Major Adverse	To be offset through programme of archaeological investigation

Location/Receptor	Significance of Effect	Notes
Noise bund and wall (Archaeological remains)	Minor Adverse	-
Environmental mitigation land at Museum Field (Archaeological and geoarchaeological remains)	Major Adverse	Mitigation potentially through detailed design but if not then to be offset through programme of archaeological investigation
Grade I listed Church of St Bartholomew (Horley)	Minor Adverse	Mitigated through Code of Construction Practice (CoCP)
Grade II* listed Church of St Michael and All Angels	Minor Adverse	Mitigated through CoCP

CONSTRUCTION AND OPERATIONAL PHASE

2030 to 2032

13.3.13. The following works in the ES [APP-032] are predicted to have a significance of effect higher than negligible:

Table 13.3: Significance of Effect to Heritage Assets During Construction and Operation 2030 to 2032

Location/Receptor	Significance of Effect	Notes
Central Area Recycling Enclosure (CARE) facility (Archaeological remains)	Minor Adverse	-
Setting of Church Road ConsA	Minor Adverse and Moderate Adverse	Effect would reduce over time for moderate adverse effects
Longbridge Roundabout Highway Improvements (Archaeological remains)	Minor Adverse	-
Car Park B contractor compound and Environmental mitigation works (Archaeological remains)	Major Adverse and Major Adverse	Appropriate mitigation may be implemented ahead of the works to establish the compound but if not then effect could be offset through a programme of archaeological investigation.
Church Road ConsA	Minor Beneficial	Due to environmental mitigation works

Location/Receptor	Significance of Effect	Notes
Grade I listed Church of St Bartholomew (Horley)	Minor Adverse	Mitigated through CoCP
Grade II* listed Church of St Michael and All Angels	Minor Adverse	Mitigated through CoCP
Grade I listed Church of St Nicholas (ground noise)	Minor Adverse	-
Grade II* listed Manor House, Charlwood (ground noise)	Minor Adverse	-
Grade II* listed Providence Chapel, Charlwood (ground noise)	Minor Adverse	-

2032 to 2038

13.3.14. The following works are predicted to have a significance of effect higher than negligible in the ES [APP-032]:

Table 13.4: Significance of Effect to Heritage Assets During Construction and Operation 2032 to 2038

Location/Receptor	Significance of Effect	Notes
Grade I listed Church of St Nicholas (ground noise)	Minor Adverse	-
Grade II* listed Manor House, Charlwood (ground noise)	Minor Adverse	-
Grade II* listed Providence Chapel, Charlwood (ground noise)	Minor Adverse	-

13.3.15. It was concluded in the ES that for the three heritage assets considered under the negative noise footprint that, in part due to aircraft noise lessening due to fleet mix changes, and as considered against the future baseline proposals, the noise changes at these three locations would not affect the significance of such assets.

13.3.16. Written schemes of investigation (WSIs) for post consent archaeological investigations for Surrey and West Sussex were submitted during the Examination [APP-105] [APP-106], and Requirement (R) 14 of the draft Development Consent Order (dDCO) submitted prior to the commencement of the Examination [AS-004] stated that works must be carried out in accordance with the WSIs. The WSIs are also certified documents under Schedule 12 of the Order.

13.4. ISSUES CONSIDERED DURING THE EXAMINATION

13.4.1. Relevant Representations (RR) concerning the historic environment largely considered heritage assets under existing flight paths which have the potential to have increased frequency of flights and therefore noise/disturbance, and the effect of this on their settings. Such comments covered heritage assets such as Hever Castle (Grade I), Penshurst Place (Grade I), Chartwell (Grade I), and Chiddingstone Castle (Grade I).

13.4.2. The joint Crawley Borough, Horsham and Mid Sussex Districts and the West Sussex County Councils Local Impact Report (LIR) (the West Sussex LIR) [REP1-068] raised concerns over archaeological impacts at various sites within the operational boundary, including Car Parks Y and H and the North Terminal long stay car park, the Motor Transport Facilities, the water treatment works, car rental facility at the south terminal, the CARE, north of Hangar 7 and various construction compounds and airfield works (with the apron, south of runways, west end of runway). The Councils wished to see further appropriate evaluation or evidence for all such areas.

13.4.3. In terms of other heritage assets, the Councils wished to see further information and mitigation provided for Charlwood House and Charlwood Park Farmhouse to understand physical separation between the assets and airfield works and further design details. Clarification was requested for elements of the CoCP and the West Sussex WSI.

13.4.4. Kent County Council's (KCC) LIR [REP1-079] notes that there is no mention of Kent in the ES and considers that it is essential that there is a reasonable assessment of the historic environment of west Kent, noting that low flying aircraft, increased flight numbers, increase in pollution from planes and increased road traffic through Kent may all have an impact upon designated and non-designated heritage assets in the county. Historic buildings such as Squerryes Court, Chiddingstone, Chartwell and Penshurst Place, as well as ConsAs in Markbeech, Chiddingstone, Hoath Corner and Royal Tunbridge Wells were all raised, as well as the impact on historic landscapes.

13.4.5. The LIR of Surrey County, Mole Valley and Tandridge District Councils (the Surrey LIR) [REP1-097] notes that the ES baseline report provides a thorough overview of heritage assets within their respective areas. They suggest amendments to the WSI for Surrey concerning sampling strategies and to R(14) of the dDCO to clarify responsibilities. They also note that the proposed enhancements to Church Meadows provide an opportunity to enhance the setting of the Church of St Bartholomew (Horley). Further detail of such mitigation was requested. A comment on the process for noise insulation of listed buildings was also made.

13.4.6. At Open Floor Hearing 3 (OFH3), Hever Castle stated that anything that increases planes over Hever Castle, a grade I listed asset and park and garden, should be avoided.

13.4.7. At D1 a Statement of Common Ground (SoCG) with Historic England (HE) was submitted [REP1-035]. This stated:

- HE supported the thoughtful approach taken to undesignated heritage assets;
- under the scheme there is the potential for harm to a range of assets, including undesignated archaeological assets to the east of the airport, less than substantial harm to the grade II* listed Charlwood Park Farmhouse and a small

number of grade II listed buildings on the edge of the airport, and less than substantial harm to Thunderfield Castle. There is also the potential for impacts to the setting of heritage assets as a result of noise increases;
- any harm will require clear and convincing justification;
- HE is content that no permanent significant harmful impacts to high graded heritage assets from increased aircraft noise would result from the Proposed Development;
- it is likely that the harm to undesignated archaeological assets could be mitigated by the enhanced understanding that could be derived from a detailed archaeological study of the area; and
- works in the vicinity of the Church Road ConsA are unlikely to result in significant harm to the setting of this ConsA. Mitigation works such as planting and enhanced public access would cancel out harm.

13.4.8. Replying to the RRs and the OFH, the Applicant [REP1-048] noted that the assessment of air noise on heritage assets was carried out in accordance with HE guidance, as referred to in the ANPS (para 5.194). For the various heritage assets raised, it also noted that the predicted changes to the average summer daytime noise level (Leq 16 hr) with the Proposed Development in place would be less than 1dB, which is an imperceptible level of change. Predicted changes in road traffic are all rated as negligible and would not result in any harmful effect on the significance of any heritage asset.

13.4.9. In response to the Surrey LIR the Applicant amended R14 of the dDCO, the WSI submitted at D2 [REP2-017] and submitted an Update Note [REP2-031] on the noise insulation scheme for listed buildings. Referring to the Sussex LIR, the Applicant stated that it would prepare a report on the history of the airport and likely impacts of airport development on buried archaeology and that it would review the excavation areas at Museum Field and Brook Farm. It noted the SoCG with HE regarding the Grade II* listed Charlwood House and stated that the Design Principles document (see Chapter 18 Good Design) had been updated to reflect the need to minimise the visibility of Car Park X to Charlwood House.

13.4.10. In response to the KCC LIR the Applicant stated that it had assessed the likely impacts of air noise on designated heritage assets using the methodology commissioned by HE and published in 2014 (Aviation Noise Metric). It noted that this metric is named in paragraph 5.194 of the ANPS as the appropriate guidance document for the assessment of air noise impacts on heritage assets. It noted that this metric found that the Proposed Development would not result in any impacts on the significance of designated heritage assets in Kent, and that this was confirmed in the SoCG with HE [REP1-035], who stated that:

"On the basis of this assessment we are content that no permanent significant harmful impacts to high- graded designated heritage assets from increased aircraft noise would result from the scheme proposals".

13.4.11. Through ExQ1 [PD-012] we asked a range of questions of the Applicant, centred around:

- archaeology and the adequacy of the WSIs;
- the specific heritage assets of Charlwood House and Charlwood Park Farmhouse and the proposed car parks near to them;
- the Church Road ConsA;
- the Burstow ConsA;
- upon places of worship within Charlwood;
- noise insulation to listed buildings;

- effects on Pentagon Field, and;
- air noise effect on the setting of heritage assets.

13.4.12. In response the Applicant noted that: amendments had been made or were proposed to the respective WSIs (Surrey, and West Sussex); the Design Principles had been altered to provide more detail for Pentagon Field, Charlwood House and Charlwood Park Farmhouse (with a nursey housed at the latter now being potentially included within the noise insulation scheme); details over the HE metric used for noise sensitive assets; and further information provided for Church Road ConsA and the noise insulation scheme.

13.4.13. In response to previous queries, at D6 a report was submitted by the Applicant titled 'The Historical Development of Gatwick Airport Including a Review of the Extent of Past Ground Disturbance' [REP6-070]. At D7 the Legal Partnership Authorities (LePAs) [REP7-110] welcomed this report and stated that discussions were ongoing.

13.4.14. Responses to questions at ExQ2 [REP7-085] centred on the number of likely flights at Hever Castle, queries over the WSIs and details of proposed heritage outreach programme.

13.4.15. At D9 final WSIs for Surrey and West Sussex were submitted [REP9-045] [REP9-046]. These both included details of public outreach programmes.

13.4.16. Relevant to the historic environment, at the same deadline SoCGs with Crawley Borough Council (CBC) [REP9-066], Mid Sussex District Council (MSDC) [REP9-074], Mole Valley District Council [REP9-076], Reigate and Banstead Borough Council (RBBC) [REP9-078], Surrey County Council (SCC) [REP9-080], West Sussex County Council (WSCC) [REP9-085] were submitted. Relevant Principal Areas of Disagreement Summary Statement [PADSS] were also submitted for CBC [REP9-133], MSDC [REP9-152], RBBC [REP9-166], and WSCC [REP9-172].

13.4.17. In summary the outstanding areas of disagreement in these documents were:

- a recommendation for pre-construction archaeological trial trenching at Works No 28 (Car Park H) (CBC, [REP9-133], WSCC [REP9-172];
- adequate safeguarding for Charlwood House and Park Farmhouse (CBC, [REP9-133]; and
- assessment of the potential for noise impact on the High Weald AONB (now National Landscape) and Historic Parks and Gardens therein (MSDC [REP9-152].

13.5. ExA's CONCLUSION ON HISTORIC ENVIRONMENT

13.5.1. The ExA considers that the Applicant has adequately provided a description of the significance of the heritage assets that would be affected by the Proposed Development and the contribution of their setting to that significance. The Applicant has also provided detailed studies on heritage assets affected by noise, light and indirect impacts based on HE guidance. In this regard the ExA considers that the application meets the requirements of the ANPS, the NNNPS, the NPPF and PPG, as well as relevant legislation and local policy as set out in Appendix A. Our conclusions have also taken into account the Infrastructure Planning (Decisions) Regulations 2010.

Archaeology

13.5.2. The respective final WSIs for Surrey [REP9-045] and West Sussex [REP9-046] underwent various iterations and changes during the Examination and were informed by various documents, including the application documents and also the submission and incorporation of 'The Historical Development of Gatwick Airport Including a Review of the Extent of Past Ground Disturbance' [REP6-070]. At the close of the Examination, aside from the outstanding queries over Car Park H from CBC and WSCC, all details were agreed.

13.5.3. The report on the historical development of the Airport [REP6-070] is a detailed and comprehensive document which the ExA considers useful for the application. Details within this document note that while the survival of archaeological features in the area of Car Park H cannot be ruled out, they would likely be truncated due to the removal of upper parts of features (as the site is a surface car park already) and fragmentary further down from deeper disturbances such as drainage.

13.5.4. The ExA notes that the Applicant provided confidential information on electrical services and drainage in this area. Although not submitted to the Examination the ExA has been given no reason to doubt the veracity of this information and therefore agrees with the Applicant's conclusions in respect of this site. The area is likely to have low archaeological potential, and, as such, the ExA does not consider that pre-construction trial trenching is required.

13.5.5. R14 of the dDCO [REP10-004] ensures that works within the Proposed Development are carried out in accordance with the WSIs and the WSIs themselves are also certified documents under the terms of the dDCO. The ExA considers on the basis of the above that such documents provide adequate control and mitigation for archaeological purposes.

Other Heritage Assets

13.5.6. The ExA agrees with the conclusions of the ES, the Applicant, and HE except for Charlwood House and Charlwood Park Farmhouse. While the Design Principles document [REP9-062] was updated and improved during the Examination and Chapter 18 recommends that further design details are included in respect of proposed works near to Charlwood Park Farmhouse, the ExA considers that harm will still occur to these heritage assets. The construction of substantial new car parks in their vicinity will adversely affect their setting visually and audibly during construction. While visual effects will lessen over time with the maturation of planting, harm will still occur.

13.5.7. The ExA notes the views of KCC and of individual IPs, including Hever Castle, over the potential effects of increased air traffic over significant heritage assets in Kent and under flight paths. Such heritage assets were visited during the Examination and the ExA noted the frequency and noise effects of the current operations from the Airport. However, the Applicant has complied with the relevant sections of the ANPS and has correctly carried out the appropriate HE noise metric test. On the basis of the results of this test and the conclusions of HE, the ExA considers that the Proposed Development will not increase harm to the setting of such heritage assets.

13.5.8. Assessment of impacts for noise impact on the High Weald National Landscape are considered in Chapter 12, Landscape and Townscape. Historic Parks and Gardens within this National Landscape were not defined within the Examination and the ExA considers that the noise metric test also applies in this respect.

13.5.9. The ExA considers that, notwithstanding mitigation where possible, harm will occur to various listed buildings and ConsAs, as detailed below:

Table 13.5: The ExA's Consideration of Heritage Assets Where Outstanding Harm Will Occur

Name of asset	Grade	Reason	Permanent/temporary
Church of St Bartholomew (Horley)	I	Construction	Temporary
Church of St Michaels and All Angels	II*	Construction	Temporary
Church of St Nicholas, Charlwood	I	Ground noise	Permanent
Manor House, Charlwood	II*	Ground noise	Permanent
Providence Chapel, Charlwood	II*	Ground noise	Permanent
Charlwood House	II*	Visual effects from Car Park X	Permanent but lessening over time
Charlwood Park Farmhouse	II*	Visual effects from NT Car Park	Permanent but lessening over time
Thunderfield Castle	SM	Construction	Temporary
Church Road	ConsA	Construction	Temporary

13.5.10. The harm to all the assets identified in Table 5 would be less than substantial, and the ExA is satisfied that the Proposed Development would not result in substantial harm to any designated or non-designated heritage assets.

13.5.11. Within the range of less than substantial, harm would be at the lower end of the scale to all identified assets (with some only being affected temporarily). Nevertheless, where there is harm, the SoS must give that harm considerable importance and weight.

13.5.12. Such levels of harm would not be affected by the conclusions of the ExA with regard to the forecast traffic levels for the future baseline and the Proposed Development, as found in Chapter 4.

13.5.13. Due to the number of assets identified where harm occurs, the ExA ascribes moderate harm to matters relating to the historic environment against the making of the Order.

13.5.14. This harm requires clear and convincing justification and is weighed against the public benefits of the Proposed Development in Chapter 20 of this Report, in the planning balance.

14. ECOLOGY

14.1. INTRODUCTION

14.1.1. This Chapter considers the effects of the Proposed Development on ecology and nature conservation. It includes effects on protected species and consideration of sites of national, regional and local interest. The effects on European sites in the context of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) are separately considered in Chapter 19 of this Report although there are some linkages with the content of this Chapter. Ecology was identified within the Initial Assessment of Principal Issues (IAPI) (Annex C [PD-009]). It was also the subject of oral examination at Issue Specific Hearing (ISH) 8 [EV17-002 to EV17-005 and EV17-010 to EV17-013].

14.2. THE APPLICATION

OVERVIEW

14.2.1. Environmental Statement (ES) Chapter 9: Ecology and Nature Conservation [APP-034] assessed the effects of construction and operation of the Proposed Development on the natural environment of the application site and surrounding receptors. A number of supporting figures and appendices were also submitted including a number of ecological surveys. A full list can be found in Table A1 of Appendix A of this Report.

14.2.2. ES Chapter 9 and its associated figures and appendices should be read as part of the wider ES with particular reference to ES Chapter 11: Water Environment [APP-036], Chapter 12: Traffic and Transport [APP-037], Chapter 13: Air Quality [APP-038] and Chapter 14: Noise and Vibration [APP-039].

14.2.3. The key measures being undertaken to mitigate and compensate any effects of the Proposed Development on habitats and the species they support were contained in an Outline Landscape and Ecology Management Plan (oLEMP) [APP-113], Code of Construction Practice (CoCP) [APP-082] and Biodiversity Net Gain (BNG) Statement [APP-136]. These documents were subsequently updated throughout the Examination, the final versions of which can be found at [REP9-047] (oLEMP), [REP9-031] (CoCP) and [REP8-076] (BNG Statement). At Deadline (D) 8 the Applicant submitted a Register of Environmental Actions and Commitments (REAC) [REP8-121] extracting the key committed mitigation and compensation measures which are set out in environmental control documents.

14.2.4. ES Chapter 9 (Table 9.13.1, [APP-034]) detailed the assessment of likely significant effects (LSE) predicted to arise from the Proposed Development on the following categories of ecological receptors:

- statutory designated sites;
- non-statutory designated sites;
- ancient woodland;
- habitats of principal importance and species of principal importance;
- protected species; and
- notable habitats and species.

ECOLOGICAL CHARACTER OF THE AREA

Existing Site and Surroundings

14.2.5. The existing land within the Order Limits largely comprises low value habitats associated with the airport and its infrastructure. The Gatwick Airport site consists of large areas of hard standing and amenity grassland with areas of ornamental shrub and tree planting. These areas are predominantly located within the centre of the project site with areas of higher value habitats to the east and west [APP-034].

14.2.6. A biodiversity area east of the airport (referred to as the Land East of the Railway Line (LERL) biodiversity area) comprises a variety of grasslands with trees, woodland and hedgerows. The Gatwick Stream flows through the site and larger areas of semi-natural broadleaved woodland surround it, including areas of ancient woodland. Existing car parking areas to the north include linear strips of woodland which connect to the woodland to the south [APP-034].

14.2.7. The River Mole corridor (referred to as the North West Zone biodiversity area) comprises the River Mole, a variety of associated damp and dry grasslands and wetland areas. Semi-natural broadleaved woodland is present in the western part of the airport including an area of ancient woodland, Brockley Wood [APP-034].

14.2.8. Smaller areas of higher value habitat are present, for example Riverside Garden Park to the north which comprises semi-natural broadleaved woodland interspersed with areas of grassland, tall ruderal vegetation and the Gatwick Stream flows through it. Crawter's Field to the south of the airport comprises grassland and semi-natural broadleaved woodland [APP-034].

Proposals

14.2.9. The Proposed Development would require the removal of hedgerow and loss of plantation woodland and scrub habitat. The impact of this is discussed in detail in this Chapter.

14.2.10. New areas of higher value habitats would be created within two mitigation areas located to the west of the River Mole (Museum Field) and the north-east of the Longbridge Roundabout. Landscaping undertaken as part of the construction works would also reinstate and introduce new habitats including the diverted River Mole, which would increase the length of the water course and the riparian habitat along it, and the Museum Field flood compensation area which would create a variety of damp and dry grasslands [APP-034].

14.2.11. Tree planting would be undertaken along the new highway alignment to contribute to compensation for the woodland that would be lost in the construction phase, and flood mitigation features would be created along it introducing more damp and wet habitats to the Proposed Development site [APP-034].

DESIGNATED SITES AND AREAS OF ANCIENT WOODLAND

14.2.12. A list of the statutory designated sites and distances from the Order Limits can be found in of ES Chapter 9 (paras 9.6.2 to 9.6.5, [APP-034]). Figures 14.1 and 14.2 below depict the statutory and non-statutory designated sites in relation to the site location (extracts from ES figures 9.6.1 and 9.6.2 [APP-048])

Figure 14.126: Statutory Designated Sites

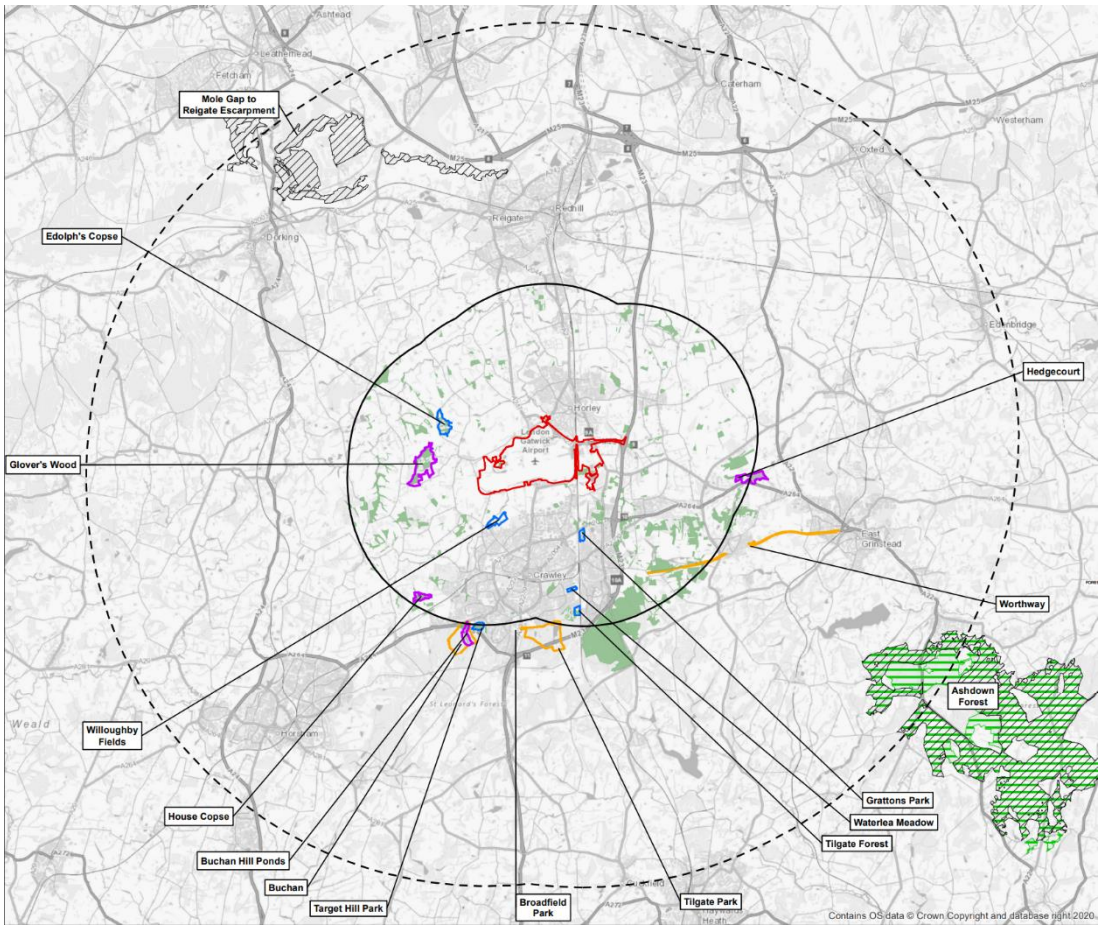
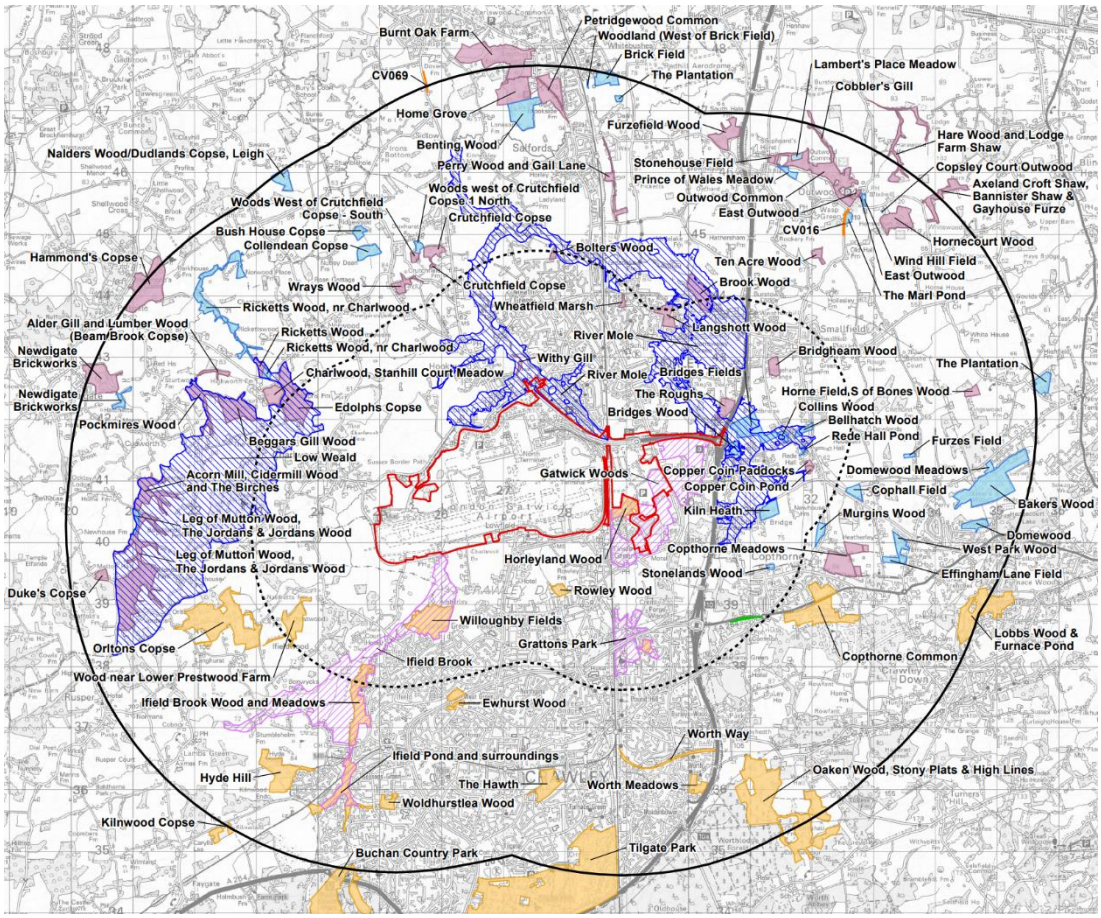


Figure 14.227: Non-Statutory Designated Sites



14.2.13. The Applicant states in ES Chapter 9 that the Proposed Development would have no LSE on statutory or non-statutory designated sites or areas of ancient woodland.

HABITATS

14.2.14. During the initial construction period (2024-2029) of the Proposed Development, ES Chapter 9 confirms that there would be a requirement for the removal of species-poor hedgerow and loss of plantation woodland and scrub habitat. The extent of habitat loss and delay in reprovision of replacement habitats would result in LSEs.

14.2.15. The mitigation and compensation proposed to address these LSEs is summarised in REAC commitments ENC033, ENC034, ENC035, ENC037, ENC038, ENC039, ENC040 and ENC045 [REP8-121], which state that the following would take place:

- tree and shrub planting to compensate for loss of existing habitat within built-up areas (such as car parks);
- woodland creation to compensate for loss of existing habitat;
- woodland, scrub and species-rich grassland creation within Car Park B will assist with providing an extension of Riverside Garden Park and to compensate for habitat loss along the highway;
- creation of new habitats within a newly created mitigation area north and east of Longbridge Roundabout comprising woodland, scrub and tree planting and species-rich, wet and dry grassland creation to compensate for construction and highway related habitat losses;

- retention of a strip of woodland between the Gatwick Stream and new highway alignments/ water attenuation area to retain a dark corridor and well-used bat foraging and commuting route;
- creation of woodland belts in Pentagon Field to compensate for woodland and trees lost in other parts of the site in a location that extends existing woodland and enhances connectivity;
- an existing non-native hedgerow comprising Leyland cypress between the A23 London Road and Perimeter Road East will be replaced with a native species-rich hedgerow; and
- woodland creation to compensate for loss of existing habitat.

14.2.16. The Proposed Development also includes works to the River Mole including the creation a new section of river channel and establishment of native flora and flora providing high value habitats. ES Chapter 9 concludes that this would result in long-term moderate beneficial significant effects (Table 9.13.1, [APP-034]).

SPECIES

14.2.17. ES Chapter 9 [APP-034] confirms that the removal of woodland habitats in the initial construction period (2024-2029) would result in the temporary displacement of breeding birds. The loss of suitable breeding sites would result in LSEs. The habitat loss would also result in LSEs on the bat and invertebrate assemblages.

14.2.18. The mitigation proposed is summarised in REAC commitments ENC011, ENC012, ENC013, ENC014, ENC015, ENC037 and ENC041 [REP8-121], which state that the following would take place:

- suitable habitat for breeding birds will be cleared between October and mid-February (outside of the breeding bird season) as far as practicable;
- additional surveys will be undertaken prior to construction commencing to determine the presence or absence of Schedule 1 species; peregrine, little ringed plover and firecrest;
- any nest of a Schedule 1 species found to be active during construction works will be protected by a suitably sized buffer;
- a scheme of new bird boxes will be implemented at the start of construction;
- where trees with low potential bat roost features require removal, those trees will be subject to a supervised soft-felling methodology;
- where trees with medium or high potential bat roost features require removal, those trees will be subject to climbing inspections and/ or dusk emergence/ dawn re-entry surveys as appropriate to inform where further mitigation is required;
- the retention of a strip of woodland between the Gatwick Stream and new highway alignments/ water attenuation area to retain a dark corridor and well-used bat foraging and commuting route; and
- any disturbance or removal of bat roosts identified during pre-construction surveys will be mitigated under an appropriate licence from Natural England (NE).

14.2.19. In addition, ES Chapter 9 (paras 9.9.143 to 9.9.147, [APP-034) explains that during the initial construction phase a main badger sett would be closed, using appropriate methods and timings, to allow the Proposed Development to be constructed an artificial sett would be created within the badger social group's territory resulting in a minor adverse and therefore not significant effect.

BIODIVERSITY NET GAIN

14.2.20. ES Chapter 9 [APP-034] states that the Proposed Development provides approximately 20% BNG in relation to the area of the site where physical development would take place. Both the ES and the BNG Statement [REP8-076] are clear that the assessment compared the baseline conditions within the area of habitats to be lost (230.09 hectares (ha)), rather than all land within the Order Limits (735ha), with the post-development score within those areas to get an overall net gain score.

SUMMARY OF SIGNIFICANT EFFECTS

14.2.21. Table 9.13.1 of ES Chapter 9 (pages 138 to 163, [APP-034]) summarises all the residual effects, taking account of the mitigation and compensation measures, associated with each phase of the Proposed Development. All the adverse and beneficial significant effects for each phase are consolidated in the following list.

- Construction Period 2024-2029 (construction effects up to first opening of Northern Runway):
    - a moderate significant adverse effect on semi-natural broadleaved woodland, mature broadleaved trees, broadleaved plantation woodland and associated scrub due to long term loss of woodland and some loss of connectivity;
    - significant adverse effects on the breeding bird assemblage due to loss of nesting sites and foraging habitat (minor significant effects on reed bunting and moderate significant effects on other species);
    - a moderate significant adverse effect on the assemblage of bat species due to the long-term loss of woodland and shrubs that form a linear corridor through the north of the Order Limits;
    - a moderate significant adverse effect on the terrestrial invertebrate assemblage due to habitat loss;
    - a moderate significant beneficial effect on hedgerows due to replacement planting of greater biodiversity value; and
    - a moderate significant beneficial effect on watercourses due to the creation of a new section of the River Mole providing high value habitats.
- Construction and Operational Effects 2030-2032
    - a moderate significant adverse effect on semi-natural broadleaved woodland, mature broadleaved trees, broadleaved plantation woodland and associated scrub due to continued absence of woodland due to new planting being immature;
    - moderate significant adverse effects on the breeding bird assemblage due to loss of nesting sites for a range of species; and
    - a moderate significant adverse effect on the assemblage of bat species due to the loss of semi-natural broadleaved woodland.
- Construction and Operational Effects 2033-2038
    - a moderate significant adverse effect on semi-natural broadleaved woodland and mature broadleaved trees due to continued absence of habitat; and
    - a moderate significant adverse effect on the assemblage of bat species as new woodland would not have matured sufficiently.
- Long-term forecast year 2047

- no significant adverse effects identified as new areas of semi-natural broadleaved woodland would be semi-mature.

14.3. ISSUES CONSIDERED DURING THE EXAMINATION

BIODIVERSITY NET GAIN

Baseline

14.3.1. The Joint Surrey Councils (JSCs) state in their LIR (para 7.47, [REP1-097)] that although not a legal requirement, due to the long term and large-scale impacts of habitat loss the Applicant should be delivering BNG in the local, regional and national interest. In response to ExQ1.EN.1.5 [REP3-090] on this matter the Applicant referenced its approach set out in the BNG statement [APP-136] and highlighted that the Proposed Development would deliver over 20% net gain.

14.3.2. There was however concern raised by the Legal Partnership Authorities (LePAs) [REP4-063] (also highlighted in Section 9.10 of the Joint West Sussex Local Authorities (JWSLAs) Local Impact Report (LIR) [REP1-068] and the JSCs LIR [REP1-097]) that unless the BNG baseline considered all habitat within the Development Consent Order (DCO) application boundary, the Applicant cannot claim that 20% BNG is being achieved. The LePAs concern was that the scheme may deliver substantially less (or even a loss) if all land assessed is within the Order Limits.

14.3.3. NE confirmed in its RR [RR-3223] and Statement of Common Ground (SoCG) with the Applicant [REP9-090] that the Applicant's approach, whereby the net gain shown within the metric is based only upon land impacted during the project (230.09ha), was agreed with the Applicant at the pre-application stage due to the constraints associated with providing a 10% gain on the full site. NE also noted that as BNG is not mandatory for Nationally Significant Infrastructure Projects (NSIP), it would not be requiring specific measures. NE also recommended that the target increase of 22.5% habitat units and 16.7% watercourse units should be secured by a suitably worded requirement in the DCO.

14.3.4. The Applicant provided further explanation at ISH8 (Applicant's Written Summary of Oral Submissions ISH8: Ecology) [REP6-082] that it was required to draw its Order Limits around the airport as a whole to ensure the full airport is bound by the controls in the DCO. As a result, the redline boundary is not solely around areas of impact as would be the case for many other developments. Therefore, its position is that using BNG with a baseline of the Order Limits as a whole would lead to skewed calculations and a need to provide a gain that was disproportionate to the impact.

14.3.5. The Applicant confirmed [REP6-082] that if the BNG calculation is carried out across the full Order Limits, the BNG calculations would show approximately 7% net gain.

14.3.6. At ISH8 the LePAs highlighted that the most recent BNG guidance from DEFRA (Calculate biodiversity value with the statutory biodiversity metric, updated February 2024) states that *"If you are making an on-site calculation, you will need to include everything that exists within a development's red line boundary. This includes all features, whether or not they may be lost, retained or improved"*.

14.3.7. In its finalised Principal Areas of Disagreement Summary Statement (PADSS) Surrey County Council (SCC) [REP9-168] states that it is of the view that if BNG

statutory/ best practice guidelines are not followed, it is inappropriate to state the scheme is achieving BNG.

14.3.8. Nevertheless, at D9 the LePAs indicated in the SoCG with the Applicant [REP9-090] and in their Closing Submission (para 3.88, [REP9-151]) that their concerns about non-compliance with the current BNG methodology in the calculation of BNG had been addressed through the s106 agreement obligation for a landscape and ecology enhancement fund (refer to para 14.3.54 to 14.3.59 below) and associated dedicated officer.

14.3.9. In response to ExQ2.EN.2.1 [PD-021] NE confirmed that its position had not changed from its RR [RR-3223], as the DEFRA guidance update is specific to applications which are currently required to achieve a 10% BNG [REP7-116].

14.3.10. The Applicant explained (para 14.1.36, [REP9-112]) that achievement of the target BNG would be secured through the approval of a Landscape and Ecology Management Plan (LEMP) for each part of the Proposed Development under Requirement (R) 8 of the draft DCO (dDCO). The oLEMP (para 8.1.3, [REP9-047]) states that each LEMP submitted to the relevant authority for approval pursuant to R8 will include an explanation of how the plan contributes to the achievement of 19.4% BNG.

Habitat Trading Rules

14.3.11. The Proposed Development would result in the net loss of 3.35ha of woodland. The Applicant explained in the BNG Statement [REP8-076] that it would not be possible to plant extensive areas of new woodland due to aircraft safeguarding requirements.

14.3.12. The BNG Statement [REP8-076] is clear that, due to the loss of woodland, the calculation does not pass the habitat trading rules. Habitat trading rules are set to prevent a net gain being delivered through the incorporation of large areas of low value habitat at the expense of higher value habitats. The net loss of woodland (-52.37 units) is replaced with a net gain in grassland (97.61 units), heathland and shrub (34.24 units) and wetland (10 units).

14.3.13. Crawley Borough Council (CBC) [REP9-133] and West Sussex County Council (WSCC) [REP9-172] state in their finalised PADSS that if the Proposed Development is to truly deliver 10% BNG (and meet BNG trading rules) this needs to include woodland, as woodland is a key habitat impacted by the Proposed Development.

14.3.14. NE stated in its RR [RR-3223] and SoCG with the Applicant [REP9-090] that it considers the rationale given by GAL for not meeting the trading rules to be satisfactory, given that it is in the interest of aircraft and public safety that new areas of woodland should not be planted within the Order Limits.

Biodiversity Net Gain Additionality

14.3.15. The JSCs stated in their LIR [REP1-097] that habitat creation/ enhancement for protected species should not be counted towards achieving 10% BNG. Its concern was reiterated at D7 [REP7-105], that it was unclear how the habitat enhancement and compensation proposed for protected species mitigation has been included in the BNG metric. The D7 submission explained that usually, two metrics would be submitted, one metric including all habitat proposals for protected species mitigation and a second metric with all other habitat proposals.

14.3.16. The Applicant responded [REP8-117] that it considers that the approach to the assessment of BNG has accounted for all necessary aspects of the calculation and is therefore correct. It also highlighted that NE reiterated its support for this position in its response to ExQ2 EN.2.1 [REP7-116]. However, the JSCs maintained that the Applicant had not answered their question on BNG additionality [REP9-143].

ExA's Conclusions on Biodiversity Net Gain

14.3.17. The Applicant's case is that it can achieve a 19.64% BNG across the Proposed Development. However, achieving this scale of benefit is questionable in the context of the latest DEFRA guidance on the calculation of BNG. As the Applicant acknowledges, the net loss of woodland falls foul of habitat trading rules and while understandable, further undermines the Applicant's case for BNG. There is currently no mandatory requirement for NSIPs to secure a 10% BNG but such a benchmark provides a useful measure of BNG benefit. Achieving approximately 7% gain based on a calculation across the entire Order Limits and not simply the area of habitats to be lost would still have an overall benefit but this would carry substantially less weight than an almost 20% BNG.

14.3.18. We also note that the Applicant has not followed the advice of NE that BNG should be secured through a requirement in the DCO and therefore, while providing a target, does not secure the benefits which NE and the LePAs were seeking.

LOSS OF WOODLAND HABITAT

14.3.19. We questioned the Applicant at ExQ1.EN.1.7 [PD-012] as to why replacing lost woodland habitat with new woodland habitat on a like for like basis within the Proposed Development poses any greater risk to aircraft safeguarding than that which exists in the baseline scenario and what alternative options were considered.

14.3.20. The Applicant responded [REP3-090] that the greater part of loss of trees is a result of the highway improvements (Work numbers (Nos) 35 – 37). There is limited space within the highway corridor to replant trees on a like for like basis once the revised road geometry has been accounted for. Furthermore, the reprovision of woodland elsewhere within the Proposed Development site would involve planting closer to the runways and could increase risk of bird strike due to an increase in risk species commuting across the runways. The Applicant also explained that planting of woodland in offsite areas had been explored and included in the application, where safe to do so (for example, wet woodland along Horley Road and woodland edge habitat around existing mature tree lines).

Realistic Worst-Case Loss of Trees

14.3.21. In Appendix C to its D3 submission [REP3-117], the JWSLAs stated that the Applicant had not demonstrated the proposed extent of tree removal was required in a realistic worst-case scenario. The JWSLAs also listed the arboricultural features where the need for removal had not been demonstrated by the Applicant.

14.3.22. In response to the concerns from the JWSLAs, the Applicant reduced the extent of tree removal along the surface access corridor in the outline Arboricultural and Vegetation Method Statement (oAVMS) submitted at D6 [REP6-018] and quantified the extent of tree removal in the Tree Survey Report and Arboricultural Impact Assessment (TSRAIA) (para 6.2.9, [REP6-038]). The Applicant also highlighted that the project-wide design principles L1 and L4 in the Design and Access Statement Appendix 1 – Design Principles (final version [REP9-062]) ensure that the detailed design process would seek to retain existing vegetation where possible. The

Applicant submitted a Note on Project Wide Habitat Loss at D6 [REP6-071] (final version [REP8-098]) to provide a single point of reference for vegetation change.

14.3.23. Whilst the JWSLAs welcomed the updates at D6 [REP7-103], it remained of the view that the Applicant had not provided enough detail of the project proposals to demonstrate that the design had been based on a realistic worst-case scenario. The concern of the JWSLAs was that the proposals maximised space within construction areas to allow maximum flexibility with little consideration of arboricultural features. This remained an outstanding concern for the JWSLAs at the close of the Examination [REP9-151].

14.3.24. The Applicant's Closing Submissions [REP9-112] state that further detail would be provided during the detailed design stage to confirm tree loss. An AVMS would be submitted to CBC for approval for each area prior to any vegetation or tree clearance in that area. This is secured through R28 of the rDCO.

Time Delay and Advanced Planting

14.3.25. A number of Interested Parties (IPs) raised concerns in RRs that the time between habitat loss and subsequent reprovision associated with the length of the construction period had not been assessed. The issue was raised for example by Communities Against Gatwick Noise (CAGNE) [RR-0556], Councillor Essex [RR-0896], Gatwick Area Conservation Campaign (GACC) [RR-1495], Mr Humphreys [RR-4193], Surrey Climate Commission [RR-4396] Sussex Wildlife Trust [RR-4466] and others.

14.3.26. The Applicant responded to the RRs at D1 [REP1-048] confirming that the medium term significant adverse effects identified in ES Chapter 9 [APP-034] were due to the time lag that the IPs referred to. The effect would remain significant until the replanting had matured at which point the level of effect would be reduced below that of significant.

14.3.27. The JWSLAs stated in their LIR [REP1-068] that advance tree planting should be viewed as essential compensation and be provided wherever possible, predominantly within land adjacent to the surface access works. In its Response to the Local Impact Reports [REP3-078] the Applicant explained that locations adjacent to the surface access improvements works are too constrained by construction activities to be viable as locations for advance planting.

14.3.28. The Applicant pointed out in its Written Summary of Oral Submissions ISH8: Ecology [REP6-082] that the oLEMP [REP9-047] requires each LEMP to include advance mitigation and enhancement planting opportunities and Annex 4 of the oLEMP includes preliminary locations for advance planting (approximately 10ha in the Museum Field Environment Mitigation Area, 2.5ha of hedgerow at Crawter's Brook and 0.3ha beside Perimeter Road East/ A23). The submission of each LEMP to CBC for approval is secured through R8 of the rDCO.

14.3.29. In its final SoCG with the Applicant [REP9-084], WSCC stated it had outstanding detailed concerns regarding advanced planting (see sections 3 and 5 of the JLAs Response to the Applicant's D6 Submissions [REP7-103]). Furthermore, it raised concern that the proposed advanced planting would not minimise the effects alongside the highway corridors.

Replacement Tree Planting

14.3.30. Concern was raised by the JWSLAs at D4 [REP4-042] that it was unlikely, given the level of flexibility sought by the Applicant, that the precise level of tree loss could be known prior to the determination of the DCO. As such, the authorities sought for tree mitigation to be secured, initially via a section (s) 106 agreement and then latterly through an additional requirement in the DCO.

14.3.31. Policy CH6 of the CBC Local Plan (2015-2030) states (para 9.31, [REP1-068]) that where development proposals would result in the loss of trees, a number of additional replacement trees must be provided, with the number of replacement trees calculated based on the trunk diameter of each tree to be removed. Additional and replacement tree planting requirements would normally be expected to be met within the Proposed Development site. Where the local planning authority agrees that this is not feasible or desirable, commuted sums will be sought in lieu on a per tree basis.

14.3.32. The Applicant provided calculations in the TSRAIA [REP8-064] to demonstrate that in the worst-case scenario, the proposed replacement tree planting would provide a sufficient number of trees to satisfy Policy CH6.

14.3.33. The LePAs remained concerned that there was not a mechanism in place to secure the payment of compensation required under Policy CH6 if the proposed tree planting was not delivered and provided a proposed new requirement wording at D7 [REP7-103]. We raised the issue at ISH9, following which the Applicant proposed its own new requirement (R39) in its draft DCO (dDCO) submitted at D8 [REP8-005]. R39 secures a tree balance statement being submitted to CBC for approval and the payment of a tree mitigation contribution to CBC if the total number of trees provided is less than the number required under CBC Policy CH6.

14.3.34. In the LePAs Closing Statement [REP9-151], they welcomed the principle of the addition of R39 to the dDCO but questioned why this requirement should only be fulfilled after 9 years from the commencement of dual runway operations and suggested that a phased approach would be appropriate. Amendments to the wording of R39 were submitted by the LePAs at D9 [REP9-147].

14.3.35. At the close of the Examination the key remaining concerns of the LePAs in their Closing Statement [REP9-151] were: “(i) failure to provide adequate mitigation/ compensation for the loss of 3.12 ha of woodland, and (ii) failure to demonstrate a realistic worst-case approach to tree-loss has been applied.”

ExA’s Conclusions on Loss of Woodland Habitat

14.3.36. The Applicant has acknowledged that there would be a net loss of area of woodland arising from the Proposed Development. While originally this was identified as an area of 5.7ha the Applicant’s revised figure places this at 3.12ha. The JWSLAs identified the loss as a key concern but also maintained their position that insufficient justification had been provided for the calculation of the loss. However, based on the analysis provided by the Applicant in Note on Project Wide Habitat Loss [REP8-098], we consider that a realistic worst-case has been prepared in spite of the reduction in area.

14.3.37. IPs concerns about the time delay between the loss of habitat and subsequent reprovision because of the length of the construction period are both justified and accepted by the Applicant. The effect would be moderate adverse until replacement planting matures, at which point the effect would fall below the level of significance.

While best practice and mitigation measures, including some advance planting, would limit the amount of habitat loss and the time period over which the impact is experienced, the scale of construction would mean that a significant effect cannot be avoided.

14.3.38. The Applicant's response in its Closing Submissions [REP9-112] to the issue of replacement tree planting is based in part on the replacement trees being of an improved overall ecological condition compared to the baseline and an overall net gain in the number of trees and increased diversity of habitats. Along with contribution towards the Gatwick Greenspace Partnership (GGP), a specific Landscape and Ecology Delivery Contribution under the s106 agreement and the revised version of R39 in the rDCO, we consider that an appropriate response to replacement tree planting has been provided which would also be in accordance with CBC Policy CH9.

14.3.39. We consider that the LePAs version of R39 more appropriately secures compliance with CBC Policy CH6 and so the rDCO reflects this.

LANDSCAPE SCALE APPROACH

14.3.40. Several of the local authorities and a number of IPs raised the issue that there needed to be a landscape scale approach to assessing and addressing ecological impacts, for example SCC [RR-4398], Reigate and Banstead Borough Council (RBBC) [RR-3734], WSCC [RR-4773] and GACC [RR-1495].

14.3.41. The Applicant provided its response at D1, for example in the SoCG with SCC [REP1-045], that the potential for ecological impacts beyond the DCO limits was recognised through the extension of the survey work beyond the Order Limits and that opportunities to create enhanced wildlife corridors beyond the confines of the existing airport boundary have included those at Brook Farm and Longbridge Roundabout.

14.3.42. The issue was also raised in the LIR of the JSCs [REP1-097] which the Applicant responded to at D3 [REP3-078] by reiterating that the Proposed Development would deliver habitat creation measures beyond the confines of the airport at both Museum Field and the Brook Farm area. However, the issue remained an outstanding concern of a number of IPs.

14.3.43. We raised the matter of the landscape scale approach at ISH8 [EV17-002 to EV17-005 and EV17-010 to EV17-013]. The LePAs were asked to expand on what they would like to see from the Applicant's proposals to evidence a landscape scale approach.

14.3.44. The LePAs explained that there were numerous impacts which extend beyond the airport boundary and that there is a need to maintain habitat connectivity within the wider landscape over the 14-year construction period. Also, due to the loss of woodland that cannot be replaced within the Order Limits the LePAs asked the Applicant to consider measures which would operate on a landscape scale and deliver off-site compensatory habitat. The LePAs position is set out in detail in their post hearing submission [REP6-109].

14.3.45. In response, the Applicant stated that it had considered the potential for severance effects and the importance of creating and maintaining linkages between the airport and the wider environment. It explained that the ecological strategy for the Proposed Development accounts for the presence of two rivers and their landscape-

scale role as wildlife corridors. The Applicant's position is that enhancing these river corridors within the Order Limits would result in an overall enhancement to the connectivity for biodiversity around the airport. Further detail on the Applicant's position can be found in its Written Summary of Oral Submissions ISH8: Ecology [REP6-082].

Biodiversity Opportunity Areas

14.3.46. The JSCs identify in their LIR [REP1-097] that Local Nature Recovery Strategies (LNRS) are a new statutory commitment from the Environment Act (2021). Whilst the Surrey LNRS is emerging at present, it will be heavily based on Biodiversity Opportunity Areas (BOA), and within Surrey the JSCs would be keen for habitat creation and ecological enhancements/ offsetting to take place within BOAs. Similarly, D3 Submissions from GACC [REP3-129] and Mr Benatt [REP3-159] identify the nearby BOAs and state that Proposed Development should incorporate a comprehensive strategy to protect and enhance these vital biodiversity areas around its site boundary.

14.3.47. In response to Mr Benatt's submission, the Applicant stated [REP4-029] that the Proposed Development has had regard to the aims of the BOAs that occur partially within the Order Limits by including the following:

- new tree planting would be undertaken along the eastern boundary of Pentagon Field, resulting in increased woodland within the BOA;
- new wet woodland would be created within the Brook Farm area, along with new areas of reedbed; and
- the planned diversion of the River Mole will increase the total length of channel and improve the shape/ flow characteristics.

14.3.48. Whilst there are no enhancements planned for the Glover's Wood and Edolph's Copse BOA, the Applicant stated [REP4-029] that the survey work undertaken as part of the bat trapping and radio tracking exercise could be used to further the BOA aim of species recovery through targeted management of those woodlands.

14.3.49. The Applicant also states (para 2.1.4, [REP4-029]), that although not set out in terms of a LNRS, the ecology strategy for the site, set out in the oLEMP (final version [REP9-047]), provides what is, in essence, a Local Nature Recovery Plan for the Gatwick estate and wider area. The Applicant also noted that its ecology strategy would enhance the key wildlife corridors along the various water courses and provide wildlife nodes throughout the site where none currently exist.

14.3.50. Paragraph 5.104 of the Airports National Policy Statement (ANPS) and paragraph 5.33 of the National Policy Statement for National Networks (NNNPS) are clear that proposed developments should provide opportunities for building in beneficial biodiversity as part of good design and that the SoS will consider whether applicants have maximised such opportunities in and around developments. The ANPS specifically references the importance of establishing and enhancing green infrastructure.

14.3.51. We sought to understand (with reference to the NPSs and representations mentioned above) whether the Applicant had maximised opportunities for enhancement around the airport and so asked the Applicant at ISH8 whether enhancements to woodland within other nearby BOAs could be used to further compensate for the woodland loss.

14.3.52. The Applicant responded [REP6-082] that the Gatwick Wood and River Mole BOAs had been incorporated into the ecology strategy as set out in the oLEMP (final version at [REP9-047, REP9-049 and REP9-051]) and that the other BOAs within the surrounding landscape are some distance from the application site. The Applicant also stated: *"Simply because there are BOAs some distance from the Project does not mean that one has to look to incorporate those."*

14.3.53. We sought clarification from the Applicant in ExQ2.EN.2.2 [PD-021] as to the distance from the Order Limits that it had considered enhancement opportunities. The Applicant responded [REP7-082] that the land at Brook Farm and the land at Longbridge Roundabout had been identified as appropriate locations outside of the existing airport boundary that could be incorporated into the Order Limits and form a key component of the ecology strategy for the Proposed Development. The Applicant considered that the ecological enhancement provided within the Order Limits was significant, appropriate and proportionate and that there was no requirement to seek additional enhancement off-site.

Landscape and Ecology Enhancement Fund

14.3.54. Whilst the LePAs acknowledged, in their post hearing submission to ISH8 [REP6-109], that the Applicant may be taking a landscape scale approach within the confines of the Order Limits, the LePAs maintained that the Applicant's proposals did not represent a landscape scale approach.

14.3.55. The LePAs position was that the best way for the Applicant to achieve the required landscape scale approach would be through a specific landscape and ecological enhancement fund. This fund would be separate to the GGP fund secured by Schedule 6 of the draft s106 agreement. The LePAs noted [REP6-109] that, while the GGP is an admirable initiative, it focusses on a small number of discrete sites and relies on significant community involvement.

14.3.56. The Applicant was initially opposed to a separate fund because it did not think that a specific landscape and ecology enhancement fund was necessary. The Applicant pointed out that measures to improve ecology around the airport would primarily be secured through the oLEMP and R8 of the dDCO. In addition, the Applicant emphasised that the GGP had been effective and wide ranging to date and that it preferred this approach to setting up different individual funds.

14.3.57. However, at D9 the Applicant's completed s106 agreement [REP9-102] included provision for a Landscape and Ecology Enhancement Fund (including an associated ecologist to be employed by WSCC or CBC in respect of distribution of the fund).

14.3.58. The LePAs confirmed [REP9-147] in their D9 update on the draft s106 agreement that through the agreement of the terms of Schedule 6, together with the dDCO requirements and associated control documents noted in the preceding paragraphs, that all issues raised and submissions made in relation to these elements of Biodiversity and Landscaping mitigation (including the need for a landscape scale approach) during the Examination had been adequately addressed.

14.3.59. Other IPs, for example GACC in its Closing Statement [REP9-248], maintained that a landscape-scale approach to assess and address biodiversity and ecological impacts was still required.

ExA's Conclusions on Landscape Scale Approach

14.3.60. The JLAs (and other IPs) argued throughout the Examination that the Applicant had not adopted a landscape scale approach to assessing and addressing ecological impacts and the mitigation to address the impacts. At D9 the JLAs confirmed that a s106 agreement obligation for a Landscape and Ecology Enhancement Fund and associated dedicated officer would address their concerns. While we do not consider that these provisions in themselves would address the concerns about the approach to assessing impacts, the Applicant's case, as summarised at D6 [REP6-082] and in its Closing Submissions at D9 [REP9-112] demonstrated that it had considered a study area beyond the application site for assessment and therefore, in our view addresses this concern.

14.3.61. We have considered whether the Applicant has maximised the opportunities for building in beneficial biodiversity in and around developments in accordance with paragraph 5.104 of the ANPS and paragraph 5.33 of the NNNPS. In our view, given the proximity of the application site to BOAs and their role in providing a strategic framework for conserving and enhancing biodiversity at a landscape scale the Applicant has not taken the opportunity to maximise enhancement opportunities in spite of proposed improvements within the Order Limits. However, the provision of a Landscape and Ecology Enhancement Fund and funding for an ecologist through the s106 agreement could provide a mechanism for beneficial biodiversity to be maximised over a wider area in line with the objectives within the ANPS and NNNPS.

STATUTORY DESIGNATED SITES

14.3.62. The impacts of the Proposed Development on internationally designated sites are considered in detail in Chapter 19 of this Report. Therefore, this section focuses primarily on nationally designated sites although there is a strong degree of overlap given the internationally protected sites identified as for this application are underpinned by the Site of Special Scientific Interest (SSSI) designations.

Nationally Designated Sites

14.3.63. NE raised concern in its RR [RR-3223] that three sites (Titsey Woods SSSI, Westerham Woods SSSI and Mole Gap to Reigate Escarpment SSSI) show an increase in nitrogen oxides (NO_x) and nitrogen deposition that is greater than 1% of the critical load/ level. However, no assessment of potential impacts to these sites had been made.

14.3.64. NE also expressed concern that air quality impacts to nationally designated sites had only taken into account NO_x and nitrogen deposition. Despite ammonia (NH_3) being included within the air quality assessment for internationally designated sites, there had been no assessment made for all SSSIs.

14.3.65. Additional assessment of the impacts to SSSIs within 200m of the affected road network was undertaken by the Applicant (Appendix G of [REP1-050] - Supporting Air Quality Technical Notes to SoCGs). The SoCG between the Applicant and NE [REP9-090] records that NE agreed with the conclusions of the assessment that there were no significant effects on all sites other than Westerham Wood SSSI where they requested further bryophyte surveys be undertaken to determine whether this interest feature was present with the impact risk zone adjacent to the M25.

14.3.66. The SoCG between the Applicant and NE [REP9-090] records that following review of the bryophyte surveys NE agreed with the conclusion that there would be no significant impact on the SSSIs included within the assessment.

ExA's Conclusions on Statutory Designated Sites

14.3.67. The Applicant's initial assessment concluded that the Proposed Development would not result in LSE on any SSSI other than Westerham Wood SSSI which was subject to further surveys to address traffic related air quality issues. The SoCG between the Applicant and NE [REP9-090] confirms that there will be no significant impacts on the SSSIs included within the assessment. No other IPs raised concerns about the effects of the Proposed Development on statutory designated sites. Considering NE's position, we are content that there would be no significant air quality impacts to nationally designated sites.

PROTECTED HABITATS AND SPECIES

Ancient Woodland

14.3.68. Concerns were raised by several IPs including the JWSLAs in their LIR [REP1-068] regarding the protection of ancient woodland during the construction phase.

14.3.69. The Applicant submitted a TSRAIA [REP1-026 to REP1-030] and an outline Arboricultural and Vegetation Method Statement (oAVMS) [REP1-023 to REP1-025] at D1. There was discussion throughout the Examination about the content of these documents that is summarised in the SoCG between the Applicant and WSCC [REP9-084] resulting in updates to these documents [REP9-037 and REP8-064].

14.3.70. The SoCG between the Applicant and WSCC [REP9-084] records that the TSRAIA updated at D6 [REP6-038], alongside with the oAVMS updated at D7 [REP7-030] provided adequate protection for retained trees and demonstrated avoidance of impacts within the buffer zone of Horleyland Woods ancient woodland. We consider that the measures identified in the oAVMS (Section 3, [REP9-037]) for ancient woodland both generally and also specifically for Brockley Woods and Horleyland Woods are adequately secured through R28 in the rDCO.

14.3.71. The CoCP (para 5.4.4, [REP9-031]) also ensures that measures will be put in place to ensure that a minimum buffer is retained between ancient woodland and construction areas including appropriate fencing to prevent access, avoid compaction of soils or roots and to avoid any accidental damage. R7 in the rDCO secures that construction of the Proposed Development must be carried out in accordance with the CoCP.

Badgers and Great Crested Newts

14.3.72. At D9 the Applicant submitted letters of no impediment (LONI) received from NE [REP9-126 and REP9-127] in relation to the Applicant's draft badger and great crested newt (GCN) licence applications. NE confirmed in both LONIs that it saw no impediment to a licence being issued, should the DCO be granted. NE set out points that should be addressed fully as part of a formal licence application submission. NE highlighted in the SoCG with the Applicant [REP9-090] that the LONI for GCN contains caveats which should be addressed during the actual application.

Bats

European Sites

14.3.73. NE confirmed in its RR [RR-3223] that it was satisfied that the bat colonies identified within the airport's vicinity are not functionally linked to any of the nearby European designated sites.

Loss of Habitat

14.3.74. The JWSLAs raised concern in their LIR [REP1-068] regarding the impacts of disturbance and loss of woodland habitat, leading to impacts on commuting, foraging and roosting activity of bats, including Bechstein's, Alcathoe and barbastelle bat.

14.3.75. Similar concerns around disturbance and habitat severance were also raised by Mr Benatt at D3 [REP3-159]. The Applicant responded [REP4-029] explaining that overall connectivity through the length of the A23 is not severed at any point, with at least a 10 to 15m buffer of retained vegetation present along the Gatwick Stream to ensure connectivity, although reduced, is never severed. The Applicant also pointed out that the CoCP (paras 5.4.20 and 5.4.21, [REP9-031]) sets out measures to ensure the maintenance of a dark corridor along the Gatwick Stream, in particular where it meets the River Mole, to ensure connectivity for bats is maintained.

14.3.76. The SoCG between WSCC and the Applicant [REP9-084] records that whilst WSCC still had concerns regarding disturbance over the lengthy construction period, including the loss of woodland and impacts on bats over the short and medium term, subject to the s106 agreement Landscape and Ecology Enhancement Fund being agreed (which would help mitigate these impacts), this issue could be marked as agreed.

14.3.77. The JSCs raised concerns in its LIR [REP1-097] that no bat roost surveys of 'high' or 'medium' trees proposed for removal have been carried out to inform the baseline and impact assessment.

14.3.78. The Applicant submitted a Bat Tree Survey Report at D8 [REP8-104] and summarised in its Closing Submissions [REP9-112] that no bats had been identified as using any tree on site which is required to be felled.

14.3.79. In their D9 submission [REP9-143] the JSCs commented that whilst no bat roosts have been identified to date, it considered it was clear that the trees which would be removed provide a significant roosting resource for the local bat population. The JSCs state that the mitigation provided by the scheme should ensure that there is no reduction in roost resource following the construction of the Proposed Development and ideally provide an enhancement to roosting resource.

14.3.80. The Applicant set out in its Closing Submissions [REP9-112] that the completion of surveys during the Examination and the commitment to undertake, as necessary, pre-commencement surveys would ensure that the Proposed Development accounted for bats that may be roosting in trees and would mitigate any potential effects.

14.3.81. The LePAs state in their Closing Submission (para 3.88, [REP9-151]) that the JLAs have secured a s106 agreement obligation for a landscape and ecology enhancement fund (refer to paragraphs 14.3.54 to 14.3.59 above) and associated

dedicated officer as a means of addressing concerns relating to compensatory measures to offset impacts on bats and now consider them addressed.

Noise Impacts

14.3.82. Horsham District Council (HDC) raised concerns in its RR [RR-1742] regarding noise impacts on Bechstein and barbastelle bat populations to the west of the airport.

14.3.83. At D5 the Applicant submitted a technical note providing further details on the potential for disturbance effects from noise on bats (section 3 of Supporting Ecology Technical Notes [REP5-069], subsequently updated at D8 [REP8-094]). The conclusion of this note was that there would be no effect on any bats, given the high-noise environment bats were already acclimated to. As such, the Applicant concluded that there were no implications for the conclusions in either the ES or the Habitats Regulations Assessment Report.

14.3.84. HDC maintain in its final PADSS [REP9-139] that noise impacts on Bechstein and barbastelle bat populations should be considered in greater detail. The SoCG between HDC and the Applicant [REP9-070] references ongoing work to establish whether there are additional roosts. HDC state in its PADSS that it awaits the outcome of this survey work, and NE's response.

14.3.85. The Applicant was asked at ExQ2.EN.2.9 [PD-021] for details of the ongoing review of potential impacts of noise on bats with NE that HDC refer to in its D5 submission [REP5-042]. The Applicant responded [REP7-082] that it had discussed the matter with NE who have confirmed their agreement with the Applicant's assessment. The SoCG between NE and the Applicant [REP9-090] records this matter as agreed.

Pre-Construction Surveys

14.3.86. The CoCP [REP9-031] outlines the surveys of Habitats and Species that will be undertaken prior to commencement of construction works including: breeding bird surveys; climbing inspections and/ or dusk emergence and dawn re-entry surveys for bats; reptile surveys (if identified as required following an initial walkover by the Ecological Clerk of Works (ECoW)); GCN re-survey; and badger re-survey. We consider that this is adequately secured in R7 in the rDCO which requires that construction of the Proposed Development must be carried out in accordance with the CoCP.

ExA's Conclusions on Protected Habitats and Species

14.3.87. Through various documents submitted during the Examination including the TSRAIA [REP8-064] and oAVMS [REP9-037] and measures secured through the CoCP and R7 of the rDCO, the Applicant has confirmed protection would be provided for retained trees and to avoid potential adverse impacts in the vicinity of ancient woodland. As protected species, appropriate measures are in place to prevent harm to badgers and GCN through the draft licences. Additionally, while some IPs raised concerns about the potential loss of habitat for bats, survey work during the Examination and proposed mitigation to be secured through R7 and R8 of the rDCO would provide adequate protection.

OTHER MATTERS

Loss of Pond Habitats

14.3.88. Concern was raised by some IPs about the loss of habitat associated with the removal of two ponds that would not be compensated for (for example in the JWSLAs LIR [REP1-068] and Mr Benatt's D3 submission [REP3-159]).

14.3.89. We raised the matter at ISH8 [EV17-002 to EV17-005 and EV17-010 to EV17-013] and the Applicant confirmed that the ponds that would be removed were currently managed in such a way as to prevent them being ecological habitats due to their location in relation to the runway and the relevant airport safeguarding requirements. The loss of these ponds was considered to be a minor adverse effect in ES Chapter 9 [APP-034].

14.3.90. The Applicant was of the view that it is not necessary to replace those ponds. Instead, the Applicant would be mitigating the loss in ecological functionality terms of the ponds by providing wider wetland habitats in the form of reed beds at the south terminal roundabout area and as part of the water treatment works [REP6-082].

14.3.91. RBBC [REP9-166] and SCC [REP9-168] maintained in their finalised PADSS that concerns on this matter had not been addressed.

14.3.92. We consider that the Applicant's position is reasonable considering that the BNG Statement (Annex 3, [REP8-076]) shows a net gain of 10 units in relation to wetland habitat.

Invasive Species

14.3.93. The Environment Agency (EA) raised concern in its RR [RR-1374] that minimal reference to invasive non-native species (INNS) impact was included within ES Chapter 9 [APP-034] and that biosecurity or INNS management had not been included in the CoCP.

14.3.94. The Applicant submitted an Outline INNS Management Strategy in Annex 8 of the CoCP [REP4-011] (final version (REP8-044]). The signed SoCG between the Applicant and the EA [REP10-015] records that all matters relating to INNS are agreed. No other IPs raised concerns regarding INNS.

14.3.95. The INNS Management Strategy [REP8-044] states that prior to commencement of development in any area, an INNS survey will be carried out by the ECoW and if INNS is identified, a specific INNS Management Plan for that area must be submitted to and approved by CBC. The INNS Management Strategy forms part of the CoCP and is secured through R7 of the rDCO. We consider that the Applicant's approach to INNS management is acceptable.

14.4. ExA's CONCLUSION ON ECOLOGY

14.4.1. We have given careful consideration to the views of IPs, to the evidence presented and the responses received, including the view of the relevant Statutory Nature Conservation Body, NE. We find that, the Applicant has addressed those concerns as far as possible in line with relevant legislation, the policy within the ANPS and other policy requirements and referenced through the relevant LIRs as important and relevant matters.

14.4.2. While there would be adverse effects on some habitats and protected species during construction arising from the loss of woodland habitat, these impacts would be temporary but long term until mitigation planting matures.

14.4.3. During the operational phase, the Applicant's proposed mitigation and compensation measures would ensure that there would be no significant adverse residual effects on ecology and the habitat creation/ enhancement measures secured through the oLEMP, for example additional hedgerow planting and the realignment of the River Mole would result in significant beneficial effects. In addition, we consider that there is an overall benefit from BNG. However, as the proposed BNG calculations fall foul of habitat trading rules and do not include all land within the Order Limits, we consider that this would carry little weight.

14.4.4. Mitigation and compensation measures would be adequately secured through requirements R7, R8, R28 and R39 of the rDCO as well as Schedule 6 of the s106 agreement.

14.4.5. Nevertheless, because of the timescale to achieve the beneficial effects, our overall conclusion in respect of ecology is that a little weight should be ascribed against the Order as applied for. This conclusion also applies to the Order with the ExA's rDCO.

15. HEALTH AND WELLBEING

15.1. THE APPLICATION

15.1.1. The Applicant's assessment of health and wellbeing was primarily contained within Chapter 18 of the Environmental Statement (ES) [APP-043]. For the purposes of this assessment, this included the:

- Construction period - construction and demolition activities within the existing airport boundary, including the construction of upgraded highway junctions and associated changes in surface transport; and
- Operation period - use of the airport, including upgraded highway junctions.

15.1.2. ES Chapter 18 [APP-043] was also supported by the following documents:

- ES Appendix 18.2.1 Summary of Planning Policy - Health and Wellbeing [APP-202];
- ES Appendix 18.3.1 Summary of Stakeholder Scoping Responses - Health and Wellbeing [APP-203];
- ES Appendix 18.3.2 Summary of Other Consultation Responses - Health and Wellbeing [APP-204];
- ES Appendix 18.4.1 Methods Statement for Health and Wellbeing [APP-205];
- ES Appendix 18.5.1 Health Baseline Trends, Priorities and Vulnerable Groups [APP-206];
- ES Appendix 18.5.2 Health and Wellbeing Baseline Data Tables [APP-207]; and
- ES Appendix 18.8.1 Quantitative Health Assessment Results [APP-208].

15.1.3. Several measures were proposed as part of the Proposed Development to mitigate the potential impacts on health and wellbeing. These measures are listed in Table 18.7.1 of ES Chapter 18 [APP-043] and the Mitigation Route Map [REP8-020].

15.1.4. With the proposed mitigation measures in place, no residual significant adverse effects were identified by the Applicant. However, the following residual significant beneficial effect was reported:

- Health and wellbeing effects from changes in socioeconomic factors - operational increase in direct, indirect, and induced employment opportunities. This beneficial effect was reported as being long-term and permanent and was applicable in respect of years 2032, 2038 and 2047.

15.2. ISSUES CONSIDERED DURING THE EXAMINATION

15.2.1. There were no health and wellbeing matters set out in our Initial Assessment of Principal Issues in Annex C of the Rule 6 letter [PD-009]. Based on the Applicant's application documents, we were satisfied that the Applicant had satisfactorily assessed health and wellbeing impacts in their submission as outlined above.

15.2.2. However, over 550 Relevant Representations (RR) raised concerns in respect of potential health and wellbeing impacts of the Proposed Development. Having taken these into account alongside the submitted application documents, we considered that the following issues should be further considered during the Examination. These were:

- the need for a standalone Health Impact Assessment;
- Section 106 Agreement – Schedule 7: Hardship Fund;
- air quality – ultrafine particulates; and

- Noise Insulation Scheme - overheating and ventilation.

Health Impact Assessment

15.2.3. ES Chapter 18 [APP-043] presents the Environmental Impact Assessment (EIA) findings concerning potential effects of the Proposed Development on human health and wellbeing and comprises a Health Impact Assessment (HIA). Compliance with relevant legislation and policy is outlined in Section 18.2 of ES Chapter 18 [APP-043] and in Section 8.19 of the Planning Statement [APP-245].

15.2.4. Concern was raised in the following Local Impact Reports (LIR) that the Applicant had not completed a standalone HIA or integrated a HIA to the same quality, scope, and scale as a standalone assessment:

- Joint West Sussex LIR [REP1-068];
- East Sussex County Council LIR [REP1-070]; and
- Joint Surrey Councils LIR [REP1-097].

15.2.5. Additional concerns detailed in the above LIRs related to the fact that because of the nature of the HIA included within ES Chapter 18 [APP-043] it was not possible for the separate local authorities to understand the specific health impacts on each of the local authority populations. It was further stated that as health impacts would vary across the authority areas, separate HIAs were required and should have been presented transparently rather than integrated within an existing ES chapter.

15.2.6. This matter was also discussed at Issue Specific Hearing 3 – Socioeconomics [EV8-001 and EV8-002] (ISH3). The Applicant noted [REP1-058] that it had prepared a robust health equality assessment, in the form of the HIA. Additionally, the Applicant commented that it did not consider it necessary to also prepare an Equalities Impact Assessment, as this would be a different exercise that would not fall to the Applicant to carry out. However, the Applicant suggested that it would prepare a signposting document to indicate where equalities information relating to protected characteristics had been set out in the existing application material.

15.2.7. During ISH3 the Legal Partnership Authorities (LePAs) accepted [REP1-213] that the Applicant would not be subject to the Public Sector Equality Duty (PSED) but noted that health inequalities was an important component of a HIA, and that the Applicant had not, in ES Chapter 18 [APP-043], provided a sufficiently comprehensive assessment.

15.2.8. Additionally, following the publication of the ISH3 action points [EV8-005] the Applicant confirmed that an Equality Statement was to be provided at Deadline (D) 3 to support the SoS obligations in discharging the PSED when making a decision [REP1-064]. This document was submitted at D3 [REP3-109]. Further detail in respect of PSED is discussed in Chapter 20 Compulsory Acquisition and Related Matters of this Report and is not repeated here.

15.2.9. In the second round of written questions (ExQ2) we asked the Applicant whether a standalone HIA for West Sussex County Council (WSCC) as required at ExQ2.HW.2.10 [PD-021]. In response [REP7-084] the Applicant stated that this was not deemed necessary as the geographic reporting of an assessment by impact related study area rather than by individual local authority is a proportionate approach that is the norm for reporting results in both a HIA and EIA. It was also confirmed that the assessment findings were based on the local evidence base for each local authority, and not an average. Similarly, the results were not an averaged effect that relied on multiple local authorities to be assessed together to avoid

significant adverse effects. Adverse effects would not become more or less significant if a local authority was considered individually.

15.2.10. The Applicant further confirmed [REP7-084] that a standalone HIA for each local authority would result in a high degree of duplication, running to several thousand pages. It would not change the conclusion, with which the United Kingdom Health Security Agency (UKHSA) and the Office for Health Improvement and Disparities (OHID) agreed [RR-4687], that the Proposed Development would not result in any significant adverse effects to public health.

15.2.11. We noted that the initial concern raised by WSCC in their LIR [REP1-068] remained an issue in their Principal Areas of Disagreement Summary Statement (PADSS) [REP9-172], insofar as a standalone HIA was still deemed necessary. Whilst WSCC acknowledged the submission of the Equality Statement by the Applicant, this was not the standalone HIA that it considered necessary.

ExA's Conclusion on the Health Impact Assessment

15.2.12. We are satisfied that the HIA undertaken by the Applicant adequately assessed potential effects on human health as a result of the Proposed Development. Additionally, we consider that the assessment contained within ES Chapter 18 [APP-043] applied recognised HIA guidance and combined this with the regulatory requirements defined for EIA to investigate, inform, assess, and effectively communicate how and where health issues and opportunities are addressed.

15.2.13. In relation to the scale of the HIA, the concerns of WSCC at the close of the Examination are noted. However, we are content that as the assessment findings were based on local evidence data sets for each local authority and results were not averaged, the scale of the HIA was appropriate.

15.2.14. In terms of the need for an equality impact assessment, this is required by the Equality Act (2010) but only applies to those public sector organisations or authorities who must comply with the PSED. As such, we accept it was not necessary for the Applicant to undertake such an assessment.

15.2.15. We therefore consider that the HIA complies with both paragraph 4.72 of the Airports National Policy Statement (ANPS) and paragraph 4.81 of the National Networks National Policy Statement (NNNPS) insofar as the assessment undertaken identified and set out any likely significant health impacts.

Section 106 Agreement – Schedule 7: Hardship Scheme

15.2.16. At D6, the Applicant submitted an updated version of the draft s106 agreement [REP6-063] into the Examination. A Hardship Scheme was included in Schedule 7, which included the provision of a Hardship Fund.

15.2.17. The fund was stated [REP6-063] as being available up to and including 31 December 2047 and would be made available on an annual basis for the purpose of mitigating hardship suffered by individuals living in relevant areas because of the Proposed Development. Specific criteria were set out in Schedule 7 in respect of eligibility and any funding provided would need to be used to provide extra care needs, home modification or short-term respite accommodation periods if unacceptable disruption would be experienced by the Hardship Scheme applicant. Payments awarded under the Hardship Scheme would not exceed £5,000 per household unless otherwise agreed by the Applicant upon the recommendation

from a relevant Integrated Care Board. The total funding available per annum was set at £10,000.

15.2.18. At ExQ2.HW.2.9 [PD-021] we asked the Applicant to provide reasoning for the inclusion of Schedule 7 and to also answer specific questions regarding the content of the Schedule. In response, the Applicant confirmed [REP7-084] that funding was initially proposed to be facilitated through the London Gatwick Community Fund, however following comments from the Joint Local Authorities (JLAs), a decision was made to provide a separate fund. The overarching aim of the fund would be to mitigate potential impacts of the Proposed Development on individuals experiencing hardship.

15.2.19. In terms of funding, the Applicant also confirmed [REP7-084] that the figure of £10,000 per annum had been calculated on informed expectations of likely demands on the Hardship Fund. It was further stated that the fund was only to be administered in 'exceptional circumstances' related to the Proposed Development and for situations where support would not be covered through other mitigation measures.

15.2.20. The other mitigation measures where eligible applicants would be able to draw funding from was stated as being the Noise Insulation Scheme and the London Gatwick Community Fund. Additionally, the Applicant also referenced the Code of Construction Practice (CoCP) [REP9-031] which was stated as securing both on and off-site measures to mitigate effects on residents. As such, the Applicant considered that there would be a limited number of eligible applicants for the Hardship Fund and that the sum of £10,000 per annum would be sufficient.

15.2.21. The issue of the Hardship Fund was also discussed during Issue Specific Hearing 9 - Socioeconomics (ISH9), where we asked further questions regarding eligibility and timing of delivery of the fund [EV20-015 and EV20-017]. In summary, the Applicant reiterated that the fund would provide appropriate mitigation for those very rare instances when a person of exceptional vulnerability was present at a place and time of a large change caused by the Proposed Development and where the other mitigation measures would be either not applicable or not intended to address the level of sensitivity. The Applicant also stated that the level of funding was under review and any changes would be confirmed at D9 [REP8-109].

15.2.22. During ISH9, in respect of the Hardship Fund, the LePAs [REP8-167] confirmed that they wished to see the terms by which some of the eligibility criteria were defined tightened. They also considered that there should be an increase in the quantum of the overall fund and although it was acknowledged that discussions were ongoing between the parties, they emphasised the need for a better package than that currently proposed.

15.2.23. At D9 [REP9-119], the Applicant confirmed that the level of funding available had been amended to the following non-accruing sums:

- £25,000 during the period between the Commencement Date and Commencement of Dual Runway Operations;
- £50,000 during the Monitoring Period; and
- £25,000 following the end of the Monitoring Period until 2047.

15.2.24. At D9, we noted that in both the 'Joint Position Statement between Gatwick Airport Limited and the Joint Local Authorities' [REP9-123] and the 'Legal Partnership Authorities Update on the Draft DCO Section 106 Agreement' [REP9-149] that it

was stated "*Through the agreement of such terms, the parties confirm that all issues raised/ submissions made in relation to the mitigation of Health impacts during the examination have been adequately addressed*".

ExA's Conclusion on the Section 106 Agreement – Schedule 7: Hardship Scheme

15.2.25. We note that the LePAs stated throughout the Examination that the Applicant had failed to recognise the full effect the Proposed Development could have on vulnerable groups in the local community [REP1-097, REP5-038 and REP5-115]. Despite these concerns, prior to D7 the Applicant maintained that the various mitigation funds, particularly the proposed Community Fund, would provide adequate mitigation for the most vulnerable members of local communities.

15.2.26. The Applicant's response to ExQ2.HW.2.1 [REP7-084] stated that the introduction of the fund was introduced following discussions with Community Foundations and the JLAs. Whilst we were pleased to see the introduction of the Hardship Fund at D7, despite both written questions and discussions during ISH9, the rationale behind the proposed level of funding remained unclear.

15.2.27. In addition, as discussed above, at ISH9 [EV20-015 and EV20-017] the Applicant confirmed that the level of funding was under review and at D9 an amended funding schedule was included within Schedule 7 [REP9-102]. Whilst we were pleased to see an increase in funding, during ISH9 [EV20-015 and EV20-017] the Applicant was asked to provide justification for the figures for the financial contributions in the draft s106 agreement schedules and additional information was provided by the Applicant at [REP8-111].

15.2.28. The detail provided in [REP8-111] was minimal, however the Applicant confirmed that the updated s106 agreement Explanatory Memorandum to be submitted at D9 would include justification for the final values of the financial contributions.

15.2.29. At D9 the '*Section 106 Agreement – Explanatory Memorandum'* [REP9-106] was submitted into the Examination. However, this did not provide a justification for the final financial contributions. Rather it referred back to the '*Written Summary of Oral Submissions at ISH9: Socio-economics'* [REP8-109] and the Applicant's '*Response ISH9 Action Point 40'* [REP9-119]. Neither of these documents provided a detailed financial justification. However, we note that the local authorities who were signatories to the s106 agreement have agreed to the monies proposed.

15.2.30. As such, we are satisfied that the provision of the Hardship Scheme and associated funding could provide a mechanism for the mitigation of potential health impacts on vulnerable residents. In addition, given the agreement reached between both the Applicant and the JLAs, we are satisfied that the use of a s106 agreement is an appropriate mechanism rather than that of a Requirement.

15.2.31. Furthermore, we consider that the provision of such the Hardship Scheme complies with the objectives within the ANPS and NNNPS, insofar as the Applicant has identified an appropriate measure to compensate for potential adverse health effects.

Air Quality – Ultrafine Particulates

15.2.32. In both the Joint Surrey Councils [REP1-097] and the Joint West Sussex [REP1-068] LIRs, concern was raised regarding the changes in concentrations of $PM_{2.5}$ not

being a good indicator of the general risk associated with exposure to fine and ultrafine particulates (UFPs).

15.2.33. In addition, the issue of air quality, and particularly UFPs, was an issue of concern for several IPs throughout the Examination. Examples of representations made regarding this issue include, but are not limited to, [RR-0341], [RR-1581], [REP4-105], [REP9-223], [REP9-248].

15.2.34. Matters relating to air quality, including UFPs, were discussed during Issue Specific Hearing 7 (ISH7) [EV11-001]. The Applicant's response to actions arising from ISH7 [REP4-037] included a detailed technical response on UFPs and clarifications on other matters raised.

15.2.35. With regards to UFPs, the Applicant confirmed that:

- an UFP assessment had been undertaken, including of aviation and transport sources;
- UFP monitoring, including a local monitoring study, was being proposed;
- PM2.5 exposure is correlated to, or a proxy for, UFP exposure; and
- it was appropriate to mitigate UFPs.

15.2.36. The Applicant also drew attention to the RR made by the UKHSA and OHID [RR-4687] which stated that "*Following our review of the submitted documentation we are satisfied that the proposed development should not result in any significant adverse impact on public health"*.

15.2.37. The Applicant, in its Closing Submissions [REP9-112], confirmed that an air quality action plan, support for air quality monitoring and support for work on UFPs, was included in Schedule 1 of the s106 agreement with the LePAs [REP10-019].

15.2.38. However, at the close of the Examination we noted common ground had not been reached regarding the issue of UFPs in the following PADSS:

- Mole Valley District Council [REP9-154];
- Tandridge District Council [REP9-171]; and
- Reigate and Banstead Borough Council [REP9-166].

15.2.39. The above authorities accepted that the Applicant had agreed to an increase in funding for monitoring, but concern was raised that this would not be implemented prior to standards being published and the funding would not cover all costs for equipment purchase or operation. The authorities requested that proactive monitoring in advance of standards should be undertaken by the Applicant to gather a set of baseline data.

ExA's Conclusion on Ultrafine Particulates

15.2.40. In considering this issue, we are mindful of the concerns raised throughout the Examination in respect of the possible links from air pollution to health effects.

15.2.41. However, we note the RR [RR-4687] received from the UKHSA and OHID which clearly stated that their view of the Proposed Development was that it would not result in any significant adverse impact on public health and there is no evidence before us which leads us to disagree with this in respect of UFPs. Additionally, we are also mindful that the Applicant and the LePAs have reached agreement [REP10-019] on a range of measures that would support local air quality monitoring and further work in relation to UFPs, within the s106 agreement [REP10-019].

15.2.42. Regarding the outstanding areas of disagreement with the above authorities we do not consider they are sufficient to compromise the Proposed Development when compared with the requirements of the ANPS. As such we do not consider it therefore necessary to recommend changes to the Requirements in Schedule 2 of the dDCO [REP10-004] with respect to UFPs.

15.2.43. Further technical discussion on air quality as a wider topic is contained within Chapter 7 Air Quality of this Report.

Noise Insulation Scheme

15.2.44. Concerns were expressed by several local authorities in respect of the proposed Noise Insulation Scheme (NIS) from the start of the Examination [REP1-068, REP1-095 and REP1-097]. In addition, several representations were made by IPs during the Examination which also raised concern over the adequacy of the proposed NIS which includes, but is not limited to, the following [REP7-126], [REP8-149] and [REP9-223].

15.2.45. In the LePAs Closing Position Statement [REP9-151] the following were listed as being the primary remaining concerns:

- that the thresholds for the inner zone should be set at 60dB LAeq 16hr for daytime and 48 LAeq 8hr for nighttime noise exposure;
- the suggestion that alternative contours should be included in the criteria for eligibility, namely single mode contours, combined ground and air noise contours, and a one additional awakening contour;
- absence of review and assessment mechanisms within the scheme;
- the suggestion that there should be a voluntary acquisition scheme for residential properties inside the daytime air noise 69 dB LAeq 16h or night-time air noise 63 dB LAeq 8h contour; and
- consideration of overheating and ventilation issues.

15.2.46. Consideration of the above first four bullet points is discussed in Chapter 6 Noise and Vibration of this Report, which addresses the adequacy of the Applicant's NIS as a whole.

15.2.47. In respect of specific overheating and ventilation issues, concern was raised in the Joint West Sussex LIR [REP1-068] that no provision had been made to prevent overheating in residential properties subject to noise insulation measures as part of the NIS. Mole Valley District Council (MVDC) requested in its PADSS [REP5-101] that an overheating assessment was undertaken by the Applicant.

15.2.48. We asked the Applicant at ExQ2 HW.2.12 [PD-021] whether an overheating assessment was necessary. In response the Applicant stated [REP7-084] that due to the diverse range of housing stock, it would not be feasible to carry out any meaningful assessment of the risk of overheating to all affected properties. The Applicant explained that the potential for internal rooms to overheat because of noise insulation measures would be reduced due to the ventilation measures proposed within the acoustic package for properties where overheating would be considered a concern. The Applicant's approach to reducing overheating is set out in the NIS [REP8-086] and it would provide for thermal insulation to loft spaces and acoustic ventilators. However, the Applicant stated in its Closing Submissions [REP9-112] that ventilators do not completely negate the need to open windows in certain circumstances.

15.2.49. Despite the above justification, MVDC maintained its position that an overheating assessment was required to demonstrate adequacy of the ventilation scheme [REP9-154].

ExA's Conclusion on the Noise Insulation Scheme

15.2.50. At [PD-028] we issued our proposed schedule of changes to the dDCO. Included in this was our recommended requirement (R) 18 in our Recommended DCO (rDCO) and paragraph 1 of Schedule 2 in respect of interpretation. We are satisfied that the wording of our proposed R18 would address concerns regarding overheating.

15.2.51. However, based on the Applicant's final draft DCO we cannot be certain that such concerns regarding overheating would be adequately addressed as ventilators would not address the wish or need for occupants to open windows in certain circumstances.

15.2.52. As such, we have taken account of concerns about overheating arising from the NIS and while we do not consider that the Applicant's preferred approach would overcome these concerns, R18 in the rDCO, would satisfactorily address this matter.

15.2.53. Further technical discussion on noise and vibration as a wider topic is contained within Chapter 6 Noise and Vibration of this Report.

15.3. ExA's CONCLUSION ON HEALTH AND WELLBEING

15.3.1. We find that the Applicant's assessment of health and wellbeing has been appropriately undertaken in line with the requirements of paragraphs 4.70 to 4.73 of the ANPS and paragraphs 4.81, 4.82, 5.7 and 5.195 of the NNNPS.

15.3.2. In respect of mitigation, apart for the issue of overheating, we consider the Applicant has identified suitable means of mitigation. In terms of overheating, as detailed above, we do not find the Applicant's preferred approach to be satisfactory and consider the inclusion of R18 in the rDCO to be necessary.

15.3.3. In conclusion, we find that the Proposed Development would accord with the ANPS, NNNPS, other relevant legislation and policy requirements and we are satisfied that, with the inclusion of R18 in the rDCO, that mitigation would be adequately provided for and secured.

15.3.4. Consequently, with the inclusion of R18 the health and wellbeing effects of the Proposed Development can be considered to be neutral and do not weigh for or against the making of the Order.

15.3.5. However, should R18 in the rDCO not be included, we consider that the health and wellbeing effects of the Proposed Development should attract minor weight against the making of the Order.

16. LAND USE AND RECREATION

16.1. THE APPLICATION

16.1.1. The Applicant's assessment of land use and recreation was primarily contained within Chapter 19 of the Environmental Statement (ES) [APP-044]. For the purposes of this assessment, this included:

- agricultural land quality and soils;
- farm holdings;
- public rights of way;
- national cycle routes;
- other walking, cycling and horse-riding routes; and
- open space.

16.1.2. Chapter 19 was supported by the following documents:

- ES Appendix 19.2.1: Summary of Local Planning Policy: Agricultural Land Use and Recreation [APP-209];
- ES Agricultural Land Use and Recreation Figures [APP-058]
- ES Appendix 19.3.1: Summary of Stakeholder Scoping Responses [APP-210];
- ES Appendix 19.6.1: Published Agricultural Land Classification Data [APP-211];
- ES Appendix 19.6.2: Soil Survey Results [APP-212];
- ES Appendix 19.6.3 Part A: 2019 Recreational User Survey [APP-213];
- ES Appendix 19.6.3 Part B: 2022 Recreational User Survey [APP-214]; and
- ES Appendix 19.8.1: Public Rights of Way Management Strategy [APP-215].

16.1.3. Several amendments were made to the Public Rights of Way Management Strategy during the Examination, with the final version submitted at Deadline (D) 9 [REP9-061].

16.1.4. Several measures were proposed as part of the Proposed Development to mitigate the potential impacts on land use and recreation. These measures are listed in Table 19.8.1 of the ES chapter [APP-044] and also the Mitigation Route Map [REP8-020].

16.1.5. As part of the proposed mitigation measures relating to potential adverse impacts during construction the Applicant submitted a Soil Management Strategy (SMS) [APP-086], which is Annex 4 of the Code of Construction Practice (CoCP). The Applicant confirmed that the purpose of the SMS was to "…*describe the methodology and control measures to be adopted during the construction of the Project. Detailed soil management plans would be developed in general accordance with the principles in this strategy, prior to the commencement of construction"* (para 1.1.2 of [APP-086]).

16.1.6. However, even with the proposed mitigation measures in place, the Applicant identified the below residual significant adverse effects would remain during the construction period 2024-2029 and for the interim assessment years 2030-2032:

- temporary diversion or disruption of public rights of way (PRoW) and on the Sussex Border Path;
- temporary diversion or disruption of national cycle route (NCR) 21;
- temporary disruption to the southern fringe of Riverside Garden Park; and
- temporary disruption to the southern and western fringes of Church Meadows.

16.2. ISSUES CONSIDERED DURING THE EXAMINATION

16.2.1. Over 70 Relevant Representations (RR) raised concerns in respect of potential land use and recreation impacts of the Proposed Development. Having taken these into account, alongside the submitted application documents, we considered that land use and recreation would be one of the initial principal issues for the Examination. The Initial Assessment of Principal Issues (IAPI) is set out in Annex C of the Rule 6 letter [PD-009].

16.2.2. We considered that the following issues should be examined in greater detail:

- agricultural land and soil resources;
- replacement open space; and
- Museum Field, located at the Gatwick Aviation Museum, Charlwood.

Agricultural Land and Soil Resources

16.2.3. The Applicant confirmed in ES Chapter 19 [APP-044] that during both the initial construction period (2024-2029) and the 2030-2032 period, there would be temporary agricultural land take associated with the start of construction of the South Terminal roundabout improvements. This would affect land to the north of the existing South Terminal roundabout (STR), together with the placement of spoil material on Pentagon Field. Whilst this land take would result in a temporary loss of approximately 12.1 hectares (ha), the loss would be of lower quality subgrade 3b land.

16.2.4. In terms of permanent agricultural land take, this would be primarily associated with ground lowering to create a flood compensation area within Museum Field, land required for the STR, Longbridge Roundabout improvements and associated drainage works. This would equate to approximately 10.1ha.

16.2.5. In terms of both the temporary and permanent agricultural land take, the Applicant further confirmed that no Best and Most Versatile (BMV) land resources would be affected (paras 19.9.2 and 19.9.4 of [APP-044]).

16.2.6. In addition to the above land take, there would also be a permanent loss of agricultural land from six land holdings. ES figures 19.6.3a and 19.6.3b [APP-058] shown below, depict the farm holdings plan.

Figure 16.128: Agricultural Land Holdings Plan Figure 19.16.3a

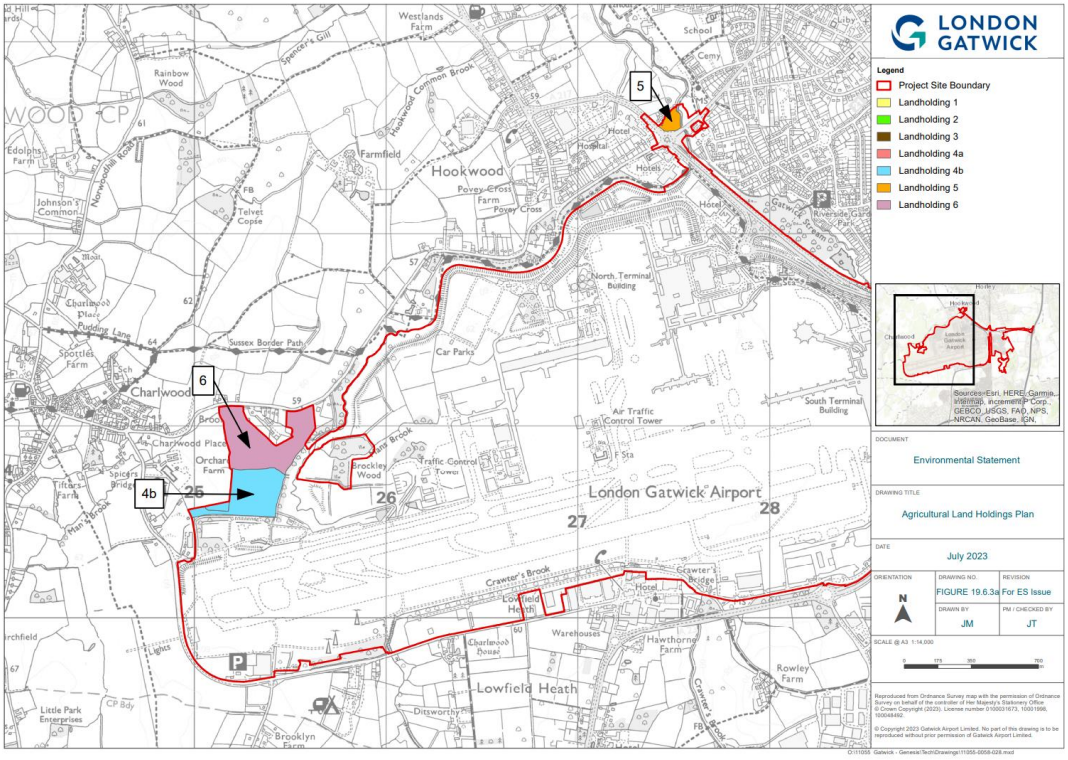
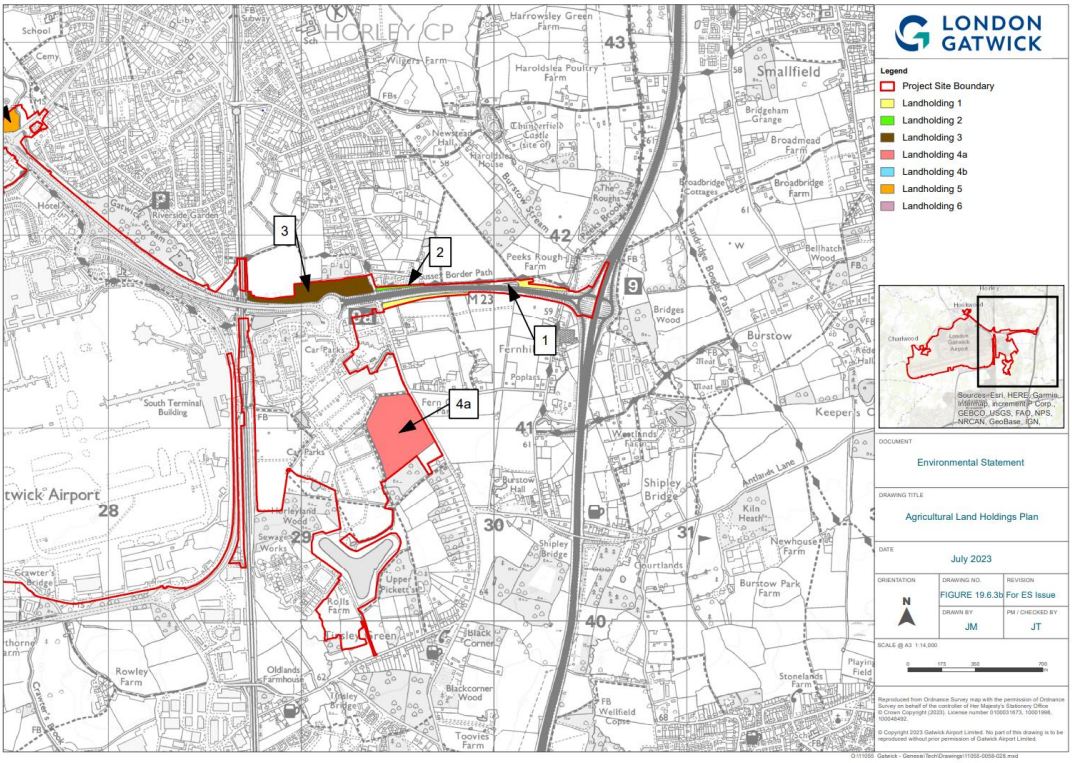


Figure 16.229: Agricultural Land Holdings Plan Figure 19.16.3b



16.2.7. It was confirmed by the Applicant that although there would be some permanent loss of land from all six holdings during the initial construction period, the loss would not result in any significant adverse effects in respect of existing farming activities (para 19.9.16 of [APP-044]). In response to question LU.1.12 in the first round of

written questions (ExQ1) [REP3-096], at Appendix A the Applicant provided further detail regarding each of the holdings and confirmed the proposed land take and land classification within the plots to be affected.

16.2.8. In response to ExQ1.LU.1.2 [REP3-096], the Applicant also confirmed that as the quality of the agricultural land to be affected by the Proposed Development would comprise entirely of lower quality subgrade 3b land, it would satisfy the tests at paragraph 5.168 of the National Networks National Policy Statement (NNNPS), as no BMV land in grades 1, 2 or 3a would be affected by the Proposed Development.

16.2.9. As previously commented on, the SMS [APP-086] sets out the Applicant's approach to soil management. In response to ExQ1.LU.1.5 the Legal Partnership Authorities (LePAs) [REP3-135] confirmed that the overall content of the SMS was acceptable, and it was based on the Institute of Quarrying best practice guidance as well as the DEFRA Code of Practice on Sustainable Use of Soils in Construction Sites. However, several comments were raised by the LePAs in respect of soil stripping activities and aftercare considerations. A detailed response to the concerns raised was provided by the Applicant at D4 [REP4-031] which provided supplementary information where necessary, clarification and/ or signposting to where information in the SMS already existed in respect of concerns raised. No further comments were received by the LePAs in respect of this specific issue.

16.2.10. A Soil Management Plan (SMP) would also be required prior to the commencement of the construction. This would be secured by Requirement (R) 29(1)(a) of the Applicant's final dDCO [REP10-004] and must be substantially in accordance with the SMS.

ExA's Conclusion on Agricultural Land and Soil Resources

16.2.11. Whilst we note that there would be some elements of permanent agricultural land loss as a result of the Proposed Development, this would be relatively minimal in scale and would not result in any loss of BMV agricultural land.

16.2.12. As such we are satisfied that the Applicant has, in line with paragraphs 5.168 of NNNPS and 5.115 of the Airports National Policy Statement (ANPS), sought to minimise impacts on BMV agricultural land by utilising poorer quality land.

16.2.13. We consider that appropriate measures to safeguard soil resources and ensure effective reinstatement where necessary are secured through the need for submission and approval of a SMP that is required under R29 of the Applicant's final dDCO. We consider that this represents a reasonable approach to ensuring that soil resources would be safeguarded during construction operations and that areas of temporary land take would be properly and promptly restored post-construction.

Replacement Open Space

16.2.14. In the Statement of Reasons [REP9-009], the Applicant confirmed that the following areas of open space would need to be acquired permanently for the delivery of the Proposed Development:

- 1.01ha at Riverside Garden Park - This area was calculated on a precautionary basis as it includes land currently within the highway embankment where there would be a loss of mature vegetation adjacent to and along the existing highway. The area of land affected within the park, not including land within the highways boundaries, comprises a smaller area of approximately 0.34ha. This

area would be required to deliver the highway improvement works to the A23 London Road;

- 0.02ha south of Brighton Road - This is a small area located at the confluence of the River Mole and Gatwick Stream immediately to the south of the A23 Brighton Road near to Longbridge Roundabout. It can only be accessed using a pedestrian gate located next to the A23 Brighton Road and by negotiating a steep earth bank. This area would be required to deliver the highway improvement works to the Longbridge Roundabout junction; and
- 0.13ha of Church Meadows - This area is adjacent to St Bartholomew's Church and to the south of the former Horley Anderson Centre and Playing Fields. It is located immediately to the north of the A23 Brighton Road and to the east of the River Mole. This area would be required for the Proposed Development to deliver the highway improvement works to the Longbridge Roundabout junction.

16.2.15. As a result of the permanent acquisition of the above open space, the Applicant proposed that the below areas of land would be developed as replacement open space as part of the Proposed Development:

- 0.52ha west of Church Meadows - A pasture located to the west of Church Meadows and the River Mole would be developed to provide replacement open space. A pedestrian bridge over the River Mole would be provided to allow access from Church Meadows. Access would also be provided in the southwestern corner of the area, accessed from the shared use pedestrian and cycle route that has recently been constructed in this location; and
- 1.43ha at Car Park B - The existing Car Park B, which includes land both to the north and south of the A23 London Road, would be developed to provide replacement open space. The replacement open space would be provided in a similar nature to the existing Riverside Garden Park. A new additional pedestrian route linking Riverside Garden Park to Car Park B and to the Sussex Border Path would also be provided, located to the west of the railway line north of the A23 London Road. Direct access to the open space would be provided from the Sussex Border Path to the northern part of the replacement open space and from the NCR 21 to the southern part.

16.2.16. In addition to the permanent acquisition of the above open space, the following areas of open space land would also be subject to the acquisition of rights for the delivery of the Proposed Development:

- 0.47ha at Riverside Garden Park;
- 0.01ha south of Brighton Road; and
- 0.36ha of Church Meadows.

16.2.17. The majority of the rights to be acquired would be required in respect of the delivery of the highway improvement works to the A23 London Road, the Longbridge Roundabout junction and to also construct and maintain the proposed River Mole pedestrian bridge for access to the replacement open space to the west of the River Mole. As these are only required temporarily, s132(4b) of the Planning Act 2008 (PA2008) is satisfied and no replacement land would be required.

16.2.18. In respect of rights being acquired to subsequently maintain the pedestrian bridge longer term, the Applicant stated that the rights would not render the land in question any less advantageous than it currently is. The rights would allow the undertaker (or a person under its direction) to enter onto the land periodically to inspect and, if necessary, repair the bridge. The Applicant maintained that as this would not prevent the land from being used for recreation by members of the public in the manner it currently is, s132(3) of the PA2008 had been complied with and no

replacement land would be required [REP9-009]. Further detail in respect of the compulsory acquisition of such land is detailed within Chapter 21 of this Report.

16.2.19. Throughout the Examination concern was raised by Reigate and Banstead Borough Council, Crawley Borough Council (CBC) and Surrey County Council (SCC) in respect of the delivery, design, and maintenance of the proposed open space land adjacent to Church Meadow and Car Park B, north and south [REP1-068 and REP1-097].

16.2.20. Following discussions with the Applicant, it was confirmed that none of the authorities wished to own the replacement land and/ or have any associated management or monitoring obligations. As such, we requested that the Applicant amended Article 40 within the dDCO to ensure that the future maintenance of the replacement open space would be assured indefinitely by the Applicant [PD-028]. The Applicant provided this commitment in the revised dDCO at D9 [REP9-004].

ExA's Conclusion on Replacement Open Space

16.2.21. We are satisfied that the areas of replacement open space would be in proximity to those areas of land which would be acquired and therefore would be accessible to those communities currently served by the existing open space. The provision of the proposed footpath link from Riverside Garden Park to Car Park B and also the provision of a pedestrian footbridge from Church Meadows into the land to the west of the River Mole would ensure that accessibility by foot is maintained.

16.2.22. We also note that the replacement open space would comprise a significantly larger area of open space when compared to the areas which would be permanently acquired for the Proposed Development. Additionally, the provision of the replacement open space in Car Park B could potentially improve the accessibility to and the quality of the Sussex Border Path where it currently runs along the western boundary of the London to Brighton railway line.

16.2.23. It is also noted that the replacement open space would be delivered in accordance with the open space delivery plan, which is required to be submitted to, and approved in writing by, CBC under Article 40 of the dDCO [REP10-004]. Further detail in respect of proposed landscaping and planting for each of the open space areas are detailed within the outline Landscape and Ecology Management Plan (oLEMP) [REP9-047], which would be secured by R8 of the dDCO [REP10-004].

16.2.24. Whilst the Applicant is not relying on the provision of 'replacement land' in the statutory sense under s131(4) of the PA2008 to which this definition applies (section 2.2 of [REP9-104]), we are satisfied that the test in paragraph 5.194 of NNNPS is met, insofar as the proposed exchange land is "…*at least as good in terms of size, usefulness, attractiveness, quality and accessibility*."

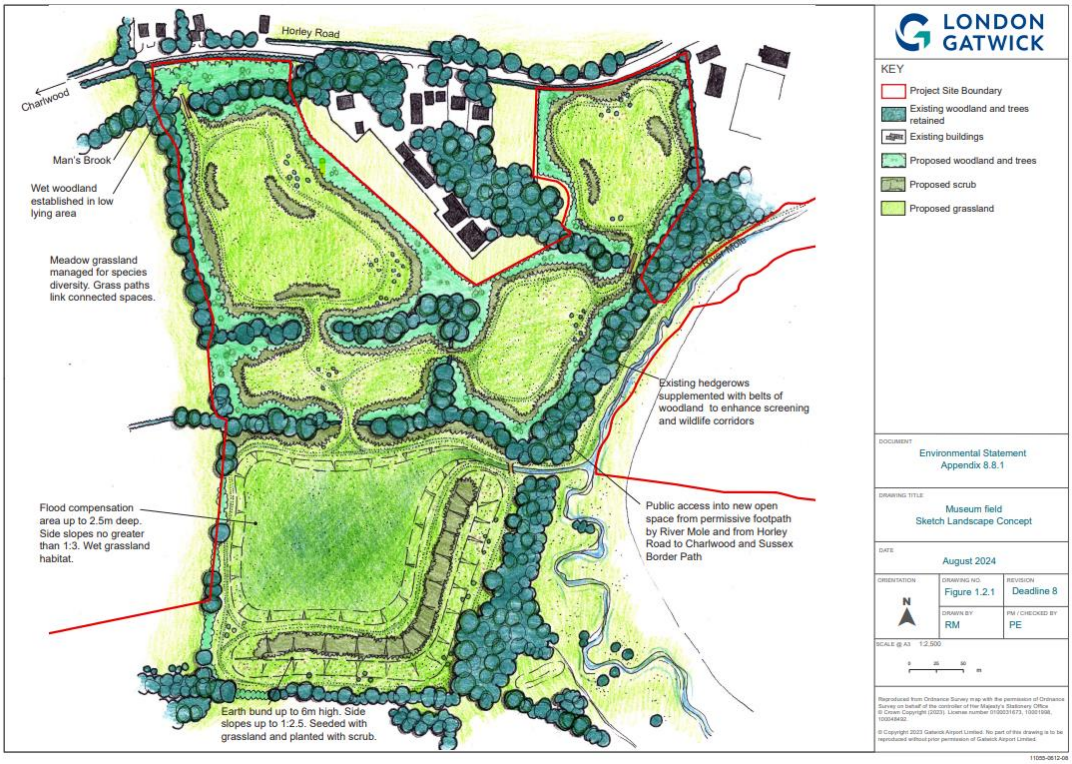
16.2.25. As such, we are satisfied that the Applicant has, in line with paragraph 5.123 of the ANPS, taken appropriate mitigation measures in respect of open space and considered opportunities to improve accessibility.

16.2.26. In respect of the ownership issue regarding the replacement open land, we are satisfied that an appropriate resolution between the parties had been reached by the close of the Examination. We consider the wording of Article 40 in the dDCO, including the need to deliver an open space delivery plan, to be appropriately drafted and secured.

Museum Field

16.2.27. There would be permanent land take associated with the provision of the flood compensation area in Museum Field. However, the Applicant proposed the provision of a new circular recreational route around the flood compensation area to the east of Museum Field, with a link to the current permissive pedestrian route along the western bank of the River Mole which would connect to the existing alignment of the Sussex Border Path, which is depicted in Figure 16.3 below [REP9-047]. The commitment to the provision of the footpath is included at paragraph 4.4.2 of the oLEMP [REP9-047], which is secured by R8 of the Applicant's final dDCO [REP10-004].

Figure 16.330: Museum Field Sketch Landscape Concept 31



16.2.28. However, throughout the Examination concern was raised by CBC in respect of the proposed route. In its Local Impact Report (LIR) [REP1-068] CBC acknowledged that there would be the creation of an informal recreation space, by allowing permissive public access for the local community onto the site once the flood compensation area had been created and the site re-landscaped. However, CBC also commented on the level of accessibility and relative recreational value of the area due to the relatively poor condition of the current permissive path to the site. As such, CBC stated that the Applicant should consider the creation of a new path onto Horley Road to allow the Museum Field to be more readily accessible to nearby residents and assist in the connectivity of newly created wildlife / recreational assets as it was currently very poorly connected to the existing PRoW network [REP1-068].

16.2.29. In response to the concerns raised, we asked questions to both CBC and the Applicant in respect of the feasibility of improving accessibility at this location (ExQ1.LU.1.13 [PD-012] and ExQ2.LU.2.5 [PD-021]). Both parties provided

responses [REP3-096, REP7-086 and REP7-110] and confirmed that discussions were being held to try to resolve the issue.

16.2.30. At the close of the Examination the Applicant confirmed that it had reviewed the possibility of providing an entrance to its future landholding at Brook Farm via a bridge to cross the ditch in the highway verge to connect to a new permissive path. This would enable pedestrians to exit on to Horley Road from Brook Farm and then cross the road to travel on existing footways towards Charlwood. However, the Applicant also identified potential issues from a road safety perspective. In their Statement of Common Ground (SoCG), both CBC and the Applicant agreed that SCC would review the situation in the context that the entrance would not be part of the designated PRoW network. Similar crossings exist in rural Surrey and a simple footbridge to the ditch and entrance through the hedgerow were all that was proposed to facilitate enhanced recreational use for pedestrians. SCC confirmed that they would contact the Road Safety Audit team to confirm whether a full audit would be required to create a link in the area [REP9-066].

16.2.31. SCC provided details of simple bridge designs and information about gate accesses and requested that the Applicant provide formal drawings and a detailed brief so that SCC could undertake an assessment. However, the Applicant stated that given the advanced stage of the Examination, it would not be possible to prepare and receive feedback on potential access locations and arrangements within the timeframe available or to include further detail within the oLEMP. Despite this, in the SoCG the Applicant confirmed it would remain open to facilitating a link post the landholding coming into its ownership and after any necessary habitat and other ground preparation works had been undertaken [REP9-066].

ExA's Conclusion on Museum Field

16.2.32. It is disappointing that given this issue was identified at the start of the Examination, limited progress had been made in respect of a possible opportunity to improve accessibility and recreational opportunities in this location and that this matter therefore remains unresolved between parties at the close of the Examination.

16.2.33. Whilst we consider an opportunity may have been lost to improve accessibility, it is accepted that that there is a clear commitment in the oLEMP [REP9-047] to provide a circular route with a link to the existing permissive path by the Applicant and that this is adequately secured in the dDCO. As such, we are satisfied that the existing accessibility situation would not be degraded because of the Proposed Development.

16.2.34. Whilst a resolution may be reached between parties, any further submission from CBC or the Applicant would be after the close of the Examination. As such, this would not be able to be considered as part of our Recommendation but may be available to the Secretary of State, who may wish to follow this matter up prior to making a decision.

16.3. ExA's CONCLUSION ON LAND USE AND RECREATION

16.3.1. We find that the Applicant's assessment of land use and recreation has been appropriately undertaken in line with the requirements of paragraphs 5.115 and 5.123 of the ANPS and paragraphs 5.168 and 5.180 of the NNNPS.

16.3.2. Additionally, given that BMV land is a finite national resource, we are satisfied that there would be no loss of this resource. We also consider the Applicant has taken

appropriate measures to safeguard soil resources and ensure effective reinstatement is secured through the need for submission and approval of a SMP prior to the commencement of construction, which would be secured by R29.

16.3.3. Further mitigation, provided through R8 of the recommended DCO, would also ensure the appropriate delivery of replacement open space as required through paragraph 5.181 of the NNNPS.

16.3.4. In conclusion, we find that the Proposed Development, in respect of land use and recreation, would accord with the ANPS, NNNPS and other relevant legislation and policy requirements.

16.3.5. Consequently, the land use and recreation effects of the Proposed Development can be considered to be neutral and do not weigh for or against the making of the Order.

17. OTHER MATTERS

17.1. INTRODUCTION

17.1.1. Other matters where no significant issues were identified are discussed in this Chapter, including consideration of alternatives, geology and ground conditions, health and wellbeing, major accidents and disasters, resource and waste management and cumulative and combined effects.

17.2. CONSIDERATION OF ALTERNATIVES

OVERVIEW

17.2.1. Environmental Statement (ES) Chapter 3 sets out the Applicant's Consideration of Alternatives [APP-028]. It sets out the main reasons for the options selected for the Proposed Development and the reasons for not opting to select the other alternatives considered, including a 'do minimum' scenario. ES Chapter 3 is supported by ES Appendix 3.5.1: Options Appraisal Tables [APP-073] and ES Appendix 3.5.2: North Terminal Roundabout Options Development [APP-074].

MASTERPLAN ALTERNATIVES

17.2.2. The Applicant considered three scenarios (Section 3.4, [APP-028]) for the long-term growth and development of the airport as set out in the following paragraphs.

Scenario 1

17.2.3. In this 'do minimum' scenario the airport remains a single-runway operation using the existing main runway. This scenario would use technology to increase the capacity of the main runway, leading to incremental growth through more efficient operations.

17.2.4. The Applicant explained that although the airport could grow with the existing single-runway operation, this growth would be constrained by the limits on available runway capacity. This option was developed as the future baseline and is discussed above in section 4.3 of this Report.

Scenario 2

17.2.5. In this scenario the existing northern runway is routinely used together with the main runway. This scenario proposed that a strip of additional pavement is laid to the northern edge of the existing northern runway, moving its centreline 12m north of its current position enabling dual operation of the main runway and northern runway together to increase the number of aircraft movements.

17.2.6. The Applicant considered that Scenario 2 offered the optimum approach to making best use of existing runways and increasing airport capacity.

Scenario 3

17.2.7. In this scenario the Applicant continues to safeguard for an additional runway to the south of the airport. The additional runway scenario would require development of the land to the south of the airport as well as significantly more changes to the existing airport and surrounding roads.

17.2.8. The Applicant considered that this scenario would likely lead to adverse effects of a greater magnitude on ecology, landscape, agriculture, recreation, ground

conditions, the water environment and historic environment, traffic and transport, noise, air quality and greenhouse gases compared to scenarios 1 and 2.

17.2.9. The Applicant explains in its conclusion (Section 3.7, [APP-028]) that it is not actively pursuing scenario 3 in light of the Government's support for the third runway at Heathrow but still considers it to be in the national interest for land to continue to be safeguarded to allow for a new runway to be constructed, if required in the future.

DESIGN AND TECHNOLOGY ALTERNATIVES

17.2.10. The Applicant undertook an options appraisal for the design and layout of the various components that make up the Proposed Development as listed below:

- runways;
- end around and exit/ entrance taxiways;
- aircraft holding areas;
- terminals (including International Departure Lounge);
- piers and stands;
- hangars;
- hotels, offices and car parks;
- foul water;
- surface water drainage;
- fluvial flood risk mitigation;
- displaced facilities: waste management, engine running areas and rendezvous point;
- Longbridge Roundabout;
- North Terminal Roundabout;
- South Terminal Roundabout;
- rail access;
- Inter Terminal Transit System;
- surface access: forecourts;
- active travel (travel routes for pedestrians and cyclists);
- airfield construction compounds; and
- highways construction compounds.

17.2.11. The Applicant assessed options against criteria in Table 3.4.1 (Page 6, [APP-028]) and applied a scoring system using its professional judgement and experience of the site and surrounding area. The detailed assessment is set out in ES Appendix 3.5.1: Options Appraisal Tables [APP-073] and a summary of the alternatives considered by the Applicant for each component is contained in ES Chapter 3 (Section 3.6, [APP-028]).

17.2.12. The options identified as performing best against the assessment criteria (para 3.6.246, [APP-028]) were taken forward to form the design of the Proposed Development. The Applicant concludes that the selected design and layout options offer a sustainable approach to providing greater operational resilience at Gatwick and improved UK airport capacity.

ExA's CONCLUSION ON CONSIDERATION OF ALTERNATIVES

17.2.13. Other than queries over whether the proposal complied with Making Best Use (MBU) policy and whether the proposal would undermine the Airports National Policy Statement (ANPS) in terms of whether the Proposed Development would be an alternative to the London Heathrow (LHR) North West Runway (NWR) scheme, the consideration of alternatives was not a substantial issue at Examination.

17.2.14. In response to ExQ1 GEN1.4, the Applicant explained [REP3-091] that the three scenarios were developed and consulted upon as part of the Applicant's draft 2019 Master Plan, and that, while Scenario 2 was chosen, Scenarios 1 and 3 were valid and realistic alternatives to the question of how the Airport could develop to accommodate increased demand.

17.2.15. Questions were raised over the continued safeguarding of a future southern runway (Scenario 3) at ExQ1 and ExQ2. The Applicant confirmed that [REP3-091]:

- They were no longer actively pursuing such plans but stated that there remains a possibility of building and operating one in the future but no further work on the proposal has taken place since 2015.
- The land for this runway has been safeguarded in local planning policy since 2007. The Draft Crawley Borough Local Plan confirms that land is still required to be safeguarded and draft policy GAT2 identifies this land. The principle of continued safeguarding has been established and releasing this would be contrary to the APF, Aviation 2050 (2018) and the National Planning Policy Framework (NPPF).

17.2.16. A follow up question in ExQ2 queried whether policy still supported safeguarding of the land. The Applicant stated that it did [REP7-083], because:

- Aviation 2050 (which post-dates the ANPS) confirms at para 3.66 that it is prudent to continue with a safeguarding policy to maintain a supply of land for future national requirements and to ensure that inappropriate developments do not hinder sustainable aviation growth, and that the NPPF supports this where there is robust evidence, sites and routes; and
- The Local Plan Inspectors have stated that "*on the fundamental issue of the need to safeguard land to deliver an additional wide spaced runway, we consider the combination of the 2019 Airport Masterplan and the ongoing process of clarifying the need for additional runway capacity in the southeast as instigated through the 2018 draft Aviation Strategy 'Aviation 2050: The Future of UK Aviation' (which postdates the Airports National Policy Statement (June 2018)) to meet a minimum threshold for the 'robust evidence' required by NPPF paragraph 106 c) for safeguarding"*.

17.2.17. The ANPS states that the Applicant should comply with all legal obligations and policy set out in the ANPS on the assessment of alternatives, and that in particular:

- The Environmental Impact Assessment Directive requires projects with significant environmental effects to include a description of the reasonable alternatives studied by the applicant which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the project on the environmental effects;
- There may also be other specific legal obligations requiring the consideration of alternatives, for example, under the Habitats and Water Framework Directives; and
- There may be policies in the Airports NPS requiring consideration of alternatives, for example the flood risk sequential test.

17.2.18. In relation to highways works, the same text is contained within the National Networks National Policy Statement (NNNPS).

17.2.19. The ExA considers that all questions raised were answered satisfactorily by the Applicant and that the application considered realistic alternatives, given the constricted nature of the site and the specifics of the Proposed Development.

17.2.20. In relation to HRA considerations, the ExA notes in Chapter 19 of this Report that adverse effect on integrity on all relevant sites and their qualifying features can be excluded. From conclusions in Chapter 11, in respect of flood risk, the ExA finds the Applicant has demonstrated compliance with the requirements of the ANPS and also the NNNPS in relation to the highway improvement elements of the Proposed Development.

17.2.21. Issues regarding the MBU and ANPS in relation to the LHR NWR are dealt with elsewhere in this Chapter. In relation to the safeguarding of the wide spaced second runway, the conclusions of the Local Plan inspectors are noted and agreed with. Depending on the ultimate decision on the Proposed Development and future implementation (or otherwise) of the LHR NWR this may change in the future.

17.2.22. The ExA considers that there are no matters relating to site selection and alternatives which would weigh for or against the Order being made.

17.3. GEOLOGY AND GROUND CONDITIONS

INTRODUCTION

17.3.1. This Section considers the potential effects of the Proposed Development in relation to geology and ground conditions.

THE APPLICATION

17.3.2. The Applicant's consideration of effects associated with geology and ground conditions during the construction and operation of the Proposed Development is presented in its ES Chapter 10: Geology and Ground Conditions [APP-035]. In addition, the Code of Construction Practice (CoCP) [REP9-031] contains details of how the Applicant would manage any hazards during construction.

17.3.3. The Applicant concludes in Table 10.13.1 [APP-035] that any effects during construction and operation are not significant.

ISSUES CONSIDERED DURING THE EXAMINATION

17.3.4. In the Joint West Sussex Local Authorities (JWSLAs) LIR [REP1-068] the Councils raised concerns with regard to the potential sterilisation of safeguarded clay, and whether the mitigation measures were sufficient to meet the ANPS paragraph 5.121 requirement for appropriate mitigation.

17.3.5. Through our first written questions (ExQ1) [PD-012] we asked the Applicant whether the landscape and visual design impact of slope stabilisation works, should they be required as a result of ground stability assessment, had been considered in the ES and if so where.

17.3.6. The Applicant's response [REP3-093] said that:

- further intrusive ground investigation would be undertaken prior to detailed design and suitable design parameters would be derived for any slope stability assessment as set out in the CoCP [REP9-031] and secured by Requirement 7 in the dDCO [REP10-004];

- from a design and visual impact perspective a reasonable worst-case scenario had been assessed which assumed the removal of all existing vegetation within the road corridor; and
- should a need for slope stabilisation works be identified at the detailed design stage, measures that may be considered could include additional drainage, slope gradient modifications, and reinforcement of the formation.

17.3.7. On the matter of mitigation in relation to potential sterilisation of safeguarded clay the Applicant said that these were included in the draft Statement of Common Ground (SoCG) with West Sussex County Council (WSCC) [REP1-033] who it would continue to engage with.

17.3.8. In the SoCG with WSCC [REP9-084] the Applicant confirmed that the Construction Resources and Waste Management Plan (CRWMP), appended to the CoCP [REP9-031], had been updated to include mineral safeguarding policies with regards to the Weald Clay formation. WSCC welcomed this amendment that ensured that incidental extraction of safeguarded brick clay would be given due consideration.

17.3.9. The Legal Partnership Authorities (LePAs) Closing Statement [REP9-151] contained no references to outstanding geology and ground condition matters.

ExA's CONCLUSION ON GEOLOGY AND GROUND CONDITIONS

17.3.10. We consider that the CoCP [REP9-031] as secured by Requirement 7 in the dDCO [REP10-004] is sufficient to address effects relating to geology and ground conditions and conclude that neutral weight should be given to the issue of geology and ground conditions in the overall planning balance of the Proposed Development.

17.4. MAJOR ACCIDENTS AND DISASTERS

INTRODUCTION

17.4.1. This Section considers the potential effects of the Proposed Development in relation to major accidents and disasters.

THE APPLICATION

17.4.2. The Applicant's assessment of the vulnerability of the Proposed Development to risks of major accidents and disasters both during construction and operation was contained within ES Chapter 5 - Appendix 5.3.4 [APP-089]. In addition, the CoCP [REP9-031] contains details of how the Applicant would manage any hazards during construction and outlines the existing plans and procedures at the airport.

ISSUES CONSIDERED DURING THE EXAMINATION

17.4.3. In excess of 60 Relevant Representations (RR) referred to the potential safety implications resulting from the Proposed Development. The majority were concerned about the safety of dual runway operations and that the airport was losing its 'emergency' runway. A small number were of the view that the Proposed Development would be safer, and two representations were concerned about the potential for increased terrorism.

17.4.4. The Joint Surrey Councils (JSCs) LIR [REP1-097] concluded that although additional aircraft movements would be taking place, the *"hazard/ impact would remain the same as currently assessed".*

17.4.5. In the JWSLAs LIR [REP1-068] the Councils asked for consideration of the potential impact of the Proposed Development on the West Sussex Fire and Rescue Service (WSFRS). The Applicant [REP3-078] responded that fire prevention and emergency measures currently employed as part of existing operations would be in place and extended to the Proposed Development. It also stated that during construction, the contractor would comply with the requirements of the local fire authority. Specific fire prevention measures would be developed, as explained in Section 4.10 of the CoCP [REP9-031]. The Applicant's intent was to give an indication of future project risk management through a description of present-day (and well-established) practice.

17.4.6. Discussions continued between the Applicant, WSCC and WSFRS relating to the concerns expressed. The signed WSCC SoCG [REP9-084] records that all matters were agreed, and the ongoing engagement would take place with WSFRS during development of the detailed design and construction.

17.4.7. In terms of overall aircraft safety and any potential terrorist threat relating to the Proposed Development the Applicant [REP1-048] in Table 4.20.1 responded to the concerns expressed about increased major accidents stating *"Existing emergency response arrangements at Gatwick Airport will be extended to cover operations on the Northern Runway following implementation of the Northern Runway Project (NRP). The NRP will result in an increase in passenger numbers and total aircraft movements, however, it won't introduce fundamentally new or "bigger" hazards than those already taken into account in the airport's emergency planning."*

17.4.8. The Applicant [REP1-048] also responded in Table 4.20.1 that *"An emergency or stand-by runway is not a Civil Aviation Authority (CAA) requirement and many other airports do not have one. Should circumstances arise where an aircraft could not use the runway(s) at Gatwick Airport, for whatever reason, it would be diverted to an alternative airport."* The Applicant reiterated this response in reply to our question ExQ1.MAD.1.1 [PD-012]. In addition, the CAA [REP3-111] responded to the same question *"Although this question was not addressed to the CAA, we do not agree that the change of the 'emergency' second runway to an operational runway will potentially compromise safety at the airport. Gatwick, as with all airports, has established procedures in place should a runway need to be closed and these are not solely reliant on the use of its northern runway."*

17.4.9. In question ExQ1.MAD.1.2 [PD-012], we asked about the impact of the Proposed Development on the airfield Public Safety Zone. The Applicant [REP3-100] answered *"The dimensions and shape of the public safety zone (PSZ) will stay the same but the zone itself will shift 12m to the north to correspond to the realigned northern runway centreline. Nothing will change in relation to the Northern Runway PSZ - with the Northern Runway restricted zone (PSRZ) remaining within the airport boundary and the controlled zone (PSCZ), extending up to 1,500 metres beyond the airfield boundary aligned with the runway centreline where the general presumption against new or replacement development and / or changes of use of existing buildings will apply. There are no existing buildings within the Northern Runway PSCZ".*

17.4.10. From the above submissions, the ExA understands that in terms of major accidents and disasters the Proposed Development would not introduce any new risks that could not be dealt with by the airport's existing emergency procedures. In addition, the loss of the standby runway would also not present any new additional risks.

ExA's CONCLUSION ON MAJOR ACCIDENTS AND DISASTERS

17.4.11. Gatwick Airport is already a busy airport with well-established safety plans and procedures. The Applicant has set out that the increase in passenger numbers and aircraft movements does not present any additional impacts that would not be addressed by these existing plans and procedures.

17.4.12. This is further evidenced by the agreement of the CAA [REP3-111] in response to our question ExQ1.CS.1.2 [PD-012]. It stated, *"that there are no obvious safety-related impediments why the project should not progress with respect to safety considerations at the Airport."*

17.4.13. As set out above during construction the Applicant's emergency procedures will be developed in accordance with the CoCP [REP9-084]. The CoCP would be a certified document listed in Schedule 14 and secured by Article 52 of the rDCO.

17.4.14. Taking all of these matters into account the ExA consider that the Proposed Development would accord with the ANPS and other relevant legislation and policy requirements. On that basis the ExA conclude that the Proposed Development would have a neutral effect in the planning balance.

17.5. RESOURCE AND WASTE MANAGEMENT

THE APPLICATION

Overview

17.5.1. The Applicant's ES did not include a separate chapter for resource and waste management. Instead, the Scoping Report [APP-092] stated that a waste management strategy, including a Site Waste Management Plan (SWMP), would be produced, and included as a technical appendix to the ES.

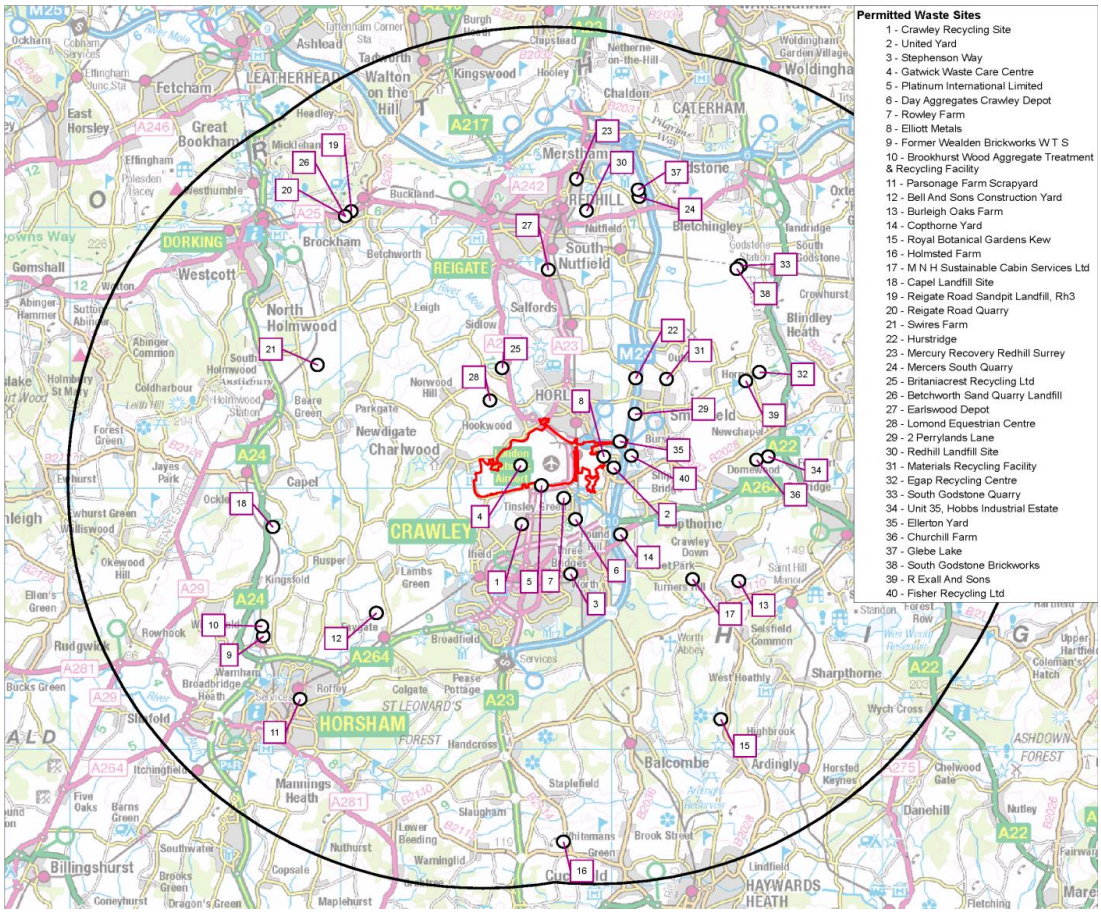
17.5.2. A CRWMP [APP-087] was submitted as an annex to Appendix 5.3.2 of the ES (CoCP). ES Chapter 5: Project Description [REP9-026] provides approximate figures for excavated materials in construction and describes the alterations to the operational waste management facilities.

Baseline

17.5.3. ES Chapter 5 [REP9-026] explains that operational waste from Gatwick (both airside and landside) is currently taken to the existing Central Area Recycling Enclosure (CARE) facility which comprises a food waste to energy plant that produces heat for use within the facility and is located within an area of the existing airfield to the north of Taxiway Juliet. Facilities include the existing waste processing building (including a biomass boiler), compound area, materials recovery facility and bin store.

17.5.4. The CRWMP [APP-087] provides details of the existing waste management facilities within 15 km of Gatwick Airport and Figure 17.1 below shows the location of these facilities.

Figure 17.132: Waste Sites Within 15km in 2019


Permitted Waste Sites
1 - Crawley Recycling Site
2 - United Yard
3 - Stephenson Way
4 - Gatwick Waste Care Centre
5 - Platinum International Limited
6 - Day Aggregates Crawley Depot
7 - Rowley Farm
8 - Elliott Metals
9 - Former Wealden Brickworks W T S
10 - Brookhurst Wood Aggregate Treatment & Recycling Facility
11 - Parsonage Farm Scrapyard
12 - Bell And Sons Construction Yard
13 - Burleigh Oaks Farm
14 - Copthorne Yard
15 - Royal Botanical Gardens Kew
16 - Holmsted Farm
17 - M N H Sustainable Cabin Services Ltd
18 - Capel Landfill Site
19 - Reigate Road Sandpit Landfill, Rh3
20 - Reigate Road Quarry
21 - Swires Farm
22 - Hurstridge
23 - Mercury Recovery Redhill Surrey
24 - Mercers South Quarry
25 - Britaniacrest Recycling Ltd
26 - Betchworth Sand Quarry Landfill
27 - Earlswood Depot
28 - Lomond Equestrian Centre
29 - 2 Perrylands Lane
30 - Redhill Landfill Site
31 - Materials Recycling Facility
32 - Egap Recycling Centre
33 - South Godstone Quarry
34 - Unit 35, Hobbs Industrial Estate
35 - Ellerton Yard
36 - Churchill Farm
37 - Glebe Lake
38 - South Godstone Brickworks
39 - R Exall And Sons
40 - Fisher Recycling Ltd
CRAWLEY
HORSHAM
REIGATE
DORKING
REDHILL
CATERHAM
LEATHERHEAD
Fetcham
Great Bookham
Walton on the Hill
Kingswood
Merstham
Godstone
Nutfield
South Nutfield
Bletchingley
Brockham
Betchworth
Westcott
North Holmwood
Salfords
Charlwood
Newdigate
Capel
Ifield
Three Bridges
Tinsley Green
Crawley Down
Copthorne
Lambs Green
Kingsfold
Rusper
Broadfield
Pease Pottage
Colgate
Rowfant
Warnham
Rudgwick
Rowhook
Slinfold
Mannings Heath
Itchingfield
Billingshurst
Southwater
Nuthurst
Lower Beeding
Slaugham
Staplefield
Handcross
Balcombe
Ardingly
Sharpthorne
Wych Cross
West Hoathly
Selsfield Common
Worth Abbey
Turners Hill
Saint Hill Manor
Domewood
Newchapel
Blindley Heath
Crowhurst
Tandridge
Oxted
Woldingham
Chaldon
Netherne-on-the-Hill
Hooley
Chipstead
Burgh Heath
Tattenham Corner
Ashtead
Epsom
Ewell
Cobham
Ockham
Effingham
Horsley
Headley
Mickleham
Buckland
Betchworth
Leigh
Sidlow
Norwood Hill
Hookwood
Parkgate
Beare Green
Coldharbour
Abinger Common
Abinger Hammer
Gomshall
Holmbury St Mary
Forest Green
Jayes Park
Ewhurst
Ockley
Cowfold
Shipley
Warnham
Broadbridge Heath
Roffey
Colgate
Pease Pottage
Services
Broadfield
Lambs Green
Kingsfold
Rusper
Ifield
Three Bridges
Tinsley Green
Crawley Down
Copthorne
Worth
Turners Hill
Saint Hill Manor
Domewood
Newchapel
Blindley Heath
Crowhurst
Tandridge
Godstone

17.5.8. Annex B of the CRWMP contains the template for a resource management plan which would be used to record resource management during construction as an internal control document.

17.5.9. Chapter 16 of the ES [APP-041] contains the Applicant's assessment of Greenhouse Gas (GHG) emissions in construction, including the extraction, processing, manufacturing and transportation of construction resources. The Applicant concludes that impacts associated with construction emissions are minor adverse and therefore not significant. See Chapter 8 of this Report for further detail on the assessment of GHG emissions.

Waste

17.5.10. Approximate quantities of excavated materials in the construction phase are provided in ES Chapter 5 (paras 5.3.137 to 5.3.139, [REP9-026]). The Proposed Development would produce approximately 1.5 million cubic metres (m^3) of excavated materials. Where possible this would be recycled and reused within the Proposed Development site.

17.5.11. The Applicant estimated that up to 670,000m^3 of excavated materials would need to be removed from the Proposed Development site. A further 235,000m^3 of potentially contaminated material would also require removal to appropriately licensed facilities offsite.

17.5.12. The volume of concrete and asphalt would be approximately 620,000m^3. Approximately 555,000m^3 of this would be crushed at the reprocessing area at Car Park Y, whilst approximately 65,000m^3 is estimated to be contaminated requiring removal to appropriately licensed facilities offsite.

17.5.13. The CRWMP (para 5.2.14, [APP-087]) states that as all the waste forecasts for the Proposed Development have not yet been defined, it cannot be confirmed if the capacity of waste facilities in West Sussex would be sufficient to manage waste from the Proposed Development in line with the principle of net self-sufficiency.

Operational Phase

17.5.14. The existing CARE facility is proposed to be demolished and re-provided (Work No. 9 in the dDCO [REP10-004]). The existing facility would remain in operation until the new facility has been commissioned.

17.5.15. The application documents did not include projections or forecasts for waste amounts expected in the operational phase.

CARE Facility as Originally Submitted

17.5.16. As originally proposed, the replacement CARE facility would process food waste for energy (heat), as does the current facility, although to provide for growth associated with the Proposed Development it would need to process a larger volume of food waste. There would be two biomass boilers (one pre-existing to provide for the relocated 650 kw plus an additional 450 kw to provide for growth) [REP9-026].

CARE Facility Change Request

17.5.17. As described in Section 1.6 of this Report, through a formal change request, Project Change 2 [AS-139] proposed a reduction in height of the proposed replacement CARE facility and change in the purpose of the CARE facility. This proposed the

removal of the incineration of waste on site, changing the CARE facility to become a waste sorting facility only.

ISSUES CONSIDERED DURING THE EXAMINATION

Construction Phase

Waste Arisings

17.5.18. The ExA raised concern in ExQ1.RES.1.2 [PD-012] that there was no estimate of the type and quantity of all expected waste produced during the construction phase and that there was no description of likely significant effects (LSE).

17.5.19. The Applicant responded [REP3-102] that the Proposed Development was not sufficiently designed at this stage to estimate the types and quantities of all the expected wastes. However, the likely types and quantities of demolition and construction wastes would be set out in the Waste Forecast sheet of the SWMP prior to construction.

17.5.20. The ExA sought further clarification and issued a request for further information under Rule 17 of the Examination Procedure Rules[17] [PD-018]. The Applicant was asked (question R17b.2) to either provide a description of LSEs or justify why an assessment of LSEs for waste has not been undertaken to demonstrate compliance with the EIA Regulations[18].

17.5.21. The Applicant's response [REP5-070] stated that a description of the LSEs resulting from the creation, disposal and recovery of waste is included across the ES and any potential residual impacts would be mitigated by waste management plans so as to result in no LSEs. For this reason, the Applicant's position was that an individual assessment of LSEs for waste was not required. To support its position, the Applicant provided a Waste Management Signposting Document [REP6-017] setting out how the potential effects of construction waste (including production, storage and transport) have been considered in the assessment in other chapters of the ES.

17.5.22. The Applicant was also asked in R17b.2 [PD-018] to confirm whether there were any other waste arisings that should have been detailed by type and quantity in the ES in order to meet the EIA Regulations. In response [REP5-070] the Applicant stated that an initial list of waste types that would be generated from these activities had been included in the SWMP template of the CRWMP [REP4-009]. However, an estimate of quantities of each waste type was not provided.

17.5.23. A requirement for approval of a SWMP was included in the Applicant's dDCO (Requirement (R) 30) at deadline (D) 5 [REP5-005]. The ExA asked several detailed questions about how R30 would work in practice at ExQ2.RES.2.1 [PD-021]. The Applicant's response [REP7-090] and updates to the dDCO [REP7-005] and CRWMP [REP7-028] provided the ExA with assurance that although no forecasted waste arisings for the construction period have been provided, R30 and the CRWMP would give the relevant waste authority appropriate control over how construction waste would be managed to prevent any LSEs.

[17] Infrastructure Planning (Examination Procedure) Rules 2010
[18] Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Transportation of Waste

17.5.24. The Applicant's Waste Management Signposting Document [REP6-017] stated that the effects associated with the transportation of waste had been considered within other topic chapters in the ES. The ExA asked the Applicant at ExQ2.RES.2.2 [PD-021] how the effects of transportation of waste could have been considered in the assessments under other topic areas when the quantity of different waste types, and therefore amount of associated transportation of waste, was not known.

17.5.25. The Applicant explained in response [REP7-090] that the ES assumed a conservative estimate that 60% of construction vehicles used for moving materials onto the site would be used for the movement of waste from the site. The Applicant also stated that the waste minimisation measures set out in the CRWMP would result in the amount of waste being generated being significantly reduced.

17.5.26. The ExA finds that the Applicant's position in respect of the transportation of waste has been adequately explained for the stage of design development reached to date.

Operational Phase

Project Change

17.5.27. The Applicant explained in the Change Application Report (CAR) [AS-139] that the existing biomass boiler at the CARE facility had been switched off during the Covid-19 pandemic as the volume of organic waste being generated was too low to operate effectively without a continual supplement of diesel fuel to achieve sufficiently high temperatures. The boiler has remained switched off as the volume of organic waste produced at the airport remains low post-pandemic.

17.5.28. Project Change 2 therefore removes the biomass boilers from the Proposed Development as the biomass operation would not be effective without supplementary diesel fuel. Instead, waste material would be taken off-airport rather than being processed on site.

17.5.29. Communities Against Gatwick Noise and Emissions (CAGNE) raised concern at D6 [REP6-120] that the transport impacts of sending waste offsite arising from the Project Change had not been properly assessed by the Applicant. The Applicant's case, as set out in the CAR (Table 4, [AS-139]) is that the additional traffic impacts were expected to be very small, in the region of fewer than six vehicle trips a day. It concluded that this level of trip generation was not expected to be perceptible on the highway network or have a material impact on the outcomes of the assessment presented in the ES.

17.5.30. The ExA finds that the expected quantum of additional traffic movements would not be so significant as to materially change the findings in relation to ES Chapter 12: Traffic and Transport [APP-037].

Operational Waste Forecasts

17.5.31. The JWSLAs raised concern in their Local Impact Report (LIR) [REP1-068] that there was no baseline provided about the existing waste operations, no projections or forecasts for waste amounts expected (including waste streams), and therefore no justification for the proposed CARE facility.

17.5.32. At D3 the Applicant submitted an Operational Waste Management Strategy (OWMS) [REP3-070] presenting the baseline waste arisings, a description of how these wastes are currently managed and predicted waste forecasts based on the predicted passenger numbers for the Proposed Development.

17.5.33. The Applicant also included a new requirement (R25) in its dDCO at D3 [REP3-006] requiring an Operational Waste Management Plan (OWMP) to be submitted to WSCC, the relevant planning authority, for approval. The timescale for approval of the OWMP was originally within six months of commencement of dual runway operations [REP3-006]. The ExA recommended [EV20-001] the timescale for R25 be changed to pre-commencement of works to construct Work No. 9 to prevent a situation where the existing CARE facility had been removed and the replacement facility had been constructed but could not be brought into operation if the OWMP were not approved.

17.5.34. The Applicant accepted the recommended change, and this is reflected in the Recommended DCO (rDCO). The ExA considers that WSCC would have sufficient control over how operational waste is managed through R25 of the rDCO.

Design of the CARE Facility

17.5.35. The JWSLAs raised concern in their LIR [REP1-068] that the information provided on the design of the CARE facility was high-level and limited. The JWSLAs stated that they were concerned about how the building would be designed to limit the impacts associated with operating waste facilities, including, but not limited to, noise, dust, odour and vermin.

17.5.36. The OWMS [REP3-070] explains that the environmental permit for the CARE facility would include prescribed processes for reducing the risk of pests, vermin and dust. The Applicant's process for monitoring, recording and reporting on odour issues is covered in the Odour Monitoring and Management Plan, final version [REP9-108]. Noise impacts of the Proposed Development are discussed within Chapter 6 of this Report.

17.5.37. In its final Principal Areas of Disagreement Summary Statement (PADSS) [REP9-172] WSCC maintains that Work No. 9 should be included as 'listed works' in Schedule 12, as also set out in the Joint Local Authorities' (JLAs) D8 submission [REP8-126]. However, the ExA considers that the scale and location of the proposed CARE facility within the airport site, would not justify the inclusion of Work No. 9 within Schedule 12. Furthermore, as mentioned above, WSCC would have control over how operational waste is managed through R25 of the rDCO.

ExA's CONCLUSION ON RESOURCE AND WASTE MANAGEMENT

17.5.38. The ExA finds that the Applicant's assessment of resource and waste management has been appropriately undertaken in line with the requirements of paragraphs 5.141 of the ANPS and 5.42 of the NNNPS. Mitigation, provided through R25 and R30 of the rDCO would minimise the volume of waste arisings and the volume of waste sent to landfill thereby reducing the risk of adverse impacts associated with resource and waste management as required through paragraphs 5.136 and 5.143 to 5.145 of the ANPS and 5.43 to 5.44 of the NNNPS. Consequently, the resource and waste management effects of the Proposed Development can be considered to be neutral and do not weigh for or against the making of the Order.

17.6. CUMULATIVE EFFECTS

INTRODUCTION

17.6.1. This Section considers the potential effects of the Proposed Development in relation to cumulative effects and inter-relationships.

THE APPLICATION

17.6.2. The Applicant's assessment of the effects arising from the Proposed Development that may occur at the same time as effects from other developments on environmental receptors (cumulative effects), as well as the combined effects of the environmental topics covered in the ES (inter-relationships) is set out in ES Chapter 20 [APP-045].

17.6.3. The assessment of cumulative effects for the Proposed Development was undertaken using a four-stage process, which was summarised as follows:

- Stage 1- identification of a 'longlist' of other proposed developments based on the area around the Proposed Development site that may be affected for each environmental topic considered in the ES;
- Stage 2 - preparation of a 'shortlist' of other proposed developments, which was defined by reviewing the longlist against inclusion/ exclusion criteria;
- Stage 3 - collection of environmental information (if available) relating to other proposed developments in the shortlist; and
- Stage 4 - determining if significant cumulative effects were likely to occur between the Proposed Development and the other developments in the shortlist.

17.6.4. In addition to the process above, a separate qualitative (descriptive) assessment was undertaken to determine the potential cumulative effects between the Proposed Development and the potential addition of a new runway at Heathrow (Heathrow R3). The assessment was undertaken on the assumption that Heathrow R3 would become operational by the mid-2030s. However, the Applicant stated that there was insufficient available information on the Heathrow R3 project to allow a full cumulative assessment to be undertaken.

17.6.5. The Applicant identified in the assessment the following significant cumulative effects:

- Temporary and permanent adverse effects on the landscape and townscape character of High Woodland Fringes, Low Weald, Horsham Upper Mole Farmland and Mole Valley Open Weald during construction and operation of the Proposed Development. However, the Applicant concluded that the contribution of the Proposed Development to these significant effects, when compared to the other proposed developments, is medium to negligible.
- Temporary and permanent adverse effects on people with mid to long distance views from elevated locations during construction and operation of the Proposed Development.

17.6.6. The assessment of inter-related effects for the Proposed Development was undertaken following completion of the assessments for each of the environmental topics considered in the ES. These were then reviewed to identify receptors likely to be affected by one or more of the environmental topics. An assessment was then undertaken to determine how individual effects for each environmental topic may combine to create significant inter-related effects on identified receptors.

17.6.7. The Applicant concluded that additional adverse inter-related effects may arise at some locations from noise, traffic and visual effects during construction and operation of the Proposed Development. However, considering the mitigation measures proposed within each of the environmental topic chapters of the ES, no significant inter-related effects were likely to occur during construction and operation of the Proposed Development.

ISSUES CONSIDERED DURING THE EXAMINATION

17.6.8. In the JWSLAs LIR [REP1-068] they set out that their main concerns related to:

- the consideration of the combined effects of the potential third runway at Heathrow Airport; and
- whether the assessment correctly considered the temporal construction effects relating to the Gatwick Green Strategic Employment Site and the development West of Ifield.

Third Runway at Heathrow

17.6.9. We asked in question ExQ1.CE.1.1 [PD-012] whether ES Chapter 20 had taken full account of the cumulative effects of Heathrow R3. The Applicant [REP3-088] stated that it did not consider that the status of the Heathrow R3 proposal required it to do a fully detailed cumulative impact assessment relating to the Proposed Development, as envisaged by the Planning Inspectorate Advice Note 17.

17.6.10. Advice Note 17 is now the advice page on *"Nationally Significant Infrastructure Projects: Advice on Cumulative Effects Assessment"*. It recommends a four-stage assessment process, the third stage of which is information gathering. The Applicant set out that there was not enough detailed information about Heathrow R3 in order for them to have undertaken a cumulative assessment as envisaged by the advice page. The Applicant however had considered a qualitative sensitivity test of the likely cumulative effects of Heathrow R3 in Table 20.7.2 in ES Chapter 20 [APP-045].

17.6.11. The Applicant concluded in paragraph 20.7.6 that *"in circumstances that Heathrow R3 were to become operational by the mid-2030s, air traffic levels at Gatwick would likely decline in the period immediately following the opening of Heathrow R3, by comparison to the scenario where Heathrow R3 was not operational. In the longer-term, even with Heathrow R3, it is forecast that Gatwick's traffic would subsequently return to the levels forecast without Heathrow R3".*

17.6.12. The Legal Partnership Authorities (LePAs) [REP4-061] responded to the Applicant's [REP3-088] reply expressing the view that not doing a full assessment of the cumulative impact of the Proposed Development, that the Applicant may be *"circumventing or undermining the ANPS".*

17.6.13. Heathrow Airport [REP3-132] also responded to ExQ1.CE.1.1 concluding that a robust assessment of the cumulative effects of the Proposed Development with the Heathrow R3 scheme should inform the ExA's consideration of consistency of national aviation policy set out in the ANPS.

17.6.14. The Applicant [REP4-025] responded that they had, as far as possible, undertaken a qualitative assessment of the impact of Heathrow R3. It stated that it did not anticipate that any likely significant cumulative effects would occur. The Applicant based this conclusion on the following:

- the distance between the airports means that any site-based impacts would not interact;
- in any airspace configuration it is unlikely that the LOAELs for air noise would overlap; and
- Heathrow is committed to a “no more traffic scenario” (paragraph 5.38, ANPS).

17.6.15. At the end of the Examination in the signed SoCG with WSCC [REP9-084] no issue relating to cumulative effects was recorded. The signed SoCG with Horsham District Council (HDC) [REP9-070] recorded that they still had concerns about the cumulative impact of Heathrow R3 that had not been addressed, although they did not mention any further issues than already identified in the JWSLAs LIR [REP1-068].

ExA’s Conclusion on Cumulative Effects of Third Runway at Heathrow

17.6.16. The ExA has taken into account all of the representations made about the consideration of the cumulative impacts of the Proposed Development when considered alongside the Heathrow R3 project. In terms of the effect on national aviation policy and the position of Heathrow Airport, this matter is considered in section 4.2 of this Report. With respect to the consideration of the cumulative environmental effects relating to Heathrow R3, we are satisfied that the Applicant’s position as summarised above is reasonable and in practical terms as much as it could have done in its submission.

Local Development Sites

17.6.17. We asked in ExQ1.CE.1.2 [PD-012] about the concerns expressed about the interaction with the Proposed Development and the listed economic development sites. The Applicant [REP3-088] responded clarifying the sites included in the ES Chapter 20 assessment. The LePAs [REP4-061] set out their concerns around full engagement and the cumulative transport effects taken into account by the Applicant. The Applicant [REP5-072] explained the approach and also set out where appropriate how sites like those mentioned in the second bullet point of paragraph 1.2.8 Above had been taken into account in both the TA [REP3-058] and also in section 12.11 of ES Chapter 12 [REP3-016].

17.6.18. At the end of the Examination the signed SoCG with WSCC recorded no items not agreed but the signed SoCG with HDC recorded that despite the additional information from the Applicant the Council’s position remains unchanged.

ExA’s Conclusion on Cumulative Effects Relating to Development Sites

17.6.19. The ExA considers that the Applicant has undertaken a proper assessment, as set out above, of the cumulative impact of the Proposed Development when considering other developments. Notwithstanding the outstanding concern from HDC, we consider that the Applicant has explained how cumulative traffic and environmental effects have been properly addressed in its assessment.

ExA’s CONCLUSION ON CUMULATIVE EFFECTS

17.6.20. The assessment of cumulative and inter-related effects is based on the mitigation measures identified within each of the environmental topic chapters of the ES. The ExA concludes that the Applicant’s assessment accords with paragraphs 4.14 and 4.15 of the ANPS, and paragraphs 4.16 and 4.17 of the 2015 NNNPS. Paragraph 17.6.5 above identifies some temporary and permanent effects which are taken into account in Chapter 12 of this Report. Given that no further significant residual cumulative effects are identified in this assessment the ExA recommends that

neutral weight should be given to cumulative effects in the overall planning balance of the Proposed Development.

18. GOOD DESIGN

18.1. INTRODUCTION

18.1.1. This Chapter considers the effect of the Proposed Development in relation to good design.

18.2. THE APPLICATION

18.2.1. Due to the fairly wide-ranging nature of good design, the Applicant's assessment of matters relating to the topic can be considered to be included in various chapters of the Environmental Statement (ES). Design specifically is considered within the Design and Access Statement (DAS) [APP-253 to APP-257].

18.2.2. The DAS is split into five volumes, with volume one [APP-253] introducing the DAS, providing the site context and project requirements and detail over the evolution of the scheme, and subsequent volumes [APP-254 to APP-257] dealing with specific 'zones' of the airport, providing site wide design guidelines (volume 5, [APP-257]).

Figure 18.133: Airport Zones

18.2.3. DAS volume one [APP-253] describes the sustainability objectives identified by the Applicant for the Proposed Development. In summary, these are:

- mitigation of:
  - air quality impact;
  - local ecological impacts and biodiversity net gain proposals to be the 'sector leader' for net gain; and
  - impact on climate.
- minimisation of potential negative effects on surrounding communities;
- to ensure the project generates a local and regional thriving economy;
- to ensure the project does not negatively impact the historic environment and surrounding landscape;

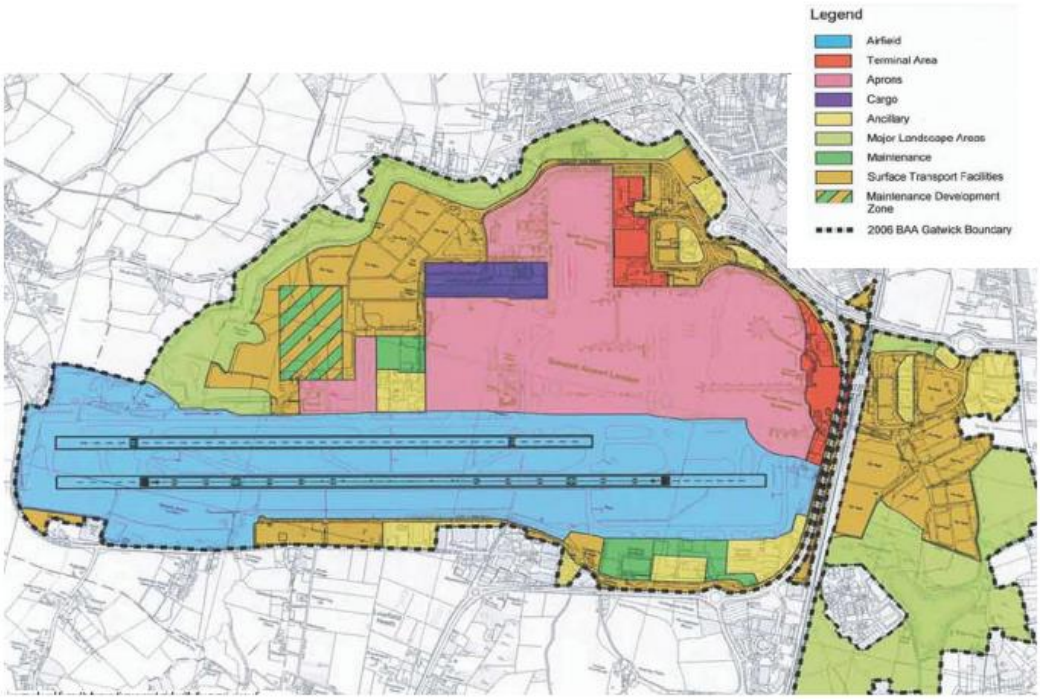
- to encourage resource and material efficiency and sustainable waste management; and
- to develop surface access actions to assist with sustainable transportation targets.

18.2.4. The above details are included within the Planning Statement Appendix D, Sustainability Statement [APP-249]. Other relevant documents to good design include the ES Appendix 5.3.2 Code of Construction Practice (CoCP) [APP-082], and the Carbon Action Plan [APP-091].

18.2.5. Volume one of the DAS [APP-253] describes consultation which took place in Autumn 2021 and Summer 2022 in the progression of the scheme that was to form the Proposed Development, and summarises the design evolution of the various elements of the scheme, including airfield design, terminals, piers, stands, hangars, car parking, offices, hotels, and highways, as well as replacement open space and proposals for Pentagon Field.

18.2.6. Volumes two [APP-254] to four [APP-255 to APP-256] consider the eight zones of the airport (shown above), providing descriptions and photographs of each zone, and constraints and proposed elements of the Proposed Development within each zone. Volume five contains a design guide, following guidance in the National Planning Policy Framework (NPPF), the National Design Guide, Crawley Borough Council's (CBC) Local Plan and Gatwick Airport Supplementary Planning Document (SPD).

Figure 18.234: Airport Areas (from the CBC Gatwick Airport SPD)



18.2.7. Volume five [APP-257] provides general design guidance for the following areas:

- landscape, townscape and visual amenity;
- historic environment;
- biodiversity;
- greenhouses gases and climate change;

- noise;
- resources and waste;
- water environment;
- lighting;
- surface access, roads and bridges;
- building design (terminal extensions, piers, hotels, offices, car parks, operational buildings, fire station, and hangars);
- construction compounds; and
- phasing and delivery (from 2024 to 2038).

18.2.8. Appendix one to volume five provides design principles for the areas above. An example of one such design principle is shown below. Land use and construction phasing plans are separate appendices to volume five.

"DBF1

The extensions to the terminal buildings shall incorporate the following design features:

- *A contemporary aesthetic ensuring that the extensions and the existing buildings complement each other, reflect modern design techniques and use high quality design materials.*
- *The façade will be optimised where possible to provide natural light and views to the airfield.*
- *Materials will include metal cladding and glazed curtain walling."*

(DBF1, Page 65 [APP-257])

18.3. ISSUES CONSIDERED DURING THE EXAMINATION

18.3.1. Relevant Representations did not, by and large, mention good design, preferring instead to concentrate on the individual elements of the Proposed Development which may or may not fall under the wider good design umbrella. One exception was West Sussex County Council (WSCC) [RR-4773], which noted that the design principles upon which the detailed design of the Proposed Development would be secured against had no input from stakeholders, were not detailed enough, and contained ambiguous wording. It was also of the view that the DAS was not comprehensive as some development was excluded; that there was a general lack of detail for character zone analysis and design and visual impact of some works; a lack of analysis of site context, opportunities and constraints; and no comprehensive commentary to explain the phasing plans.

18.3.2. At the commencement of the Examination the draft Development Consent Order (dDCO) [AS-004] contained two general requirements (R) to consider design:

- R4 stated that no part of the development could commence (apart from highway works or 'excepted development') until details had been submitted to and approved by the relevant planning authority. Excepted development could not be carried out until the planning authority had been consulted on that development. Excepted development was deemed to be development which would fall under Schedule 2, Part 8, Class F of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO); and
- R5 stated that no highway works were to commence until full details had been submitted to and approved by the relevant highway authority.

18.3.3. The Joint West Sussex Local Authorities Local Impact Report (LIR) (the JWSLAs LIR) [REP1-068] contains a section on 'Design and Sustainability'. It considered that

the level of information currently provided on the proposed plans, together with the current dDCO (AS-004) and the level of detail contained within the control documents (as currently drafted) would not give the Authorities sufficient control over design details and sustainability to ensure a high-quality development is delivered which would be in accordance with adopted national policy guidance and local plan policy. The following matters were raised:

- lack of control and information over visual appearance of development and lighting. A more detailed design control document was requested, with an independent design review panel to inform detailed design for major elements of the project;
- lack of control over landscaping and tree loss; and
- lack of control over building performance in terms of sustainability. The Authorities would wish to see Building Research Establishment Environmental Assessment Methodology (BREEAM) certification incorporated.

18.3.4. The JWSLAs LIR considered that there had been little meaningful engagement on design matters and that much of the DAS was badged as 'indicative', with ambiguous wording and a lack of detail. It considered that design information fails to draw on the character area analysis prepared and that there is no commitment to good design quality or striving for exemplar design.

18.3.5. A range of questions were asked in the Examining Authority's (ExA) first written questions (ExQ1) around good design. Such questions covered the following topics:

- accordance with the Aviation National Policy Statement (ANPS) in terms of good design (ExQ1.GEN1.18);
- further details/ drawings for key built elements of the Proposed Development (ExQ1.GEN.1.19);
- accordance with the National Infrastructure Commission's Design Principles for National Infrastructure (ExQ1. GEN.1.20);
- sustainable design and BREEAM compliance (ExQ1.GEN.1.22); and
- the desirability of the appointment of the following measures to the project:
    - a design champion at board level;
    - a design review panel to provide informed 'critical friend' comments;
    - an approved design code; and
    - an outline of the proposed design process going forward (ExQ1.GEN.1.21).

18.3.6. In summary, the Applicant responded with the following [REP3-091]:

- signposting to relevant sections of the DAS [REP2-032 to REP2-036], the revised Design Principles [REP3-056], and the Outline Landscape and Ecology Management Plan (oLEMP) [REP2-021 to REP2-027];
- the details of the elements are not at a sufficient stage to be able to provide detailed drawings. Where possible, indicative massing, cross sections, floor plans and axonometric drawings are within the DAS. The Design Principles contain matters to be reflected in detailed design, including building finishes, external materials and overall appearance. Detailed design of each component would be controlled through approval and consultation with relevant local authorities via R4 and R5 of the dDCO; and
- the airport's Chief Technical Officer is responsible for overseeing design matters and sits on the airport's Executive Management Board. A design review panel will be considered. The design principles meet the requirements of a design code and moving forward detailed design will take place in accordance with R4 of the dDCO (or R5 and R6 for highway works).

18.3.7. Replying to the JWSLAs LIR [REP3-078], the Applicant referred to the review of the Design Principles undertaken in response to ExQ1. It stated that the Principles had been updated to specify relevant work numbers and that new site specific design principles had been drafted. It considered that there was sufficient control over landscaping and planting within the Code of Construction Practice Annex 6 (Outline Arboriculture and Vegetation Method Statement (oAVMS)) [REP9-037 to REP9-042] and within the oLEMP [REP9-047 to REP9-052]. In relation to BREEAM, the Applicant stated that different schemes are available for different types of assets and covering different sustainability issues. It stated that they would consider the use of such schemes to decide whether they would result in sustainability outcomes that may otherwise not be achieved.

18.3.8. The Legal Partnership Authorities (LePAs) made a comprehensive response [REP3-135] to ExQ1.GEN.1.21, noting that good design was vital to the Proposed Development given the significance of the airport and the scale and visual impact of some of the development proposed. It acknowledged that the Applicant required some flexibility to address some uncertainties but considered that the necessary controls to ensure good design were not in place due to the level of detail provided by the Applicant. The LePAs repeated concerns over stakeholder engagement and considered that such engagement should be included prior to the submission of details under R4 or 5 of the dDCO.

18.3.9. The LePAs considered [REP3-135] that a design champion would be useful but due to the timing of the process that their effectiveness was a major concern. It considered that their position on the board would create doubts about impartiality. The LePAs considered that an independent design review panel should be in place to consider all development elements over 1,000 metres squared (m^2) floorspace along with the highway works should be 'excepted development'. It noted that the London Luton Airport Expansion DCO was proposing an independent design review process for its own more detailed proposals and noted design review process in various highway schemes (A57 Link Roads; A14 Cambridge to Huntingdon; and Silvertown Tunnel).

18.3.10. They were also of the view that a design code would have been appropriate if it had been substantially developed prior to the submission of the DCO and were of the view that the Design Principles should be merged with the design elements of the oLEMP. Furthermore, they considered that the design principles should be updated with relevant local planning policies. Concerns were raised over habitat and tree loss and a list of Proposed Development elements for which the LePAs considered were sensitive sites which should have more detail. Finally, a detailed timeline of what it considered next steps to be was submitted.

18.3.11. At D4, the Applicant [REP4-031] stated that they were looking to appoint a Design Advisor to work with the airport and review/ advise on the designs brought forward by the Applicant. It also submitted a note further justifying the excepted development route [REP4-030] and noting that D5 would see a revised dDCO specifically defining works which would require detailed design approval, as opposed to tying the definitions to the GPDO.

18.3.12. The D5 dDCO [REP5-005] altered the wording of R4, redefining excepted development as 'listed works'. Development that was not highway or listed works would go through the following process:

- CBC would be consulted in the same manner as they would be under the GPDO; CBC must make their comments within 8 weeks; and

- All works must be carried out in accordance with the Design Principles.

18.3.13. Listed works were defined in Schedule 12 (non-highway works for which detailed design approval is required), and were the following works [REP5-005]:

Table 18.1: 'Listed Works' from D5 dDCO

Work No	Work Description
22 (a) – (c)	North Terminal extension
23 (a)	South Terminal extension
26	Hotel north of multi storey car park 3
27	Hotel on the car rental site
28 (a)	Hotel on the Car Park H site
40 (a)	Pedestrian footbridge over the River Mole

18.3.14. A D5 version of the Design Principles [REP5-031] included an Annex outlining the proposed Design Advisor role, outlining that they would have a remit to undertake an independent review of the following elements of the scheme:

Table 18.2: Works Within the Remit of the Design Advisor

Work No	Work Description
26	Hotel north of multi storey car park 3
27	Hotel on the car rental site
28 (a)	Hotel on the Car Park H site
35 (a) – (v)	Works associated with South Terminal junction improvements
36 (a) – (q)	Works associated with North Terminal junction improvements
37 (a) – (l)	Works associated with the Longbridge Roundabout Junction

18.3.15. Issue Specific Hearing 8 (ISH8) specifically considered good design and we asked questions around the detail and breadth of the DAS, its interlinkages with other documents, such as the oLEMP, external and internal design review; and the control of design within the dDCO.

18.3.16. The Applicant defended [REP6-080] the level of detail within the DAS in relation to the local context of the Proposed Development and for various elements of the Proposed Development and noted that detailed design would be picked up by adherence to the Design Principles. Following comments of the LePAs concerning the level of design control over non-listed works, the Applicant considered that:

"Control and approval are two different concepts. It is absolutely clear that the development is subject to design control and that it will be designed in a holistic way. There are no exceptions to the Design Principles [REP5-031]; they apply to every aspect of development under Articles 4 to 6 of the draft DCO (Doc Ref. 2.1). Additional controls on the physical dimensions of the authorised development are provided within the Parameter Plans [REP5-018] and Works Plans [REP5-016] which are secured by Article 6 of the draft DCO (Doc Ref. 2.1)"

18.3.17. It did not see the virtue in combining design elements of differing plans into one document as they were created for differing purposes. The Applicant also confirmed that they had approached a prospective Design Advisor (Paul Finch OBE) and that the works proposed to be under his remit were those which were readily visible from public areas and hotels. They stated that they would consider further whether Car Parks X and Y and the proposed hangar should be included.

18.3.18. The LePAs noted [REP6-107] that there was a clear dividing line between the Applicant and the local authorities on the approach to detailed design. The LePAs remained unpersuaded over the approach taken to listed works and the lack of control for development elements which would not fall within the list. It also raised specific concerns over design principles such as DBF11 (multi storey car park) and DBF40-41 (hangar) and the parameters for Car Park X. They were of the view that using permitted development rights to effectively apply to works within the Proposed Development (in terms of their design approval) was an error, as such works would not be permitted development due to the size of the Proposed Development (under the Environmental Impact Assessment (EIA) regulations).

18.3.19. The LePAs requested a steer from the ExA on whether the Applicant's or the LePAs' general approach was sound. With reference to merging together design documents, they considered that design should be integrated and holistic and advocating consolidating as much information as possible into one overarching document. The LePAs welcomed the Design Advisor role but raised concerns over the limited role of the Advisor.

18.3.20. Finally, the LePAs suggested [REP6-111] a list of works which should fall within the category of listed works within Schedule 12 of the dDCO. These were: Northern Runway (in part); Runways and Taxiways; Pier 7; Oscar Area; Central Area Recycling Enclosure; Motor Transport Facilities; Grounds Maintenance Facilities; Airfield Surface Transport Facilities; Fire Training Ground; Satellite Airport Fire Service Facility; Hangar; Hangar 7 support structures; Western Noise Mitigation Bund; Pumping Station 2a; Re-align Larkins Road; North Terminal Works; South Terminal Works; North Terminal Forecourt; South Terminal Forecourt; Hotel north of Car Park 3, Hotel on car park rental site, Hotel, car park and office; Conversion of Destinations Place to Hotel; Car Park Y; Car Park X; Decked Car Park; Purple Parking; Car Park B; Museum Field; River Mole Works; Land North East of Longbridge Roundabout; Pentagon Field; Habitat enhancement, weir and fish pass; and Water Treatment Works. In addition, they wished to see construction compounds added to the Schedule, and further information on Work 5, 8 and 13, Charlie Box, Removal of airside supporting facilities and Rendezvous Point North respectively.

18.3.21. With reference to the works to fall within the remit of the Design Advisor the LePAs wished to see the additional works below included [REP6-111]:

Table 18.3: LePAs Suggested Works for the Design Advisor

Work No	Work Description
9	Central Area Recycling Facility
16	New Hangar
22	North Terminal works
23	South Terminal works

24	Upgrade to North Terminal forecourt
25	Upgrade to South Terminal forecourt
28	All works at car park H – Hotel, office, car park
30	Car Park Y
31	Car Park X
35	All works associated with South Terminal junction improvements
36	All works associated with North Terminal junction improvements
37	All works associated with the Longbridge Roundabout Junction

18.3.22. Further questions on good design were asked at ExQ2 [PD-021], with questions about accuracy, certainty and precision, decked parking design, net zero emissions, and new National Infrastructure Commission guidance.

18.3.23. Based on ISH8 and ExQ2, D7 saw the update of the DAS to its final version [AS-154, REP7-059, AS-155, REP7-061, AS-156] and a further update to the Design Principles [REP7-063] which aimed to assuage the concerns of the LePAs voiced at D6. The extent of works to fall under the remit of the Design Advisor was also updated to include all works at Car Park H (Work no 28), Car Parks Y and X (Works no 30 (b) and 31 (e)), and the pedestrian footbridge over the River Mole (Work no 40(a)).

18.3.24. The Applicant also submitted a substantial note on design matters at D7 [REP7-096] in response to the above comments of the LePAs, including the list of development elements which the LePAs wished to see included within listed works and within the remit of the Design Advisor. Additional drawings called Informative Sub-Work Plans [REP7-021] were submitted, which broke down the airfield works into smaller sub-sections, in response to a LePAs request. R4 and R10 (surface and foul water drainage) in the dDCO [REP7-005] were also amended to state that when elements of the Proposed Development were submitted which fell within the listed works that a ‘compliance statement’ would be included detailing compliance with the design principles.

18.3.25. At D8 the Design Principles document [REP8-090] was updated by the Applicant to include the potential wastewater treatment works and to provide further definition to Museum Field works. The Joint Local Authorities welcomed [REP8-126] the Informative Sub-Works Plans [REP7-021] and additions to the Design Advisor role but raised concerns that the potential wastewater treatment works were not included in the DAS. They reiterated concerns over the control process for non-listed works and re-stated the need for other works to come under the remit of the Design Advisor and within the definition of listed works, although several of the works in their previous list [REP6-007] were no longer requested to be included.

18.3.26. On 14 August the ExA published [PD-028] its recommended amendments to the Applicant’s dDCO from D8 [REP8-005]. This included suggested changes to R4, to include further details to be submitted for listed works (including details of layout, siting, scale and appearance; schedule of materials; lighting; and the design approach and process for works falling within the Design Advisor role). The document [PD-028] also included suggestions to add additional works to the listed works, namely:

- a new hangar (Work No. 16);
- multi storey car park (Work No. 22(g));
- office and multi storey car park on the Car Park H site (Work No. 28 (b-c)));
- conversion of Destinations Place office into a hotel (Work No. 29);
- Car Park Y (Work No. 30); and
- Car Park X (Work No. 31).

18.3.27. The Applicant's D9 dDCO [REP9-004] included the above additions.

18.3.28. In their closing statement, the LePAs [REP9-151] stated that there remained four key concerns on design matters. These were:

- a lack of detail on the visual impact of large parts of the Proposed Development;
- the lack of effective controls to enable them to be confident that these could be overcome post-consent; and
- specific concern over various works, notably:
    - construction compounds
    - Pentagon Field
    - Car Park X
    - Car Park Y
    - North Terminal long stay car park (NTLSCP)
    - Purple parking
    - A23 corridor
- Lack of control over landscaping, extent of tree loss and concerns over suitable replacement provisions.

18.4. ExA'S CONCLUSION ON GOOD DESIGN

Design Detail

18.4.1. Design details are contained in various documents. At the close of the Examination, the primary design documents are as follows:

- the DAS [AS-154, REP7-059, AS-155, REP7-061, AS-156]; and
- Design Principles (Appendix 1 to the DAS) [REP9-062].

18.4.2. These documents are supplemented by various plans and documents, including:

- oLEMP [REP9-047 to REP9-052];
- CoCP [REP8-024] and relevant annexes;
- Works Plans [REP7-018];
- Parameter Plans [REP7-020]; and
- Informative Sub Works Plans [REP7-021].

18.4.3. The DAS contains details of the sustainability objectives identified by the Applicant for the Proposed Development and the process of consultation on the Proposed Development, including design evolution of the different elements of the Proposed Development, with volumes two to four of the DAS providing more detailed descriptions and design details for the identified zones of the airport. Volume five provides a design guide. Drawings included in the DAS for separate elements of the Proposed Development differ for each proposed work and include indicative massing, cross sections, floor plans and axonometric drawings on occasion. The DAS was updated during the Examination to respond to various comments and changes to the Proposed Development.

18.4.4. The Design Principles is a more detailed document, effectively providing a design code (along with other documents, such as the works and parameter plans) for the Proposed Development. There are four types of design principles within the document, namely:

- project-wide;
- detailed built form;
- detailed drainage; and
- detailed landscape.

18.4.5. When considering the range of documents submitted, and the revisions to the documents made during the Examination as detailed above, the ExA is content that the design detail accompanying the application is sufficient. In line with the ANPS, the Applicant has demonstrated how the design process was conducted and how the proposed design evolved (more information on this can be found in Alternatives, within Chapter 17 of this Report).

18.4.6. While the design of various elements of the Proposed Development could be more detailed, the ExA is mindful that it is reasonable for the Applicant to maintain some design flexibility for the Proposed Development bearing in mind the rapidly changing environment of aviation and the flux of technology, particularly given the fairly long scale nature of the Proposed Development.

18.4.7. The ExA notes the views of the LePAs considering joining the relevant design sections of the above documents (particularly the DAS, Design Principles, oLEMP and CoCP) to form one coherent design document. However, we consider that while this may be beneficial in one respect, on the other hand removing integral design elements from the oLEMP and CoCP may not be so advantageous. It is reasonably clear to read across the various documents and no harm arises from design advice falling within separate documents in our view.

Design Controls

Overview

18.4.8. Control over the design of the Proposed Development is provided within the Applicant's final dDCO [REP10-004]. Relevant documents to be certified under Schedule 14 of the dDCO include:

- Design Principles;
- CoCP (R7 also ensures that the Proposed Development would be carried out in accordance with the CoCP);
- consolidated ES;
- Land Plans;
- oAVMS;
- oLEMP (R8 also concerns the LEMP);
- Parameter Plans (Schedule 13 also provides maximum parameter heights);
- Surface access drainage strategy, general arrangements, engineering sections and structure section drawings; and
- Works Plans.

18.4.9. R5 of the dDCO provides for detailed design of the local highway works of the Proposed Development, with R6 doing the same for national highway works. Both requirements require detailed designs to be submitted to and approved by the relevant highway authority, and that such designs will be in accordance with the design principles. These requirements provide sufficient comfort to the ExA that the

highway elements of the Proposed Development will be subject to the level of control required and that good design for these elements of the Proposed Development will be secured. In accordance with the ANPS, this should ensure that both functionality and aesthetics will be considered for the proposed highway works. In a similar vein, R10 and R11 provide comfort that surface and foul water drainage details will be carried out in accordance with approved details and subject to the Design Principles.

18.4.10. In essence, R4 states that all parts of the Proposed Development would not commence until CBC has been consulted on their design. Such consultation will be accompanied by an explanatory note, drawings, and a statement showing compliance with the Design Principles. Specific listed works would need to be submitted to and approved by the relevant planning authority and require additional details to be submitted. The final listed works are as follows [REP10-004]:

Table 18.4: Listed Works Within Schedule 12 of the Final dDCO

Work No	Work Description
16	New aircraft hangar
22 (a to c), (g)	Extending the North Terminal International Departure Lounge and constructing a multi-storey car park
23 (a)	Extending the South Terminal International Departure Lounge
26	Hotel north of multi-storey car park 3
27	Hotel on the car rental site
28 (a to c)	Hotel, office and multi-storey car park on the Car Park H site
29	Converting the existing Destinations Place office into a hotel
30	Car Park Y
31	Car Park X
40 (a)	Pedestrian footbridge over the River Mole

18.4.11. In addition to the above, certain works would fall within the remit of a Design Advisor. The Design Advisor, as described within Annex A to the Design Principles would be a "*suitably qualified and experienced independent Design Advisor*". The Design Advisor would review designs brought forward, hold a design review meeting with the relevant planning/ highway authorities and other statutory consultees and prepare a written report including a review of the design presented, its appropriateness, the views of the meeting, and recommendations for improvement before the design finalisation. Details of the review and response to recommendations would be included in the details provided to the local authority under R4, R5 and R6. Works in the remit of the Design Advisor (final list [REP9-062]) would be:

Table 18.5: Works Within the Remit of the Design Advisor

Work No	Work Description
26	Hotel north of multi-storey car park 3

27	Hotel on the car rental site
28	Car Park H site
30 (b)	Car Park Y
31 (e)	Car Park X
35 (a to v)	Works associated with the South Terminal Junction Improvements
36 (a to q)	Works associated with the North Terminal Junction Improvements
37 (a to l)	Works associated with the Longbridge Roundabout Junction Improvements
40 (a)	Pedestrian footbridge over the River Mole

18.4.12. The list of works in Schedule 12 in the dDCO accord with that proposed by the ExA in [PD-028] and as such we largely agree with this list (with one omission, see below). The list encompasses various significant proposals which would be of a fairly large scale and be visible to various receptors. The height of the new aircraft hangar would make it visible to various viewpoints to the north of the airport, while the departure lounge extensions and the various hotels would be highly visible to members of the public travelling to and from the airport and to airport staff. Car parks X and Y will be visible beyond the site boundaries and the footbridge over the River Mole offers an opportunity for high quality design to link two areas of public open space.

18.4.13. We have recommended one additional site in the rDCO – that of the NTLSCP (Work No. 32). The LePAs considered that this should be included given its positioning close to the airport site boundary and possible interactions with the Grade II* listed Charlwood Park Farmhouse. In Chapter 12, Landscape and Townscape and Chapter 13, the Historic Environment we have considered that this car park could have an adverse effect on the setting of the listed building and on the surrounding landscape. The Applicant was of the view that lighting would be adequately controlled via the Design Principles [REP7-096]; however, the ExA notes the proximity of the site to the Order Limits which we consider warrants extra control. Its inclusion within Schedule 12 would help to ensure that any adverse effect was minimised through good design.

18.4.14. While the ExA considers that a Design Review Panel for wider elements of the Proposed Development would have been of benefit, the introduction of the Design Advisor to the Examination as Annex A to the Design Principles is welcomed by the ExA. The potential advisor, Paul Finch OBE (CV attached to the Annex), has an excellent CV with various relevant experience who could have a considerable positive effect on the developments contained within the Annex.

Other Works

18.4.15. The LePAs raised concerns over several other elements of work, as detailed above. These are considered below.

Construction Compounds

18.4.16. These are considered primarily in Chapter 12, Landscape and Townscape. The ExA considers that the design of the compounds is adequately covered by the CoCP, the Design Principles and dDCO R7.

Pentagon Field

18.4.17. This is considered primarily in Chapter 12, Landscape and Townscape. The ExA considers that the controls afforded by the oLEMP, the Soil Management Strategy [APP-086] and the Design Principles document would be acceptable.

Car Park X

18.4.18. This is considered primarily in Chapter 12, Landscape and Townscape and Chapter 13, the Historic Environment. We have concluded that the Car Park has the potential to cause harm to the landscape and to the setting of a nearby listed building. However, such harm would be minimised and mitigated as far as possible by the inclusion of the Car Park as both a listed work and as being within the remit of the Design Advisor.

Car Park Y

18.4.19. This is considered primarily in Chapter 12, Landscape and Townscape and Chapter 13, the Historic Environment. We have concluded that the Car Park has the potential to cause harm to the landscape and to the setting of a nearby listed building. However, such harm would be minimised and mitigated as far as possible by the inclusion of the Car Park as both a listed work and as being within the remit of the Design Advisor.

Purple Parking

18.4.20. This is considered primarily in Chapter 12, Landscape and Townscape. The ExA considers that the controls afforded by the Design Principles, the oLEMP, and R4 of the dDCO would be acceptable in design terms.

A23 Corridor, and Lack of Control Over Landscaping

18.4.21. This is considered primarily in Chapter 12, Landscape and Townscape and Chapter 14, Ecology. The ExA considers that there would be a net loss of woodland arising from the Proposed Development but a revised R39 as included in the rDCO would form an appropriate response to this. In design terms, the controls offered by the Design Principles and R5 and R6 would suffice. Furthermore, the Longbridge Junction and the North and South Terminal improvements elements which fall within this area would come under the remit of the Design Advisor.

Other Works

18.4.22. As detailed above, the LePAs also suggested a list of other works [REP6-111] which they considered should be included within Schedule 12 of the dDCO or in the remit of the Design Advisor. Some of these were subsequently moved into the listed works or the remit of the Design Advisor (Hangar, North Terminal Work 22 (g), Hotel north of Car Park 3, Hotel on car park rental site, Hotel, car park and office; Conversion of Destinations Place office to Hotel; Car Park Y; Car Park X).

18.4.23. Of the other works the ExA is not persuaded that they require additional design control over and above what would be required under R4 of the dDCO. Early in the Examination the subject of controls that are currently available under the GPDO

was considered, and it appeared that the initial list of developments which would fall under R4 as consultation only developments or as listed works was predicated upon whether or not the proposed work would fall within the remit of the GPDO were the Proposed Development not an NSIP (and subject to the EIA Regulations).

18.4.24. However, over the course of the Examination matters progressed and R4 became more detailed and precise. The other works suggested by the LePAs are, by and large, relatively small scale works not readily visible or confined to the interior of the airport site. Such works would now be subject to R4, which requires that they take place in accordance with the Design Principles and that a Compliance Statement is submitted with the relevant consultation demonstrating this. Such controls would be more demanding than would be required under the GPDO and would help to ensure that a higher design standard is secured than might otherwise be the case under the Future Baseline case.

Other Design Matters

18.4.25. The ANPS states that applying 'good design' to airports projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction, and matched by an appearance that demonstrates good aesthetics as far as possible, and that a good design should meet the principal objectives of the scheme by eliminating or substantially mitigating the adverse impacts of the development, for example by improving operational conditions. It should also mitigate any existing adverse impacts wherever possible, for example in relation to safety or the environment. A good design will also be one that sustains the improvements to operational efficiency for as many years as is practicable, taking into account capital cost, economics and environmental impacts. Similar wording can be found in the National Networks National Policy Statement (NNNPS).

18.4.26. In consideration of the above, the following other issues considered in this Report also fall under the remit of good design.

Terminal facilities

18.4.27. Chapter 4, the Case for the Development, confirms that the Proposed Development would provide adequate terminal facilities, in terms of security, check in, departure lounge space and facilities and baggage systems and the ExA is satisfied that extant security, customs and immigration measures would be maintained or re-provided, as required by the ANPS.

Noise

18.4.28. Suggested requirements are contained within the ExA's rDCO to ensure that the air noise effects from the Proposed Development satisfy the provisions of the ANPS and mitigate and minimise adverse impacts on health and quality of life in the context of sustainable development.

Flooding

18.4.29. The ANPS states that the SoS will need to be satisfied that projects account for natural hazards such as flooding. Chapter 11 Water Environment and Chapter 9 Climate Change resilience confirm that we are satisfied that with the Proposed Development in terms of fluvial flood risk and all matters with the Environment Agency were agreed.

Surface Access

18.4.30. The ExA have recommended a requirement removing permitted development rights relating to provide further car parking and imposing a cap on the total number of parking spaces. This will assist in the Applicant's approach in managing sustainable surface access. A further requirement is proposed in the rDCO tying modal share targets to the use of certain elements of the Proposed Development.

Sustainability

18.4.31. Chapter 17 confirms that the ExA is content that the Applicant's assessment of resource and waste management has been appropriately undertaken in line with the requirements of the ANPS and the NNNPS. Volume 1 of the DAS [AS-154] summarises the airport document, 'Second Decade of Change to 2030' and various sustainability objectives within the Proposed Development are noted, including:

- mitigating local air quality;
- mitigating effects on local ecology and biodiversity net gain proposals;
- mitigation of climate change impacts;
- minimisation of potential negative effects on surrounding communities;
- ensure a thriving local and regional economy;
- mitigating impacts on heritage assets and the local landscape;
- encourage resource and material efficiency; and
- strategically developed surface access actions to assist with sustainable transportation targets.

18.4.32. Such measures are assessed in the relevant chapters of this Report.

ExA's OVERALL CONCLUSION ON GOOD DESIGN

18.4.33. We have concluded that the design detail accompanying the application is sufficient. The Applicant has demonstrated how the design process was conducted and how the proposed design evolved. While the design of various elements of the Proposed Development could be more detailed, the ExA is mindful that it is reasonable for the Applicant to maintain some design flexibility for the Proposed Development. The various documents that make up the design case for the Proposed Development are reasonably clear to read across the various documents and no harm arises from design advice falling within separate documents.

18.4.34. Aside from the NTLSCP, we agree with the list of works in Schedule 12 in the dDCO. While the ExA considers that a Design Review Panel for wider elements of the Proposed Development would have been of benefit, the introduction of the Design Advisor to the Examination as Annex A to the Design Principles is welcomed by the ExA. Design of specific elements of the Proposed Development are adequately covered by the various design based and other documents. The provisions of R4 of the dDCO changed through the Examination and controls over design of the specific elements of the Proposed Development would be higher and more demanding than under the provisions of the GPDO.

18.4.35. With our suggested requirements in the rDCO for noise and surface access, as well as Applicant proposed controls for flooding, sustainability and surface access, we also consider that the Proposed Development would meet the provisions of the ANPS and the NNNPS in relation to wider matters of good design.

18.4.36. Taking all the above together, and with the suggested alteration to Schedule 12 included in the rDCO, the ExA considers that the Proposed Development satisfies

the provisions of the ANPS and the NNNPS in relation to good design. The ExA considers that the Proposed Development would be as sustainable and as aesthetically sensitive, durable, adaptable and resilient as it can reasonably be, having regard to regulatory and other constraints and including accounting for natural hazards such as flooding. In coming to this view the ExA has taken into account the ultimate purpose of the infrastructure and borne in mind the operational, safety and security standards which the design has to satisfy.

18.4.37. Airports are in a unique position, in providing a gateway in and out of the country for visitors, tourists, and businesses. In committing to taking professional independent advice on the design, there is an opportunity for the Proposed Development to deliver a substantially improved urban environment at the airport and its surrounds. The ExA notes that the original Gatwick airport was served by the Beehive terminal. The Grade II* listing states that this building:

"is important not only in the history of British aviation but also in terms of world airport design. It is a rare example of how airport owners and architects collaborated to put passenger comfort as a top consideration when designing a terminal building."

18.4.38. Should the SoS decide to grant consent for the Proposed Development, the ExA urges the Applicant to take forward this approach and apply it to the detailed design of the Proposed Development.

18.4.39. In conclusion, we find that the Proposed Development in respect of good design would accord with the ANPS and other relevant legislation and policy requirements. The ExA ascribes a little weight on matters relating to Good Design in favour of the Order being made. Should the NTLSCP not be included in Schedule 12 of the final dDCO (if granted) this weight would reduce to neutral (neither in favour nor against the Proposed Development).

19. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

19.1. INTRODUCTION

19.1.1. This Chapter sets out our analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS) for Transport, as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

19.1.2. This Chapter is structured as follows:

- Section 19.2: Findings in relation to Likely Significant Effects on the UK National Site Network and other European sites;
- Section 19.3: Conservation Objectives for sites and features;
- Section 19.4: Findings in relation to Adverse Effects on Integrity; and
- Section 19.5: HRA conclusions.

19.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s)[19] and no reasonable scientific doubt remains[20].

19.1.4. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 2 of this Report.

19.1.5. We have been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the Competent Authority. We have sought evidence from the Applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and Issue Specific Hearings (ISH).

REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES AND CONSULTATION

19.1.6. We produced a Report on the Implications for European Sites (RIES) [PD-026] which compiled, documented, and signposted HRA-relevant information provided in the Development Consent Order (DCO) application and Examination representations up to Deadline (D) 7 (15 July 2024). The RIES was issued to set out our understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time. Consultation on the RIES took place between 25 July 2024 and 21 August 2024. Comments were received from the Applicant [REP8-122] and NE [REP9-162]

[19]The term 'European sites' includes Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), proposed SACs, potential SPAs, Ramsar, proposed Ramsar, and any sites identified as compensatory measures for adverse effects on any of the above.
[20] CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij

by D9 (21 August 2024). These comments have been taken into account in the drafting of this Chapter.

19.1.7. The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

PROPOSED DEVELOPMENT DESCRIPTION AND HRA IMPLICATIONS

19.1.8. The Proposed Development is described in Chapter 1 of this Report.

19.1.9. The spatial relationship between the Order Limits of the Proposed Development and European sites is shown in Figure 1 of the HRA Report [REP3-045].

19.1.10. The Proposed Development is not directly connected with, or necessary to, the management of a European site. Therefore, the SoS for Transport must make an 'appropriate assessment' of the implications of the Proposed Development on potentially affected European sites in light of their Conservation Objectives.

19.1.11. The Applicant's assessment of effects is presented in the following application document(s):

- Environmental Statement (ES) Appendix 9.9.1 Habitats Regulations Assessment Report Part 1 [APP-134], updated at D3 [REP3-043]; and
- ES Appendix 9.9.1 Habitats Regulations Assessment Report Part 2 [APP-135], updated at D3 [REP3-045].

19.1.12. The HRA is supported by the following ES chapters:

- ES Chapter 9: Ecology and Nature Conservation [APP-034];
- ES Chapter 12: Traffic and Transport [REP3-016];
- ES Chapter 13: Air Quality [REP3-018];
- ES Chapter 20: Cumulative Effects and Inter-relationships [APP-045];
- ES Appendix 9.3.1: Summary of Stakeholder Scoping Responses – Ecology and Nature Conservation [APP-120]; and
- ES Appendix 20.4.1: Cumulative Effects Assessment Long and Short List [APP-217].

19.1.13. During the Examination, the Applicant submitted a number of change requests as described in Chapter 1 of this Report. No evidence was submitted indicating that the change requests would alter the conclusions of the HRA Report. The HRA report was not updated as a result of any of the change requests. The changes were accepted into the Examination by the ExA as described in Chapter 1 of this Report.

19.1.14. The Applicant updated the HRA report at D3 following ExQ1, no further iterations were provided during the Examination. This Chapter refers to the updated HRA Report [REP3-043] unless otherwise specified.

19.1.15. The RIES put one further written question to the Applicant and NE relating to confirmation of the level of detail provided on the conservation status of Ockham and Wisley Common and Chobham Common Sites of Special Scientific Interest (SSSI) and Ashdown Forest (Special Protection Area) SPA. The Applicant responded at Deadline 8 [REP8-122] to confirm the ExA's understanding of the

information provided and NE confirmed at Deadline 9 [REP9-162] that they were content with the level of information.

19.1.16. Non-UK European sites in European Economic Area (EEA) States were considered in the Applicant's assessment; however, the Applicant did not identify any likely significant effects (LSE) (para 1.3.8, [REP3-043]). Only UK European sites are addressed in this Report. No transboundary effects were raised for discussion by any IPs during the Examination.

19.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

19.2.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' and the activities, sites or plans and projects to be included for further consideration in the appropriate assessment.

19.2.2. The European sites and qualifying features that were considered in the Applicant's assessment of LSE are listed below:

- Mole Gap to Reigate Escarpment Special Area of Conservation (SAC[21]);
- Ashdown Forest Special Area of Conservation;
- Ashdown Forest SPA;
- Thames Basin Heath SPA (Ockham and Wisley and Chobham SSSI);
- The Mens SAC;
- Ebenoe Commons SAC; and
- Thursley, Ash, Pirbright and Chobham SAC (Chobham Common SSSI).

19.2.3. Qualifying features and pathways for effects on these sites are set out in Tables A1.1 to A1.7 in Annex 1 of the RIES [PD-026].

19.2.4. The Applicant's HRA Report sets out the methodology including how pathways of effects were considered to determine which sites to include in the assessment. This included identifying sites within 200m of major roads where there would be an increase in traffic flows. It also includes those sites designated for bats within the potential range of the species. Data from various ES technical chapters were used. to determine what would constitute a 'significant effect' within its HRA Report (para 1.2.3 and section 2, [REP3-043]).

19.2.5. NE agreed [REP1-037] that all relevant European sites and/ or European site features that could be affected by the Proposed Development had been identified by the Applicant, in section 3 of the HRA Report [REP3-043]. No other European sites or qualifying features were identified by IPs which could be affected by the Proposed Development.

LIKELY SIGNIFICANT EFFECTS FROM THE PROPOSED DEVELOPMENT ALONE

19.2.6. The Applicant identified LSE of the Proposed Development alone in Section 4 of the HRA Report [REP3-045].

[21] In this Chapter SAC refers to Special Area of Conservation. In all other Chapters of this Report, SAC refers to Surface Access Commitments.

19.2.7. The impacts considered by the Applicant to have the potential to result in LSE alone are:

- Thames Basin Heath SPA (Ockham and Wisley Common SSSI)
    - Dartford Warbler – aerial emissions during operation on supporting habitat;
    - Nightjar – aerial emissions during operation on supporting habitat; and
    - Woodlark – aerial emissions during operation on supporting habitat.

LIKELY SIGNIFICANT EFFECTS FROM THE PROPOSED DEVELOPMENT IN COMBINATION

19.2.8. The Applicant addressed potential in combination effects arising from the Proposed Development. The methodology applied is set out in its HRA Report (paras 2.2.6 to 2.2.9, [REP3-045]). The methodology and list of projects included in the in-combination assessment are detailed in ES Chapter 20 Cumulative Effects and Inter-Relationships [APP-045] and Inter-relationships and supporting appendix [APP-045 and APP-216]. Their locations are shown on HRA Figures 20.4.2 to 20.4.4 in the Cumulative Effects and Inter-Relationship Figures [APP-051].

19.2.9. The Thames Basin Heath SPA is made up of a number of separate SSSIs. In addition to the LSE from the Proposed Development alone which could affect the Ockham and Wisley Common SSSI, the Applicant also identified potential in-combination LSE on the Thursley, Ash, Pirbright and Chobham SAC/ Chobham Common SSSI component of the SPA.

19.2.10. An in-combination LSE has been identified by the Applicant upon the following qualifying features/European sites:

- Thames Basin Heath SPA (Ockham and Wisley and Chobham Common SSSIs)
    - Dartford Warbler – aerial emissions during operation on supporting habitat;
    - Nightjar – aerial emissions during operation on supporting habitat; and
    - Woodlark – aerial emissions during operation on supporting habitat.
- Ashdown Forest SAC
    - Northern Atlantic wet heaths with Erica tetralix - aerial emissions during operation on qualifying feature;
    - European dry heaths – aerial emissions during operation on qualifying feature; and
    - Great crested newt – aerial emissions during operation on supporting habitat.
- Ashdown Forest SPA
    - Dartford Warbler – aerial emissions during operation on supporting habitat; and
    - Nightjar – aerial emissions during operation on supporting habitat.
- Thursley, Ash, Pirbright and Chobham SAC (Chobham Common SSSI)
    - Depressions on peat substates of the Rhynchosporion – aerial emissions during operation on qualifying feature;
    - Northern Atlantic wet heaths with Erica tetralix – aerial emissions during operation on qualifying feature; and
    - European Dry heaths – aerial emissions during operation on qualifying feature.

LIKELY SIGNIFICANT EFFECT ASSESSMENT OUTCOMES

19.2.11. The sites for which the Applicant concluded no LSE would occur from either the project alone or in combination with other plans and projects are presented in the RIES (para 2.3.4, [PD-026]).

19.2.12. The submitted Statement of Common Ground (SoCG) between the Applicant and the ANCB (Table 2.8.1, [REP1-037]) records agreement on the conclusions of the screening assessment. The Applicant's conclusions of potential LSE on the European sites and their qualifying features considered were not disputed by any IPs during the Examination.

19.2.13. The sites and features listed in paragraph 19.2.10 were assessed by the Applicant to determine if they could be subject to adverse effects on integrity, as a result of the Proposed Development alone or in combination with other plans and projects, in view of their conservation objectives.

19.2.14. We are satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and are satisfied with the approach to the assessment of alone and in-combination LSE.

19.2.15. Taking into account the reasoning set out above, we consider that the Proposed Development is likely to have a significant effect from the impacts identified in paragraphs 19.2.7 and 19.2.11 above on the qualifying features of the European sites identified when considered alone, or in combination with other plans or projects. This was not disputed by IPs/ NE during the Examination.

19.3. CONSERVATION OBJECTIVES

19.3.1. The conservation objectives for all of the European sites for which a LSE was identified by the Applicant at the point of the DCO application were included within section 3 of the HRA Report [REP3-043].

19.3.2. The updated HRA Report [REP3-043] sets out the following in relation to the conservation status for those sites screened in for LSE:

- Thames Basin Heaths SPA: there are 14 SSSIs that underpin the SPA, but paragraph 1.3.5 states that Ockham and Wisley Common SSSI and Chobham Common SSSI are the only SSSIs relevant to the assessment. Paragraph 3.7.1 states that the *"majority of units within the 14 SSSIs are in favourable condition with areas that are in unfavourable recovering condition"* but does not identify the status of units for Ockham and Wisley Common and Chobham Common SSSIs;
- Thursley, Ash, Pirbright and Chobham SAC: paragraph 1.3.5 indicates that Chobham Common SSSI is the only SSSI component relevant to the assessment. No conservation status is provided (beyond the general commentary in paragraph 3.7.1) but it is stated that the Site Improvement Plan covers Thames Basin Heaths SPA and Thursley, Ash, Pirbright and Chobham SAC;
- Ashdown Forest SAC – *"The majority of Ashdown Forest has been identified as unfavourable recovering, with some areas of unfavourable declining and favourable condition"* (paragraph 3.3.3); and
- Ashdown Forest SPA – no conservation status is provided but it is stated that the Site Improvement Plan is the same as for Ashdown Forest SAC (paragraph 3.4.5).

19.3.3. In the RIES, we sought clarification on the information provided in relation to the conservation objectives in the HRA Report and whether the information was clear and detailed enough to inform the assessment for each site. The Applicant confirmed that the information was correct [REP8-122] and the relevant ANCB, NE [REP8-162] did not raise any issues on the level of information.

19.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY

19.4.1. The European sites and qualifying features identified in paragraphs 19.2.7 and 19.2.10 above were further assessed by the Applicant to determine if they could be subject to adverse effects on integrity (AEoI) from the Proposed Development, either alone or in-combination. The assessment of AEoI was made in light of the conservation objectives for the European sites [Section 3, REP3-043].

19.4.2. No additional impacts were identified during the Examination to be taken into account in the Applicant's AEoI assessment.

19.4.3. We are satisfied, based on the information provided, that the correct impacts have been assessed. This section discusses the conclusions with respect to AEoI for each site.

19.4.4. The Applicant's approach to the in-combination assessment is discussed above at paragraph 19.2.8.

19.4.5. The Applicant's conclusions in respect of adverse effects on integrity are presented in the HRA Report (Table 5.3.1, [REP3-043]).

19.4.6. Based on the findings of the Examination, we are satisfied that an assessment of AEoI from the Proposed Development in combination with other plans or projects can be based on this information and that no other plans or projects should be taken into account.

SITES FOR WHICH THE APPLICANT CONCLUDED ADVERSE EFFECTS ON INTEGRITY CAN BE EXCLUDED

19.4.7. The Applicant's HRA Report [REP3-043] concluded that the Proposed Development will not result in AEoI of the following European sites, alone or in-combination:

- Thames Basin Heaths SPA (Ockham and Wisley Common SSSI);
- Ashdown Forest SAC;
- Ashdown Forest SPA;
- Thames Basin Heaths SPA (Chobham Common SSSI); and
- Thursley, Ash, Pirbright and Chobham SAC (Chobham Common SSSI).

19.4.8. The Applicant's conclusion of no AEoI for each of the sites is set out in Section 5 of [REP3-043].

19.4.9. AEoI for the project alone was ruled out for Thames Basin Heaths SPA (Ockham and Wisley Common SSSI), as the area of the SSSI was not a supporting habitat of the qualifying bird features, within the SPA. The woodland present on the SSSI is a buffer between the heathland and the M25/A3. AEoI in combination with other plans or projects was ruled out as the effects, noting minor exceptions, are limited to an area of woodland buffer proximate to the road which does not support the interest

features and therefore impacts from nutrient nitrogen deposition on such habitats would not in turn affect the qualifying features of the site.

19.4.10. AEoI in combination with other plans or projects was ruled out for Ashdown Forest SAC/ SPA. This was on the grounds that the areas of habitat with the potential for AEoI located within 10m of the A22 carriageway did not comprise either the habitat qualifying feature of the SAC or supporting habitat of the SPA birds. The HRA Report further notes that these findings correspond with those for the Tandridge Local Plan HRA.

19.4.11. The Applicant excluded in-combination on the Thames Basin Heaths SPA (Chobham Common SSSI) noting that the habitat found to be present does not comprise supporting habitat for the bird qualifying features. It was further noted that with the proximity of the road, restoration of the habitat was unlikely. It was determined that if restored, exceedances would not be sufficient to drive meaningful ecological change. However, the proximity to the major roads would likely deter interest feature birds from using the site.

19.4.12. AEoI in combination with other plans or projects were ruled out for the Thursley, Ash, Pirbright and Chobham SAC as the qualifying habitat features for the SAC were not found to be present where exceedances of Nitrogen Oxides (NO_X) and nitrogen deposition were predicted to occur.

19.4.13. These conclusions do not require the delivery of mitigation to conclude no AEoI on these sites.

19.4.14. Neither the ANCB, nor other IPs, raised concerns in relation to the Applicant's conclusions for these sites and features [RR-3223]. NE agreed with the conclusions of the HRA Report in their Relevant Representation.

19.4.15. The ExA is satisfied on the basis of the information above that AEoI on all these sites and their qualifying features can be excluded. The complete details of these sites are provided in Table 19.1 below.

Table 19.1: Likely Significant Effects to European Sites and Qualifying Features for which Adverse Effects on Integrity from the Proposed Development (Alone or In-Combination) can be Excluded

European Site(s)	Qualifying Feature(s)	LSE Identified From	AEoI alone	AEoI in-combination
Mole Gap to Reigate Escarpment SAC	Stable xerothermophilous formations with *Buxus sempervirens* on rock slopes (Berberidion p.p.) Semi-natural dry grasslands and scrubland facies on calcareous substrates *important orchid sites *Taxus baccata* woods of the British Isles *priority feature European dry heaths Asperulofagetum beech forests Great crested newt (Triturus cristatus) Bechstein's bat (Myotis bechsteinii)	None	No	N/A
Ashdown Forest SAC	Northern Atlantic wet heaths with *Erica tetralix* European dry heaths Great crested newt (*Triturus cristatus*)	Aerial emissions during construction on all qualifying features	No	No
Ashdown Forest SPA	Dartford Warbler (*Sylvia undata*) Nightjar (Caprimulgus europaeus)	Aerial emissions during construction	No	No

		on all qualifying features		
The Mens SAC	Atlantic acidophilous beech forests with Ilex and sometimes also *Taxus* in the shrub layer Barbastelle bat (barbastella barbastella)	None	No	No
Ebernoe Common SAC	Atlantic acidophilous beech forests with Ilex and sometimes also *Taxus* in the shrub layer (or *Ilici-Fagenion*) Barbastelle bat (barbastella barbastella) Bechstein's bat (Myotis bechsteinii)	None	No	No
Thames Basin Heath SPA	Dartford Warbler (*Sylvia undata*) Nightjar (Caprimulgus europaeus) Woodlark (Lullula aborea)	Aerial emissions during construction on all qualifying features	No	No
Thursley Ash, Pirbright and Chobham SAC	Depressions on peat substrates of the *Rhynchosporion* Northern Atlantic wet heaths with *Erica tetralix* European dry heaths	Aerial emissions during construction on all qualifying features	No	No

ADVERSE EFFECTS ON INTEGRITY ASSESSMENT OUTCOMES- SUMMARY

Proposed Development Alone and In-Combination

19.4.16. The Applicant's HRA Report concluded that AEoI can be excluded on the European site(s) listed in Table 19.1 from the Proposed Development alone, or in-combination with other plans and projects. These conclusions were agreed with the ANCB [RR-3223].

19.5. ExA's CONCLUSION ON HABITATS REGULATIONS ASSESSMENT

19.5.1. The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the Proposed Development with respect to adverse effects on potentially affected sites must be assessed by the SoS.

19.5.2. Seven European Sites and their qualifying features were considered in the Applicant's assessment of LSE:

- The Mens SAC;
- Ebernoe Common SAC;
- Mole Gap to Reigate Escarpment SAC;
- Thames Basin Heaths SPA (Ockham and Wisley Common SSSI as a component);
- Thames Basin Heaths SPA (Chobham Common SSSI as a component);
- Thursley, Ash, Pirbright and Chobham SAC (Chobham Common SSSI component only);
- Ashdown Forest SPA; and
- Ashdown Forest SAC.

19.5.3. LSE were identified for the following four sites:

- Thames Basin Heaths SPA;
    - Ockham and Wisley Common SSSI as a component; and
    - Chobham Common SSSI as a component.
- Thursley, Ash, Pirbright and Chobham SAC (Chobham Common SSSI component only);
- Ashdown Forest SPA; and
- Ashdown Forest SAC.

19.5.4. NE confirmed it agreed with the Applicant's conclusion of no LSEs in respect of the remaining European sites identified [RR-3223].

19.5.5. We are satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

19.5.6. The Applicant's HRA Report [REP3-043] concluded that the Proposed Development will not result in AEoI of the following European sites, alone or in-combination:

- Thames Basin Heaths SPA (Ockham and Wisley Common SSSI);
- Thames Basin Heaths SPA (Chobham Common SSSI); Ashdown Forest SAC;

- Ashdown Forest SPA; and
- Thursley, Ash, Pirbright and Chobham SAC.

19.5.7. NE confirmed it agreed with the Applicant's conclusion of no AEoI in respect of the remaining European sites identified [RR-3223].

19.5.8. We consider that there is sufficient information before the SoS for Transport to enable an appropriate assessment to be undertaken.

20. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

20.1. INTRODUCTION

20.1.1. This Chapter provides an evaluation of the planning merits of the Proposed Development. It considers the legal and policy context set out in Chapters 2 and 3, the Principle of the Proposed Development and the Need Case from Chapter 4 and individual applicable legal and policy requirements identified in Chapters 5 to 18 above. Whilst the Habitats Regulations Assessment (HRA) has been documented separately in Chapter 19, relevant facts and issues set out in that Chapter are taken fully into account.

20.1.2. The Proposed Development seeks to add capacity at Gatwick Airport by moving the existing northern runway and thus enabling dual runway operations. The Applicant states that this would grow the airport to a throughput of 80.2 million passengers per annum (mppa) in 2047 from their 2019 figures of 46mppa. In the absence of the Proposed Development, the Applicant considers that the Airport could grow to 67.2mppa in 2047 (the future baseline) using extant planning permissions and permitted development rights. Chapter 4 considers these figures in detail. Our conclusion also draws a distinction between the final position of the Applicant, based on the application as applied for and its final draft Development Consent Order (dDCO) and the view of the Examining Authority (ExA) using our recommended Development Consent Order (rDCO), which can be found in Appendix E to this Report.

20.1.3. Discussions took place during the Examination over whether the Proposed Development should be assessed against section (s) 104 or s105 of the Planning Act 2008 (PA2008). We considered these discussions in Chapter 3 and concluded that the primary focus of the Proposed Development is the airfield works and that the starting point in policy terms for the Proposed Development should be the Aviation National Policy Statement (ANPS). As this does not have effect in relation to the Proposed Development, the application falls to be considered primarily under s105 of the PA2008, but the ANPS will be both an important and relevant consideration in the determination of the application, particularly as the airport lies within the south-east of England and is considered to be a London airport.

20.1.4. The works to improve the M23/ A23, the North and South Terminal junctions and Longbridge roundabout are a Nationally Significant Infrastructure Project in their own right. Section 104 of the PA2008 applies to the highway elements of the Proposed Development although the highway works are subsidiary to the airfield works. Consequently, the National Networks National Policy Statement (NNNPS) is also an important and relevant consideration in the determination of the application (where appropriate).

20.2. THE PLANNING BALANCE

The Principle of the Proposed Development and the Need Case

20.2.1. The ExA concluded in Chapter 4 that the Proposed Development would involve works to an existing runway, and that the scale of the Proposed Development falls within the Making Best Use of existing runways (MBU) policy contained within the ANPS and ‘Beyond the Horizon, the future of UK Aviation’. Such policies

demonstrate that there is a nationally recognised need for aviation development, particularly in the south-east of England.

20.2.2. We have concluded that the growth which is forecast for the Northern Runway Project (NRP) may not be as rapid as predicted by the bottom-up forecasts, but it would likely be 'quicker' than the top-down forecasts presented. This would lead to the benefits of the NRP in the 'early years' being overstated to a small degree, but this would not be significant and would be a relatively short-term effect.

20.2.3. In terms of the future baseline and NRP forecasts, the ExA is of the view that these are overly optimistic and unlikely to be realised in the timeline forecast. On the basis of the evidence submitted, considered in Chapter 4, we are of the view that a likely outcome by 2047 would be in the region of 60 to 61mppa for the future baseline and 76 to 77mppa for the NRP. This results in a delta of around 16 to 17mppa, larger than the Applicant's prediction of some 13mppa.

20.2.4. We consider that with the NRP Gatwick could reach 80.2mppa in due course, sometime after 2047. We are of the view that this delay would not be significant and consider that if ultimately it takes the airport longer than expected to reach anticipated levels of throughput, then, as stated in the decision to allow growth at Stansted noted in Chapter 4, the corresponding environmental effects would also take longer to materialise or may reduce due to advances in technology (including technology associated with the Jet Zero Strategy (JZS)) that might occur in the meantime.

20.2.5. The ANPS confirms that there is a need for additional airport capacity. We have found that the need that the Proposed Development would partially satisfy would be additional to and different from that which would be met by the London Heathrow North West Runway (LHR NWR) scheme. We therefore ascribe moderate weight to matters relating to Need and the Case for the Proposed Development. This weight applies equally to the Applicant's case under the dDCO and to the Proposed Development with the rDCO in force.

Traffic and Transport

20.2.6. Issues around any differences in the passenger throughput in the future baseline and the Proposed Development case were examined. However, the Applicant's commentary relating to sensitivity tests concerning these differences does not give us suitable comfort; additional impacts could arise through any such changes. Whilst the ExA has concerns that the Environmental Statement (ES) may have underestimated likely effects, the Transport Assessment (TA) has assessed junction capacities up to a level of traffic associated with 80.2mppa. The ExA considers that this provides sufficient comfort that there would not be severe residual impacts beyond those assessed in the ES and aligned with the controls proposed in the rDCO.

20.2.7. Notwithstanding this, there would be increased road traffic and public transport passenger journeys creating additional stress on already congested networks. Consequently, the ExA considers that traffic and transport carries a moderate level of weight against the making of the Order as applied for (the dDCO case).

20.2.8. In the rDCO we have recommended additional controls for the Surface Access Commitments (SAC) and parking levels. With these additional controls the harm caused would be reduced and would attract a little weight against the making of the Order.

Noise and Vibration

20.2.9. With regard to aircraft noise, we conclude that the Applicant has not met the requirements of ANPS paragraph 5.53 with respect to the assessment of aircraft noise and ANPS paragraph 5.60 with respect to the avoidance of significant noise effects and the minimisation of adverse noise effects from aircraft noise. As a result, we ascribe moderate weight to the issue of noise and vibration against the making of the Order in the form represented by the Applicant's final dDCO.

20.2.10. Based on our proposed modifications to Requirement (R)1, R15, R16, and R18, and Schedules 11 and 14 in the rDCO, which we consider would address our concerns, we find that noise and vibration effects would reduce to a neutral effect in the overall planning balance.

Air Quality

20.2.11. The Applicant's conclusion was that the construction and operation of the Proposed Development would not cause any significant adverse air quality effects. This conclusion had not changed during the course of the Examination. No substantive evidence was put before us that challenges this conclusion.

20.2.12. As reported in Chapter 5, we have concerns over the reliability of the Applicant's transport assessment because of concerns over the future baseline. We consider that a larger change in traffic would cause a larger change in air quality. However, as the predicted total concentrations would not exceed the values reported in the ES, we conclude that the Applicant's assessment of no significant residual effects on air quality would be unaltered.

20.2.13. The Applicant and the Legal Partnership Authorities (LePAs) reached agreement on a range of measures that would support local air quality monitoring and further work in relation to ultrafine particulates. We do not consider that any outstanding areas of disagreement between the Applicant and the LePAs are sufficient to compromise the Proposed Development when compared with the requirements of the ANPS. We therefore conclude that neutral weight should be given to the issue of air quality in the overall planning balance of the Proposed Development for both the application as applied for and the rDCO.

Greenhouse Gas Emissions

20.2.14. In line with requirements in the ANPS and NNNPS the Applicant has undertaken an assessment of likely significant climate factors, assessing the carbon impact against the Government's carbon obligations. This has been done before and after mitigation and assessed worst-case scenarios. Mitigation measures have been proposed to limit the carbon impact of the Proposed Development through the Carbon Action Plan (CAP) and SAC. The Applicant has assessed the likely significant climate factors of the Proposed Development and mitigation through the CAP, SAC and DCO requirements would manage the carbon footprint.

20.2.15. There is no dispute that the Proposed Development would increase greenhouse gas (GHG) emissions and approximately 95% of those emissions are attributable to aviation impacts. These would be regulated at national and international levels including through the JZS which seeks to ensure that Government meets legal duties including UK carbon budgets and achieving net zero by 2050.

20.2.16. We find no reason why airport buildings and ground operations emissions from the Proposed Development as part of wider airport operations cannot be managed to be

net zero by 2030 and to achieve zero-emissions by 2040. Nevertheless, their contribution to total GHG emissions in the short term would be considerable.

20.2.17. Aviation policy does not impose a capacity limit on UK airports to achieve climate change objectives and the Government's key objective on aviation emissions is to ensure that the aviation sector makes a significant and cost-effective contribution towards reducing global emissions. The Government's approach is not to directly intervene to limit aviation growth. At the same time, given legal obligations and other recent airport expansion decisions it is reasonable to believe that the Government will introduce the necessary measures to ensure that the Jet Zero trajectory is achieved and our conclusions are based on this.

20.2.18. Paragraphs 5.82 of the ANPS and 5.18 of the NNNPS note that any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets including carbon budgets. We have no clear evidence that the indicative 5% threshold of a carbon budget has been met, with the Applicant's own assessment indicating an effect of over 3.4%. However, the effects of non-CO_2 emissions, international inbound flights and fuel produced outside the UK were not included in the assessment which also only covers the period to 2037, not to 2050 (although it does relate to the entire airport). Nevertheless, were these other factors included, it is likely that the threshold would be reached and that a significant adverse effect in EIA terms should be recorded.

20.2.19. We have found that the increase in GHG emissions would be such that it is likely that there would be a material impact on achieving carbon targets which would be contrary to paragraph 5.70 of the ANPS. Consequently, the mitigation measures cannot be considered acceptable contrary to the requirement of paragraph 5.83. While the trajectory of emissions would be towards net zero by 2050, based on the JZS, the Proposed Development would not contribute to radical reductions in GHG emissions as required by the National Planning Policy Framework (NPPF).

20.2.20. We have reviewed recent airport expansion decisions and legal challenges and note that the SoS's decision in respect of Manston Airport concluded that carbon emissions should be given neutral weight. However, in the light of the Finch and West Cumbria cases as well as the Carbon Budget Delivery Plan we find that the landscape in respect of GHG emissions has changed. Accordingly, GHG emissions should be afforded moderate weight against the Proposed Development in the planning balance.

Climate Change

20.2.21. The ExA is satisfied that the Applicant has undertaken its assessment in accordance with the approach proposed in the ANPS. We agree with the Applicant's conclusion that there are unlikely to be any significant effects associated with climate change and we are satisfied that there are not features of the design critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected.

20.2.22. We have taken account of concerns about overheating arising from the noise insulation scheme and while we do not consider that the Applicant's preferred approach would overcome these concerns, R18 in the rDCO would address this matter.

20.2.23. Consequently, we conclude that the requirements in respect of climate change set out in the ANPS and NNNPS are met. Our overall conclusion is that climate change would have a neutral effect in the planning balance and does not weigh for or against the making of the Order either as applied for or with the rDCO in place.

Socioeconomics

20.2.24. We are satisfied that the Applicant has undertaken an appropriate assessment in terms of socioeconomics and that the assessment has adequately identified the effects of the Proposed Development. We are satisfied that the Proposed Development would provide significant beneficial effects in terms of the availability of labour, due to the airport attracting additional staff, and direct, indirect, and induced employment. Estimates of such employment forecasts were common ground by the end of the Examination between the Joint Local Authorities and the Applicant. Gatwick Airport is already an important employer in the area and currently supports a significant level of local employment and the possible economic benefits from the Proposed Development, if realised, would undoubtedly result in both local and national economic growth. We are also content that the Applicant has adequately justified the methodology it has followed to assess catalytic effects.

20.2.25. There would be significant employment opportunities created by the Proposed Development. Additionally, we are satisfied that following further engagement with local authorities and stakeholders, the Applicant has sought to maximise further employment and educational opportunities. We are also satisfied that, given the very small proportion of construction workers who would require accommodation, significant adverse effects on the availability of affordable housing and private rented accommodation would not be experienced as a result.

20.2.26. We are mindful of the housing emergency faced by Crawley Borough Council (CBC), but we are satisfied that the provision of the Homelessness Prevention Scheme and associated funding could provide a mechanism for the mitigation of potential housing effects. The availability of employment lies at the heart of inclusive economic growth and the alleviation of poverty. It is also widely accepted that good quality employment can have positive influences on an individual's overall health and wellbeing. We also consider that the initiatives set out in the Employment, Skills and Business Strategy (ESBS) would promote and increase health equity by enabling greater accessibility to employment for local vulnerable groups. The measures included within the ESBS would, through training, employment and procurement initiatives, aid in removing barriers to employment.

20.2.27. We have reviewed the key principles of the proposed Gatwick Community Fund and consider them to be appropriate. The proposed governance arrangements would allow for any affected communities to be part of the process in delivering the benefits that would come from the fund and this would respond directly to the effects of the development over a prolonged period.

20.2.28. We are therefore satisfied that the Proposed Development would support economic development in both the local area and nationally. Such effects would not be affected by the conclusions of the ExA with regard to the forecast traffic levels for the future baseline and the Proposed Development, as found in Chapter 4 of this Report.

20.2.29. Accordingly, we ascribe moderate weight to matters relating to socioeconomics in favour of the Order being made under the dDCO and the rDCO.

Water Environment

20.2.30. The ExA is satisfied that there are no outstanding construction and operational issues relating to flood risk, water supply and water quality that would not be satisfactorily controlled by the dDCO.

20.2.31. Discussions were ongoing during the Examination concerning the capability and capacity of the public sewer network (PSN) to accommodate additional flows arising from the Proposed Development, with a potential onsite Wastewater Treatment Works (WTW) identified as a possible solution. The preference from the Applicant and the Environment Agency was for wastewater flow to be discharged into the existing PSN. We concluded that there needs to be some certainty as to the ability of Thames Water Utilities Limited (TWUL) infrastructure to accommodate the additional wastewater flows before any consideration that an alternative onsite WTW should be constructed. We are therefore recommending that an amended R31 that would allow for both alternative options, but first preference would be given to the connection to the PSN under TWUL's control.

20.2.32. The ExA considers that on the basis of the flood risk, wastewater, water supply and water quality considerations set out above that the Proposed Development accords with the relevant sections on the ANPS and the NNNPS. Therefore, should the SoS accept the amended R31 as drafted in the rDCO the ExA considers that the Proposed Development should be given neutral weight in the overall planning balance. If the SoS were not minded to accept the ExA's amended R31 and the wastewater issues remain unresolved, the overall conclusion would be that it would attract a little weight against making the Order.

Landscape and Townscape

20.2.33. Harm would be caused to various receptors during construction and operation, until landscaping mitigation has matured. The ES found harm to various receptors, to which the ExA has also found that harm would be caused at:

- Pentagon Field;
- North Terminal Long Stay Car Park (NTLSCP);
- Car Park X;
- Car Park Y; and
- A23 highways works.

20.2.34. Some harm would be caused to nationally designated landscapes, with the highest levels of harm to the High Weald National Landscape. However, harm to all identified nationally designated landscapes would be minor. Such levels of harm would not be affected by the conclusions of the ExA with regard to the forecast traffic levels for the future baseline and the Proposed Development.

20.2.35. The Proposed Development would not compromise the purposes of designation of the relevant nationally designated areas. With respect to the duty under s85 of the Countryside and Rights of Way Act 2000 (and s245 of the Levelling Up and Regeneration Act 2023), the Proposed Development would conserve such areas, but would not enhance them.

20.2.36. The ExA ascribes a little harm on matters relating to landscape and townscape against the making of the Order. This conclusion applies to both the dDCO and rDCO.

Historic Environment

20.2.37. The ExA considers that controls in the Order as applied for (the dDCO) and the Written Schemes of Investigation provide adequate control and mitigation for archaeological purposes.

20.2.38. The ES finds harm to various heritage assets, The ExA agrees with the conclusions of the ES and Historic England (HE) except for the Grade II* listed Charlwood House and Charlwood Park Farmhouse. Here, the ExA considers harm would be caused by the construction of nearby car parks.

20.2.39. The ExA notes the views of various parties over the potential effects of increased air traffic over significant heritage assets in Kent. However, the Applicant has complied with the relevant sections of the ANPS and has correctly carried out the appropriate HE noise metric test. On the basis of the results of this test and the conclusions of HE, the ExA considers that the Proposed Development would not increase harm to the setting of such heritage assets.

20.2.40. The harm to all the assets identified in Table 12.5 of this Report would be less than substantial, and the ExA is satisfied that the Proposed Development would not result in substantial harm to any designated or non-designated heritage assets.

20.2.41. Within the range of less than substantial, harm would be at the lower end of the scale to all identified assets (with some only being affected temporarily). Nevertheless, where there is harm, the SoS must give that harm considerable importance and weight. Such levels of harm would not be affected by the conclusions of the ExA with regard to the forecast traffic levels for the future baseline and the Proposed Development, as found in Chapter 4.

20.2.42. Due to the number of assets identified where harm occurs, the ExA ascribes moderate harm to matters relating to the historic environment against the making of the Order. This harm applies to both the Order as applied for and to the Order with the ExA's rDCO. This harm is weighed against the public benefits of the Proposed Development in this chapter below.

Ecology

20.2.43. The ExA has given careful consideration to the views of IPs, to the evidence presented and the responses received, including the view of the relevant Statutory Nature Conservation Body, Natural England (NE). We find that the Applicant has addressed those concerns as far as possible in line with the policy within the ANPS and referenced through the relevant Local Impact Reports (LIR) as important and relevant matters.

20.2.44. While there would be adverse effects on some habitats and protected species during construction arising from the loss of woodland habitat, these impacts would be temporary but long term until mitigation planting matures.

20.2.45. During the operational phase, the Applicant's proposed mitigation and compensation measures would ensure that there would be no significant adverse residual effects on ecology and the habitat creation/ enhancement measures secured through the outline Landscape and Ecology Management Plan would result in significant beneficial effects. In addition, we consider that there is an overall benefit from Biodiversity Net Gain (BNG). However, as the proposed BNG calculations fall foul of habitat trading rules and do not include all land within the Order Limits, we consider that this would carry limited weight.

20.2.46. Mitigation and compensation measures would be adequately secured through requirements R7, R8, R28 and R39 of the rDCO as well as Schedule 6 of the s106 agreement.

20.2.47. Nevertheless, because of the timescale to achieve the beneficial effects, our overall conclusion in respect of ecology is that a little weight should be ascribed against the Order as applied for. This conclusion also applies to the Order with the ExA's rDCO.

Health and Wellbeing

20.2.48. We find that the Applicant's assessment of health and wellbeing has been appropriately undertaken in line with the requirements of paragraphs 4.70 to 4.73 of the ANPS and paragraphs 4.81, 4.82, 5.7 and 5.195 of the NNNPS. In respect of mitigation, apart for the issue of overheating, we consider the Applicant has identified suitable means of mitigation. In terms of overheating, as detailed above, we do not find the Applicant's preferred approach to be satisfactory and consider the inclusion of R18 in the rDCO to be necessary.

20.2.49. In conclusion, we find that the Proposed Development would accord with the ANPS, NNNPS, other relevant legislation and policy requirements and we are satisfied that, with the inclusion of R18 in the rDCO, that mitigation would be adequately provided for and secured. Consequently, with the inclusion of R18 the health and wellbeing effects of the Proposed Development can be considered to be neutral and do not weigh for or against the making of the Order.

20.2.50. However, should R18 in the rDCO not be included, we consider that the health and wellbeing effects of the Proposed Development should attract a little weight against the making of the Order.

Land Use and Recreation

20.2.51. The Applicant's assessment of land use and recreation has been appropriately undertaken in line with the requirements of the ANPS and the NNNPS. We are satisfied that there would no loss of Best and Most Versatile land and consider the Applicant has taken appropriate measures to safeguard soil resources and ensure effective reinstatement is secured through the need for submission and approval of a Soil Management Plan prior to the commencement of construction, which would be secured by R29.

20.2.52. Further mitigation, provided through R8 of the dDCO, would also ensure the appropriate delivery of replacement open space as required through paragraph 5.181 of the NNNPS.

20.2.53. Consequently, the land use and recreation effects of the Proposed Development can be considered to be neutral and do not weigh for or against the making of the Order, either as applied for or as provided with the ExA's rDCO.

Other Matters

20.2.54. All conclusions in the topics considered under 'Other Matters' apply equally to the Order being applied for and the ExA's proposed rDCO.

Consideration of Alternatives

20.2.55. The ExA considers that all questions raised were answered satisfactorily by the Applicant and that the application considered realistic alternatives, given the

constricted nature of the site and the specifics of the Proposed Development. We consider that there are no matters relating to site selection and alternatives which would weigh for or against the Order being made.

Geology and Ground Conditions

20.2.56. We have concluded that the Code of Construction Practice (CoCP) as secured by R7 in the dDCO is sufficient to address effects relating to geology and ground conditions and have concluded that neutral weight should be given to the issue of geology and ground conditions in the overall planning balance.

Major Accidents and Disasters

20.2.57. Gatwick Airport is already a busy airport with well-established safety plans and procedures. The Applicant has set out that the increase in passenger numbers and aircraft movements does not present any additional impacts that would not be addressed by these existing plans and procedures. This is agreed by the Civil Aviation Authority who state that "*there are no obvious safety-related impediments why the project should not progress with respect to safety considerations at the Airport."*

20.2.58. During construction the Applicant's emergency procedures would be developed in accordance with the CoCP. The CoCP would be a certified document listed in Schedule 14 and secured by Article 52 of the dDCO.

20.2.59. Taking all of these matters into account the ExA concludes that the Proposed Development would have a neutral effect in the planning balance.

Resource and Waste Management

20.2.60. The ExA finds that the Applicant's assessment of resource and waste management has been appropriately undertaken in line with the requirements of paragraphs 5.141 of the ANPS and 5.42 of the NNNPS. Mitigation, provided through R25 and R30 of the rDCO would minimise the volume of waste arisings and the volume of waste sent to landfill thereby reducing the risk of adverse impacts associated with resource and waste management as required through paragraphs 5.136 and 5.143 to 5.145 of the ANPS and 5.43 to 5.44 of the NNNPS. Consequently, the resource and waste management effects of the Proposed Development can be considered to be neutral and do not weigh for or against the making of the Order.

Cumulative Effects

20.2.61. The assessment of cumulative and inter-related effects is based on the mitigation measures identified within each of the environmental topic chapters of the ES. The ExA concludes that the Applicant's assessment accords with paragraphs 4.14 and 4.15 of the ANPS, and paragraphs 4.16 and 4.17 of the NNNPS. Paragraph 17.6.5 identifies some temporary and permanent effects which are taken into account in Chapter 12 of this Report. Given that no further significant residual cumulative effects are identified in this assessment the ExA considers that neutral weight should be given to cumulative effects in the overall planning balance.

Good Design

20.2.62. We have concluded that the design detail accompanying the application meets the required standard. The Applicant has demonstrated how the design process was conducted and how the proposed design evolved. While the design of various elements of the Proposed Development could be more detailed, the ExA is mindful

that it is reasonable for the Applicant to maintain some design flexibility for the Proposed Development. The various documents that make up the design case for the Proposed Development are reasonably clear to read across the various documents and no harm arises from design advice falling within separate documents.

20.2.63. Aside from the NTLSCP, we agree with the list of works in Schedule 12 in the dDCO. While the ExA considers that a Design Review Panel for wider elements of the Proposed Development would have been of benefit, the introduction of the Design Advisor to the Examination as Annex A to the Design Principles is welcomed by the ExA. Design of specific elements of the Proposed Development is adequately covered by the various design based and other documents. The provisions of R4 of the dDCO changed through the Examination and controls over design of the specific elements of the Proposed Development would be more demanding than under the provisions of the Town and Country Planning (General Permitted Development) Order 2015.

20.2.64. Taking all the above together, and with the suggested alteration to Schedule 12 included in the rDCO, the ExA considers that the Proposed Development satisfies the provisions of the ANPS in relation to good design. The ExA considers that the Proposed Development will be as sustainable and as aesthetically sensitive, durable, adaptable and resilient as it can reasonably be, having regard to regulatory and other constraints including accounting for natural hazards such as flooding. In coming to this view the ExA has taken into account the ultimate purpose of the infrastructure and borne in mind the operational, safety and security standards which the design has to satisfy.

20.2.65. The ExA ascribes a little weight on matters relating to Good Design in favour of the Order being made under the rDCO. Should the NTLSCP not be included in Schedule 12 of the final DCO (if granted) and the Order as applied for then this weight would reduce to neutral (neither in favour or against the Proposed Development).

Habitats Regulations Assessment

20.2.66. Whilst the Secretary of State (SoS) is the competent authority under the Habitats Regulations and will make the definitive assessment, the ExA is satisfied on the basis of the information provided that Adverse Effects on Integrity on all relevant sites and their qualifying features can be excluded.

20.3. ASSESSMENT AGAINST SECTION 105 OF THE PLANNING ACT 2008

20.3.1. This chapter summarises the benefits and disbenefits of the Proposed Development. The purpose of this section is to consider them together to reach a recommendation as to whether the case is made for granting development consent.

20.3.2. Section 105 of the PA2008 states that in deciding the application the SoS must have regard to:

- Any local impact report,
- Any matters prescribed in relation to development of the description to which the application relates, and
- Any other matters which the SoS thinks are both important and relevant to the SoS's decision.

20.3.3. In reaching its conclusions, the ExA has had particular regard to the LIRs submitted. The individual chapters in this Report have considered the relevant sections of the LIRs in their individual recommendations, summarised above. Chapter 2 of this Report notes that no overall conclusion was drawn on the Proposed Development as a whole in the Joint West Sussex Local Authorities and East Sussex County Council (ESCC) LIRs, while the LIRs of the Joint Surrey Councils, Kent County Council, and Sevenoaks District Council raised concerns that acknowledged economic and strategic benefits did not override environmental considerations.

20.3.4. The ANPS and the NNNPS (where appropriate) are important and relevant considerations in the determination of the application. The ExA notes that in paragraph 1.41 of the ANPS it states that the ANPS will be '*particularly*' important and relevant where it relates to London or the south-east of England, and that among the considerations that will be important and relevant are the findings as to the need for new airport capacity.

20.3.5. The ANPS stresses the importance of aviation to the UK economy and the need for new airport capacity. Beyond the Horizon, the Future of UK aviation (Making Best Use of Existing Runways) also states that the Government is supportive of airports beyond Heathrow making best use of their existing runways.

20.3.6. We have concluded that the Proposed Development would make the best use of an existing runway and that there is a nationally recognised need for aviation development, particularly in the south-east of England. We also note that the current capacity at London airports falls far short of this need, and that the need that has been shown to be present for Gatwick's growth is both largely additional to, and different from the need that would be met by the LHR NWR runway scheme. In our view the partial fulfilment of such need that would be provided by the Proposed Development weighs moderately in favour of the Proposed Development.

20.3.7. We note that Gatwick Airport is already an important employer in the area and currently supports a significant level of local employment and that the potential economic benefits from the Proposed Development, if realised, would undoubtedly result in both local and national economic growth. There would be significant employment opportunities created by the Proposed Development and the Applicant has sought to maximise further employment and educational opportunities. The Proposed Development also has the potential to improve the airport environs with the correct detail paid to matters of good design.

20.3.8. On the other hand, we have found that the Proposed Development would cause harm in various areas. Of particular significance is that we have found, in the light of the Finch case, that the scale of GHG emissions arising from the Proposed Development would be such that it is likely that there would be a material impact which would be contrary to paragraph 5.70 and 5.83 of the ANPS. The Proposed Development would also not contribute to radical reductions in GHG emissions as required by the NPPF. Our judgment is that a significant effect in EIA terms should be recorded and that, taking into account the JZS, it is likely that the Proposed Development would have a material effect on achieving carbon targets.

20.3.9. Harm has also been found in the Order as applied for in matters of traffic and transport, ecology, noise, the water environment, health and wellbeing, and landscape and townscape. Great weight must also be given to harm to heritage assets.

Our Conclusions

20.3.10. Consideration of the Proposed Development is therefore clearly finely balanced, and we acknowledge that our recommendation is too. The Proposed Development and our consideration of it was complex and we are grateful to the many Interested Parties who gave up their time to participate in the Examination, which was improved greatly by their expertise.

20.3.11. Essentially there are three possibilities to our recommendation: that we recommend that the Order is not made; that the Order is made with the Applicant's dDCO; or that the Order is made with the rDCO. These are considered in turn.

Refusal Scenario

20.3.12. It is relevant to consider the position if the Order were not made. Submissions by the Applicant clarified the controls over the existing use of the airport. The extant planning permission (CR/128/79) restricts the existing use of the northern runway, and: *"Beyond that, there are no planning controls on the growth of the airport, including regarding numbers of flights or hours of operation"* [REP1-057].

20.3.13. An agreement under s106 of the Town and Country Planning Act 1990 (s106 agreement) was first entered into between the Applicant, West Sussex County Council (WSCC) and CBC in 2001. This has been rolled forward a number of times with the latest version executed in 2022 due to expire on 31 December 2024. We understand that an extension to this s106 agreement is planned to operate from 1 January 2025 until the DCO is approved (if it is). The obligations within the s106 agreement seek to manage and mitigate operational aspects of the airport and airport related development on the environment while promoting the positive contribution to the local economy. Night flight restrictions are also set by Government periodically as Gatwick is a designated airport under s78 of the Civil Aviation Act 1982. The current designation (to October 2025) sets a movement limit of 11,200 movements in the summer and 3,250 in the winter between the hours of 23:30 and 06:00.

20.3.14. At Issue Specific Hearing 9 the ExA asked whether, if development consent were not approved for the Proposed Development, the existing controls would be retained. The Applicant confirmed that existing obligations would be retained but also noted that the current s106 agreement is time limited and subject to review. The LePAs affirmed this but noted that it could not be assumed that the baseline conditions in 2019 would remain unchanged by 2047.

20.3.15. The Applicant's future baseline for traffic levels in 2047 is 67mppa. In Chapter 4, the ExA has concluded that a more likely outcome would be in the region of 60 to 61mppa. However, this may grow in subsequent years. Therefore, without the Proposed Development, the airport could grow to 61mppa and above with no planning controls on the growth of the airport, other than a s106 agreement which was based on historic obligations, and the night flight restrictions imposed by Government.

20.3.16. If development consent were granted, in either scenario, the controls that would be introduced would be in place from the date the Order was made and would be in place throughout the growth of the airport from that date, thereby effectively applying not only to the growth of the Proposed Development, but also the underlying future baseline.

The Order as Applied for (the Applicant's dDCO) Scenario

20.3.17. The Applicant's dDCO would introduce a wider range of controls than the existing position. In our view under the dDCO moderate levels of harm would be caused to matters of GHG emissions, traffic and transport, and noise, along with a little harm to matters relating to the water environment and health and wellbeing. In this scenario the harm that the Proposed Development would cause would outweigh the benefits.

The Order with the ExA's rDCO Scenario

20.3.18. By contrast, the rDCO would introduce a wide range of detailed planning controls on the operation of the Proposed Development, such that harm levels would be reduced in matters of traffic and transport and removed in relation to noise, the water environment and health and wellbeing. Additional benefit would also result from good design. Under this scenario the benefits of the Proposed Development would outweigh the identified harms, including public benefits sufficient to outweigh harm to heritage assets.

ExA's OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

20.3.19. For all of the above reasons and having had regard to the LIRs as well as the findings and conclusions on important and relevant matters set out in this Report, the ExA concludes that:

- with the Applicant's dDCO Development Consent should not be granted
- with the ExA's rDCO approval should be granted for the Proposed Development.

20.3.20. In coming to this view the ExA notes that the Joint Local Authorities (JLAs) (comprising in this instance CBC, Mid Sussex District Council, WSCC, Reigate and Banstead Borough Council, Mole Valley District Council, Tandridge District Council, Surrey County Council, and ESCC) would not object to consent if the DCO were to include additional measures to control and regulate the Proposed Development as detailed in their response at Deadline 8. While the ExA's rDCO does not contain all the details requested by the JLAs, particularly on the topic of environmentally managed growth, the rDCO does in the ExA's view provide necessary, relevant, enforceable, precise and reasonable controls over the Proposed Development such that adverse impacts would be mitigated as far as possible.

20.3.21. The ExA also notes that the Applicant has stated with regard to the proposed requirements for air noise and surface access within the ExA's proposed rDCO that the Proposed Development "*would not take place*" or that they "*would not choose to implement a DCO which had the wording recommended by the ExA*". However, as above, we consider that such controls meet the six tests contained within paragraph 4.9 of the ANPS and are therefore justified.

20.3.22. In Chapter 3 we noted that the LePAs considered that the application should be decided against s104 of the PA2008 (as opposed to s105 and s104), but that both they and the Applicant agreed that whichever interpretation is adopted would not materially affect the outcome of the decision. We agree with that view.

20.3.23. While the highway works are subsidiary to the airfield works, the NNNPS does have effect in relation to such works and consequently we have considered those elements of the application having regard to s104(2) of the PA2008. We have found

that because of the Proposed Development there would be increased road traffic and public transport passenger journeys creating additional stress on already congested networks. We find that the highway elements of the Proposed Development for which the NNNPS has effect would carry moderate weight against the making of the Order based on the Applicant's dDCO, with this reduced to a little weight when the rDCO is taken into account.

21. COMPULSORY ACQUISITION AND RELATED MATTERS

21.1. INTRODUCTION

21.1.1. The case for compulsory acquisition (CA) and temporary possession (TP) is examined in accordance with the tests in the Planning Act 2008 as amended (PA2008). CA, TP and other land or rights considerations were identified as a principal issue in the Rule 6 letter [PD-009]. The Examining Authority (ExA) examined matters relating to:

- the need for the amount of land proposed to be subject to CA and TP;
- alternatives in relation to individual plots;
- whether the intended use for the plots was clear;
- whether funding would be available;
- whether the Applicant's case for the Proposed Development would be in the public interest and justify interference with Human Rights and would accord with the Equality Act 2010; and
- interference with Statutory Undertakers' (SU) land and apparatus.

21.1.2. The full extent of the land which would be subject to powers of CA and required to enable the Applicant to construct the Proposed Development, as described in the Statement of Reasons (SoR) [REP9-009] is shown on the Land Plans [REP10-007], Works Plans [REP7-018], Crown Land Plans [REP9-016] and Special Category Land Plans [REP9-018]. It is further described in the Book of Reference (BoR) [REP9-011 and REP9-013], the Explanatory Memorandum (EM) [REP9-008] and in documents comprising the Environmental Statement (ES).

21.1.3. The Applicant's final Navigation Document [REP10-002] charts the submission of these documents and provides a guide to the structure of the application and its principal contents.

21.1.4. This Chapter follows the structure set out below:

- 13.2 Legislative Requirements;
- 13.3 The Request for Compulsory Acquisition and Temporary Possessions Powers;
- 13.4 The Applicant's General Case;
- 13.5 Approach to the Examination of the Compulsory Acquisition and Temporary Possession Case;
- 13.6 Individual Objections and the Applicant's and Examining Authority's Responses;
- 13.7 Statutory Undertakers;
- 13.8 Crown Land;
- 13.9 Special Category Land;
- 13.10 The Examining Authority's Consideration of the Case for Compulsory Acquisition and Temporary Possession; and
- 13.11 Conclusions.

21.2. LEGISLATIVE REQUIREMENTS

PLANNING ACT 2008

21.2.1. CA powers can only be granted if the conditions set out in section (s)122 and s123 of the PA2008 are met, together with relevant guidance. The relevant guidance is

the Procedures for the Compulsory Acquisition of Land, DCLG (former Department for Communities and Local Government), September 2013 (the CA Guidance).

21.2.2. Section 122(2) of the PA2008 requires that the land must be required for the Proposed Development to which the development consent relates or is required to facilitate or is incidental to the development or under s122(2)(c) is for replacement land for the Order land under s131 or s132 (a common, open space or fuel or field garden allotment). In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate, as set out in the CA Guidance.

21.2.3. Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. That does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the Proposed Development. There must be a need for the Proposed Development to be carried out and there must be consistency and coherency in the decision-making process.

21.2.4. Section 123 of the PA2008 requires that one of three conditions is met, namely that:

- the application for the Order includes a request for CA of the land to be authorised;
- that all persons with an interest in the land consent to the inclusion of the provision; or
- that the prescribed procedure has been followed in relation to the land.

21.2.5. Several general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must have been explored;
- the Applicant must have a clear idea of how it intends to use the land and to demonstrate that funds are available to meet the compensation liabilities which might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

21.2.6. TP powers are capable of being within the scope of a Development Consent Order (DCO) under Part 1 of Schedule 5. The PA2008 and the CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to deprive or amend a person's interest in land permanently. However, TP is an interference with human rights of Affected Persons (AP) and so there must be adequate justification of the scope of the powers and the degree of interference for them to be justified.

21.2.7. The PA2008 requires that if changes are sought to the application, whether material or non-material, then the ExA must consider whether to accept them into the Examination.

21.2.8. Section115 (2) of PA2008 provides that, in addition to the development for which consent is required under Part 3 of the PA2008 (the principal development), consent may also be granted for associated development. The PA2008 defines associated development as development which is associated with the principal development.

21.2.9. Section 120(5)(a) of the PA2008 provides that a DCO may apply, modify, or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s117(4) provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. Since in certain instances the Applicant's final draft Development Consent Order (dDCO) seeks to apply s120(5)(a), it is in the form of a statutory instrument.

NEIGHBOURHOOD PLANNING ACT 2017

21.2.10. The Neighbourhood Planning Act 2017 (NPA2017) has been enacted and contains provisions which amount to a codification of new TP practice. In recognition of the greater extent to which TP is being sought by scheme promoters and of the extended durations for which TP can be sought, NPA2017 provisions in general terms provide for enhancements to the rights of persons subject to TP, with a view to ensuring that they have equivalent or proportionate rights to notice and to relevant compensation to those already available to APs subject to CA. However, at the time of submission of this Recommendation to the Secretary of State (SoS) for Transport, the relevant NPA2017 provisions had not commenced.

21.2.11. The ExA has taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this Chapter of the Report.

21.3. THE REQUEST FOR COMPULSORY ACQUISITION AND TEMPORARY POSESSION POWERS

POWERS SOUGHT

21.3.1. The powers being sought by the Applicant and how they relate to the principal articles in the dDCO are set out in the SoR [para 3.3.4, REP9-009]. An explanation of the Articles is set out in the EM [REP9-008].

21.3.2. The powers sought in the dDCO relate to the CA of land (Article 27), the CA of rights and imposition of restrictive covenants (Article 28), the CA of land – incorporation of the mineral code (Article 29), the statutory authority to override easements and other rights (Article 30) and private rights of way (Article 32).

21.3.3. Paragraph 3.3.4 of the SoR [REP9-009] also confirms that the Land Plans [REP10-007] show plots of pink, blue and green which together comprise the Order land. The Order land is made up only of those plots of land over which the Applicant is applying for the acquisition of land (shown as pink) or permanent acquisition rights (shown as blue, or green in the case of presumed highway) through the Proposed Development. It should also be noted that the Applicant is also applying for TP powers over the full extent of the Order land.

CHANGES DURING THE EXAMINATION

21.3.4. As detailed in Section 1.6 of Chapter 1 of this Report, changes to the application documents, including to the wording of the dDCO, were made during the Examination. Three change requests were submitted into the Examination and consisted of the following:

- First change request:
    - Project change 1, an extension to the design parameters for the north terminal international departure lounge proposed southern extension;

- Project change 2, a reduction in height of the proposed replacement Central Area Recycling Enclosure (CARE) facility and change in the purpose of the CARE facility; and
- Project change 3, a revision to the proposed water treatment works.

21.3.5. The ExA agreed with the Applicant that the proposed changes were non-material. In the Rule 8 Letter [PD-011], the ExA therefore included a Procedural Decision (PD) to accept the proposed changes into the Examination.

- Second change request:
  - Project change 4, the provision of on-airport Wastewater Treatment Works.

21.3.6. The ExA agreed with the Applicant that the proposed changes were non-material and issued a PD [PD-023] to accept the proposed change request into the Examination.

- Third change request:
  - Project change 5, a revision to the Order Limits at the Holiday Inn, Povey Cross Road, RH6 0BA to facilitate a temporary access point and associated works.

21.3.7. The ExA agreed with the Applicant that the proposed changes were non-material and to accept the proposed change request into the Examination [PD-027].

21.3.8. Changes are described in more detail later in this Chapter where they relate to specific areas of land and/ or persons with interest in land, where objections have not been withdrawn. Further detail in respect of the submitted documents comprising the change requests are detailed in Table A2 of Appendix A of this Report.

STATUTORY UNDERTAKERS' LAND

21.3.9. If a SU makes a representation about the CA of land or a right over land which would be acquired for the purpose of its undertaking, and this is not withdrawn, s127 of the PA2008 applies. In these circumstances, the Order can only include a provision authorising the CA of that land or right if the SoS is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land.

21.3.10. S138 of the PA2008 applies where a SU has a relevant right or relevant apparatus in the CA land. In those circumstances, the Order can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.

21.3.11. The Applicant's final position in terms of negotiations with the SU is set out in Compulsory Acquisition and Temporary Possession-Status of Negotiations [REP9-110]. At the close of the Examination there were no outstanding objections from SU.

CROWN LAND

21.3.12. The Applicant confirmed in the SoR that it is seeking the CA of interests in Crown land, other than the interests of the Crown [REP9-009]. Section 135 of the PA2008 confirms that a DCO may authorise the acquisition of interests in Crown land only if

those interests are not owned by or on behalf of the Crown and if the appropriate Crown authority consents. Crown consent is therefore required in relation to these interests. The BoR [REP9-013, Part 4] and the Crown Land Plans [REP9-016] identify the relevant plots.

SPECIAL CATEGORY LAND

21.3.13. Sections 131 and 132 of the PA2008 state that an Order granting development consent that authorises the CA of common land or open space or rights over such land would be subject to Special Parliamentary Procedure (SPP) unless the SoS is satisfied that one of the corresponding subsections applies.

21.3.14. Schedule 10 of the dDCO [REP10-004], the BoR [REP9- 013, Part 5] and the Special Category Land Plans [REP9-018] confirm that the Applicant is seeking CA powers over special category land and rights over the following:

- special category land to be permanently acquired is required for the highway improvement works to the A23 London Road, A23 Brighton Road and Longbridge Roundabout; and
- rights proposed to be acquired over the western and southern edges of Church Meadows, land south of the A23 Brighton Road and along the southern edge of Riverside Garden Park to facilitate construction activity on neighbouring plots of land. The rights acquired would allow temporary use of the areas in connection with the activities, whilst the highway improvement works and works to construct the pedestrian bridge over the River Mole to the west of Church Meadows take place. Once construction has concluded, these rights would no longer be necessary.

THE PURPOSES FOR WHICH LAND IS REQUIRED AND EXTENT OF POWERS SOUGHT

21.3.15. Land to be acquired and rights sought are necessary for the Proposed Development to facilitate alterations to the existing northern runway at Gatwick Airport which, together with the lifting of the current restrictions on its use, would enable dual runway operations. The Applicant's case is that the powers sought in its final dDCO [REP10-004] as set out in the SoR are reasonable, proportionate, and necessary to deliver and thereafter maintain the Proposed Development [REP9-009].

21.3.16. The CA powers sought by the Applicant are set out in Part 5 of the Applicant's final dDCO [REP10-004], Articles 27 to 46. The Applicant stated that the CA and TP of land and rights in land is necessary to deliver the Proposed Development, with the extent of the land and rights to be acquired drawn to avoid any unnecessary interference with third-party land. It argued that a proportionate approach to CA and TP is taken, mindful of the impact on affected landowners. It seeks to acquire only such land and rights which would be necessary to ensure dual runway operations and associated development.

21.3.17. The dDCO would give additional rights to the undertaker that could interfere with property rights and other interests through Article 23 (Protective work to buildings), Article 24 (Authority to survey and investigate the land) and Article 25 (Felling or lopping of trees and removal of hedgerows).

21.3.18. The Land Rights Tracker [REP7-065] and the Compulsory Acquisition and Temporary Possession – Status of Negotiations [REP9-110] include details of the purpose for which CA and TP powers are sought with tables indicating:

- use and class of rights sought by plot number; and
- a schedule of negotiations with land interests, showing status of negotiations with APs.

21.4. THE APPLICANT'S GENERAL CASE

21.4.1. The Applicant's case for the grant of CA powers is set out in the SoR [REP9-009]. The SoR explains that it forms part of a suite of documents accompanying the application and should be read alongside those documents. These include:

- Land Plans [REP10-007];
- Special Category Land Plans [REP9-018];
- Crown Land Plans [REP9-016];
- Book of Reference [REP9-011] and [REP9-013];
- Funding Statement [APP-009];
- Draft DCO [REP10-004]; and
- Explanatory Memorandum to the draft DCO [REP9-008].

21.4.2. In respect of the Land Plans [REP10-007], the plots are coloured to indicate the type of power that is required. The colours used are:

- Pink: power to compulsorily acquire all freehold and leasehold interests;
- Blue: power to compulsorily acquire rights by the creation of new rights or the imposition of restrictive covenants; and
- Green: power to compulsorily acquire rights by the creation of new rights or the imposition of restrictive covenants in respect of presumed highway.

21.4.3. The green notation was introduced by the Applicant towards the close of the Examination to address concerns raised primarily by National Highways (NH) regarding the extent of permanent acquisition sought in the dDCO as originally proposed, over highways which NH controls. The Applicant was satisfied that this reduced acquisition would still enable the effective delivery of the Proposed Development.

21.4.4. Where a plot is shown as grey on the Land Plans, no powers of CA or TP are sought in the dDCO. The plots are, overall, within the existing airport boundary and form part of the operational airport. The land has been included within to make clear that such land, forming part of the operational airport, would remain subject to, as well as benefitting from, the powers and controls secured by the dDCO.

21.4.5. The Applicant confirmed [REP9-009] that it is not anticipating carrying out works related to the Proposed Development within most of the plots coloured grey. They were included within the Order land as once detailed design progresses it may be necessary for minor works such as protective works or utility diversion works to be undertaken on such land, and so it may need to benefit from the corresponding powers within the dDCO. Within this context the Applicant considered that it either already had sufficient land rights over these plots, as the overwhelming majority fall within the Applicant's freehold ownership, or it could obtain the land rights through private agreement where necessary, and without requiring any powers of CA or TP.

21.4.6. The other plots shown as grey related to the proposed temporary alternative access to the Holiday Inn Hotel, whilst the Longbridge Roundabout works are constructed. The Applicant has not sought powers of CA or TP over this land however this land has been included within the Order land for reasons detailed in paragraphs 1.6.49 to 1.6.61 of this Chapter.

21.4.7. The Applicant further confirmed that all plots coloured pink, or blue or green on the Land Plans would also be subject to TP powers and a statutory authority to override easements and other rights, and to extinguish private rights of way upon the appropriation of the land for the purposes of the Proposed Development

21.4.8. The Applicant's strategic case for the Proposed Development was made based on the critical importance of aviation to the nation's economic health and the UK's status in the world. The Applicant refers to current government policy in respect of the commitment to global connectivity to facilitate sustainable growth [REP9-009]. Additionally, the Applicant referred to the constrained nature of the UK's aviation sector and the effect that this has on the quality and efficiency of the UK's airports, which are also apparent at Gatwick Airport. The Applicant considers that the Proposed Development is an innovative way of achieving additional runway capacity for Gatwick, the South-East and for the UK without the scale of land take and associated impacts normally associated with providing a new additional runway [REP9-009]. We have reported on the need case in Chapter 4 of this Report.

21.4.9. The Applicant also sets out the alternatives that were considered with regard to the process it followed in terms of the three scenario options available in the Gatwick Airport Master Plan and any changes made resulting from statutory and non-statutory consultation [APP-228]. This is also reported on in Chapter 4 of this Report.

21.4.10. The Applicant stated that it had drawn the extent of the land and rights to be acquired to avoid any unnecessary interference with third-party land. It further stated that it had taken a proportionate approach to the proposed CA, mindful of the impact on APs and seeks to acquire only such land and rights which would be necessary to ensure securing the land and/ or rights required to facilitate the delivery of the Proposed Development.

21.4.11. In the s127 and s138 cases, which relates to SU land, the Applicant set out the reasons why CA powers are sought in the dDCO for the acquisition of land and interest in land held by SU and how the relevant tests are met in the SoR [REP9-009]. The relevant plots are described in (BoR) ([REP9-011 and REP9-013]) and on the Land Plans [REP10-007].

21.4.12. The Applicant also confirmed that any person affected by CA and TP would be entitled to compensation under Article 28 and Schedule 8 of its final dDCO [REP10-004]. The accompanying Funding Statement demonstrated that funding would be likely to be available to build the Proposed Development and to enable the CA within the statutory timescale in accordance with Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (the APFP Regulations) [APP-009].

21.4.13. The Applicant stated that it is not aware of anything that is likely to prevent the grant of consent. The need for other consents is set out in the List of Other Consents and Licences [REP8-092], which the SoR [REP9-009] states would not present any impediment to the implementation of the Proposed Development. The SoR also sets out the Applicant's position regarding Human Rights.

21.5. APPROACH TO EXAMINATION OF THE COMPULSORY ACQUISITION AND TEMPORARY POSSESSION CASE

INTRODUCTION

21.5.1. Examination of CA and TP issues was undertaken through procedural decisions (PD), including written questions, the ExA's dDCO commentary, six requests under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (Rule 17), at two Open Floor Hearings (OFH) and two Compulsory Acquisition Hearings (CAH) and observations of land on accompanied and unaccompanied site inspections (ASI and USI).

21.5.2. The Applicant complied with requests for updates of standalone documents relating to CA and TP at certain deadlines as set out in the Examination Timetable.

21.6. INDIVIDUAL OBJECTIONS AND THE APPLICANT'S AND EXAMINING AUTHORITY'S RESPONSES

INTRODUCTION

21.6.1. This part of the Chapter considers representations made by APs under s127 and s138 of the PA2008, including representations made at CAHs and OFHs.

21.6.2. The ExA's considerations on each of the individual objections made in relation to specific plots and the rights and powers sought are addressed, consideration then goes forward to inform the finding on the general case in respect of all plots.

21.6.3. The ExA has considered all the objections received and many of the issues raised by objectors have also been considered in earlier parts of this Report when considering the planning issues arising in relation to the Proposed Development. The objections considered here are done so in the context of the application for the grant of CA and TP powers. Other objections have also been received from APs listed in the BoR. However, these other objections refer to concerns not directly related to CA or TP and are therefore not reported in this Chapter.

21.6.4. The ExA examined CA objections against the tests set out in s122 and s123 of the PA2008, having regard to the CA Guidance. The ExA also considered objections to the application for powers of TP under Articles 37 and 39 of the dDCO [REP10-004] and by those who may be able to make a claim under s10 of the Compulsory Purchase Act 1965 or Part I of the Land Compensation Act 1973. Similarly, the ExA has had regard to the Human Rights Act 1998 and the Equality Act 2010 in considering the application for the grant of CA and TP powers.

21.6.5. In considering these objections, the ExA noted the Compulsory Acquisition and Temporary Possession – Status of Negotiations provided by the Applicant at D9 [REP9-110]. This identifies the Relevant and Written Representation (RR) and (WR) objections made and the plots concerned, a description of the land and rights requested. The document also identified any other documents submitted by APs and the relevant reference numbers relating to the Applicant's responses.

PERSONS WITH AN INTEREST IN LAND/ AFFECTED PERSONS

BRITANNIA HOTELS LIMITED

21.6.6. Britannia Hotels Limited (BH) has an interest in plots 1/087, 1/089, 1/090, 1/091 and 1/092, which form part of the Britannia Hotel and surrounding land, where the

Applicant was seeking both the permanent acquisition of land and rights and TP in connection with Work No. 37 and for minor works which may include protective works, access, or utility diversions.

21.6.7. BH submitted a RR [RR-0529] stating that it was willing to negotiate a fee for the land edged blue on the land plan, however if a reasonable fee could not be agreed it would seek to object to the Proposed Development. Additionally, BH stated it wasn't clear from the provided plans as to why the land was required.

21.6.8. Furthermore, in respect of the land required for permanent acquisition, BH confirmed it was generally not inclined to consent to such an agreement. BH also submitted a WR [REP1-119] which made the same points as detailed in its RR.

21.6.9. In response to BH RR [REP1-048], the Applicant confirmed that its agent had been attempting to discuss and negotiate a consideration for a voluntary agreement. Whilst the first proposed figure was declined by BH, no further meetings, or a counteroffer had been received by the Applicant. The Applicant stated that it would continue to attempt to negotiate and would encourage BH to submit a counter proposal. In response to the WR [REP3-072], the Applicant confirmed that the land in the proposed location was required for the construction of the surface access highway improvement works as part of the Proposed Development.

21.6.10. At CAH1 [EV14-001 to EV14-002] the Applicant confirmed that the strip of land would be required to widen the road and embankment for the A23 London Road and to provide the new active travel path for pedestrians on the west side of the A23 London Road. It was also confirmed that a decision in respect of the location of the hotel signage would be made post consent, at the detailed design stage, but that it would remain within the existing land plot.

21.6.11. At CAH2, the Applicant confirmed that, despite Head of Terms (HoTs) being sent to BH, it had still not received any substantive response. In its Closing Submissions [REP9-112] the Applicant confirmed that it would continue to attempt to make contact and progress an agreement, however it can only do so if BH was willing to enter into such an agreement.

ExA's Conclusion on Britannia Hotels Limited

21.6.12. In terms of adequacy of consultation and information, there is evidence of consultation and engagement with BH during the pre-application period and during the Examination ([APP-224], [APP-242], [APP-243], and [REP7-065].

21.6.13. Agreement between the parties had not been reached by the end of the Examination. However, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

21.6.14. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the Order be granted. The ExA also considers that the Recommended DCO (rDCO) includes adequate compensation provisions. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and competing factors and interests. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

DAVID JONATHAN SMITH

21.6.15. Mr D J Smith has an interest in plots 1/005 and 1/006 which is approximately 223 square metres (m^2) of public road on Church Walk. It was confirmed by the Applicant in the BoR [REP9-011] that the land in question is adopted highway, and that Mr D J Smith is the freeholder. As such, the plots in question are shaded green on the land plans as the Applicant is seeking the creation of new rights or the imposition of restrictive covenants in respect of presumed highway in connection with Work No. 37 and for minor works which may including protective works, access or utility diversions. No representations were made by Mr D J Smith during the course of the Examination.

21.6.16. The Applicant confirmed in its Closing Submissions [REP9-112] and Compulsory Acquisition and Temporary Possession – Status of Negotiation [REP9-110] that it had made numerous attempts at correspondence and undertaken extensive investigations, but by the close of the Examination had been unable to contact Mr D J Smith. The Applicant also posted letters at the site of the land parcel to provide updates on the progress of the Proposed Development and to also give Mr D J Smith further opportunities to contact the Applicant.

ExA's Conclusion on David Jonathan Smith

21.6.17. In terms of adequacy of consultation and information, there is evidence of consultation and attempted engagement with Mr D J Smith during the pre-application period and during the Examination ([APP-224], [APP-242], [APP-243], and [REP7-065].

21.6.18. Agreement between the parties had not been reached by the end of the Examination. However, the ExA is satisfied that the CA of the relevant rights in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

21.6.19. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and the competing factors and interests that exist in terms of APs. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

DBM CONTRACTORS LIMITED

21.6.20. Dbm Contractors Limited (Dbm) has an interest in plots 1/030, 1/033 and 1/041 which includes 110 m^2 of public road, footway, and verge on the Brighton Road, A23, 112m^2 of woodland south of Brighton Road, A23 and 1076 m^2 square metres of woodland, south of Brighton Road, A23. The Applicant is seeking the permanent acquisition of land and TP in connection with Work No. 37. No representations were made into the Examination by Dbm.

21.6.21. The Applicant confirmed in its Land Rights Tracker [REP7-065] that HoTs had been issued to Dbm and it did not see any reason why a voluntary agreement could not be concluded. However, in May 2024 Dbm requested that the Applicant purchased the land parcels in question outright, prior to the end of the Examination. The Applicant advised that it was unwilling to do so until a decision in respect of the

dDCO had been made and would continue to attempt to negotiate terms for an Option Agreement.

21.6.22. At the close of the Examination, the Applicant confirmed that it had not received any further settlement negotiations from Dbm but would continue to attempt to progress a voluntary agreement.

ExA's Conclusion on DBM Contractors Limited

21.6.23. In terms of adequacy of consultation and information, there is evidence of consultation and attempted engagement with Dbm during the pre-application period and during the Examination ([APP-224], [APP-242], [APP-243], and [REP7-065].

21.6.24. Agreement between the parties had not been reached by the end of the Examination. However, the ExA is satisfied that the CA and TP of the relevant interests in this AP's land would be necessary to implement the Proposed Development, no feasible alternatives have been brought forward and that it would be reasonable and proportionate to do so.

21.6.25. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and the competing factors and interests that exist in terms of APs. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

HORLEY ESTATES LIMITED

21.6.26. Horley Estates Limited (HRE) has an interest in the following plots:

- 1/028 - consists of 40m^2 of grassed area and shrubbery, west of Woodroyd Avenue;
- 1/043 - consists of 9m^2 of land comprising car parking space at 72 Longbridge Road, RH6;
- 1/044, 1/045, 1/048 and 1/054 – each plot consists of 15 square metres of garage at land south of Brighton Road, A23; and
- 1/051 - consists of 15 square metres of garage at land south-west of Harlow Service.

21.6.27. In respect of the above plots, the Applicant was seeking both the permanent acquisition rights and TP in connection with minor works which may including protective works, access or utility diversions.

21.6.28. The Applicant confirmed in its Land Rights Tracker [REP7- 065] that whilst initial discussions and the issue of HoTs had taken place, HRE confirmed prior to D5 that they no longer wished to progress a voluntary agreement with the Applicant. Despite this, the Applicant confirmed that it would continue to communicate with HRE to establish whether the position had altered.

ExA's Conclusion on Horley Estate Limited

21.6.29. Whilst it is disappointing that negotiations were unable to progress to a conclusion with HRE, if agreement is not reached through negotiation, the ExA is satisfied that the CA and TP of the relevant interests in this AP's land would be necessary to

implement the Proposed Development and that it would be reasonable and proportionate to do so.

21.6.30. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and the competing factors and interests that exist. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

WALNUT GARDENS LIMITED

21.6.31. Walnut Gardens Limited (WG) has an interest in the following plots:

- 1/012 - consists of 52m^2 of hardstanding and verge at Horley Service Station;
- 1/016 - consists of 219m^2 of hardstanding and woodland at Horley Service Station;
- 1/022 and 1/023 - each plot consists of 18m^2 and 24m^2 of shrubbery at Horley Service Station;
- 1/033 and 1/040 – each plot consists of 112m^2 and 35m^2 of woodland, south of Brighton Road, A23.

21.6.32. In respect of the above plots, the Applicant was seeking both the permanent acquisition of land and rights and TP in connection with Work No. 37 and minor works, including protective works, access, or utility diversions. No representations were made into the Examination by WG.

21.6.33. The Applicant confirmed in its Land Rights Tracker [REP7-065] that whilst initial discussions and the issue of HoTs had taken place, limited responses to correspondence had been received.

21.6.34. At D7 the Applicant provided a further update stating that it had continued to attempt to negotiate with representatives for WG, and it had provided updated wording from the Code of Construction Practice (CoCP) [REP8-024], which was relevant to WG land. However, the Applicant confirmed that an option agreement and a Memorandum of Understanding (MoU) was rejected by WG [REP9-110]. At the close of the Examination, the Applicant confirmed that it would continue to attempt negotiations to try to agree a voluntary agreement.

ExA's Conclusion on Walnut Gardens Limited

21.6.35. In terms of adequacy of consultation and information, there is evidence of consultation and attempted engagement with WG during the pre-application period and during the Examination ([APP-224], [APP-242], [APP-243], and [REP7-065].

21.6.36. Whilst it is disappointing that agreement had not been reached through negotiation, the ExA is satisfied that the CA and TP of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

21.6.37. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate

compensation provisions and blight claim opportunities. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and the competing factors and interests that exist in terms of APs. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

AIRPORT INDUSTRIAL PROPERTY TRUST

21.6.38. Airport Industrial Property Trust (AIPUT) is a limited partner in the Airport Industrial Limited Partnership, the General Partner of which is Airport Industrial GP Limited (AIGPL). AIGPL, together with its wholly owned subsidiary Airport Industrial Nominees Limited (AINL), own the legal title to the leasehold land and have rights in certain parcels of land to which the Proposed Development relates to. AIPUT, AIGPL and AINL made their submissions into the Examination as a group under the name 'AIPUT'.

21.6.39. AIPUT has an interest in the following plots:

- E/36 - Viking House, Perimeter Road South, Gatwick South Side, Gatwick, RH6 0PA;
- 6/733 and 6/736 - each plot consists of 31m^2 and 480m^2 of footway and verge on Perimeter Road South;
- 6/734 and 6/737 - each plot consists of 57m^2 and 69m^2 of access splay on Perimeter Road South but excludes all interests of the Crown; and
- 6/740 - consists of 32m^2 of verge on Perimeter Road South.

21.6.40. The Applicant is seeking the permanent acquisition of land and rights in connection with minor works, including protective works, access, or utility diversions in particular adjacent to Work No. 42, which is related to the establishment of a habitat enhancement area along Perimeter Road East and Perimeter Road South, including replacement hedgerows and habitat suitable for bats along Crawter's Brook.

21.6.41. AIPUT raised objection in their RR [RR-0041] and WR [REP1-165] to the CA of rights in relation to Viking House, which fronts onto Perimeter Road, as it was considered that the CA had not been adequately justified. AIPUT requested further information on Work No. 42 and any potential impacts on airside access. The main concern raised was that a strip of land in the northern part of Viking House adjacent to Perimeter Road South, which relates to Plots 6/733, 6/734, 6/737 and 6/740, was proposed to be subject to powers of CA. However, AIPUT commented that the Works Plans [APP-017] did not propose any particular works relating to this part of the Viking House site, and the SoR [APP-010] did not adequately explain the reasons why this area was required for the Proposed Development to justify the use of CA powers.

21.6.42. In response to both AIPUT's RR and WR [RR-0041] and [REP1-065], the Applicant confirmed that it had a vested interest in ensuring that the airport roads and associated infrastructure would be maintained into the future and that any impacts arising from the Proposed Development would be mitigated as far as possible, and the Applicant did not intend to prevent access to terminals via internal roads or otherwise. The Applicant stated its commitment to working with AIPUT to ensure these outcomes. The Applicant also confirmed that in respect of Work No. 42, there was no proposal to alter the airside access.

21.6.43. It is noted that whilst AIPUT raised concern in respect of the Applicant's level of engagement, at [REP7-122] AIPUT stated that the Applicant had been more proactive in progressing discussions and revised HoTs had been received.

21.6.44. At the close of the Examination, the Applicant confirmed [REP9-112] that both parties were in the process of finalising HoTs with the aim that a draft option agreement would follow shortly thereafter. The Applicant also acknowledged the concern regarding any potential loss of access to Viking House if the CA powers were to be accessed in full. However, the Applicant signposted to their commitment to the protection of access in the CoCP [REP8-024].

21.6.45. At D10, AIPUT [REP10-034], confirmed that HoTs were close to being signed. AIPUT also stated that the HoTs also provided for the completion of the option agreement between the parties within 8 weeks following the close of the Examination, at which point AIPUT agreed it would write to the SoS confirming the withdrawal of its objection and representations to the dDCO.

21.6.46. Whilst both parties confirmed they were working collaboratively to finalising the HoTs, if the option agreement was not completed within the 8-week period, AIPUT stated [REP10-034] that it reserved the right to make further representations to the SoS with regard to the CA of its land interests and to ensure the concerns raised during the Examination are addressed in the made DCO, should the SoS be minded to grant the DCO.

ExA's Conclusion on Airport Industrial Property Trust

21.6.47. The efficacy and timeliness of the Applicant's willingness to engage over land matters was criticised by AIPUT and this is noted by the ExA. Whilst it is disappointing that negotiations were unable to progress to a conclusion with AIPUT prior to the close of the Examination, if agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant land and rights in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

21.6.48. As any further submission from AIPUT or the Applicant would be after the close of the Examination, this would not be able to be considered as part of our Recommendation but may be available to the SoS. Should agreement between AIPUT and the Applicant be submitted to the SoS during the Recommendation or Decision period, as parties have suggested they might be, the SoS would be able to rely on these to be satisfied that terms have been negotiated satisfactorily.

21.6.49. The ExA considers that the CoCP [REP8-024] would secure adequate mitigation in respect of measures to protect access to existing commercial enterprises. Furthermore, we consider the Applicant's approach in relation to the CA powers sought in respect of this land and rights to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and the competing factors and interests that exist in terms of APs. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

MARATHON ASSET MANAGEMENT MCAP GLOBAL FINANCE (UK) LLP

21.6.50. Marathon Asset Management MCAP Global Finance (UK) LLP (MAM) act on behalf of HICP Limited & HI (London Gatwick) and have an interest in the following plots:

- 1/009 - consists of 53m^2 of verge, north-west of the Longbridge Roundabout;
- 1/026 - consists of 348m^2 of private road and verges, south of
- Reigate Road, A217;
- 1/057 - 1762m^2 of Reigate Road, A217, private road off Reigate Road, A217 and footways and verges;
- 1/061 - 90m^2 of public road, verge and footway on Reigate Road, A217;
- 1/062 - 316m^2 of grassed area and woodland, west of Longbridge Roundabout; and
- 1/072 - 11m^2 of woodland, north of Povey Cross Road.

21.6.51. In respect of the above plots, the Applicant was seeking both the permanent acquisition of land and rights and TP in connection with Work No. 37 and minor works, including protective works, access, or utility diversions.

21.6.52. Whilst MAM stated in both its RR [RR-2703] and WR [REP1-221 and 222] that it did not oppose the principal of the Proposed Development, it had significant concerns about potential effects on both the Holiday Inn London Gatwick Airport and the hotel operations. The specific concerns in respect of land take related to:

- that there would be excessive and unjustified permanent compulsory land take;
- the permanent land take as proposed was excessive and not clearly justified;
- the sole access to the Hotel is proposed for permanent acquisition; and
- there was a lack of clarity over the actual need to CA rights.

21.6.53. In terms of hotel operations, it was primarily concerned that construction activities associated with Work No.37 would result in significant noise disturbances which would affect guests staying at the hotel. This was considered of particular concern as MAM confirmed that the hotel has contracts with several airlines who use it for crew and as such, quiet conditions are necessary.

21.6.54. Prior to CAH2, the Applicant submitted a Covering Letter [AS-152], a Third Notification of Proposed Change Report [AS-153] and a Third Change Application Report [REP7-097]. The proposed change request related to a minor extension to the Order Limits to include an additional 0.175ha of land at the Hotel, to facilitate the construction of a temporary access point, a temporary bus parking layby, temporary traffic management measures and associated drainage provisions.

21.6.55. Following further land referencing checks, the Applicant confirmed that Surrey County Council (SCC) had additional minor land interests over the land associated with the proposed change. Consent was not obtained from SCC for the inclusion of CA powers over the additional land. As such, s123 of the PA2008 could therefore not be satisfied and the Applicant confirmed that it was no longer seeking CA powers over the additional land.

21.6.56. Despite this the Applicant confirmed it would be extending the Order land to include the additional land, and that the powers sought in the dDCO would apply to the land and would be used to carry out the proposed works. The Applicant did not consider that not including powers of CA over the additional land would present an impediment to the delivery of the proposed work as consent to the inclusion of the land had been obtained from the freeholder/ leaseholder to the land, for whose benefit the change is being promoted and the works would be carried out.

21.6.57. During CAH2 [EV19-003 to EV19-005], the Applicant confirmed that SCC land interests related to the verge which adjoined the highway within which it is a highway authority. The Applicant stated that it would incorporate this element of the Proposed Development into its wider discussions with SCC, in their capacity as landowner, but noted that in any event it was necessary to seek their consent as highway authority under Article 21 of the dDCO.

21.6.58. On 14 August 2024, the ExA accepted the Change Request [PD-027] as it agreed that the proposed change would be non-material and would not be so substantial as to constitute a materially different project and therefore could be accepted into the Examination.

21.6.59. MAM accepted that the creation of a new temporary access would be the only feasible solution to ensure continuity of access and business at the Hotel during the Longbridge Roundabout construction works [REP7-141]. However, concern was raised by MAM at various points during the Examination in respect of the status and speed of negotiations with the Applicant. Despite this MAM acknowledged that discussions were continuing between parties and that HoTs had been agreed and it was anticipated that the commercial terms would be concluded prior to the close of the Examination [REP8-170].

21.6.60. Whilst it was agreed that both parties were continuing to work collaboratively towards completion of the contemplated commercial agreement, at D9 MAM [REP9-303] confirmed that it was unlikely that a commercial agreement would be concluded by the close of the Examination. As such, draft Protective Provisions (PP) were provided and a request made to the ExA for these to be included in the rDCO, to protect MAM's interests [REP9-303].

ExA's Conclusion on Marathon Asset Management MCAP Global Finance (UK) LLP

21.6.61. Whilst it is disappointing that negotiations were unable to reach a conclusion, we note that both MAM and the Applicant referred to the likelihood of commercial terms being agreed between the parties. If agreement is not reached through negotiation, the ExA is satisfied that the CA and TP of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities.

21.6.62. Certainly, in our view such agreement between MAM and the Applicant would obviate the need for PP as submitted by MAM at D9. However, the SoS might wish to clarify this position with MAM, if it has not submitted further comment. However, as no agreement had been reached prior to the close of the Examination, we consider it appropriate to include the PP as drafted by MAM to protect their interests. Further detail in respect of this matter is considered in Chapter 22 of this Report.

GATWICK GREEN LIMITED

21.6.63. Gatwick Green Limited (GGL) has an interest in the following plots:

- 4/463 - consists of 5617m^2 of hardstanding north of M23 and public footpath UF001/368/30;
- 4/469 - consists of 403m^2 of verge and hedgerow, north of M23;
- 4/472 - consists of 12m^2 of hardstanding and verge east of Peeks Brook Lane;

- 4/473 - consists of 431m^2 of hardstanding and hedgerow east of Peeks Brook Lane;
- 4/476 - consists of 432m^2 of agricultural land and hedgerows south of M23 and public footpath CRA/367Sy/1;
- 4/478 - consists of 918m^2 of agricultural land and shrubbery south of M23 and public footpath CRA/367Sy/1;
- 4/479 - consists of 1695m^2 of agricultural land, hedgerows and shrubbery south of M23;
- 4/483 - 3906 m^2 of agricultural land, hedgerows and shrubbery south of M23 and public footpath CRA/367Sy/1;
- 4/485 and 4/487- both plots consist of 57m^2 and 1050m^2 of shrubbery and hedgerows south of M23;
- 4/489 - 840m^2 of public road, verges, and hedgerows on Balcombe Road, B2036; and
  4/491 - 114m^2 of shrubbery and hedgerows east of Balcombe Road, B2036.

21.6.64. In respect of the above plots, the Applicant was seeking both the permanent acquisition of land and rights and TP in connection with Work No. 35 and minor works, including protective works, access, or utility diversions.

21.6.65. It was confirmed by GGL at [REP8-153] that an agreement in-principle had been reached, however this agreement was subject to the approval of NH as the agreement related to proposed access to an existing balancing pond located in plots 4/463 and 4/467.

21.6.66. At the close of the Examination the Applicant maintained [REP9-112] that it is seeking powers over the land to ensure that it could provide the access NH require to maintain the pond and to ensure that the Proposed Development is deliverable and that it is always provided with unimpeded access to the pond. The final nature of that physical maintenance access provision would be confirmed at the Detailed Design stage in consultation with NH.

ExA's Conclusion on Gatwick Green Limited

21.6.67. Whilst it is disappointing that negotiations were unable to reach a conclusion, we note that both GGL and the Applicant indicated that the possibility of commercial terms being agreed between the parties following the close of the Examination. The ExA notes that the access solution under debate with NH is outside of the Order Limits and refers to operational commitments from both the Applicant and NH and no amendments are required in respect of the extent of the Order Limits or the Land Plans to deliver the access solution.

21.6.68. As any further submission from GGL or the Applicant would be after the close of the Examination, this would not be able to be considered as part of our Recommendation but may be available to the SoS. Should agreement between GGL and the Applicant be submitted to the SoS during the Recommendation or Decision period, the SoS would be able to rely on these to be satisfied that terms have been negotiated satisfactorily.

21.6.69. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and the competing factors and interests that exist in terms of APs. If agreement is not reached through negotiation, the ExA is satisfied that the

CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

THE ARORA GROUP

21.6.70. The Arora Group (AG), which includes Agut Limited and Ah6 Limited, has an interest in the following plots:

- 1/209 - consists of 377m^2 of access splay and private road east of Northway and excludes all interests of the Crown;
- 4/492 - consists of 3026m^2 of woodland and shrubbery south of M23;
- 4/493 - consists of 288m^2 of woodland and shrubbery west of Balcombe Road, B2036
- 4/496 - consists of 3370m^2 of car park at Schlumberger House;
- 4/544 - consists of 760m^2 of private road at Buckingham Gate Road but excludes all interests of the Crown; and
- 6/700 - consists of 182m^2 of hardstanding east of London Road, A23.

21.6.71. In respect of the above plots, the Applicant was seeking both the permanent acquisition of land and rights and TP in connection with Work Nos. 35 and 36, and minor works, including protective works, access, or utility diversions.

21.6.72. At the close of the Examination, the outstanding objection related to land outside the Sofitel Hotel (Plot 1/209), north terminal which is used as a drop off area. Concern by AG focused on the potential effect on the use of this parcel of land and the wider implications for the hotel. In addition, concern was also raised in respect of the possibility for significant noise disturbance from any works as there are bedroom windows which would directly abut the construction areas.

21.6.73. At D5 [REP5-119], AG confirmed the Applicant had stated in a meeting that no design work had been commissioned and commented that "*In terms of the drop off areas at the Premier Inn/Sofitel at the North Terminal, we understand your concerns. However, without more design work to our forecourt areas we're unable to move this one forward at the moment so suggest we re-visit this at a later date".*

21.6.74. Whilst AG confirmed at D8 [REP8-137] that the Applicant had provided some indicative proposals and a MoU, the proposed land take would still result in operational difficulties to the hotel. The Applicant had provided a verbal guarantee to always maintain access to the drop off point, however AG stated that no specific details were provided. In respect of the noise concerns, AG confirmed that the Applicant had offered terms to minimise noisy works to certain hours, but again no specific detail had been provided. AG also confirmed that several of the commercial terms contained within the HoTs were unacceptable in their current form as they appeared excessive, unreasonable, and not commercially viable.

21.6.75. As such, AG commented that they felt that they had been left in an impossible situation whereby their only course of action was to continue to object as the Applicant appeared to be making no effort to offer a solution.

ExA's Conclusion on The Arora Group

21.6.76. The efficacy and timeliness of the Applicant's willingness to engage over land matters was criticised by AG and this is noted by the ExA. We also note that similar objections were raised by MAM on behalf of the Holiday Inn in respect of the potential effect on hotel operations. However, significant progress was made during

the Examination to provide feasible solutions to the objections raised. As such, the ExA is disappointed that similar progress and attention was not shown to AG.

21.6.77. Nevertheless, the ExA notes that specific reference is made to the north terminal forecourt in the Design and Access Statement (DAS) [AS-155] at paras 5.7.13.2 and 5.7.13.3. It is stated that '*The forecourts and approaches to both existing terminals will be enhanced, with routes providing access to the terminal frontage, car parks, hotels and pick-up and drop-off areas for different transport modes. The way in which access is managed for different modes may change in order to optimise the use of available capacity. The detailed design of these works is to be determined at the next stage of design and will be integrated at this time with the more developed Surface Access works".*

21.6.78. Taking all these matters together, we accept that some design solutions are not available during the Examination and can only be progressed once the detailed design phase has been reached. This is further reflected in the DAS Appendix 1 – Design Principles [REP8-090] which includes Detailed Built Form Design Principles 35 and 36, which relate specifically to the North and South Terminal forecourts. As such, the ExA is satisfied that any physical and technical concerns raised by AG would not preclude the design of appropriate access to the drop off point(s).

21.6.79. In respect of the concerns raised regarding construction noise and hotel bedrooms, as detailed above, the ExA is disappointed that agreement in respect of technical solutions were not advanced during the Examination. Notwithstanding this, the ExA is satisfied that the Applicant is now working with AG to understand the operational impacts of the Proposed Development and that an in-principle agreement could be reached between the parties in respect of both minimising noise and associated levels of disturbance, alongside of ensuring access to the required drop off point(s).

21.6.80. Whilst it may be possible that agreement is reached regarding commercial terms between the parties, any further submission from AG or the Applicant would be after the close of the Examination and this would not be able to be considered as part of our Recommendation. However, should agreement between AG and the Applicant be submitted to the SoS during the Recommendation or Decision period, the SoS would be able to rely on these to be satisfied that terms have been negotiated satisfactorily.

21.6.81. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so. Whilst we note the criticism of the Applicant's level of engagement, we consider the Applicant's approach in relation to the CA powers sought in respect of this land to be overall acceptable, should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities.

CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

21.6.82. Cheshire West and Chester Borough Council (CWCBC) has an interest in plot 5/672 which consists of 27690m^2 of building and hardstanding at Purple Parking, Airparks Gatwick Long Term Parking and BP Pulse Charging Station.

21.6.83. In respect of the above plot, the Applicant is seeking the permanent acquisition of land in connection with Work Nos. 4 and 33 and is proposing that CWCBC and the tenant, Q-Park Limited, are relocated to the eastern section of existing Car Park X.

21.6.84. At D7, the Applicant confirmed [REP7-065] that although discussions on a land agreement had been progressing, they had been slowed by requests from CWCBC for detailed information about the designs of the proposed replacement Car Park X. The Applicant confirmed that it had advised that detailed designs had not been carried out at this stage but to provide CWCBC with the assurances that they were seeking, the Applicant proposed a workshop on site to work through the detail relating to the facilities to be provided on Car Park X. The Applicant further proposed commitments for CWCBC to be involved in and approve detailed designs at the time they are completed and was working with CWCBC on the wording of such commitments for the legal agreement. The Applicant confirmed that both HoTs and a MoU had been issued to the landowner and it was awaiting further comment.

21.6.85. At the close of the Examination, the Applicant confirmed that a meeting had been held in August with CWCBC to further discuss details regarding the facilities to be provided on Car Park X. A commitment was made by the Applicant to also continue to negotiate terms with CWCBC to try to agree a voluntary arrangement [REP9-110].

ExA's Conclusion on Cheshire West and Chester Borough Council

21.6.86. From the information provided by the Applicant at the close of the Examination, the ExA understood that negotiations were at an advanced stage, and that it was hopeful that agreement between the parties could be reached. We are content with the Applicant's proposed land swap, on the understanding that the facilities provided meet the requirements of CWCBC and their tenant, Q-Park Limited.

21.6.87. Whilst it may be possible that agreement is reached regarding commercial terms between the parties, any further submission from CWCBC or the Applicant would be after the close of the Examination and this would not be able to be considered as part of our Recommendation. However, should agreement between CWCBC and the Applicant be submitted to the SoS during the Recommendation or Decision period, the SoS would be able to rely on these to be satisfied that terms have been negotiated satisfactorily.

21.6.88. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities.

MALHURST SOUTH EAST LIMITED

21.6.89. Malhurst South East Limited (MSEL) has an interest in the following plots:

- 1/080 - consists of 78m^2 of building at the Longridge Roundabout service station, verge, hardstanding and woodland south-west of Longbridge Roundabout; and
- 1/082, 1/084 and 1/085 - the plots consist of 46m^2 square metres, 22m^2 and 109m^2 of building at the Longridge Roundabout service station.

21.6.90. In respect of the above plots, the Applicant is seeking the permanent acquisition of land and rights in relation to the above plots in connection with Work No. 37.

21.6.91. In its RR, MSEL [RR-0156] raised objection in relation to the Esso petrol filling station adjacent to the Longbridge Round, Horley as it considered that the proposed land take would potentially render the petrol filling station unusable or would materially impact the operation, its trading potential, and hence its overall viability.

21.6.92. The Applicant confirmed in its Land Rights Tracker [REP7- 065] that discussions with MSEL had been productive. However, MSEL had requested specific design details which the Applicant confirmed could not be provided until detailed design has been carried out. The Applicant stated its commitment to keeping MSEL informed as the design progresses and confirmed it had made several commitments to minimise disturbance where possible, and these commitments had been included in a MoU.

21.6.93. At D9 [REP9-112] the Applicant confirmed that whilst an agreement had not been finalised, both parties were finalising the MoU for providing HoTs to be agreed during the detailed design phase. In respect of the concern raised regarding the operational requirements of the filling station, the Applicant further stated that the measures within the CoCP in respect to access [REP8-024] would ensure impacts to the property would be minimised.

ExA's Conclusion on Malhurst South East Limited

21.6.94. The ExA considers that the CoCP [REP8-024] would secure adequate mitigation in respect of measures to protect access to existing commercial enterprises. The ExA also notes that such mitigation would not prevent a landowner's ability to make a claim under relevant statutory regimes that may apply.

21.6.95. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities.

REIGATE AND BANSTEAD BOROUGH COUNCIL

21.6.96. Reigate and Banstead Borough Council (RBBC) has an interest in the following plots:

- 1/004 - consists of 753m^2 of the river, beds and banks of the River Mole;
- 1/007 - consists of 3549m^2 of grassed area and shrubbery north of
- Brighton Road, A23 and public footpath UF001/574/10;
- 1/007A - consists of 781m^2 of grassed area and shrubbery north of Brighton Road, A23
- 1/008 - consists of 1304m^2 of scrubland north-east of Longbridge Roundabout and public footpath UF001/574/10;
- 1/020 - consists of 10m^2 of land on the south-east side of Brighton Road, Horley public road, Brighton Road, A23 above river, beds and banks of the River Mole;
- 1/035 - consists of 50m^2 of public road on Brighton Road, A23;
- 1/036 - consists of 121m^2 of scrubland and woodland north of London Road, A23;
- 1/050, 1/070, 1/071 and 1/094 - the plots consist of 62, 41, 56, and 77m^2 of woodland south of Brighton Road, A23;
- 1/052 - consists of 122m^2 of woodland south of Brighton Road, A23 and river, beds and banks of the River Mole;

- 1/053 - consists of 90 m^2 of river, beds and banks of the River Mole;
- 1/059 - consists of 4m^2 of woodland south of Brighton Road, A23;
- 1/064 - consists of 116m^2 of public road and footway on London Road, A23;
- 1/069 - consists of 2746m^2 of wooded area east of the Longbridge Roundabout;
- 1/074 - consists of 7m^2 of footway and verge south-east of the Longbridge Roundabout;
- 1/093 - consists of 88m^2 of scrubland and woodland north of London Road, A23
- 1/095 and 1/096 - the plots consist of 9 and 69m^2 of wooded area south east of the Longbridge Roundabout;
- 1/164 - consists of 4282m^2 of public road and verges on London Road, A23 and woodland at Riverside Garden Park;
- 1/165 and 1/166 – both plots consist of 2326 and 1342m^2 of woodland at Riverside Garden Park;
- 1/193 - consists of 3761m^2 of scrubland, slip road, verges and public road on Airport Way, A23 and London Road, A23;
- 1/201 - consists of 1446m^2 of scrubland north of London Road, A23;
- 1/211 - consists of 12m^2 of scrubland north of Airport Way, A23;
- 1/212 - consists of 5m^2 of woodland at Riverside Garden Park;
- 1/216 - consists of 36m^2 of scrubland north of Airport Way, A23;
- 1/226 and 1/226A – both plots consist of 5 and 85m^2 of woodland north of Airport Way, A23 and south-west of The Crescent; and
- 1/227 - consists of 70m^2 of woodland south of Racecourse Way.

21.6.97. In respect of the above plots, the Applicant is seeking the permanent acquisition of land and rights in connection with Work Nos. 36, 37 and 40 and 46, and minor works, including protective works, access or utility diversions.

21.6.98. In its RR as landowner [RR-3735] RBBC raised concern regarding aspects of the Proposed Development which would impact their land ownership at Riverside Gardens Park and Church Meadows and the extent, condition, and usage restrictions of the replacement land to be offered by the Applicant. In its WR [REP1-094], similar concerns were raised, and reference was also made to potential effects on the proposed Horley Strategic Business Park.

21.6.99. Similar concerns were also raised in the SCC, MVDC, RBBC and Tandridge District Council Local Impact Report [REP1-097].

21.6.100. At D7 the Applicant confirmed that whilst HoTs had been issued to RBBC [REP7-065], it had been unable to get a response in respect of substantive matters. This matter was discussed at CAH2 [EV19-003 and EV19-005] where we asked the Applicant if any further contact had been made with RBBC. As no response had been forthcoming, the ExA requested that, if possible, RBBC could contact the Applicant to progress matters in a timely fashion.

21.6.101. In the Applicant's Closing Submission [REP9-112], it confirmed that following CAH2, RBBC had made a substantive response to the Applicant and discussions were progressing towards agreement on all matters, apart from land value.

ExA's Conclusion on Reigate and Banstead Borough Council

21.6.102. The issue of Replacement Open Space and vesting concerns is discussed in detail elsewhere within this Chapter and in ES Chapter 17 – Socioeconomics [APP-042] and is not repeated here.

21.6.103. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA also considers that the rDCO includes adequate compensation provisions and blight claim opportunities. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and the competing factors and interests that exist in terms of APs. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

SURREY COUNTY COUNCIL

21.6.104. SCC, as landowner, has an interest in the following plots:

- 1/009 - consists of 53m^2 of verge north-west of Longbridge Roundabout;
- 1/010 and 1/031 – both plots consist of 1838 and 1648m^2 of public road, verges and footways on Reigate Road, A217;
- 1/013 and 1/013A - both plots consist of 5222 and 3849m^2 of agricultural land, hedgerows, scrubland and accessway north of the Longbridge Roundabout;
- 1/019 - consists of 527m^2 of public road, verges and footway on Brighton Road, A230 and Woodroyd Avenue;
- 1/024 - consists of 22m^2 of verge west of Reigate Road, A217;
- 1/027 - consists of 56m^2 of scrubland and accessway north-west of the Longbridge Roundabout;
- 1/032 - consists of 93m^2 of scrubland and verge north of the Longbridge Roundabout;
- 1/035 - consists of 50m^2 of public road, Brighton Road, A23;
- 1/038 and 1/039 – both plots consist of 15 and 7m^2 of river, bed and banks of the River Mole and woodland south of Brighton Road, A23;
- 1/042 - consists of 30m^2 of verge, scrubland and access road west of the Longbridge Roundabout;
- 1/046 and 1/047 - both plots consist of 36 and 31m^2 of woodland east of the Longbridge Roundabout;
- 1/049 - consists of 261m^2 of public road and footway on Brighton Road, A23;
- 1/053 - consists of 90m^2 of river, bed and banks of the River Mole;
- 1/056 - consists of 3460m^2 of public roads, verges and footways on the A217 and the Longbridge Roundabout;
- 1/073 - consists of 4m^2 of scrubland south-west of the Longbridge Roundabout;
- 4/462 - consists of 10m^2 of verge and hedgerow north of M23 and public footpaths UF001/367/10, UF001/367/20 and UF001/368/30;
- 4/468 - consists of 23383m^2 of grassland north of Airport Way, A23;
- 4/470 - consists of 19902 m^2 of verge, grassland and shrubbery north of Airport Way, A23; and
- 4/495 - consists of 165m^2 of woodland and shrubbery south of Airport Way, A23 and public footpath CRA/360Sy/1.

21.6.105. In respect of the above plots, the Applicant is seeking the permanent acquisition of land and rights in connection with Work Nos. 35, 37 and 40.

21.6.106. The three areas of land about which the Applicant and SCC have been negotiating include:

- land owned by SCC as the local highway authority;
- land at Gatwick Dairy Farm; and
- Land at Bayhorne Farm.

21.6.107. At the close of the Examination, both parties confirmed that HoTs had been agreed in principle regarding Gatwick Dairy Farm [REP9-112] and [REP9-170] and in relation to the land owned by SCC as highway authority, the concerns raised had been resolved [REP9-112].

21.6.108. Turning to Bayhorne Farm, the Applicant stated that the plots in relation to this land would be required to deliver the surface access works. Part of the land in question would also be used for a temporary construction compound and may also form a section of the realigned highway and provide for the associated highway infrastructure. As the highway would be adopted by NH, the Applicant confirmed it required sufficient land and land rights to deliver the Proposed Development and provide for NH adoption [REP9-110].

21.6.109. SCC's objection in respect to Bayhorne Farm related to the fact that the land in question comprised approximately 31ha of land allocated as a Strategic Employment Area, named Horley Strategic Business Park (HSBP), under Policy HOR9 of Reigate and Banstead Development Management Plan. SCC is the majority landowner with a freehold interest in approximately 19ha of the land. The rest of the site consists of a land parcel adjoining Balcombe Road which is in private ownership with Columbia Threadneedle, and a further land parcel to the west and abutting the railway line in the ownership of RBBC.

21.6.110. SCC raised objection to the acquisition of land in relation to Work No. 35 as the main access in and out of Bayhorne Farm for any development on the site would need to be from Airport Way [REP1-096]. Without these access arrangements, SCC stated that the site could not come forward for employment-related development. Should the works be consented, SCC also stated that the works would permanently alter the highway arrangements to the South Terminal Roundabout (STR) and to SCC's land. Policy HOR9 also sets out requirements for access, movement, and accessibility, with one of the principal requirements being that a new dedicated access should be taken from the site onto Airport Way via a fourth leg from STR [REP1-096].

21.6.111. The permanent arrangements proposed on this part of SCC's land would include:

- the realignment of the existing highway layout;
- an access road from Balcombe Road into the land to be permanently acquired; and
- an attenuation pond to be used for highway drainage purposes.

21.6.112. The matter of Bayhorne Farm was also discussed at CAH2 [EV19-003] and [EV19-005]. The Legal Partnership Authorities (LePAs), which includes SCC, stated one of the remaining issues was the need to ensure that the temporary access required by the Applicant for its works could be constructed without prejudicing the delivery of a permanent access required for the HSBP. It was therefore contended by the LePAs that a joined-up planning approach was required to facilitate access to the allocated site particularly due to the importance of the junction on the strategic highway network. Although it was accepted that the junction may not remain part of the strategic road network post-project implementation, it was noted that successive schemes of works could cause significant disruption to the same location. As such, the Applicant should seek to avoid this. It was further stated that a solution allowing the Applicant's temporary access to be modified into the permanent access for the allocated site had been suggested, however this approach would require more detail and coordination between the parties.

21.6.113. In response, the Applicant confirmed [REP8-105] it was not their responsibility to design a highways access for a development outside the Proposed Development. In the normal way, it would design to provide for the highways impact that results from its own scheme. If a developer did come forward on the allocated site in due course, then that development would need to consider traffic conditions, the highways that are in place because of the Proposed Development and then mitigate accordingly. It was concluded that it is not for the Applicant to design an access that anticipates a development on an allocated site that has yet to come forward.

21.6.114. Turning to the matter of the proposed attenuation pond location, the LePAs position at CAH2 [EV19-003 and EV19-005] remained that the location of the pond would sterilise a part of the site that could lend itself to alternative uses and would frustrate SCC's ability to bring this part of the site forward later. It was also stated that there appeared to have been no consultation on alternative locations proposed for the highway drainage as an alternative to Bayhorne Farm. Therefore, the LePAs remained of the view that the Applicant had not considered alternatives, despite the site's allocation for employment uses.

21.6.115. The Applicant commented [EV19-003 and EV19-005] that the attenuation proposals across the Proposed Development, including the pond in question at STR, had been developed in consultation with both SCC and West Sussex County Council (WSCC) Lead Local Flood Authority teams, as well as being developed in consultation with NH as the future asset owner.

21.6.116. In response to our letter under Rule 17, dated 20 August 2024 [PD-030], NH confirmed [REP10-030] that it was content with the temporary access requested by the Applicant in respect of the contractor compound. However, such agreement in respect of the temporary access would be conditional on a commitment by the Applicant that such access would be removed following the construction period.

21.6.117. In the Rule 17 letter [PD-030], we also asked the Applicant and SCC what consideration had been given to the drafting of PP for SCC regarding the outstanding objections in respect of Bayhorne Farm. In response, SCC [REP10-033] commented that its preferred position would be that SCC's land at Bayhorne Farm would be removed from the dDCO in its entirety to enable the future delivery and development of HSBP. However, if the ExA was minded to recommend to the SoS SCC's land at Bayhorne Farm remained in the dDCO, then SCC considered that PP would be appropriate, in order to protect their interests.

21.6.118. A copy of the drafting of the proposed PP was included in the SCC submission at [REP10-033]. SCC acknowledged that the Applicant had confirmed it was willing to continue discussions after the close of the Examination and that it would provide an update to the ExA prior to the submission of a recommendation to the SoS.

21.6.119. In response to the Rule 17 question, the Applicant [REP10-023] considered that adequate protection would be offered to SCC through the dDCO and associated control documents. Specifically, that paragraph 4.4.7 of the CoCP [REP8-024] states "*where any landowner's assets (including access to their property) will be affected by construction works appropriate accommodation works…will be undertaken in advance of the main construction works affecting their property*". The Applicant considered that this would ensure it would take measures to protect SCC's assets and access during the construction phase. If SCC is also progressing with development at the same time, the Applicant would also be required to undertake accommodation works where any assets could be affected.

21.6.120. Additionally, the Applicant further noted that were it to exercise CA or TP powers, it would be required to pay compensation under Article 27 (compulsory acquisition of land), Article 28 (compulsory acquisition of rights and imposition of restrictive covenants), Article 33 (modification of the 1965 Act) and Article 37 (temporary use of land for carrying out the authorised development) of the dDCO [REP10-023].

21.6.121. In the SCC Closing Statement [REP9-170], SCC also requested that the Applicant delivered a "*positive passive provision*" for a permanent access from the STR to the proposed site for the HSBP. This issue was also discussed by the Applicant during CAH2 [EV19-003- EV19-005] and it reiterated the point that it is not for the Applicant to design an access that anticipates a development on an allocated site that has yet to come forward. If development does come forward, the Applicant considered that SCC would need to develop any designs with NH and obtain its approval for any permanent works as well as the other consents required for the delivery of the HSBP.

ExA's Conclusion on Surrey County Council

21.6.122. The ExA is mindful of the potential benefit the delivery of the HSBP could bring to both the immediate locality and further afield. Whilst recognising that the land in question forms part of an allocated site, at the close of the Examination the ExA was not aware that a planning application for the site had been submitted.

21.6.123. In this respect, we agree with the position of the Applicant that, given the lack of technical information available, it would not be appropriate or feasible for the Applicant to design and develop a permanent fourth spur to the STR. Additionally, NH is clear in that any access to the temporary construction compound required by the Applicant would be for a temporary period only and that any spur is to be removed.

21.6.124. In respect of the proposed attenuation pond, it is evident that the Applicant had considered alternative locations suggested by SCC. However, the ExA is satisfied that given the technical constraints, the proposed location is the most appropriate location.

21.6.125. Regarding the request by SCC for the inclusion of PP, given the existing controls within the rDCO, the ExA is satisfied that the interests of SCC are adequately protected without introduction of bespoke PP.

21.6.126. We therefore consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA therefore considers that the approach sought by the Applicant is a reasonable balance between public benefit and competing factors and interests. If agreement is not reached through negotiation, the ExA is satisfied that the CA of the relevant interests in this AP's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so.

WEST SUSSEX COUNTY COUNCIL AND SURREY COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITIES

21.6.127. The ExA is aware that at the close of the Examination, concern remained in respect of the treatment of land currently vested in WSCC and SCC as local highway authorities (LHAs). It is intended that this land would remain part of the maintainable highway on completion of any construction works required for the purposes of the

Proposed Development. However, the LHAs note the vested land may potentially be transferred to a different highway authority, including NH [REP9-151].

21.6.128. The LHAs also noted that in respect of land vested in NH, the Applicant has proposed PPs such that it may not exercise the powers of CA over land forming part of the Strategic Road Network (SRN) without the consent of NH. No equivalent or similar PP are proposed with respect to the LHAs and land vested in them as part of the local road network.

21.6.129. At [REP8-164], the LePAs stated that the solution to this issue is for all land plots which are currently vested in a local highway authority and which would, post-construction, be vested in a highway authority, but which may be a different highway authority, to be dealt with as 'green' land, where only temporary possession is taken and compulsory acquisition is limited to rights only. Alternatively, the LePAs would accept the inclusion of PPs, similar to those in favour of NH, to be included in the rDCO.

21.6.130. Following CAH2 [EV19-003 and EV19-005], the Applicant confirmed they had further discussed this issue with the LePAs [REP8-110]. The Applicant confirmed that the LHA's could not be forced to adopt land and take on the associated liabilities and statutory duties. The Applicant confirmed that this could not happen under the dDCO as drafted as the LHAs would be protected by Article 21 of the dDCO. Article 21 would prevent the Applicant from commencing any works in the local highway until the LHA has entered into an Article 21 Agreement. Article 21(2)(c) explicitly includes provision for the matters included within a section 38 agreement (power of highway authorities to adopt by agreement). Therefore, the Applicant confirmed that any works on highway land which may transfer to a LHA would be subject to an Article 21 agreement as it would tie into the local highway. This effectively would give the LHAs the veto it sought. Also, a limitation on the Applicant's ability to exercise its CA powers would not provide any additional protection to the LHAs in this context.

ExA's Conclusion on West Sussex County Council and Surrey County Council, as Local Highway Authorities

21.6.131. Whilst the LePAs have not been specific in which plots these concerns relate to, the ExA understands the concern in respect of the fact that NH may gain some of their existing land if it becomes trunk road as opposed to a local highway.

21.6.132. However, we are satisfied that adequate protection exists for the LHAs given the drafting of Article 21 in the dDCO. In this instance, we are content that established systems and agreements for the Applicant to follow when carrying out this type of works exist which would provide the LHAs with adequate protection. As such, we do not consider a bespoke approach is necessary.

21.6.133. We therefore consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development. The ExA considers that the approach sought by the Applicant is a reasonable balance between public benefit and the competing factors and interests that exist in terms of APs.

21.7. STATUTORY UNDERTAKERS

INTRODUCTION

21.7.1. This section of the Chapter considers representations made by SU under s127 and s138 of the PA2008, including all representations made at CAHs and OFHs. The ExA has only identified the points considered to be important and relevant when reporting on the representations and the Applicant's responses.

PROTECTIVE PROVISIONS

21.7.2. The progress with PP was charted within the regular submissions of the Land Rights Tracker. The final Land Rights Tracker was submitted at D7 [REP7-065] and a Compulsory Acquisition and Temporary Possession – Status of Negotiations document was submitted at D9 [REP9-110], which in respect of PP sets out the nature of the undertaking, the land rights affected, whether s127 and/ or s138 would be engaged and the status of the discussions with any impediments envisaged.

21.7.3. Agreement was reached with, or no objection was received from, the following SU:

- Openreach (British Telecommunications PLC); s127 and s138 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2;
- Cornerstone Telecommunications Infrastructure Limited; s127 and s138 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2;
- EE Limited; s127 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2;
- GTC Pipelines Limited; s127 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 1;
- Hutchinson 3G Limited; s127 and s138 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2;
- Lumen Technologies Limited; s127 and s138 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2;
- Mobile Broadband Network Limited; s127 and s138 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2;
- Sutton and East Surrey Water PLC; s127 and s138 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 1;
- Telefonica O2 UK Limited; s127 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2;
- Virgin Media Limited; s127 and s138 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2;
- Vodafone Limited; s127 and s138 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2; and

- Zayo Group UK Limited; s127 and s138 would be engaged, no objection was submitted, PPs for the Protection of Operators of Electronic Communications Code Networks are included in dDCO Schedule 9, Part 2.

21.7.4. For those SU where the wording of PP has been fully agreed, the ExA is content with the wording and has made no changes to the ExA's rDCO.

BESPOKE PROTECTIVE PROVISIONS

21.7.5. At the close of the Examination agreement was reached on bespoke PP and/or a protective side agreement with the following SU:

- British Pipeline Agency/ Walton-Gatwick Pipeline Limited (BPA); initial concerns received, engagement during the Examination was entered into, BPA confirmed the withdrawal of the outstanding objection on 31 July 2024 [REP8-138] and that an agreement had been entered into, no PP were considered necessary by either party;
- South Eastern Power Networks plc (with UK Power Networks Services (South East) Limited as agent); no objection was submitted, a protective side agreement has been entered into, no PPs were considered necessary by either party;
- Network Rail Infrastructure Limited (NR); initial dialogue indicated that the NR standard form of PP should be included within the dDCO as the initial draft of the dDCO did not include any PP in favour of NR, a Framework Agreement was agreed between both parties and bespoke PP for the benefit of NR have been fully agreed and included in the rDCO, at Schedule 9, Part 4; and
- Southern Gas Networks plc (SGN); initial objection received, dialogue between parties undertaken during the Examination, SGN confirmed at D10 that agreement had been reached and the objection had been removed [REP10-032], bespoke PPs for the benefit of SGN are include in the rDCO at Schedule 9, Part 1.

21.7.6. For those SU where the wording of PP have been agreed no change has been made to the Applicant's final dDCO.

NATIONAL HIGHWAYS

21.7.7. At D10, NH also confirmed that a Framework Agreement [REP10-017] had been entered into. As such, NH confirmed the withdrawal of its objection in relation to concerns for the potential for adverse effects on the safe and efficient operation of the SRN [REP10-017].

21.7.8. In the Applicant's Closing Submission [REP9-112] and Compulsory Acquisition and Temporary Possession – Status of Negotiations [REP9-110], the Applicant stated that agreement had been reached with NH apart from the issue relating to an indemnity cap.

21.7.9. Despite confirmation of the withdrawal of objection, NH confirmed that no further dialogue in respect of the outstanding issue relating to the indemnity cap had taken place since D9 [REP10-029].

21.7.10. In their Closing Statement [REP9-160] NH stated that their objection to the Applicant's position to provide a capped indemnity of either 30% or £100 million, whichever is higher, concerning damages, losses and costs arising from its own actions remained.

21.7.11. NH provided suggested wording in respect of paragraph 18 of Schedule 9, Part 3 [REP9-160] as the current wording would in effect pass private sector burden onto the public purse. As such, NH stated that the value of indemnity should be uncapped. Section 1 of [REP9-160] also provides examples of other made DCOs which have included similar uncapped indemnities.

21.7.12. The Applicant's position in respect of this issue at the end of the Examination was that an uncapped indemnity, particularly one with the extremely broad scope of the NH proposed wording, would be unduly burdensome and go beyond what is market standard practice in similar project finance schemes [REP9-112].

21.7.13. Additionally, the Applicant confirmed that the proposed indemnity cap also sits alongside provisions that require the Applicant to procure a bond in favour of NH, which would provide significant additional security against any failure by the Applicant to complete the highway improvement and/ or other damages and losses in respect of which the bond can be drawn down. The Applicant further stated that this bond should provide NH with assured recourse if it suffers relevant loss, damages, or expenditure and this should therefore offer sufficient comfort alongside the additional, capped indemnity [REP9-112].

21.7.14. NH stated that the provision of a bond is ordinarily, as the precedents quoted demonstrate, backed up by an indemnity, and the indemnity itself applies more broadly to ensure that damages, losses, and costs arising from the Applicant's own actions would be correctly accounted for by the Applicant. NH did not consider it acceptable for the Applicant to propose nationally significant infrastructure works on the SRN, and then seek to avoid full liability for costs that arise. As such, at the close of the Examination, NH confirmed they were unable to fully withdraw their objection under s127 of the PA2008 [REP9-160] in respect of the indemnity issue.

ExA's Conclusion on National Highways

21.7.15. Whilst the ExA notes the progress made between both parties, it finds both the bond and uncapped indemnity to be necessary to avoid serious detriment to the carrying on of the undertaking under s127 of the PA2008. In this instance, the ExA agrees that it is not appropriate for a public sector agency to potentially fund a private sector burden. As such, in the rDCO the ExA has included the wording as suggested by NH in respect of paragraph 18 of Schedule 9, Part 3.

ESSO PETROLEUM COMPANY LIMITED

21.7.16. The Applicant attempted to liaise with Esso Petroleum Company Limited (EPCL) throughout the Examination but advised limited response had been received [REP9-110]. It is noted that both s127 and s138 would be engaged and at the close of the Examination EPCL had not objected to any powers in the dDCO.

21.7.17. The Applicant has included bespoke PP in favour of EPCL in Schedule 9, Part 7 [REP10-004] and consider that these would adequately protect EPCL undertakings.

ExA's Conclusion on Esso Petroleum Company Limited

21.7.18. Whilst an agreement had not been reached between parties by the close of the Examination, the ExA considers that the Applicant's wording in its final dDCO is adequate.

21.7.19. The ExA is satisfied that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138, and that the powers sought could

be exercised without serious detriment to the carrying out of EPCL's undertaking, and are consistent with s127, on the basis of the PP that are reported above and included in rDCO Schedule 9, Part 7.

BESPOKE PROTECTIVE PROVISIONS/ PROTECTIVE SIDE AGREEMENT STILL UNDER NEGOTIATION

21.7.20. For those SU where bespoke PP are required, but which were not agreed by the close of the Examination, the ExA requested, at CAH2, from both parties a set of the Applicant's PP marked up with areas of disagreement, including alternative precise wording [EV19-003 and EV19-005].

THAMES WATER UTILITIES LIMITED

21.7.21. At the close of the Examination, the only SU requesting bespoke wording where agreement had not been reached was Thames Water Utilities Limited (TWUL) and TWUL submitted their preferred wording at [REP9-358].

21.7.22. The two outstanding matters not agreed on are:

- the provision of a bond; and
- indemnities.

21.7.23. TWUL [REP9-358] stated that a bond would be required prior to any works being undertaken on or in relation to its network. TWUL further stated that this provision of a bond is a common requirement of many SU. As such TWUL did not consider that such a request was unreasonable. In addition, if the Applicant failed to fully complete any necessary works or to recompensate TWUL for carrying them out on the Applicant's behalf, TWUL would require the bond to be able to carry out these works and/ or reimburse its costs of doing so.

21.7.24. In respect of the need for an indemnity cap, TWUL stated [REP9-358] that any losses suffered would not have occurred if not for the Applicant's Proposed Development. As such, the Applicant should indemnify TWUL for losses. If damage is caused in excess of the cap, TWUL would be required to subsidise this itself, with these costs ultimately being borne by bill payers.

21.7.25. In respect of the suggested value of the indemnity cap, TWUL stated that they could face extensive costs running into the millions, which would be likely to exceed the cap. Furthermore, TWUL noted that currently there is no allowance for future inflation in the cap [REP9-358]. Accordingly, TWUL requested that the cap should be £20 million and that this figure should apply to each discrete event which impacts the TWUL network.

21.7.26. At D10 the Applicant [REP10-001], stated that it was maintaining its stance as outlined in its Closing Submissions [REP9-112] as TWUL had failed to provide adequate justification or necessity for the inclusion of a bond. The Applicant did however acknowledge that the drafting of the bond provisions by TWUL had improved from the earlier version shared with the Applicant. Despite this the Applicant considered it remained unacceptably uncertain in application and it therefore maintained its objection to the inclusion of such a bond on the basis that it could cause delay in carrying out the authorised development where there is or may be an interface with TWUL apparatus.

21.7.27. In respect of the indemnity, the Applicant [REP10-001] stated that they would be amenable to the proposed quantum of £20 million and that this indemnity cap would

rise with inflation. However, it required, there to be an overarching cap, at potentially a higher level than the suggested figure of £20 million, to ensure that indemnity is not cumulatively open-ended. An uncapped indemnity would also pose difficulties to the Applicant in terms of its corporate risk and insurance requirements [REP9-112].

ExA's Conclusion on Thames Water Utilities Limited

21.7.28. We find both the bond and a capped indemnity of £20 million per event, which both rises with inflation and would be applicable to each potential event, as requested by TWUL, to be necessary to avoid serious detriment to the carrying on of the undertaking. As such, in the rDCO the ExA has included the PP wording as suggested by TWUL at [REP9-358] in respect of Schedule 9, Part 6.

ExA's OVERALL CONCLUSION ON STATUTORY UNDERTAKERS

21.7.29. With regards to those SU whose rights and apparatus would be interfered with by delivery of the Proposed Development, but which did not make representations, Schedule 15 of the Applicant's dDCO Part 1 includes provisions for the protection of all electricity, gas, water and sewerage undertakers and Part 2 provides protection for operators of electronic communication code networks. As representations have not been made the provisions of s127 are not engaged.

21.7.30. As different matters formed the basis of outstanding matters regarding bespoke PPs, for NH, TWUL and EPCL, the ExA has provided its reasoning and concluded its recommendations under their relevant headings above.

21.7.31. Based on the evidence before the ExA, we are satisfied that the relevant PP contained within Schedule 9 of the rDCO would ensure that an appropriate degree of protection would be given to all affected SU, such that there would be no serious detriment to the carrying out of their undertakings. The ExA is satisfied that the interference with apparatus and extinguishment of rights would be necessary and proportionate for the purposes of carrying out the Proposed Development.

21.7.32. Notwithstanding the above, the ExA is disappointed that the Applicant and certain SU could not reach agreement within the statutory timescale for examination.

21.8. CROWN LAND

21.8.1. The BoR [REP9-011 and REP9-013] and the Crown Land Plans [REP9-016] identify that various plots comprise Crown land. The BoR identifies that in respect of these plots, the Applicant is seeking either TP, the acquisition of new rights, the imposition of restrictive covenants or freehold acquisition. Additionally, Article 44 (Crown rights) of the dDCO [REP10-004] includes provision for the acquisition of Crown interests.

21.8.2. Section 135 of the PA2008 provides that a DCO may authorise, with the consent of the Crown, the CA of an interest held in Crown land which, for the time being, is held otherwise than by or on behalf of the Crown, and the appropriate Crown authority consents to the acquisition. Section 227 of the PA2008 defines 'Crown land' as any land in which there is a Crown interest.

21.8.3. The Applicant confirmed negotiations with the relevant Crown authorities was on-going [REP9-112] and we asked for updates at both CAH1 [EV14-001 and EV14-002] and CAH2 [EV19-003 and EV19-005]. At CAH1, the Applicant confirmed that it was confident that all relevant Crown interest had been captured in the BoR and that introductory letters, including draft s135 consent letters, had been sent to the relevant Crown bodies in August 2023. The Applicant had also been in regular

contact with all Crown land interests, and discussions were progressing toward s135 consent letters being signed and submitted prior to the close of the Examination [REP4-034].

21.8.4. The Applicant also entered into a MoU with the Crown land interests and the completion of the MoU was expected to provide sufficient comfort to enable the Crown land interests to provide s135 consent. The Applicant saw no impediment to the s135 consents being granted by the Crown land interests in relation to the Proposed Development [REP4-034]. The Applicant was also asked during CAH1 [EV14-001 and EV14-002] to explain the implications for the Proposed Development if s135 was not obtained by the close of the Examination. The Applicant confirmed that it expected some form of agreement would be entered into prior to the decision date but that they would further expand on this in writing.

21.8.5. At [REP4-038] the Applicant confirmed that the MoU would provide comfort that the Crown's obligations, statutory duties, and operations would not be materially impacted by the Proposed Development, and appropriate accommodations would be put in place. However, if consent was not confirmed by the Crown prior to the close of the Examination, the Applicant would continue to pursue such consent in the subsequent Recommendation period to enable it to be reported as confirmed prior to any decision on the Proposed Development being made. It also confirmed that it had taken steps to reduce the impact on Crown interests by excluding certain buildings and areas from the CA powers.

21.8.6. Similar questions were asked by the ExA at CAH2 [EV19-003 and EV19-005] as we were aware s135 consent had not been received from any Crown interests. The Applicant explained that [REP8-105], as far as the Office for National Statistics (ONS) was concerned, the MoU had been agreed and the s135 was being finalised, noting that there were no issues in the s135. With the SoS for Transport, several meetings have been held and the s135 was being finalised. In terms of the Home Office, a draft MoU had been shared and the Home Office had confirmed that they were reviewing, and the Applicant hoped the MoU would be signed imminently.

21.8.7. At D9, the ONS confirmed in writing [REP9-165] that Crown land consent under s135 (1) and (2) in relation to the Proposed Development had been granted. At D10, the SoS for Transport also confirmed in writing [REP10-025] that Crown land consent under s135 (1) and (2) in relation to the Proposed Development had been granted. Additionally, the SoS also agreed with the wording of Article 44 of the dDCO.

21.8.8. In the Applicant's Compulsory Acquisition and Temporary Possession – Status of Negotiations submitted at D9 [REP9-110], the Applicant commented that negotiations were under way with the above three Crown authorities and that s135 was anticipated prior to the close of the Examination.

21.8.9. At the close of the Examination, s135 consent had not been received from the following Crown authorities:

- SoS for Levelling Up, Housing and Communities;
- HM Revenue and Customs; and
- UK Visas and Immigration.

ExA's Conclusion on Crown Land

21.8.10. At the close of the Examination, Crown consent had not been received from all the relevant Crown authorities. In the absence of consents from the relevant Crown

authorities, the ExA concludes that the Order cannot authorise the CA or TP of those plots of land and/or interests which are Crown land because the requirements in s135(1) and s135(2) of PA2008 have not been met. However, the ExA is not aware of any impediments to the granting of Crown consent by the relevant Crown authorities.

21.8.11. The SoS would therefore need to ensure that Crown consents are forthcoming from the relevant Crown authorities prior to any grant of development consent and the recommendation to the SoS to grant development consent is subject to Crown consents being forthcoming.

21.9. SPECIAL CATEGORY LAND

21.9.1. As noted above, the Applicant is seeking CA powers over special category land and rights as shown on the Special Category Land Plans [REP9-018] and also contained within Schedule 10 of the dDCO [REP10-004] and the BoR [REP9-113, Part 5].

21.9.2. The Applicant confirmed in the Note on the Acquisition of Special Category Land and Provision of Replacement Open Space [REP9-104] that the plots of special category land to be permanently acquired are all required for the highway improvement works and therefore this satisfies section 131(5)(a) of the PA2008 as it is land *"required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway"*.

21.9.3. The Applicant further stated that the giving of other land in exchange is considered unnecessary, thereby satisfying section 131(5)(b) as the plots are required to facilitate the highway improvement works. Once these works are completed, the widened and improved highways would be adopted by the relevant highway authorities, namely NH, SCC or WSCC. The entities would also be vested with the requisite land interests. Given the small amount of designated open space currently in highway authority ownership, the Applicant considered landowners would not suffer a net loss in land under their control.

21.9.4. The JLAs confirmed [REP8-164] that none wished to be vested with the replacement land and they would be satisfied if the land is to be vested, or where already owned by the Applicant, remain vested in, the Applicant provided that the Applicant laid out and maintained suitable replacement open space for the benefit of the public and provided a commitment as regards maintenance of this open space.

ExA's Conclusion on Special Category Land

21.9.5. Paragraph 2.2.7 of the Note on the Acquisition of Special Category Land and Provision of Replacement Open Space [REP9-104] confirmed that Article 40 of the dDCO would continue to secure the laying out of replacement open space by the Applicant. It was also confirmed that the land in question would not qualify as 'replacement land' under s131(4) as it is not to be vested in the entities from which the Applicant would be acquiring special category land. As such, we agree that the replacement open space is considered a suitable replacement for the special category land to be acquired for the benefit of the public by the Applicant.

21.9.6. In respect of rights proposed to be acquired over the western and southern edges of Church Meadows, land south of the A23 Brighton Road and along the southern edge of Riverside Garden Park, s132(4b) of the PA2008 applies. This provides an

exception to SPP where open space is "*being acquired for a temporary (although possibly long-lived) purpose*".

21.9.7. It is stated by the Applicant that the rights would solely facilitate access for periodic inspections and, where necessary, remedial maintenance work to the pedestrian bridge. The infrequency of the exercise of these rights, coupled with the limited disturbance to Church Meadows during times of their exercise, would render the parcel of land in question no less advantageous to those holding an interest in the land and the public.

21.9.8. We find no reason to disagree that, given the likely infrequency of the need to exercise the rights, that the CA of the rights would not result in the land being any less advantageous to the users than the current situation.

21.9.9. Additionally, we also agree that whilst s131(4) of the PA2008 applied at the time of submission of the application, for the reasons discussed above, this is no longer applicable.

21.9.10. However, the application of s132(3) and 132(4B) to the proposed acquisition of rights over open space land remains unchanged. The plots of open space land and replacement open space forming part of the application, including their size and the design proposals for the replacement open space, also remain unchanged. The only change is the application of s131(5) instead of s131(4) to open space land proposed to be permanently acquired.

21.9.11. In respect of the approach to securing the provision of replacement open space, we are satisfied that given the drafting of Article 40 of the dDCO [REP10-004] this would mean that the Applicant could not acquire any special category land until it had the means to provide all identified replacement open space and has submitted and had approved a plan setting out the timetable for doing so to Crawley Borough Council (CBC), in consultation with RBBC and MVDC.

21.9.12. Whilst we accept that this is not standard drafting, we are satisfied that it is both necessary and appropriate in this situation as the Applicant confirmed that this approach was required as the special category land to be acquired would be essential for the carrying out of the highway works and its acquisition cannot await the completion of those works. However, the construction of the highway works would also utilise land that would eventually form part of the replacement open space for proposed maintenance and footpath accesses to the replacement open space. It was therefore not possible to establish and provide access to the replacement open space in advance of the highway works. In particular, the northern part of car park B would be required as a construction compound for the highway works, and the rest of this area would be required for use as a construction access to carry out works to the carriageway in the vicinity of the Airport Way railway bridge.

21.9.13. We note that s131 of the PA2008 indicates that replacement land need not be laid out before special category land can be acquired pursuant to a DCO. Section 131 also allows for an order to authorise the CA of such land without the need for SPP provided that the SoS is satisfied that, inter alia, "*replacement land has been or will be given in exchange for the order land*".

21.9.14. Whilst the Applicant accepts that it is not providing formal replacement land for the purpose of s131(4) due to the JLAs not wishing to be vested with such land, it considers the laying out of replacement open space partly underpins the conclusion

that the *"giving in exchange of other land is unnecessary for the purpose of s131(5) is applicable".*

21.9.15. We are therefore satisfied, that as far as appropriate, the tests of s132 of the PA2008 in relation to special category land are satisfied.

21.10. THE EXAMINING AUTHORITY'S CONSIDERATION OF THE CASE FOR COMPULSORY ACQUISTION AND TEMPORARY POSSESSION

21.10.1. The ExA's approach to the question of whether and what CA powers it should recommend to the SoS to grant has been to apply the relevant sections of the PA2008, notably s122 and s123, the Human Rights Act 1998 and the Equality Act 2010 and to also have regard to the CA Guidance. In the light of the representations received and the evidence submitted, it is also necessary to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

21.10.2. A number of general considerations have also been addressed in the light of the CA Guidance, namely;

- whether all reasonable alternatives to CA have been explored;
- whether the Applicant has a clear idea how it intends to use the land and has demonstrated funds would be available;
- whether the proposed interference with the rights of those with an interest in land would be for a legitimate purpose and that it is necessary and proportionate; and
- whether there would be any impediment to obtaining any operational or other consents.

Whether all Reasonable Alternatives to Compulsory Acquisition Have Been Explored

21.10.3. Paragraph 8 of the CA Guidance requires that the Applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA, including modifications to the scheme, have been explored.

21.10.4. The Applicant's SoR set out the stages of the Proposed Development process, which demonstrated the options, identification, and selection process undertaken by the Applicant [REP9-009]. Sections 6.2.13 to 6.2.20 of ES Chapter 3, Alternatives Considered provides a summary of the alternatives considered by the Applicant during the optioneering and design process [APP-028].

21.10.5. The ExA has reported on its finding regarding the alternatives considered in Section 4.6 of this Report. We do not repeat that here, only to report that we are satisfied that the Applicant has adequately considered alternatives to the Proposed Development and that there are no matters relating to the consideration of alternatives which would weigh for or against the Order being made.

21.10.6. We now turn to the question of alternatives which arose in the specific context of land rights. Sections 6.2.13 to 6.2.20 of the SoR [REP9-009] detail the alternative options considered by the Applicant in respect of the Proposed Development and Sections 6.2.21 to 6.2.23 of the SoR [REP9-009] detail alternatives to CA. The Applicant confirmed that they own or control most of the land required for the Proposed Development and aimed to acquire all land and rights by voluntary

agreement. It was also confirmed that the Applicant is applying for TP powers over the full extent of the Order land.

21.10.7. Details of negotiations were provided initially in Appendix B of the SoR [APP-010] and updated throughout the Examination in several iterations of the Land Rights Tracker [PDLA-010], [REP3-064], [REP5-033] and [REP7-065]. The final update was provided in the Compulsory Acquisition and Temporary Possession – Status of Negotiations document at D9 [REP9-110].

21.10.8. The Applicant stated that it is progressing with acquisition by negotiation as an alternative to CA and TP it has sought to reach voluntary agreements with all APs. Notwithstanding its preference to acquire all land by agreement, the Applicant confirmed that it would need to seek to acquire land and rights compulsorily through the dDCO in circumstances where the voluntary acquisition of land or rights is ultimately unsuccessful (Para 6.2.23 of [REP9-009]).

21.10.9. At D9 the Applicant provided a final update on the land negotiations in August 2024 and this is shown below [REP9-110].

Table 21.1: Status of Negotiations

Agreements Category	Total Number
Section 1: Acquisition concluded or Option Agreement signed and exchanged	2
Section 2: Legal agreement being finalised or agreed. Exchange expected shortly	2
Section 3: Legal agreement progressing, no issues to note	4
Section 4: Heads of Terms and/or Memorandum of Understanding agreed	1
Section 5: Heads of terms and/or Memorandum of Understand in negotiation	9
Section 6: Affected Party not engaging with the Applicant	4
Section 7: Agreement not required	1
Section 8: Crown Land Consent	5

21.10.10. The above table does not include details of negotiations with SU as these have been reported in earlier paragraphs.

21.10.11. We acknowledge that there are few alternatives available to the Applicant and we are satisfied that the Applicant has explored all reasonable alternatives to CA. As such, the ExA is of the conclusion that there are no alternatives to the CA powers sought which ought to be preferred.

Diligent Inquiry and Clarity on the Use of the Land

21.10.12. Diligent inquiry must be undertaken to identify the categories of persons set out in s44 and s57 of the PA2008 as Categories 1, 2 and 3. The Applicant explained that prior to the first formal consultation exercise a diligent land referencing process was completed to identify relevant persons with an interest in land.

21.10.13. All interests within the Order land were identified, including owners, lessees, tenants, and occupiers, as well as persons who have an interest in land or have power to sell and convey, or to release land. Regarding potential Category 3 persons who may have a relevant claim pursuant to s10 of the Compulsory Purchase Act or s152(3) of PA2008, the Applicant confirmed that the Category 3 boundary had been identified on a conservative basis. The Applicant used a combination of an air noise contour, air noise change analysis and distance from the affected sections on roads to inform the Category 3 referencing boundary and to further ensure that anyone entitled to make a relevant claim was included in the Category 3 Boundary, those up to 250m from the highway developments were also included (para 7.2.5 and 7.2.7 of [REP9-009]).

21.10.14. Several amendments were made to the BoR during the Examination, particularly at D5 [REP5-009 and REP5-011], with reasoning provided in the Book of Reference – Schedule of Changes document [REP5-013]. At ExQ2, we asked whether any further changes to the BoR of a similar magnitude were anticipated prior to the close of the Examination [PD-021]. In response the Applicant confirmed that, in respect of Category 3 interests, due to the due diligence process they had undertaken and the scale of the BoR, additional changes to the BoR were likely [REP7-080].

21.10.15. The ExA is satisfied that the Applicant has undertaken, and continues to undertake, land enquiries in a diligent fashion and that the requirements under s44 and s57 of the PA2008 regarding categories of APs have been satisfactorily applied.

Extent of Land and Rights for Compulsory Acquisition and Temporary Possession

Land for Compulsory Acquisition

21.10.16. The Applicant set out that land and rights would be necessary to deliver the Proposed Development. The rationale for the extent of the required land and rights was set out, whereby the extent of the land and rights to be acquired were drawn with regard to avoiding any unnecessary interference with third-party land. The Applicant considered that all the land included in the Order land is necessary to enable the delivery of the Proposed Development and once detailed design had been undertaken, it would ensure that only the land that is required for the development would be acquired (para 6.2.6 of [REP9-009]).

21.10.17. The Applicant's Compulsory Acquisition and Temporary Possession – Status of Negotiations [REP9-110] set out its final position in respect of the justification for the grant of the acquisition of land and acquisition of rights and imposition of restrictive covenants with the specific use with the class of rights sought for Category 1 landowners, Crown land and SU. The BoR also identifies the extent of acquisition or use being sought over each plot of land which corresponds to specific articles in the dDCO for Category 1, 2 and 3 persons, Crown interest and for any Special Category Land [REP9-011 and REP9-013].

Land for Temporary Possession

21.10.18. In relation to the TP powers sought pursuant to Articles 37 to 39 of the dDCO, the Applicant set out its justification for the grant of these powers in Section 5.4 of the SoR [REP9-009]. The Applicant acknowledged that there would be situations where it would not be necessary to permanently acquire rights and interests, but instead it would be necessary to be authorised to temporarily possess and use private roads and land. The powers sought are required to carry out and thereafter maintain the

Proposed Development. The powers would be needed for a limited time during the construction phase and for occasional maintenance in the operational phase.

21.10.19. The ExA also notes that the Applicant has confirmed that it is applying for TP powers over the full extent of the Order land (Section 3.3.4 of [REP9-009]). Paragraph 7.21 of the Explanatory Memorandum (EM) [REP9-008] confirms that, where feasible, the Applicant intends to carry out construction pursuant to TP powers only vesting permanent interests or rights where necessary for construction and otherwise upon works completion, allowing for a more precise scope of land or rights to be permanently acquired. The Applicant considers that this approach is only feasible if it retains its CA powers at the time of completion of works, otherwise it would need to pre-emptively acquire rights and land.

ExA's Conclusion on the Extent of Land and Rights for Compulsory Acquisition and Temporary Possession

21.10.20. In considering the objections raised by APs who would be affected by CA, we have also taken all relevant objections or concerns into account in reaching our conclusions on the application for TP and rights in the same way as for permanent acquisition but set against the appropriate tests.

21.10.21. The ExA is satisfied that both the CA and TP powers sought are needed both to facilitate implementation of the Proposed Development and to maintain it, and that adequate compensation provisions are in place in the rDCO. We consider the human rights implications of both the temporary and permanent interests and rights sought later in this Chapter.

21.10.22. The ExA is satisfied that the Applicant has demonstrated how it intends to use the land rights which it proposes to acquire and the land for which it seeks CA and TP. We find the SoR comprehensive, when read with the BoR, the Compulsory Acquisition and Temporary Possession – Status of Negotiations and articles and Authorised Development descriptions in the dDCO. We are content that the SoS can be satisfied that there is no doubt as to the purposes for which any land which would be compulsorily acquired. Likewise, there is clarity over use of land for TP.

The Availability and Adequacy of Funding

21.10.23. Applicants are required to demonstrate that adequate funding is available, as detailed at paragraph 18 of the CA Guidance. The Applicant set out its justification for availability and adequacy of funding in its Funding Statement [APP-009], which accompanied the application, which it stated should be read alongside the SoR [REP9-009]. The Funding Statement explained how the Proposed Development generally would be funded and specifically how the acquisition of land and rights over land which are necessary to deliver the Proposed Development would be funded.

21.10.24. The Funding Statement indicates that the cost of implementing the Proposed Development would be approximately £2.2 billion. This figure includes land acquisition, including any compensation payable for any compulsory acquisition of land and interests in land and rights over land, and physical construction. The Applicant also confirmed that this cost estimate considers expected inflation and contingencies.

21.10.25. In response to ExQ1 CA.1.22 [REP3-087], the Applicant confirmed that the property cost estimate for the acquisition of land and rights would be approximately £121 million. This figure was calculated by property specialists, and it was updated in

February 2024 [REP3-087] to consider the latest information provided by Affected Persons during the Applicant's negotiations on acquisition.

21.10.26. The Applicant also confirmed in Section 3.2 of the Funding Statement [APP-009] and in response to ExQ1 CA.1.19 [REP3-087] that the Applicant proposes to fund the Proposed Development through a blend of debt, equity, and airport charges. This is stated as being on a similar basis to the historical funding of previous development works at Gatwick Airport. The Applicant's full accounts were also provided in the Applicant's Response to Actions CAH1: Compulsory Acquisition [REP4-038].

21.10.27. In terms of certainty of funding, in response to ExQ1 CA.1.21 [REP3-087] the Applicant stated that it considers that the historic evidence of its ability to fund major development works and the financial strength of Gatwick and its ownership group, as described in paragraphs 3.1.2 to 3.1.4 of the Funding Statement, should provide the ExA with sufficient confidence that adequate funding would be available.

21.10.28. The Applicant confirmed at CAH2 that there had been no updates to the Funding Statement and that the figure for the property cost estimate remained correct. It was further confirmed that funding matters were kept under review but that the Applicant did not see any reason for the figure to change [REP8-105].

21.10.29. At D10 [REP10-001], the Applicant provided a copy of the half-yearly financial results which were published for Gatwick Airport for the period ending 30 June 2024. The Applicant concluded that these results demonstrated that Gatwick Airport had continued to recover in line with its expectations and that it remained confident that 2025 would see a return to 2019 traffic levels and provide a strong foundation for future growth.

21.10.30. The ExA finds the way the Applicant has assessed the funding required for CA, and the likely cost of implementing the Proposed Development, to be satisfactory and reliable. The ExA has no reason to doubt that the Applicant is of sound financial standing, that it has the necessary funding applications in hand, and that the necessary funds would become available to finance the Proposed Development, including CA. We agree with the Applicant's statements that the SoS can be satisfied that all funding would become available if the Order is made.

The Need to Obtain Operational and Other Consents

21.10.31. The ExA's consideration of the other consents and licences required to implement the Proposed Development is set out in Section 1.8 of this Report and is not repeated here. Drawing on our findings in Section 1.8, we are satisfied that the Applicant has demonstrated that there is no impediment to obtaining any operational or other consents which may be necessary to construct and operate the Proposed Development. In this sense, paragraph 19 of the CA Guidance is met.

The Scope and Purpose for which Compulsory Acquisition is Sought

21.10.32. The SoR [REP9-009] sets out the considerations that need to be taken into account in deciding whether the condition in s122(2) of the PA2008 has been met. Paragraph 7 of the CA Guidance expands on s122, stating that applicants must be prepared to justify their proposals for CA of any land to the satisfaction of the SoS and paragraphs 8 to 22 of the CA Guidance provide several general considerations that applicants should demonstrate to the satisfaction of the decision maker.

21.10.33. For s122(2)(a) to be met, the Applicant should be able to demonstrate that the land in question is needed for the development for which consent is sought or is land required to facilitate or is incidental to that development. The SoS will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.

21.10.34. In the SoR [REP9-009], the Applicant confirmed that it already owns or controls most of the land and rights in land required for the Proposed Development and would seek to acquire all land and rights it requires by voluntary agreement. However, the Applicant maintains that a certain degree of flexibility is required due to the nature of the design process and timing of the consent process.

21.10.35. Turning to s122(2)(c) in respect of open space and replacement land, this matter is discussed above and the details regarding this issue are not therefore repeated here.

Associated Development Section 115(2)

21.10.36. Section 115(2) of the PA2008 provides that, in addition to the development for which consent is required under Part 3 of the PA2008 (the principal development), consent may also be granted for associated development. PA2008 defines associated development as development which is associated with the principal development.

21.10.37. As detailed at paragraphs 2.5 to 2.8 of the EM [REP9-008], the Applicant is also seeking consent for associated development, and this is defined in Schedule 1 of the dDCO [REP10-004]. The Applicant stated that all the Works described in Schedule 1 of the dDCO either constitute part of the NSIP or are associated development within the meaning of section 115(2) of the PA2008, and so could properly be authorised by the Order.

21.10.38. Section 3.5 of this Report provides a summary of the associated development works and is not repeated here. As also detailed in section 3.5, concern was raised by the LePAs over the inclusion of the hotels and office within the dDCO. Following questions during ExQ2 [PD-021], Requirement 34 of the dDCO was introduced by the Applicant to ensure that the new office must only be occupied by an entity related to, or whose business and/ or operations are related to, the airport, air travel and/ or aviation, unless otherwise agreed in writing by CBC. This commitment was welcomed by the LePAs [REP8-161].

21.10.39. The ExA is of the view, as set out in the EM, that the associated development in Schedule 1 of the rDCO comprises development for which development consent would be sought. The land required for this associated development can therefore, in principle, be CA pursuant to s122(2) of the PA2008.

The Scope and Purpose for which Compulsory Acquisition is Sought

21.10.40. The ExA is satisfied that the rights sought for the CA of land, CA of rights and TP of land included in the revised BoR and shown on the Land Plans and Special Category Land Plans would be required for, or to facilitate or incidental to, the Proposed Development to which the development consent relates.

21.10.41. We are content that both the principal development, and the associated development, identified by the application would be needed for that purpose. The ExA therefore confirms that in its opinion, the requirements of s122(2)(a), (b) and (c) PA2008 are met.

Whether there is a Compelling Case in the Public Interest

21.10.42. In section 4 of the SoR [REP9-009] the Applicant provided a summary of both the need and benefit of the Proposed Development, with a full explanation of the need detailed in the Needs Case [APP-250]. The Applicant also stated that the Planning Statement [APP-245] also demonstrated that there would be substantial public benefits arising from the implementation of the Proposed Development.

21.10.43. Additionally, in response to ExQ1.CA.1.11, CA.1.12 and CA.1.13 [REP3-087], the Applicant stated consideration had been given to the private loss that would result for individual APs in the event that land out of its own ownership would be required. Any such private loss is considered to have been drastically reduced by the majority of the Proposed Development being carried out on the airport or SRN which are owned by the Applicant and NH respectively. It was also noted that the Applicant is not seeking to acquire any residential properties, although some plots are located within the titles of residential properties.

21.10.44. For those areas where the Applicant is required to rely on third party land, the Applicant has assessed the private loss through engagement with APs and consideration of the current uses of the land. In carrying out such an assessment of private loss, the Applicant has considered that those affected by the exercise of CA or TP powers would be entitled to compensation under the National Compensation Code. Further the Applicant has given weight to the confidence that it holds sufficient resources to provide such compensation.

21.10.45. The ExA has also had regard to the objections raised by all APs, reported above. We consider that the private loss of land would be relatively modest given that most of the Proposed Development would take place on existing airport land or on the SRN. As such we conclude that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation and maintenance of the Proposed Development.

21.10.46. We have considered the points made in relation to whether the required land take is proportionate. However, we are satisfied that the Applicant has explored all reasonable alternatives to CA and any possible modifications to the Proposed Development in respect of required land take. In line with paragraphs 5 to 7 of the CA Guidance, the objections raised do not dissuade us from the conclusion that there are no alternatives to the CA powers sought which ought to be preferred.

21.10.47. The Applicant has demonstrated a clear idea of how it intends to use the land rights which it proposes to acquire. It has shown that there is a reasonable prospect of the requisite funds, both for acquiring the land and implementing the Proposed Development, becoming available. We are therefore satisfied that a compelling case in the public interest for CA exists.

Human Rights

21.10.48. The European Convention on Human Rights (ECHR) was incorporated into UK domestic law by the Human Rights Act 1998. The CA Guidance, paragraph 10 states that the SoS must be persuaded that the purposes for which an order authorises the CA of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. Therefore, in assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is also necessary to consider the interference with human rights which would occur, if CA and TP powers were granted.

21.10.49. The Applicant acknowledged that the dDCO would engage several Articles of the ECHR:

- Article 1 of the First Protocol - the right to those whose property would be compulsorily acquired to the peaceful enjoyment of their possessions;
- Article 6 of the First Protocol - which entitles those affected by the powers sought to a fair and public hearing; and
- Article 8 of the First Protocol - which seeks to protect private and family life, home and correspondence [REP9-009], Section 6.2.

21.10.50. The Applicant stated that it had carefully considered the human rights relevant to the Proposed Development prior to making the application and carefully considered the balance to be struck between individual rights and the wider public interest. The Applicant acknowledged that the Proposed Development could have the potential to infringe the human rights of persons who own property within the Order land or have rights over the land within the Order land. However, there would be no violation of those rights where it had been demonstrated that the proposed interference would be 'in the public interest' and lawful.

21.10.51. The Applicant concluded that proposed interference with those rights would be in accordance with law, proportionate and justified in the public interest because:

- parties were able to make representations during the pre-application stage through the consultations that the Applicant undertook under s44 PA2008;
- representations have been able to be made via objections in writing and at CAHs;
- those affected by CA and/ or TP powers would be entitled to compensation, for which the Applicant has resources;
- the need for the Proposed Development is clear and of national importance; and
- there would be very significant benefit arising from the grant of development consent [REP9-009].

21.10.52. Therefore, the Applicant reasoned that the inclusion of powers of CA and TP in the Order would not constitute any unlawful interference with Convention Rights and further that it would be appropriate and proportionate to make the Order for the Proposed Development including the grant of powers of CA and TP.

ExA's Conclusion on Human Rights

21.10.53. In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is necessary to consider the interference with human rights which would occur if CA and TP powers were granted. The ExA agrees with the Applicant that the rDCO would engage Article 1 of the First Protocol and Article 8.

21.10.54. These rights are qualified and can be interfered with in certain circumstances, such as if it is necessary to protect the legitimate interests of the wider community. In this case, the ExA has attributed significant positive weight to the clear need for the Proposed Development described earlier in this Report. This is a legitimate interest of the wider community. In this context, it is also relevant that those affected would be entitled to fair compensation, and the Applicant has demonstrated that the resources to pay such compensation are available. Moreover, the Applicant has taken steps to ensure its approach to land acquisition is proportionate and would not give rise to interference with private rights beyond what is necessary.

21.10.55. The Applicant confirmed that the land affected has been kept to a minimum, and, under the rDCO, the power for CA within the Order Limits can only be exercised where required for the Proposed Development. Reliance has also been placed on TP wherever possible, rather than CA. The Applicant has also sought to reach voluntary agreements with persons with an interest in the land affected.

21.10.56. The Applicant advised that no homes are required to be compulsory acquired because of the Proposed Development. The Applicant did however confirm that it would be necessary to take parts of the curtilage of two homes (Plots 1/229, 1/013A and 1/025 of [REP10-007]), although there would be no requirement for the dwellings to be vacated during construction and no displacement of any residents would occur. The ExA agrees that in this instance the limited interference with the owner's Article 8 rights would be lawful and necessary in the interests of the economic well-being of the country, proportionate, and it would, therefore, comply with Article 8(2). Accordingly, the limited extent of acquisition proposed is necessary and has been properly justified and is entirely proportionate to the need it is intended to address.

21.10.57. The ExA is therefore satisfied that the powers sought would be no more than is required to secure the interests of the wider community. The ExA is also satisfied that, due in part to the fair compensation available, they would not be likely to place an excessive burden on those whose human rights could be affected. The ExA therefore considers that there would be no violation of Articles 1 and 8.

21.10.58. The ExA also agrees with the Applicant that the rDCO engages Article 6 of the ECHR which relates to the need for a fair hearing. The application and its Examination procedurally accord with the PA2008 and related guidance. The ExA is satisfied that APs have had a reasonable chance to put their cases, all of which have been taken into consideration in reaching our recommendation. In so doing, the ExA is satisfied that no AP has been put at a substantial disadvantage in relation to other parties. The ExA therefore considers that there has been no violation of Article 6.

21.10.59. Finally, in terms of the overarching aims of the Human Rights Act 1998, CA Guidance and the required balancing exercise, we are satisfied that the public benefit from the Proposed Development would clearly outweigh any interference with the human rights of those with an interest in the land affected.

21.10.60. We therefore consider that any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest.

Equality Act 2010

21.10.61. Section 149 of the Equality Act 2010 (2010 Act) requires a public authority, in the exercise of its functions to:

- have due regard to the need to eliminate discrimination harassment and victimisation and any other conduct prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who do share it.

21.10.62. The Applicant is not a public body as listed in s149 of the 2010 Act and as was also confirmed by the Applicant during Issue Specific Hearing 3 – Socioeconomics (ISH3) [EV8-001 and EV8-002] and in the Applicant's Response to Actions from Issue Specific Hearing 3 – Socio-economics [REP1-064], the Applicant agreed with

the JLAs that the need for an Equality Impact Assessment under the 2010 Act did not apply to the Applicant.

21.10.63. The Applicant did however produce an Equality Statement at D3 [REP3-109] which explained how the Applicant had had regard to public sector equality duties (PSED) and as such has had regard to the PSED principles when exercising its functions as a private organisation.

21.10.64. The purpose of PSED is to ensure that public authorities and organisations carrying out public functions think about how they can improve society and promote equality in every aspect of their day-to-day business, which includes how they are promoting equality in decision-making. It also sets out that having due regard means that an organisation has made itself aware of, and understood, what PSED means and has put this knowledge into practice.

ExA's Conclusion on the Equality Act 2010

21.10.65. Whilst noting the concerns raised by WSCC in respect of the need for a standalone Health Impact Assessment (HIA), the ExA considers that the Applicant recognised and undertook as assessment based on the principles of the PSED to make reasonable adjustments to processes that would otherwise unfairly disadvantage those with protected characteristics, if such circumstances had the potential to arise. In this regard, the ExA does not consider the production of individual HIA for each of the relevant local authorities necessary.

21.10.66. The ExA is satisfied that the Applicant has had due regard to the duties under s149 of the 2010 Act. In exercising our functions as the ExA, we have also had due regard to the PSED contained in s149 of the 2010 Act. We conclude that there is no evidence that implementation of the Proposed Development would disproportionately affect persons who have a protected characteristic, nor would there be any adverse effect on the relationship between such persons and persons who do not share a protected characteristic.

Section 120(5)(A) and Section 126, the Incorporation of Other Statutory Powers

21.10.67. The rDCO seeks, in several instances, to apply s120(5)(a) of PA2008 and apply, modify or exclude a statutory provision. Since the rDCO is in the form of a Statutory Instrument, it would comply with s117(4) PA2008. Furthermore, no provision would contravene the provisions of s126 PA2008 which relates to the modification or exclusion of a compensation provision.

Section 123, Land to which Authorisation of Compulsory Acquisition can Apply

21.10.68. In terms of s123 the ExA is content that the application for the Order includes a request for CA of the land to be authorised. We are also content that the prescribed procedure has been followed in relation to the land in terms of diligent inquiry and the right for APs to be heard at CAHs and that they had the opportunity to submit representations and evidence in writing. Therefore, the SoS can be satisfied that at least one of the specified conditions have been met.

21.11. ExA's CONCLUSION ON COMPULSORY ACQUISITION AND RELATED MATTERS

21.11.1. The ExA is satisfied that the CA sought in all the plots of land included in the BoR [REP9-011 to REP09-013] and shown on the Land Plans [REP10-007] would be required for, or to facilitate or be incidental to, the Proposed Development to which the development consent relates. Both the principal development, and the associated development, identified in the application would be needed for that purpose. The requirements of s122(2)(a) and (b) of the PA2008 are, therefore, met.

21.11.2. Turning to s122(3), we have had regard to all objections raised. We are content that the Applicant has endeavoured to minimise the impact that CA would have on those APs affected by the Proposed Development and hence the extent of their private loss. The private loss to those affected would be mitigated by limiting the use of CA powers to land necessary to deliver the Proposed Development and by the use of TP powers wherever possible to minimise both land take and the extent of rights and interests to be acquired.

21.11.3. The ExA is satisfied that the Applicant has explored all reasonable alternatives to CA, including acquisition by negotiation and agreement. The ExA concludes that there are no alternatives to the CA powers sought which ought to be preferred. The ExA is also satisfied that the Applicant has demonstrated a clear idea of how it intends to use the land rights which it proposes to acquire. It has shown that there would be a reasonable prospect of the requisite funds both for acquiring the land and implementing the Proposed Development becoming available within the statutory timescale.

21.11.4. The ExA therefore concludes that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation, and maintenance of the Proposed Development. Taking these various factors together, there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plans. The ExA concludes that the Proposed Development would thus comply with s122(3) PA2008.

21.11.5. The ExA finds that the TP powers sought would be necessary both to facilitate implementation of the Proposed Development and to maintain it and that adequate compensation provisions are in place in the rDCO.

21.11.6. Section 127 and s138 PA2008 objections were made and had not been withdrawn by the close of the Examination. These objections have been considered as reported earlier and where differences remain between the Applicant and SU, the ExA has recommended wording, which has been before parties during the Examination, for the SoS to include in the rDCO Schedule 9 Protective Provisions.

21.11.7. The rDCO seeks, in several instances, to apply s120(5)(a) and apply, modify or exclude a statutory provision. Since the dDCO is in the form of a statutory instrument, it would comply with s117(4). Furthermore, no provision would contravene the provisions of s126 PA2008 which relates to the modification or exclusion of a compensation provision.

21.11.8. The ExA is satisfied that, in relation to the inclusion of CA and TP powers in the rDCO, any interference with human rights would be for legitimate purposes, would be proportionate and would be justified in the public interest. We are also satisfied that there is no evidence that the Proposed Development would not accord with

s149 of the 2010 Act. In this regard we are content that the SoS can be satisfied that they would comply with the principles of the PSED in decision-making.

21.11.9. In the event that the SoS is minded to grant development consent for the Proposed Development, the ExA recommends that:

- the CA powers included in the rDCO be granted;
- the TP powers included in the rDCO be granted;
- the powers authorising the CA of SU's land and rights over land included in the rDCO be granted;
- the powers authorising the extinguishment of rights, and removal of apparatus, of SU included in the rDCO be granted;
- the PPs for NH, TWUL and MAM should be included in Schedule 9 in the form set out in the rDCO, unless the SoS is aware of evidence of agreement having been reached that would lead to agreed different wording; and
- the powers included in the rDCO to apply, modify, or exclude a statutory provision be granted.

21.11.10. The BoR [REP9-011 and REP9-013] and the Crown Land Plans [REP9-016] identify that various plots comprise Crown land. The BoR identifies that in respect of these plots, the Applicant is seeking either TP, acquisition of new rights, imposition of restrictive covenants or freehold acquisition. In addition, Article 44 (Crown rights) of the dDCO [REP10-004] includes provision for the acquisition of Crown interests. In line with s135 of PA2008, the consent of the relevant Crown authorities is required.

21.11.11. However, at the close of the Examination, Crown consent had not been received from all Crown interests. The below table provides an update in respect of negotiations at D9:

Table 21.2: Unresolved Agreements with Crown Interests

Crown interest	Position at Deadline 9
Secretary of State for Levelling Up, Housing and Communities (now the Ministry of Housing, Communities and Local Government)	The Applicant confirmed that it had undertaken regular engagement with the Secretary of State for Levelling Up, Housing and Communities' appointed agent in respect of a MoU. The Applicant anticipated that s135 consent would be forthcoming and no specific issues to prevent this occurring was reported.
HM Revenue and Customs	The Applicant confirmed that it had undertaken regular engagement with HM Revenue and Customs post Deadline7 in respect of a MoU. The Applicant anticipated that s135 consent would be forthcoming no specific issues to prevent this occurring was reported.
UK Visas and Immigration	The Applicant confirmed that it had undertaken regular engagement with UK Visas and Immigration post Deadline 7 in respect of a MoU. The Applicant anticipated that s135 consent would be forthcoming and no specific issues to prevent this occurring was reported.

21.11.12. As such, this recommendation is subject to the Crown giving consent for the CA and TP of Crown land in accordance with s135, prior to the SoS's decision.

22. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

22.1. INTRODUCTION

22.1.1. The application draft Development Consent Order (dDCO) [APP-006] and the Explanatory Memorandum (EM) [APP-007] were submitted by the Applicant as part of the application for development consent. Both the dDCO and EM were updated throughout the Examination with the latest version of the dDCO being [REP10-004] and the EM being [REP9-008]. The EM describes the purpose of the dDCO and each of its articles and schedules.

22.1.2. This Chapter provides a summary of the main changes made to the dDCO during the Examination. For the reasons explained below, alongside the Applicant's final dDCO [REP10-004] we present our own recommended DCO (rDCO) in Appendix E of this Report.

22.1.3. Changes because of typographical or grammatical errors, or minor changes in the interests of clarity, consistency or updates to lists following discussion between the Applicant and relevant IPs, or as a result of written questions or comments which we have made, are not reported.

22.2. THE STRUCTURE OF THE ORDER AND RELATED DOCUMENTS

22.2.1. The structure of the Applicant's final dDCO [REP10-004], is set out in Table D1 in Appendix D. The structure is explained more fully in the final EM [REP9-008]. The EM takes account of the (now withdrawn) Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. It also refers to where the drafting has been taken from wording for other orders made under the Planning Act 2008 (PA2008) to support the Applicant's position. Details are included in Table D2 in Appendix D. The original application dDCO and subsequent iterations are in the form of a statutory instrument as required by s117(4) of the PA2008.

22.2.2. No IPs objected to the structure of the DCO, and we find that it is fit for purpose and no changes to the structure are required.

22.2.3. Alongside the dDCO the Applicant identified (section 5.5 of the Planning Statement [APP-245] and section 26.4 of the Applicant's Closing Submissions [REP9-112]) various "*control documents*" which would be secured through direct commitments under the dDCO and a signed legal agreement under section (s) 106 of the Town and Country Planning Act 1990 (the s106 agreement) [REP9-102]. The control documents contain more detailed commitments and are presented at three levels: Level 1, intended to be finalised at the end of the Examination, being certified documents under Article 52 and listed in Schedule 14 of the DCO; Level 2 being documents to be drafted and approved by an external body following the granting of the DCO; and Level 3 being implementation plans prepared by a contractor and approved by Gatwick Airport Limited (GAL) to ensure controls are complied with. The Applicant's closing statement [REP9-112] at Table 1 sets out the framework of control documents highlighting the securing mechanism and the approving bodies.

22.2.4. The Mitigation Route Map [REP8-020] collates all of the measures identified through the Environmental Statement (ES) as necessary to make the Proposed Development acceptable in planning terms and which are secured either through

the dDCO or the s106 agreement. In addition, a Register of Environmental Actions and Commitments [REP8-121] provides further detail of the environmental commitments and actions secured.

22.2.5. During the Examination through WRs, Issue Specific Hearings (ISH) and written questions various issues were raised in relation to the detail of certain control documents. Where appropriate these are addressed in the relevant topic chapter.

22.3. KEY CHANGES TO THE APPLICANT'S DRAFT ORDER

22.3.1. The Applicant updated the dDCO during the Pre-Examination stage and during the Examination at various deadlines responding to issues raised in questions, to Written Representations (WR) and as a consequence of the hearings process. The Applicant submitted both clean and tracked change versions of the dDCO. The changes made to the dDCO and the reasons for these changes can be found in the Schedule of Changes to Development Consent Order [REP9-006] submitted alongside revised version of the dDCO. Table D3 in Appendix D summarises the key dDCO documentation submitted and the notable changes made to the dDCO throughout the Examination.

22.3.2. Section 26.2 of the Applicant's Closing Submissions [REP9-112] provides details of the key amendments which the Applicant made to its dDCO Articles during the Examination. These can be summarised as follows:

- Article 6 – the limits of deviation (previously limits of works) for surface access works were agreed to be adjusted to address National Highways (NH) concerns.
- Article 9 – in respect of Article 9(4) an obligation was added for the undertaker to notify the relevant planning authority when an incompatibility between an existing planning condition and the Order that engages the provision is identified.
- Article 9 – in respect of Article 9(5) (now Article 9(6)) the Applicant disapplied permitted development rights in respect of Museum Field and the site of Work No. 43.
- Article 10 – provides for the application of the Surrey and West Sussex permit schemes and lane rental schemes for local highway works.
- Article 25 – includes an obligation to carry out works in accordance with British Standard 3998:2010 (Tree works) for any relevant works.
- Article 31 – the time limit from the "start date" to exercise compulsory acquisition (CA) powers was amended from 10 years to 7 years.
- Article 40 – the Applicant accepted the responsibility of management of all replacement open space.
- Subsequent approvals – the provision of subsequent consent/ approval/ consultation provisions by a relevant planning authority, including in relation to Articles 13, 14, 16 and 18.
- Notification obligations – additional notification obligations were provided including in respect of Article 8 and Requirement (R) 13.
- Deeming provisions – an amendment removed the reference to consent being unreasonably delayed.

22.3.3. The key amendments which the Applicant made during the Examination to the Requirements in Schedule 2 of its dDCO, as well as Schedule 13, can be summarised as follows:

- R2 – included to ensure that the Joint Local Authorities (JLAs) would receive sufficient information on the anticipated sequencing of requirement discharge applications being submitted.
- R4 – the structure and operation of R4 and the level of specific information to be submitted in connection with detailed design consultation and approval has been amended.
- R19 – amendments include the use of air movements rather than air transport movements.
- R37 – the Applicant committed to a cap on car parking spaces within the Order Limits.
- New requirements – comprising R31 (construction sequencing), R33 (North and South Terminal roundabouts BAU improvement scheme), R34 (office occupier), R36 (Thames Water phasing plan) and R39 (tree balance statement).
- Discharging authorities – the Applicant amended the details of which entities should discharge or be consulted on specific requirements.
- Schedule 13 – the Applicant included an informative schedule to ensure that maximum heights are clear on the face of the Order.

22.4. DCO MATTERS ADDRESSED THROUGH THE EXAMINATION

22.4.1. Table D4 in Appendix D sets out those matters which were included in the Applicant's final dDCO [REP10-004] which were unresolved due to outstanding concerns from IPs at the end of the Examination. The final column of Table D4 provides our commentary on the issue. Where we do not accept the Applicant's position, we take forward any necessary change to the rDCO.

22.4.2. While the detail of disputed DCO provisions can be found in Table D4 it is necessary to highlight various DCO issues which the Examination considered because of their significance to our Recommendation. As can be seen from Table D4, these all related to requirements in Schedule 2 of the dDCO and were:

- surface access commitments and parking;
- the noise envelope and noise insulation scheme;
- wastewater treatment; and
- the JLAs proposed Environmentally Managed Growth (EMG) Framework;
- good design.

22.4.3. However, before addressing those issues specifically we outline our approach to consultation on potential changes to the dDCO to provide context for the commentary on those matters.

The ExA's DCO Consultations

22.4.4. Item 3 in our Agenda for ISH9 [EV20-001] addressed mitigation. Specifically, item 3.1 asked the Applicant and JLAs about the draft Requirements in Schedule 2 of the dDCO [REP7-005] and the potential changes identified at Annex B of the Agenda. In addition to discussion at ISH9 we sought detailed responses to the potential amendments at Deadline (D) 8. The purpose of identifying potentially significant changes to the dDCO at ISH9 was to give IPs and particularly the Applicant an early opportunity to comment and reflected the concerns which we had about the Applicant's proposed requirements concerning the air noise envelope, noise insulation scheme and surface access. It also provided us with the opportunity to seek IPs views on potential new requirements.

22.4.5. In line with the Examination Timetable at Annex A of the Rule 8 Letter [PD-011], on 14 August 2024 we published the ExA's proposed schedule of changes to the

dDCO [PD-028]. This set out the ExA's recommended amendments to the Applicant's dDCO published at D8 [REP8-005] with a request for comments by D9 and comments on any responses by D10.

Surface Access Commitments and Parking

22.4.6. The Applicant's method of controlling surface access relied on the Surface Access Commitments (SAC) [REP9-043]. The SAC set out target mode shares and dates that these would be achieved by. It also specified the monitoring approach and an action planning process to address any potential or actual failures to meet mode share targets. The SAC would be secured by R20 of the dDCO [REP10-004].

22.4.7. The ExA took the view that the Applicant's approach did not prevent the possibility of the mode share commitments not being met, which may result in additional significant effects not addressed in the Applicant's ES assessment. The ExA's consideration is set out in Chapter 5 of this Report (paras 5.3.52 to 5.3.80). Consequently, we proposed an alternative R20 that controlled first use of some elements of the development until the Applicant's mode share targets had been met. The recommended revisions to R20 are detailed in Table 22.1 below.

22.4.8. We also explored the related issues concerning the control of car parking throughout the Examination. The ExA had concerns about the control over parking levels and in particular that permitted development rights could be used over time to provide more parking than applied for. Our consideration is set out in Chapter 5 of this Report (paras 5.3.81 to 5.3.91). As a result, we are recommending an amended R37 as set out in Table 22.1 below.

Air Noise Limits and Receptor Based Mitigation

22.4.9. With regard to air noise limits, as explained in Chapter 6 of this Report, these should be based on the Applicant's original central fleet transition case. The Applicant's final proposals were based on an assumed slower rate of fleet transition and would not have the effect of sharing the benefits of quieter aircraft with the affected communities as set out in policy. The Applicant's R15 and R16 are replaced with a single new requirement as set out in Table 22.1 below which defines the air noise limits, and the calculation and monitoring arrangements. This approach is consistent with Condition 7 of the London Stansted Airport planning application appeal decision ref: APP/C1570/W/20/3256619, May 2021.

22.4.10. With regard to receptor-based mitigation, as explained in Chapter 6 of this Report, eligibility should be based on significant effect thresholds derived from guidance and the evidence presented to the Examination. The design of receptor-based mitigation and the timing of its implementation should be consistent with the aim of avoiding significant adverse noise effects on people in their homes as set out in policy, which the Applicant's final proposals would not achieve. The Applicant's R18 is replaced with a new requirement as set out in Table 22.1 below which defines an eligibility, design and implementation process overseen by the relevant local planning authority who are best placed to take local context into consideration.

Wastewater

22.4.11. Discussions between the Applicant and Thames Water Utilities Limited (TWUL) had been ongoing for some time before and throughout the Examination. These discussions had failed to fully identify the impact of the Proposed Development on both the capacity of the public sewer network and the capacity of TWUL's off site wastewater treatment works (WTW). As a result, in the event that that a satisfactory

solution was not agreed with TWUL prior to the commencement of dual runway operations, the Applicant proposed construction and operation of an onsite WTW as an alternative solution. The Applicant proposed that its alternative solutions would be secured by R31 and R36 of the dDCO [REP10-004]

22.4.12. Ultimately there was no agreement between the Applicant and TWUL and the SoCG [REP9-094] was unsigned at the close of the Examination. Our considerations on this matter are set out in Chapter 11 of this Report (paras 11.3.15 to 11.3.35). Consequently, the ExA is recommending an amendment to R31 and deletion of R36 as set out in Table 22.1 below.

Proposals for Environmentally Managed Growth

22.4.13. Through various submissions throughout the Examination the JLAs and LePAs promoted the idea of EMG as a necessary control for the Proposed Development [REP4-050, REP5-093, REP6-100, REP7-102 and REP7-108]. EMG is based on the premise that if the Proposed Development is to proceed it should stay within the environmental parameters against which it has been assessed with the risks borne by the Applicant rather than passing costs onto local communities and the receiving environment. Sanctions would be imposed where agreed thresholds and limits were not met, and slot allocations stalled until compliance with environmental parameters was demonstrated. Ongoing monitoring of the actual environmental effects would occur, and independent oversight of effects would be provided by a new independent Environmental Scrutiny Group (ESG) comprising representatives of local authorities and specialists. Growth would therefore be linked to environmental performance. The EMG Framework would seek to secure acceptable controls on the Proposed Development's impacts on noise, surface access, air quality and greenhouse gas (GHG) emissions.

22.4.14. The Applicant responded to the JLAs' proposals [REP5-074, REP6-093 and REP8-118] and in its closing submission [REP9-112] it noted that Government policy favours sustainable aviation growth with no policy or legislative control over that growth. It rebutted the EMG approach with criticism focused on the JLAs' concerns about the retrospective effects of the controls proposed by the Applicant and the approach to effective independent oversight.

22.4.15. Comments have been provided in the relevant chapters of this Report on the topics which the EMG Framework proposes to address and they are not repeated here. Nevertheless, it is appropriate to comment on the overall approach.

22.4.16. Before addressing the differences between the EMG approach and the approach of the Applicant we note the commonality which the Applicant commented upon. Both approaches include limits/ targets in relation to key environmental topics; the annual monitoring of performance would occur with action taken where the trajectory indicates potential non-compliance; each would involve independent oversight; and in relation to air noise, there are potential growth limitations where limits are forecast to be breached.

22.4.17. The JLAs proposed to monitor activity within topics to prevent growth where exceedance of the controls was likely to occur. That would still involve looking back and would not overcome the concern they identified about the Applicant's approach being retrospective in dealing with effects once they had occurred. Moreover, having an overarching mechanism through the EMG Framework would not overcome this concern any more than the Applicant's approach involving separate, bespoke mitigation controls. Both approaches allow for monitoring to be predictive

and for any breach in commitments to be avoided. On this issue there is no evidence that EMG would be more effective than the Applicant's approach.

22.4.18. We also question the basis on which the ESG is proposed. Gatwick Airport has existing mechanisms in place to provide control and oversight and while we heard criticisms about the effectiveness of some of these mechanisms, we are not persuaded that the new body working in parallel with existing arrangements would overcome the JLAs' concerns and therefore would not be necessary. To establish the ESG without support from GAL would appear likely to limit any perceived control which this group could exercise. Again, the proposal fails because it provides nothing additional to the Applicant's proposals. To date, alternatives proposed for other airports have not been adopted and in any event would not provide justification for applying such an approach at Gatwick.

22.4.19. The JLAs reference the statement in Beyond the Horizon - The Future of Aviation: Making Best Use of Existing Runways (MBU) that growth should be *"subject to environmental issues being addressed*" (para 1.5) but nothing in MBU, the Airports National Policy Statement (ANPS) or other aviation policy proposes a constraint on growth. Applications are required to demonstrate how they will mitigate environmental issues which the Applicant's approach seeks to do. No justification is provided for departing from normal planning practice in relation to the application of controls as set out in paragraph 4.9 of the ANPS and Planning Practice Guidance. For these reasons we did not consider it was appropriate to proceed with EMG.

Good Design

22.4.20. Extensive discussions between the Applicant and LePAs on good design took place during the Examination and the matter progressed reasonably substantially, with R4 changing, along with the definition of 'listed works' on which more detailed design would be required and the introduction of a Design Advisor to consider certain proposed works.

22.4.21. However, the respective parties remained a fair distance apart at the end of the Examination. Our detailed considerations on this matter are set out in Chapter 18 of this Report. The ExA is recommending amendments to R4, and Schedule 12 as set out in Table 22.1 below.

22.5. THE ExA's RECOMMENDED CHANGES

22.5.1. Tables D4 and D5 of Appendix D address DCO issues which were outstanding at the end of the Examination. The final column of each table provides our commentary on each issue. In some cases, we conclude that no change is required to the Applicant's final dDCO; in other cases, we do not accept the Applicant's position and propose changes.

22.5.2. For clarity Table 22.1 below shows for each provision where we recommend change to the Applicant's version alongside our recommended change together with the reasoning taken from Tables D4 or D5.

22.5.3. While not diminishing the importance of any proposed changes some are more significant than others. These are the changes which we consider are necessary to be able to recommend to the SoS that the Order is made. Conversely, without these recommended changes we have concluded that consent should be withheld.

22.5.4. Given that the Applicant has already rejected the most significant changes, and having concluded that we could not recommend that the SoS makes the Order without them, we have included all of the recommended changes in the rDCO at Appendix E.

Table 22.1: Recommended Changes to the Final dDCO

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
Articles			
Article 9 (7)	Insertion of new text on Work No. 41.	(7) The undertaker must not exercise the permitted development right in Class F of Part 8 of Schedule 2 (transport related development) to the 2015 Regulations for any development on the areas labelled Work No. 38 (habitat enhancement area and flood compensation area at Museum Field), Work No. 41 (ecological area at Pentagon Field) or Work No. 43 (water treatment works) on the works plans.	Parties' positions are set out in Table D5 in Appendix D and the ExA agrees with the JLAs that this amendment should be included in the rDCO.
Article 49 (1)	Sub-paragraph 1, deletion of "(fb)".	49.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(c) in relation to a nuisance falling within paragraph (d), (e), (g) and (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—	Position is set out in Table D5 in Appendix D.
Schedule 2 – Requirements (R)			
R1 (1) Interpretation	Sub-paragraph (1) delete the following – "noise envelope document"; "noise insulation scheme document";	Revised- "noise model verification report" means a report detailing the review undertaken by an independent expert with credentials to carry out that review approved by the Institute of Acoustics to verify noise monitoring data in the	The ExA's views on air noise limits are explained in Chapter 6 of this Report in paragraphs 6.4.98 to 6.4.170. The ExA's

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
	"annual monitoring and forecasting report" and accompanying text. "extant noise envelope review document" and accompanying text. "extraordinary noise envelope review document" and accompanying text. "noise compliance plan" and accompanying text. "noise envelope limits" and accompanying text. "noise envelope review document" and accompanying text. "previous year's actual performance contours" and accompanying text. "specialist aviation forecaster" and accompanying text. Sub-paragraph 1 delete the following wording from noise model verification report text "used for the purposes of the production of the noise annual monitoring and forecasting report,"	noise model, including the siting of the noise and track keeping terminals and processing of data, which shall make recommendations to improve the validity of the noise modelling in future years where identified to be necessary; Add new- "eligible premises" means premises approved in writing by the relevant local planning authority after its consideration of potentially eligible premises provided by the undertaker; "LAeq 16h" means the equivalent sound level of aircraft noise in dBA for the 16 hour annual day. For conventional historical contours for a particular year this is based on the daily average movements that take place between 0700 and 2300 local time during the 92-day period 16 June to 15 September inclusive; "LAeq 8h" means the equivalent sound level of aircraft noise in dBA for the 8 hour annual day. For conventional historical contours for a particular year this is based on the daily average movements that take place between 2300 and 0700 local time during the 92-day period 16 June to 15 September inclusive;	views on receptor based mitigation are explained in paragraphs 6.4.76 to 6.4.97.

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
	All other parts of R1 retained.	"potentially eligible premises" means a main residence, school or college, hospital, library, place of worship, or community facility, where, following the commencement of dual runway operations, air noise, ground noise or combined air and ground noise is predicted to exceed 54 dB LAeq 16 h, and for main residences where, following the commencement of dual runway operations, air noise, ground noise or combined air and ground noise is predicted to exceed 48 dB LAeq 8 h;	
R2 (Phasing scheme)	New sub-paragraphs (3) and (4) as follows inserted and dDCO paragraphs (3) and (4) renumbered as (5) and (6).	(3) A submission of an updated phasing scheme made to a host authority under sub-paragraph (2)(b) must be made to the host authority at least 3 months before the significant change in question is implemented unless otherwise agreed in writing by the host authority in question. (4) Where any requirement in this Schedule requires the submission to any of the host authorities of details or a document relating to the authorised development, the undertaker must provide in writing to the host authority in question indicative timings for the submission of the relevant details or document in question at least 3 months before their submission unless otherwise agreed in writing by the host authority in question.	The ExA's position is that the additional sub-paragraphs are necessary to ensure that the host authorities would be able to organise necessary resources appropriately without causing any significant delay to the Proposed Development.

<table>
<tr><th>Provision</th><th>Change recommended to final dDCO [REP10-004]</th><th>Wording in the ExA's rDCO (Appendix E)</th><th>ExA's views</th></tr>
<tr><td>R3 (2) (Time limit and notifications)</td><td>Sub-paragraph (2) delete "28" from both (b) and (d) and insert 42.</td><td>(2) (b) at least 42 days prior to the anticipated date of commencement of the authorised development, provided that commencement may still lawfully occur if notice is not served in accordance with this sub-paragraph;

(d) at least 42 days prior to the anticipated date of commencement of dual runway operations; and…</td><td>The parties' positions are set out in Table D5 in Appendix D and with the change from working days in earlier versions of the dDCO to calendar days at D6 it is not unreasonable that the 42-day period is included.</td></tr>
<tr><td>R4 (Detailed design)</td><td>Sub paragraph (5) delete the following wording "those of the following that are reasonably considered necessary for the part of the listed work in question by CBC or MVDC (as relevant)".</td><td>(5) The details referred to in sub-paragraph (4) must include—</td><td>The parties' positions are set out in Table D5 in Appendix D.</td></tr>
<tr><td>R15 (Air noise envelope)

R16 (Air noise envelope reviews)</td><td>Delete all of R15 and R16.</td><td>Air noise limits

15. (1) The undertaker shall not operate the airport for dual runway operations unless the air noise contour enclosed areas set out in Table 1 are complied with.

Table 1
<table><tr><td>Air noise contour</td><td>Enclosed area from the first to</td><td>Enclosed area from the sixth</td></tr></table></td><td>Parties' positions are set out in Table D5 in Appendix D and the ExA's considerations are set out in paragraphs 6.4.98 to 6.4.170 of this Report.</td></tr>
</table>

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views

	fifth year of dual runway operations	year of dual runway operations
51 dB LAeq 16 h	125 km^2	125 km^2
45 dB LAeq 8 h	146 km^2	135 km^2

(2) Air noise contour reports shall be published annually by the operator to demonstrate compliance with this requirement, as soon as is reasonably practicable following the first year and subsequent years of dual runway operations. The air noise contour enclosed areas set out in Table 1 shall be calculated using the Civil Aviation Authority's Environmental Research and Consultancy Department (ERCD) Aircraft Noise Contour model, version 2.4 or later.

R18 (Noise insulation scheme)	Delete all of R18.	**Receptor based noise mitigation** 18. (1) Within not more than 3 months following the commencement of any of Work Nos. 1 – 7 (inclusive) the undertaker shall submit to the relevant local planning authority details of premises forecast to be potentially eligible premises, as defined in Requirement 1, at or after the commencement of dual runway operations. (2) Within not more than 6 months following the commencement of any of Work Nos. 1 – 7 (inclusive) the undertaker must take appropriate steps, having consulted	Parties' positions are set out in Table D5 in Appendix D and the ExA's considerations are set out in paragraphs 6.4.76 to 6.4.97 of this Report.

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
		with the relevant local planning authority, to notify the owners and occupiers of all eligible premises, as defined in Requirement 1, that the premises are eligible for the design and installation of a package of measures that may include ventilation, noise insulation and methods to reduce solar gain to achieve an internal living environment consistent with guidance. (3) Within not more than 12 months following the commencement of any of Work Nos. 1 – 7 (inclusive) the undertaker must, subject to access being granted to the premises, carry out a survey of all eligible premises and submit, for approval by the relevant local planning authority, proposed designs for all eligible premises. (4) The designs submitted by the undertaker and the consideration of them by the relevant local planning authority must have due regard for guidance including Sound Insulation and Noise Reduction for Buildings BS 8233 British Standards Institution (2014), Methods for rating and assessing industrial and commercial sound BS 4142 British Standards Institution (2014), Acoustic design of schools: performance standards BB93 Department for Education (2015) and Acoustics— Technical Design Manual 4032 Department for Health (2011) and other guidance as relevant. (5) If the relevant local planning authority does not approve the receptor based mitigation design for a main residence that is an eligible premises because it considers	

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
		internal living conditions would be unacceptable, the undertaker shall offer to buy the premises from the owner at its open market value and pay reasonable moving expenses, fees and costs incurred by the owner. (6) Subject to agreement by the owner of the premises and access being granted to the premises, the design approved by the relevant local planning authority shall be installed and commissioned before the commencement of dual runway operations, or the year in which the premises is forecast to be an eligible premises, whichever is later. (7) Subsequent to the commencement of dual runway operations the undertaker and the relevant local planning authority shall review actual noise levels experienced by premises affected by the operation of the airport, at least annually, to identify additional eligible premises. With regard to any additional eligible premises the undertaker shall offer, design, install and commission a package of measures to achieve an internal living environment consistent with guidance as soon as reasonably practicable.	
R19 (Airport operations)	Sub-paragraph (1) add the following "or a passenger throughput of 80.2million passengers per annum." Sub-paragraph (4) delete "or (b) as agreed in writing between the	(1) From the date of the commencement of dual runway operations, the airport may not be used for more than 389,000 aircraft movements per annum or a passenger throughput of 80.2million passengers per annum.	The ExA's position is set out in Table D5 in Appendix D.

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
	undertaker and the Secretary of State (following consultation with the CAA and CBC)."	(4) Sub-paragraph (3) does not apply and the repositioned northern runway may be used in one or both of the ways stated in that sub-paragraph where the main runway is temporarily non-operational by reason of an accident, incident or structural defect or when maintenance to the main runway is being undertaken.	
R20 (Surface access)	Add number (1) to start and add additional sub-paragraphs (2) and (3).	20 (1) From the date on which the authorised development begins the operation of the airport must be carried out in accordance with the surface access commitments unless otherwise agreed in writing with CBC and National Highways (in consultation with Surrey County Council and West Sussex County Council). (2) First use of the following airport facilities shall not be permitted until the mode shares set out below have been demonstrated to have been achieved in the Annual Monitoring Report unless otherwise permitted by CBC. a) At least 54% of passengers travelling to the airport used public transport in the monitored year. Should this public transport mode share not be achieved then the Undertaker shall not use the following: • Simultaneous operational use of the northern runway; and • Pier 7 and associated stands.	Parties' positions are set out in Table D5 in Appendix D and the ExA's considerations are set out in paragraphs 5.3.52 to 5.3.80 and 22.4.6 to 22.4.7 of this Report.

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
		b) At least 55% of passengers travelling to the airport used public transport in the monitored year. Should this public transport mode share not be achieved then the Undertaker shall not use the following: • The South Terminal Hotel Phase 2 on the former car park H; and • The use of multi storey car park Y. c) Not more than 44.9% of staff travelling to the airport were car drivers in the monitored year. Should this car driver mode share be exceeded then the Undertaker shall not use the South Terminal Office (on former car park H). (3) Prior to submission of the first Annual Monitoring Report the Transport Forum Steering Group decision making process must be agreed in writing by CBC in consultation with National Highways, Network Rail, Surrey County Council and West Sussex County Council.	
R31 (Construction sequencing)	Retain sub-paragraphs (1) and (2). Delete sub-paragraph (3) and revise.	(3) Prior to the commencement of the authorised development, the undertaker must prepare and provide to Thames Water Utilities Limited a development phasing plan which will include forecast passenger growth numbers for the period up to the commencement of dual runway operations and ten years after the commencement of dual runway operations.	The ExA's consideration is set out in paragraphs 11.3.30 to 11.3.35 of this Report.

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
		(4) The details in the plan provided pursuant to sub-paragraph (3) must not materially exceed the forecast annual passenger numbers shown for the equivalent time periods for the airport with the authorised development in Table 9.2-1 of the forecast data book. (5) The commencement of Work No 44 (wastewater treatment works) must not take place until and unless Thames Water Utilities Limited confirm in writing within two years of the making of this Order that following review of the development phasing plan its infrastructure will not be able to accommodate the additional foul water flows for the ten-year period after the commencement of dual runway operations. (6) The commencement of dual runway operations must not take place until either — (a) The development phasing plan has been approved in writing by Thames Water Utilities Limited, or; (b) (i) Work No. 44 (wastewater treatment works) has been completed; and (ii) an application has been submitted for an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the Environmental Permitting (England and Wales)	

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
		Regulations 2016 for the operation of Work No. 44 (wastewater treatment works).	
R36 (Thames Water phasing plan)	Delete all.		The ExA's consideration is set out in paragraphs 11.3.30 to 11.3.35 of this Report.
R37 (Car parking spaces)	Retain only "37.—(1) Notwithstanding the provisions of Class F of Part 8 (transport related development) of Schedule 2 to the 2015 Regulations", delete all subsequent text and replace	37.—(1) Notwithstanding the provisions of Class F of Part 8 (transport related development) of Schedule 2 to the 2015 Regulations (or any order revoking and re-enacting that Order with or without modification), no additional car parking shall be provided within the Order limits unless otherwise agreed by CBC (2) In paragraph (1) "additional car parking" means – (a) the provision of more than 53,260 car parking spaces or; (b) allowing the parking of more than 53,260 cars. (3) Upon commencement of the authorised development and by no later than each anniversary of that date, the undertaker must submit an annual report to CBC providing an update on the number of car parking spaces provided by the undertaker within the Order limits and cars parked within the Order limits.	The ExA's consideration is set out in paragraphs 5.3.81 to 5.3.91 and 22.4.8 of this Report.

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
		(4) In this requirement "car parking spaces" means space or spaces available for all car parking products provided by the undertaker including self-park, block-park, valet parking, staff parking and any other parking types used by airport passengers and staff within the Order limits. (5) In paragraph (2) the number "53,260" includes a maximum of 47,180 car parking spaces for passengers or a maximum of 47,180 passengers' cars, as appropriate.	
R39 (Tree balance statement)	Revisions and insertions to the following sub paragraphs (1), (2), (3) and (4)(b)	39.— (1) On or before commencement of dual runway operations, and on the third, sixth and ninth anniversaries of that commencement, a tree balance statement must be submitted to CBC for approval. (2) The tree balance statement referred to in sub-paragraph (1) must follow the methodology set out in Policy CH6 of the Crawley Borough Council Local Plan 2015-2030 and the accompanying Green Infrastructure SPD 2016, and must include— (3) In the event that the relevant tree balance statement identifies that the total number of trees that has been provided as part of the authorised development is less than that required by the application of the CBC tree replacement requirement, the undertaker must pay the tree mitigation contribution to CBC within 60 days of the approval of the tree balance statement by CBC under sub-paragraph (1).	Parties' positions are set out in Table D5 in Appendix D. The ExA agrees with the LePAs' views and recommends that the rDCO contains its amendments.

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
		(4) In this requirement— (b) "tree mitigation contribution" means the sum sought pursuant to Policy CH6 of the CBC development plan (or any replacement policy) and calculated in accordance with the tree mitigation formula to be paid to CBC and used towards the provision of tree planting and maintenance in the borough of Crawley or within the area of the host authority which is a district council. (c) "tree mitigation contribution formula" means the formula as set out in the CBC Green Infrastructure Supplementary Planning document or any other document replacing it containing a formula for the payment of contributions containing a formula for the payment of contributions towards providing replacement trees.	
Schedule 9 – Protective Provisions			
Part 3 – For the Protection of National Highways Paragraph 18	Paragraph 18 – delete all.	**Indemnity** 18. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.	Our consideration is set out in Table D4 in Appendix D.

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
Part 6 – For the Protection of Thames Water Utilities Limited Paragraph 10 (5), (6) and (7)	Delete all of sub-paragraph (5) of paragraph 10.	(5) The undertaker must not commence any works of removal or diversion of TWUL's apparatus carried out in accordance with paragraph 6 or any works under paragraph 8 unless and until TWUL is satisfied that the undertaker has first provided the bond and TWUL has confirmed the same to the undertaker in writing. (6) The undertaker must maintain such bond for the construction period of such works from the proposed date of commencement of construction of those works. (7) The total amount payable by the undertaker pursuant to paragraphs 10 and 11 of this Part of this Schedule shall not exceed £20 million per event (and such cap will rise in line with the Consumer Prices Index rate of inflation).	Our consideration is set out in Table D4 in Appendix D.
Schedule 11 – Procedures for Approvals, Consents and Appeals			
Part 1 (GENERAL PROCEDURE)	Delete from 1 (1) "(except where the discharging authority is the independent air noise reviewer, in which case Part 2 of this Schedule has effect in place of this Part)"	1.—(1) Where an application has been made to a discharging authority for any agreement, endorsement or approval required by a requirement included in this Order, the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.	An alternative discharging authority is not required under the ExA's rDCO.
Part 2 (PROCEDURE FOR NOISE PLANS)	Delete all of Part 2.		In the absence of an alternative discharging authority, Part 2 of Schedule

Provision	Change recommended to final dDCO [REP10-004]	Wording in the ExA's rDCO (Appendix E)	ExA's views
			11 is no longer needed.
Schedule 12 - Non-Highway Works for which Detailed Design Approval is Required			
		Addition in table of – Work No. 32 - Works to remove existing car parking at North Terminal Long Stay car park and construct a decked car parking structure.	Our consideration is set out in Table D4 in Appendix D.
Schedule 14 - Documents to be Certified			
	Delete the following – "noise envelopment document ES Appendix 14.9.7: The Noise Envelope (Doc Ref. 5.3) 5 noise insulation scheme document ES Appendix 14.9.10: Noise Insulation Scheme (Doc Ref. 5.3) 4"		The deleted certified documents are not required under the ExA's rDCO.

22.6. LEGAL AGREEMENTS AND OTHER CONSENTS

22.6.1. Section 1.7 above confirms that by the end of the Examination the Applicant had entered into a s106 agreement while Framework Agreements had been concluded with both NH and Network Rail (NR).

SECTION 106 AGREEMENT

22.6.2. The agreed s106 agreement [REP9-102] was dated 22 August 2024 and signed by GAL, West Sussex County Council (WSCC), Crawley Borough Council (CBC), Reigate and Banstead Borough Council (RBBC) and Surrey County Council (SCC).

22.6.3. The s106 agreement was accompanied by an EM [REP9-106]. It explains how WSCC, CBC, RBBC and SCC represent the wider JLA group, but these are the local authorities to whom obligations are directly due under the s106 agreement. The EM provides background to the agreement, explains the approach to securing contractual mitigation for the Proposed Development, sets out the legal and policy tests and provides a summary of the substantive commitments in the s106 agreement. It also addresses the extent to which the Applicant considers that the relevant legal and policy tests are met.

22.6.4. A Joint Position Statement between GAL and the JLAs [REP9-123] explains how the Applicant and the JLAs characterise the agreement in the wider context of the Examination. It also provides an overview of the main provisions of the finalised s106 agreement, although to fully understand the obligations reference should be made to the agreement itself [REP9-102] and the EM [REP9-106].

22.6.5. The mitigation measures which are required to make the application acceptable in planning terms would largely be secured through the DCO. There are, however, various obligations which the Applicant and the JLAs have agreed are more appropriately secured as contractual obligations under a s106 agreement. Nevertheless, through ISHs we sought the views of IPs about where obligations are most appropriately secured.

22.6.6. We find that while it might have been possible for some of the obligations within the s106 agreement to have been addressed through requirements, we are content that the overall approach of the Applicant and JLAs is in line with paragraph 55 of the National Planning Policy Framework (NPPF) which states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. This is particularly so in respect of positively worded obligations that require the payment of monies.

22.6.7. We have also had regard to paragraph 57 of the NPPF which advises that planning obligations must be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

22.6.8. In respect of the requirement that obligations must be fairly and reasonably related in scale and kind to the development Action Point 27 from ISH9 was for the Applicant to provide justification for the figures for the financial contributions in the draft s106 agreement schedules. The Applicant's response [REP8-111] records that the updated s106 EM provided at D9 would include justification for the final values of the financial contributions secured by the s106 agreement. An initial summary justification was provided at D8 although the updated EM at D9 did not provide further clarification.

FRAMEWORK AGREEMENTS

22.6.9. NH confirmed in its closing statement [REP9-160] that it had completed a Framework Agreement with the Applicant. Nevertheless, NH also confirmed that as there were unresolved matters its objection remained. As a copy of the Framework Agreement has not been provided to the Examination no account can be taken of it but the outstanding matters are addressed in Chapter 5.

22.6.10. NR also confirmed in its D10 submission [REP10-031] that it had entered into a Framework Agreement with the Applicant and the withdrawal of its objection to the application. We have not been provided with a copy of this Framework Agreement and therefore cannot take its contents into account in our Recommendation.

OTHER CONSENTS AND LICENCES

22.6.11. In addition to the DCO, the Applicant has identified other consents and licences which are required before work could commence and with which compliance is necessary before the construction, operation or maintenance of the Proposed Development. These are included in Other Consents and Licences [REP8-092]. As acknowledged by the Applicant, the list is not exhaustive as the consents, permits and licences required depend on the finalisation of design and construction details and engagement with the consenting authorities. Consequently, there may be further approvals required. Without prejudice to the exercise of discretion by other decision makers, there are no obvious impediments to the delivery of the Proposed Development arising from these consents. Additionally, we are not aware of any reason to believe that any relevant necessary consents, permits and licences would not subsequently be granted.

22.7. ExA's CONCLUSION ON DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

22.7.1. The main outstanding matters related to the DCO at the end of the Examination were requirements. The relevant tests for the imposition of requirements are set out in paragraph 4.9 of the ANPS, specifying that they should be necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects.

22.7.2. The position at the close of the Examination was that the Applicant did not accept the changes we were recommending to their final dDCO [REP10-004]. However, we have concluded that, based on the Applicant's final dDCO, when considered alongside the obligations in the signed s106 agreement, we cannot recommend to the SoS that the Order is made. This is because, the Applicant's proposed mitigations would not, in our view, adequately overcome the harm we have identified.

22.7.3. However, with the ExA's proposed changes to the Applicant's dDCO, in the form of the rDCO we are able to recommend to the SoS that the Order is made. Consequently, we put two versions of the DCO to the SoS. The first is the Applicant's final dDCO which can be found in the Examination Library [REP10-004] while the second is the rDCO which can be found at Appendix E. Should the SoS be minded to accept our recommendation it should be noted that not all of the proposed changes in the rDCO have been shared with the Applicant or other Interested Parties.

23. SUMMARY OF FINDINGS AND CONCLUSION

23.1. INTRODUCTION

23.1.1. Section (s) 104 of the Planning Act 2008 (PA2008) sets out the matters to which the Secretary of State (SoS) must have regard in deciding an application, and s105 of the PA2008 applies to an application where s104 does not apply. Where there is a relevant national policy statement s104 applies. In both cases the SoS must have regard to Local Impact Reports (LIR), prescribed matters, and any other matters which the SoS thinks are both important and relevant to their decision.

23.1.2. For the reasons set out in Chapter 3 we have considered the Proposed Development under s105 of the PA2008. The Aviation National Policy Statement (ANPS) only has effect in relation to the delivery of additional airport capacity through the provision of a London Heathrow North West Runway. Nevertheless, the contents of the ANPS are both important and relevant considerations in the determination of an application for development consent for other airport development, particularly where that development relates to London or the south-east of England (as in this case).

23.1.3. The works to improve the M23/ A23, the North and South Terminal junctions and Longbridge roundabout are subsidiary to the airport works and are a Nationally Significant Infrastructure Project in their own right. Section 104 of the PA2008 applies to the highway elements of the Proposed Development although the highway works are subsidiary to the airfield works. Consequently, the National Networks National Policy Statement (NNNPS) is also an important and relevant consideration in the determination of the application (where appropriate).

23.1.4. In addition, the ExA also took into account the submitted LIRs and any other matters which we considered were important and relevant.

23.2. FINDINGS

23.2.1. Chapter 20 contains our conclusions on the Case for Development Consent. We have concluded in Chapter 4 that the Proposed Development would constitute the best use of an existing runway and that there is a nationally recognised need for aviation development, particularly in the south-east of England. In our view the partial fulfilment of such need that would be provided by the Proposed Development weighs moderately in favour of the Proposed Development. We also note that Gatwick Airport supports a significant level of local employment, and that the potential economic benefits from the Proposed Development would undoubtedly result in both local and national economic growth.

23.2.2. On the other hand, we also found that the Proposed Development would cause harm in various areas. Of particular significance is that we have found, in the light of the Finch case, that the scale of greenhouse gas (GHG) emissions arising from the Proposed Development would be such that it is likely that there would be an impact which would be contrary to the ANPS. Our judgment is that it is likely that, having taken account of the Jet Zero Strategy, the Proposed Development would have a material effect on achieving carbon targets. Harm has also been found in matters of traffic and transport, ecology, noise, the water environment, health and wellbeing, and landscape and townscape. Great weight must also be given to harm to heritage assets.

23.2.3. We have also found that without the Proposed Development the airport could grow to 61 million passengers per annum and above with no planning controls on the growth of the airport, other than an agreement under s106 of the Town and Country Planning Act 1990 based on historic obligations and night flight restrictions imposed by Government (the Department for Transport, July 2021).

23.2.4. The Applicant's draft Development Consent Order (dDCO) would introduce a wider range of controls than the existing position. In our view under the dDCO moderate levels of harm would be caused to matters of GHG emissions, traffic and transport, and noise, along with a little harm to matters relating to the water environment and health and wellbeing. In this scenario the harm that the Proposed Development would cause would outweigh the benefits and on that basis we recommend refusal.

23.2.5. By contrast, the recommended Development Consent Order (rDCO) would introduce a wide range of detailed planning controls on the operation of the Proposed Development, such that harm levels would be reduced in matters of traffic and transport and controlled in relation to noise, the water environment and health and wellbeing. Additional benefits would also result from good design. Under this scenario the benefits of the Proposed Development would outweigh harm and we recommend approval. Should the SoS be minded to accept our recommendation it should be noted that not all of the proposed changes in the rDCO have been shared with the Applicant or other Interested Parties.

23.2.6. In terms of the Habitats Regulations Assessment, the ExA is satisfied on the basis of the information provided that Adverse Effects on Integrity on all relevant sites and their qualifying features can be excluded.

23.2.7. The ExA has considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights in order to implement the Proposed Development. The ExA is satisfied that the legal interests in all the plots of land included in the Book of Reference and shown on the Land Plans would be required for, or to facilitate or be incidental to, the Proposed Development to which the development consent relates. Both the principal development, and the associated development, identified in the application would be needed for that purpose. The requirements of s122(2)(a) and (b) of the PA2008 are, therefore, met. The land to be taken is no more than is reasonably required and the proposed land take is proportionate. The Applicant has a clear idea of how it intends to use the land and funds are available for the implementation of the Proposed Development. This recommendation is subject to the Crown giving consent for the CA and TP of Crown land in accordance with s135, prior to the Secretary of State's (SoS) decision.

23.2.8. The ExA has had regard to the provisions of the Human Rights Act 1998, in particular, Article 6, Article 8 and Article 1 of the First Protocol. The ExA is satisfied that the Examination has ensured a fair and public hearing, that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest and that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

23.2.9. The ExA has also had regard to the Public Sector Equality Duty (PSED) throughout the Examination and in producing this Report. The PSED is considered in Chapter 21 of the Report and Table A5, Appendix A. The Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not

share a protected characteristic. On that basis, the ExA is satisfied there would be no breach of the PSED.

23.2.10. With regard to all other matters and representations received, the ExA is satisfied that there are no important and relevant matters that would individually or collectively lead to different recommendations from those below.

23.3. RECOMMENDATIONS

23.3.1. As outlined in Chapter 20 and above, the ExA have come to two different recommendations.

23.3.2. Firstly, for all of the above reasons, the ExA finds that the Proposed Development, with the Applicant's dDCO fails to meet the tests in s105 and s104 of the PA2008 and recommends that development consent should not be granted.

23.3.3. Secondly and conversely, with the rDCO, and subject to the necessary Crown approvals being granted, adverse effects arising from the Proposed Development would not outweigh its benefits. In this scenario the ExA is thus satisfied that the Proposed Development would meet the tests in s105 and s104 of the PA2008 and that the case for development has been made. Accordingly, the ExA recommends that the SoS makes the Gatwick Airport (Northern Runway Project) Development Consent Order in the form attached at Appendix E.

23.3.4. In Chapter 3 we noted that the Legal Partnership Authorities considered that the application should be decided against s104 of the PA2008 (as opposed to s105 and s104), but that both they and the Applicant agreed that whichever interpretation is adopted would not materially affect the outcome of the decision. We agree with that view for both of our recommendations.

23.3.5. While the works to improve the M23/ A23, the North and South Terminal junctions and Longbridge roundabout are subsidiary to the airfield works, the NNNPS does have effect in relation to such works and consequently we have considered those elements of the application having regard to s104(2) of the PA2008.

APPENDIX 5C

DECISION LETTER

Kayla Marks
Head of the Transport Infrastructure Planning Unit
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Email: transportinfrastructure@dft.gov.uk

Web Site: www.gov.uk/dft

21 September 2025

Gatwick Airport Limited
Destinations Place
Gatwick Airport
West Sussex
RH6 0NP

Dear Sir/Madam,

PLANNING ACT 2008

APPLICATION FOR THE GATWICK AIRPORT NORTHERN RUNWAY PROJECT DEVELOPMENT CONSENT ORDER

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

    - The report dated 27 November 2024 ("the Report") of the Examining Authority ("ExA") comprised of Kevin Gleeson BA MCD MRTPI, Philip Brewer PhD BSc (Hons) MIOA, Helen Cassini BA (Hons) DipTp MRTPI, Jonathan Hockley BA (Hons) DipTp MRTPI and Neil Humphrey BSc (Hons) CEng FICE MTPS who conducted an Examination into the application made by Gatwick Airport Limited ("the Applicant") for the Gatwick Airport (Northern Runway Project) Development Consent Order ("DCO") ("the Application") under section 37 of the Planning Act 2008 as amended ("the 2008 Act");
    - The responses to the further consultations undertaken by the Secretary of State following the close of the Examination, including responses to her letter of 27 February 2025; and
    - Any late representations received by the Secretary of State following the close of the Examination.

2. On 27 February 2025, the Secretary of State issued a letter ("the minded to letter") in which she stated that as the ExA's report was novel, in that it recommended a revised DCO which included a range of additional controls on the operation of the Proposed Development (the detail of the Order for the Proposed Development is contained in

paragraph 5 of the minded to letter). The Secretary of State was mindful that not all of the additional controls had been considered during the Examination, and at that point she was unable to make a final decision on whether to accept the ExA's recommendations. However, having considered the recommended revised DCO, the evidence provided by the Applicant, and responses to that evidence from other Interested Parties, she considered that on balance, she was minded to agree with the ExA that the Proposed Development would meet the need for aviation development, as identified in the Airports National Policy Statement ("ANPS") and other policies, and that the controls introduced by the ExA would reduce and mitigate negative impacts from the Proposed Development, particularly in relation to noise and traffic, which would be more likely to stay within the modelled values. She was therefore minded to grant consent subject to the Applicant providing additional or updated views on the ExA's recommended revised requirements, following both consideration of the ExA's Report and noting the Secretary of State's initial position.

3. The Applicant was asked to provide this information by no later than 24 April 2025. In addition, the Secretary of State set out a number of matters on which she would need to be satisfied prior to reaching her final decision. These matters concerned the discharging of the duty under section 85 of the Countryside and Rights of Way Act 2000 ("CRoW Act") in relation to National Landscapes (which has been extended to include Section 11A(1A) of the National Parks and Access to the Countryside Act 1949 in relation to National Parks, as detailed in the Landscape and Townscape section of this letter); the Applicant setting out further measures to prioritise sustainable design and in turn reduce carbon emissions from the Proposed Development; and compliance with the assimilated Regulation (EU) No. 598/2014 of the European Parliament and of the Council of 16 April 2014 ("Regulation 598") with regards to noise operating provisions. In order to give other Interested Parties an opportunity to comment on the Applicant's response to the revised requirements before the Secretary of State made a final decision on the Application, the statutory deadline for the decision was extended to 27 October 2025.

4. A copy of the Report was published alongside the minded to letter on the Planning Inspectorate website. All "ER" references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form "ER XX.XX.XX" as appropriate.

SUMMARY OF EXAMINING AUTHORITY'S RECOMMENDATION

5. As set out in the minded to letter, the ExA made two different recommendations to the Secretary of State, for the reasons detailed in their Report [ER 23.3.1].

6. Firstly, the ExA found that the Proposed Development, as reflected in the DCO proposed by the Applicant, failed to meet the tests in sections 104 and 105 of the 2008 Act and recommended that development consent should not be granted [ER 23.3.2].

7. Secondly, that subject to the necessary Crown approvals being granted, consent could be granted for the DCO recommended by the ExA as adverse effects arising from the Proposed Development would not outweigh its benefits. The ExA was satisfied that with the recommended DCO the Proposed Development would meet the tests in sections 104 and 105 of the 2008 Act and the case for development consent has been made [ER 23.3.3].

SUMMARY OF THE SECRETARY OF STATE'S DECISION

8. After full consideration of all the evidence now before her, the Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in this Application.

9. The Secretary of State's position on some of the issues covered by the minded to letter remains the same. This is particularly the case for the legislative and policy considerations already referred to. For the sake of clarity, some of her conclusions may be restated in this letter however unless otherwise stated, her position remains as set out in the minded to letter. For the avoidance of any doubt, this letter contains the Secretary of State's final conclusions and decision on the Application. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

The SECRETARY OF STATE'S CONSIDERATIONS

10. The Secretary of State's final consideration of the Report, responses to her consultations of 9 December 2024, 3 January 2025 and 28 April 2025, responses to the minded to letter of 27 February 2025, representations received after the close of Examination and all other material considerations are set out in the following paragraphs. Where consultation responses and late representations are not otherwise mentioned in this letter, it is the Secretary of State's view that these representations do not raise any new issues that were not considered by the ExA and do not give rise to an alternative conclusion or decision on the Order.

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

The Principle of the Proposed Development and the Need Case

12. As set out in paragraphs 28 to 80 of her minded to letter of 27 February 2025, the Secretary of State has considered the Applicant's assessment of the principle of, and the need for, the Proposed Development and was minded to agree with the overall conclusions reached by the ExA. The Secretary of State has now considered the representations made by Interested Parties following her minded to letter, alongside the Applicant's responses to the concerns raised therein and has set out further views here. Save for where indicated otherwise, the Secretary of State does not consider that any of the representations changes the position she adopted in her minded to letter.

Policy background and compliance

13. The Secretary of State notes that the primary concerns relating to policy matters are that the Proposed Development is outside of the scope of the Government's policy for 'Making best use of existing runways' ("MBU") and is also outside of the ANPS which was designated for Heathrow Airport.

14. The Secretary of State particularly notes CPRE Sussex's letter in response to her consultation of 28 April 2025, which states that the Proposed Development effectively involves construction of a new second runway, as opposed to bringing an existing

runway into regular use. However, as detailed at paragraph 34 of the minded to letter, the ExA considered this matter and found that neither the movement of the existing northern runway by 12m nor the other works required to reconfigure taxiways and provide new pier and stands, would constitute the creation of a new runway [ER 4.2.27 and 4.2.30]. The ExA noted that the northern runway is fully CAA certified, and can be used fully when the southern runway is closed, and that at present the airport has two runways but for operational and safety reasons both runways cannot be used simultaneously [ER 4.2.24]. On this basis, the ExA was content that the Proposed Development constituted works to an existing runway [ER 4.2.32]. The ExA was additionally content that as MBU does not restrict the size of a proposed project, the scale of the Proposed Development would fall within the MBU policy [ER 4.2.42]. The Secretary of State is likewise content and is satisfied on this point.

15. It is recognised by the ExA and the Secretary of State that while there is no requirement for MBU developments to demonstrate a need for their proposals [ER 4.2.56], the scale and size of Gatwick (and that of the Proposed Development) and its proximity to Heathrow means that to benefit from policy support, it is necessary to demonstrate a need additional to, or different from, any Heathrow scheme, a position supported at paragraph 1.42 of the ANPS [ER 4.2.59]. The Need Case is considered further below.

16. With regards to the ANPS, there is no dispute that the ANPS only has effect in relation to Heathrow Airport [ER 3.5.2]. Nonetheless, paragraph 1.41 of the ANPS confirms this is still an important and relevant consideration in the determination of airport-related developments, particularly where it relates to London or the south-east of England. The Secretary of State notes that in its letter of 9 June 2025, Gatwick Area Conservation Campaign ("GACC") raised concerns that the use of the ANPS is outdated, due to the introduction of the Government's legally binding environmental obligations (the inclusion of aviation in carbon budgets and net zero targets) which mean aviation demand must be more carefully managed or reduced. GACC highlighted that the ANPS does not reflect recent airport expansions granted at Luton, Stansted, London City, Bristol and Southampton Airports, meaning that the analysis underpinning the ANPS and the need for aviation development in the south-east of England cannot now be rationally relied upon.

17. While the Secretary of State determines each application on its own merits and consideration of this Application will be based on the particular facts of this case, she agrees that other airport decisions may provide relevant context. It is clear that throughout its considerations on the need for the Proposed Development, the ExA has taken account of recent airport decisions, in particular those of Stansted, Southend, London City [ER 4.3.26] and Luton (where a final decision was still awaited at the close of Examination [ER 4.3.28]) even if/where the ExA's overall conclusion then differs. It found that based on forecasts, there remained a shortfall in capacity at London airports to accommodate the need [ER 4.5.2]. Additionally, the ExA set out at [ER 4.3.1] that the demand forecasts used had been updated post pandemic, as part of the Jet Zero Strategy ("JZS"). The Secretary of State agrees with the ExA's conclusions at [ER 4.3.6 - 4.3.7] and she is satisfied that the evidence took appropriate account of the Government's environmental policies and strategies, including the JZS [ER 4.3.3]. Furthermore, she is satisfied that all impacts of the Proposed Development have been considered by the ExA within the relevant sections of the Report, taking account of all relevant legislation and policy requirements, outside of, and in addition to, the ANPS. The ExA's consideration of the specific legislation and policy in relation to carbon

budgets, including the Committee on Climate Change's ("CCC") recommendations, is primarily contained within Chapter 8 of the Report and the Secretary of State's conclusions in the Greenhouse Gas Emissions section of this letter.

The Need Case

18. In her minded to letter, the Secretary of State set out that she was minded to agree with the ExA that there remains a nationally recognised need for aviation development, particularly in the south of England, which has not only been demonstrated by the ANPS but by the Airports Commission and by the DfT forecasts from 2017, 2022 and 2023, for which the current capacity at London airports fall short [ER 4.5.2]. The Secretary of State has had regard to the subsequent responses from Interested Parties, including Stuart Spencer, Christopher Weekes and the Langton Green Village Society Committee, who stated that the need for development is unlikely to continue as Heathrow's expansion will reduce demand at Gatwick and the Government's need to meet its net zero targets. The Langton Green Village Society Committee in particular highlighted that the need in the south-east of England is for business flight capacity, whereas Gatwick is seen as the largest 'leisure' flight airport.

19. The Secretary of State is content that the ExA considered the most recent Government forecasts available at the time, which show a significant increase in aviation demand in London up to 2050, which the Applicant predicts could not be met by any future Heathrow scheme alone [ER 4.3.7 - 4.3.8]. The ExA also considered evidence presented by Airport Coordination Limited, supported by the evidence of the Legal Partnership Authorities and easyJet, that the demand specific to Gatwick is significantly outstripping its supply at certain times of the year [ER 4.3.29 - 4.3.31]. The ExA noted that the markets served by Heathrow and Gatwick, while similar in some ways, are very different in others, including by reference to the proportion of the low-cost carrier market, and rate of passengers transferring flights [ER 4.3.33 – 4.3.35] and so conceivably meet a different demand. Transfers are expected to remain a small sector demand compared to Heathrow [ER 4.3.16 - 4.3.17] therefore the Proposed Development is unlikely to affect the 'hub' status of Heathrow long term [ER 4.3.37]. While noting the concern that Gatwick is primarily a leisure flight airport, the Secretary of State has had regard to the Applicant's Planning Statement, confirming the trend for low-cost carrier airlines (which dominate Gatwick's traffic [ER 4.3.12]), which have opened up new routes and destinations to both business and leisure travellers [Planning Statement (APP-245), 2.4.17].

20. The Secretary of State has additionally had regard to the comments of GACC in their letter of 9 June 2025 that the expansion of Eurostar routes by 2030 may also decrease demand for air travel as there is larger capacity for passengers to reach Europe by train. However, as this proposed expansion is at an early stage of development, the Secretary of State has no information before her on which to make any meaningful assessment of any impact.

21. Taking all information into account, the Secretary of State is satisfied that a need for the Proposed Development remains and she has not been presented with any new evidence that changes her position from that set out in the minded to letter. As outlined above, the Secretary of State is content that relevant Government environment policies and strategies, including obligations for net zero, have been appropriately considered within the Examination and this decision. The Secretary of State agrees with the ExA that in line with the ANPS, the need demonstrated is largely additional to, and different from, the need that would be met by the Heathrow scheme [ER 4.5.3].

Capacity and capability

22. The Secretary of State has further considered matters of capacity and capability in light of the Applicant's response of 24 April 2025. In Annex 4 to that response, the Applicant restated its argument that the assessed benefits of the Proposed Development at Gatwick are greater than the benefits assessed for any of the other airport decisions referenced in the Report, not only from an economic perspective, but from the increased resilience that the fully functioning repositioned northern runway would provide to the airport system in the south-east [Annex 4, 6.14]. The Secretary of State notes that ER 4.4.1 and 4.4.4 drew attention to the Applicant's resilience initiatives, which are designed to improve the airport's ability to respond to disruption, and reduce the delays currently experienced because of capacity issues. However, the ExA also found that the concerns raised by operators at the airport, including easyJet and British Airways, carried weight and led it to doubt that airfield infrastructure would be able to efficiently deal with the forecasted traffic [ER 4.4.9]. On balance, the Secretary of State considers that the resilience of the Proposed Development may be overstated, and she is not persuaded that this strengthens the need case. The Secretary of State is satisfied the conclusions drawn in paragraphs 72 - 73 of her minded to letter still stand.

Airspace

23. While the Secretary of State acknowledges that representations received since her minded to letter, including from easyJet, have raised concerns about the need for airspace change proposals to accommodate the results of the Proposed Development, she reiterates that both the Civil Aviation Authority ("CAA") and NATS En-Route Limited confirm that no airspace change is required because of the Proposed Development [ER 4.4.33]. As the CAA airspace change process is a separate regulatory regime to this Application, further consideration here is not appropriate [ER 4.4.34].

The Secretary of State's Conclusions on the Principle of the Proposed Development and the Need Case

24. Overall, the Secretary of State agrees with the ExA that there is a need for aviation capacity as outlined and supported by the ANPS, and that the Applicant has demonstrated sufficient need for the Proposed Development that would partially satisfy, would be additional to, and different from the need met by the Heathrow scheme [ER 4.5.12]. She also acknowledges the support received for the need for the scheme, particularly from local businesses Gatwick Diamond Business, Develop Croydon Forum and the Sussex and Surrey Chambers of Commerce, which were received following publication of her minded to letter. The Secretary of State considers she has not been presented with any new evidence that changes her position from that set out in the minded to letter and like the ExA, considers the Principle of the Proposed Development and the Need Case carries moderate weight in favour of the Order being made [ER 4.5.12].

Traffic and Transport

25. Paragraph 83 of the minded to letter dated 27 February 2025, highlighted the issues that the ExA considered to be the main matters for the Examination together with consideration of these matters which are covered in paragraphs 84 to 120. Save for where indicated otherwise, the Secretary of State does not consider that any of the

representations subsequently made, changes the position she adopted and set out in paragraph 121 of that letter. However, to provide context to her consideration of requirement 20, which deals with surface access, there is some repetition of matters set out previously in her minded to letter.

Surface Access

26. Mode shares are the basis of the Applicant's control over traffic effects. By the time of commencement of dual runway operations, a significant improvement in mode share must be achieved. The ExA considered through their proposed amendment to requirement 20 that surface access impacts would be managed by the introduction of land use controls that would restrict the first use of particular elements of the Proposed Development until the Applicant had demonstrated that they had achieved the mode share targets that would accord with the levels of traffic assessed in the Transport Assessment and Environmental Statement ("ES") [ER 5.3.61 – 5.3.62].

27. The ExA expressed concern about the Applicant's Surface Access Commitments ("SAC") and the potentially retrospective mitigations proposed by the Applicant that could be implemented should mode share targets not be met, may not be able to ensure that the traffic and transport effects are within the envelope assessed within the Transport Assessment and ES. The ExA did not accept that the Applicant's approach would necessarily control the likely significant effects to the envelope assessed in the Applicant's submission [ER 5.3.79]. The ExA considered that with the additional controls recommended, greater certainty would be provided that the impacts would stay within those modelled in the Transport Assessment. Even with the additional controls in place, the ExA considered that the Proposed Development would still generate additional movements across the already congested transport networks. The ExA concluded that, on the basis of the additional controls recommended, traffic and transport matters should be given slight negative weight in the overall planning balance [ER 5.4.5].

28. The Secretary of State was previously minded to agree with the ExA's version of requirement 20 [ER 5.3.61 – 5.3.68], which included a revised governance structure and acknowledged the role of third party delivery in implementing surface access measures [5.3.65 and 5.3.80]. The consideration of requirement 20 was set out in paragraphs 98 and 100 of the minded to letter. Paragraph 103 of the minded to letter provided the Applicant with a final opportunity to provide views and/or propose alternative wording for requirement 20 so as to achieve the same level of assurance or to provide evidence as to why this was not achievable.

The Applicant's response dated 24 April 2025

29. In response to the Secretary of State's invitation to comment on the ExA's proposed requirement 20, the Applicant proposed two revised versions set out in Appendix 2 to its Annex 3 response dated 24 April 2025. The 'alternative' revised version retains a conditionality mechanism, but introduces a tiered fallback structure, under which dual runway operations may commence if any one of the following conditions is met:

    1. Mode share targets set out in the SACs are achieved;
    2. Highway traffic levels remain within levels assessed in the Transport Assessment;
    3. The specified highway improvement works are completed; or
    4. Written agreement to vary surface access commitments is obtained from:

a. National Highways and Crawley Borough Council ("CBC"), in consultation with Surrey County Council ("SCC") and West Sussex County Council ("WSCC"), in respect of all other surface access commitments; and
b. Network Rail in respect of Commitments 14A and 14B (rail-related commitments).

30. In paragraph 3.30 of Annex 3, the Applicant set out that the SACs have been designed to bring about the committed public transport mode share; deliver a comprehensive package of commitments underlying the overarching mode share commitments proposed by the Applicant; and allow the Applicant to adopt measures within its control. The Applicant stated that it must be acknowledged that public transport usage and supply is not entirely within its control, particularly in relation to rail services, timetables and fares. The Applicant in its response (page 5 of the covering letter) stated that if a revised requirement 20 is imposed, which requires it to meet a certain mode share target then the Secretary of State is asked to recognise that the achievement of the required mode share is not entirely within the Applicant's control and relies heavily on third party actions. The Applicant highlighted that there are other factors outside of its control which will have an influence on the exact public transport mode share achieved. Such factors include key rail improvements, such as reinstating the full Gatwick Express, integrated ticketing that promotes sustainable transport options, maintaining the real cost of train travel by not increasing fares above inflation, and delivering timetable and capacity improvements consistent with demand growth. In paragraph 2.2 of Annex 3, the Applicant also emphasised that London Gatwick has consistently out-performed other major UK airports over the last 10-15 years in overseeing considerable growth in its sustainable transport mode share, with page 5 proposing a more flexible, tiered fallback mechanism to manage surface access impacts.

31. The Applicant set out in sub-paragraph (2) of its proposed requirement that commencement of dual runway operations and first use of Pier 7 would be prevented unless and until a public transport mode share had been met [paragraph 5.3.2 of Annex 3].

32. The Applicant further proposed that the first use of Pier 7 (Work No. 6(a)) be subject to the same conditionality mechanism as commencement of dual runway operations. Specifically, the use of Pier 7 would only be permitted if one of the following conditions is met:

    1. the public transport mode share target of 54% is achieved;
    2. the number of airport passenger vehicle trips is below the assessed threshold of 24 million; or
    3. the national highway works are completed and certified [paragraph 5.3.3 of Annex 3].

33. In addition, the Applicant proposed that first use of Work No. 28(a) (hotel on Car Park H site), Work No. 28(b) (office on Car Park H site), and Work No. 30(b) (Car Park Y) be conditional on completion of the national highway works. These proposals are intended to ensure that the use of these facilities does not give rise to unassessed surface access impacts [paragraph 5.20 of Annex 3].

Interested Parties responses

34. The Secretary of State has considered the representations received from Interested Parties in relation to this matter and notes the following in particular:

- National Highways response dated 6 June 2025

35. National Highways confirmed that, subject to the protections secured in the Framework Agreement signed with the Applicant, the SACs, and the Applicant's proposed alternative requirement 20, it was satisfied that the Strategic Road Network would be appropriately protected.

- Network Rail response dated 9 June 2025

36. Network Rail supported the Applicant's revised requirement 20, particularly the requirement for written agreement on any deviation from SACs 14A and 14B. It emphasised that the potential rail improvements referenced by the Applicant (the re-instatement of the full Gatwick Express service, capping train fares, timetabling and capacity improvements) are not currently funded. Network Rail set out that it was open to discussion on schemes to address capacity on the busy Brighton mainline as and when funding became available but considered that the focus should be on ensuring impacts of the Proposed Development remain within the levels assessed in the ES.

- Joint Local Authorities ("JLA") response dated 9 June 2025

37. The JLA supported the ExA's version of requirement 20, stating it provides greater confidence that sustainable transport mode share targets will be met prior to the commencement of dual runway operations. They cautioned that the Applicant's alternative wording could permit growth even if those targets are missed and urged that any final version of the requirement must align with paragraph 5.5 of the ANPS by maximising access via sustainable modes.

- Kent County Council ("KCC") response dated 9 June 2025

38. KCC described the Applicant's coach patronage forecasts as over-ambitious and warned that fallback reliance on road network upgrades could increase car use.

- Communities Against Gatwick Noise and Emissions ("CAGNE") response dated 9 June 2025

39. CAGNE supported the principles underlying the ExA's revision of requirement 20 but reiterated that the Applicant's surface access management and mitigation package is inadequate (paragraph 8). In a report by Sterling Transport Consultancy Limited which was annexed to CAGNE's letter, the Applicant's "monitor and manage" approach is described as flawed (paragraph 9), there is criticism of the lack of a suitable contractual structure and funding for rail commitments (paragraph 4), and concern is expressed that mitigation was being treated as "an afterthought or a nice to have" (paragraph 10). Their report called for a meaningful, contracted and fully funded enhancement to rail services to be secured prior to operation (paragraph 15).

- Gatwick Area Conservation Campaign (GACC) response dated 12 June 2025

40. GACC strongly supported the ExA's recommended form of requirement 20 and objected to the alternative wording proposed by the Applicant, stating it is "an inadequate alternative" that does not necessarily deliver the target mode shares (page

18). They argue that the Applicant's approach lacks sufficient funding for rail capacity improvements and relies on factors not within its control, which GACC disputes as "disingenuous" (page 17). GACC calls for stronger mechanisms to ensure the SACs are met and reasserts that compliance with them, carbon budgets, and noise limits should be linked to slot allocation (pages 19–20).

Other representations

41. Several individuals also expressed concern about vehicle trips on local roads. Concerns about overspill traffic and the capacity of local roads to accommodate increased airport-related journeys were raised in multiple representations. Kathleen Foster (15 May 2025) noted that local roads are already congested and unlikely to cope with further demand, warning that infrastructure upgrades must not become a financial burden for taxpayers. Alan Mitchell (9 June 2025) similarly highlighted inadequate road infrastructure, parking, and public transport services, stating that the area cannot support the additional traffic and workforce associated with expansion. The Mole Valley Cycling Forum (9 June 2025), represented by Roger Troughton, emphasised the risks to pedestrian and cyclist safety from increased road traffic, and called for a dedicated fund for non-vehicle infrastructure improvements such as footpaths and bridleways. These submissions reflect widespread concern that Gatwick's expansion would exacerbate congestion and road safety issues, particularly in areas already under pressure.

Conclusion on Traffic and Transport

42. The Secretary of State acknowledges the concerns raised about requirement 20 having to operate in conjunction with the SACs to ensure that surface access impacts remain with the levels assessed in the ES. While the Applicant's revised approach introduces more flexibility, it must also provide sufficient assurance that target mode shares will be met. If those targets are not achieved, there is a risk that additional significant effects could arise which have not been assessed. It is therefore essential that requirement 20 secures the delivery of the SACs in a way that remains within the levels assessed in the ES.

43. The Secretary of State considers that the inclusion of the statutory consultee sign off, with Network Rail's role limited to rail-related commitments and National Highways and CBC (in consultation with the local transport authorities) covering all other SACs, provides a meaningful safeguard to ensure that any changes to the commitments are subject to appropriate oversight. The mechanism is intended to help ensure that the commitments regarding transport mode share remain in place, and that any variation is subject to written agreement that limits deviate from the levels assessed in the ES. However, she also recognises that the test for the completion of highways works, as currently framed in sub-paragraphs (4) and (5) of the Applicant's proposed wording, may not provide the same level of certainty for local highways networks as the wording contained in the ExA's proposal.

44. Having considered all the relevant representations dealing with surface access issues, the Secretary of State is persuaded that the Applicant's proposed fallback mechanism should be refined to remove the highway works test as a standalone trigger for commencement of dual runway operations. She considers that in doing so, this approach better aligns with paragraphs 5.9 - 5.18 of the ANPS and enables requirement 20 to better meet the National Planning Policy Framework's expectation

at 114a of prioritising appropriate opportunities to promote sustainable transport modes, thereby enhancing the enforceability of the SACs.

45. She considers that the remaining elements of the Applicant's proposal, mode share compliance; traffic level thresholds; and written agreement from statutory consultees, together form a structure that is proportionate in recognising delivery constraints while still maintaining environmental safeguards. Mode share compliance ensures that alignment with the SAC's traffic thresholds provide a measurable check on impacts, and the written agreement introduces a mechanism for oversight and controlled variation. In this context, the car parking cap set out in requirement 37 plays a complementary role by limiting the potential for unassessed impacts arising from increased car use. As set out in paragraphs 111 to 113 of the Secretary of State's minded to letter, the cap on air passenger parking spaces provides a safeguard against uncontrolled expansion of parking provision, and the Secretary of State was minded to accept the ExA's proposed amendments to ensure effective control over parking provision. She remains of the view that requirement 37, as revised by the ExA, is appropriate. Therefore, requirement 20, together with requirement 37, offers a framework that supports deliverability and accountability, helping to ensure that any future adjustments remain within the scope of what was assessed in the ES.

46. However, the Secretary of State accepts the Applicant's proposals for the first use of Pier 7 and the associated hotel, office, and car park facilities. In paragraphs 5.18-5.20 of the Applicant's response on requirement 20, it indicated that Work Nos. 28(a), 28(b) and 30(b) will have a negligible impact on the amount of overall vehicular traffic and the amount of employee vehicular traffic travelling to the airport, particularly in relation to the latter as most employees will not be based at the new office on Car Park H site. As such, their use is not expected to materially affect mode share or traffic volumes, and the majority of staff will continue to work in existing on-airport facilities. The proposed conditionality in this case, for the completion of highway works, ensures that infrastructure capacity is in place before these facilities are brought into use.

47. The Secretary of State also notes that the Applicant does not propose any increase in staff car parking provision as part of the Proposed Development [REP9-043, SACs Commitment 11]. This commitment aligns with the wider strategy to encourage sustainable travel among airport employees, including commitments to active travel, car sharing, and public transport incentives, as reflected in Commitment 2A which the Applicant must achieve by the first anniversary of the commencement of dual runway operations and Commitment 2 which must be achieved by the third anniversary of the commencement of dual runway operations [REP9-043, paragraphs 4.3.1 and 4.2.1]. The SACs provide a commitment to implement and follow a specified monitoring and reporting process in relation to the SACs to provide assurance that there is compliance with the commitments [REP9-043, third bullet of paragraph 3.1.2]. The Secretary of State considers that ongoing monitoring of airport staff journeys and staff parking usage, as set out in the SACs [REP0-043, SACs Commitment 15], provides an appropriate mechanism to assess in relation to staff parking as to whether the retained staff car parking capacity remains justified. She expects the applicant to keep parking under review and, should evidence indicate that staff parking is consistently under-utilised, she would expect that the Applicant review the provision with a view to reducing overall staff parking capacity. The Secretary of State is of the view that this would support the Applicant's long-term aspiration for a minimum of 60% of airport staff journeys to be made by public transport, shared travel and active modes [REP9-043, SACs 7.1.3]. This would help to reinforce mode shift objectives and minimise the

potential for unnecessary car use in relation to staff travel in conjunction with Commitments 2 and 2A.

48. In response to representations from Interested Parties seeking clearer commitments on public reporting, monitoring of local road impacts and coordination with local authorities, the Secretary of State considers the inclusion of statutory consultee sign off for deviation from the SACs, as detailed above, is sufficient to ensure compliance with the impacts assessed in the ES. These matters should be addressed through ongoing engagement with local authorities and the Transport Forum Steering Group. She also expects that the Applicant works in partnership with other organisations, particularly local authorities, public transport operators and other service providers to achieve longer-term aspirations that go beyond the committed mode shares in the SACs where this is possible, in line with its wider aspirations for sustainable aviation and in line with the Government's JZS [REP9-043, SACs 7.1.2-7.1.4].

49. On balance, the Secretary of State considers that a slightly revised requirement 20 combined with requirement 37 will provide sufficient assurance that surface access impacts will be managed effectively and remain within the levels assessed in the ES. She therefore attributes slight negative weight to surface access matters in the overall planning balance.

Noise and Vibration

50. Paragraphs 122 - 125 of the minded to letter set out that the Secretary of State has had regard to both the Applicant's assessment of noise and vibration in the ES and supporting documents, and to the ExA's considerations on the principal issues of aircraft noise, construction noise and vibration, and road traffic noise; noting the ExA's application of established concepts set out in the ANPS and the Noise Policy Statement for England ("NPSE").

51. The views of Interested Parties, the ExA's conclusions and the Secretary of State's interim conclusions on the principal issues are at paragraphs 126 - 184 of the minded to letter. The Secretary of State does not intend to repeat or to restate these matters in full here except where it is helpful to provide context to the matters considered. Following the minded to letter, the Applicant responded to the Secretary of State's request to further consider the revised Order requirements recommended by the ExA, taking into account the Secretary of State's initial views. Interested Parties were also given an opportunity to provide further views by way of her letter of 28 April 2025. After careful consideration of all the responses received, the Secretary of State has identified the key areas for further consideration as being Air Noise Limits and Receptor-based noise mitigation. The Secretary of State has therefore set out her final consideration and conclusion on these issues below. Unless otherwise stated, her position on all other issues concerning noise and vibration remains the same as set out in the paragraphs 122-184 of the minded to letter.

Aircraft Noise Assessment

52. The Secretary of State notes the Applicant's representation of the 24 April 2025, in response to her minded to letter. Annex 2 provides the Applicant's response on requirement 18 (receptor based noise mitigation), with all further references provided by the Applicant relating to this Annex.

Daytime and Night-Time LOAELs (Lowest Observable Adverse Effect Levels)

53. The differences in the LOAEL figures applied by the Applicant and the ExA in relation to the Proposed Development were set out by the Applicant in paragraph 3.6 of Annex 2 (see Table 1 below).

Table 1: Comparison of the Applicant and ExA's proposed LOAELs

	LOAEL LAeq 16 h	*LOAEL LAeq 8 h*
Applicant	*51 decibels ("dB")*	*45dB*
ExA	*45dB*	*40dB*

54. The Secretary of State notes the information contained in paragraphs 3.7-3.9, on which the Applicant has based its argument regarding the setting of the LOAELs. The Applicant set out that its LOAEL values were taken directly from Government policy, set out in its 'Consultation Response on UK Airspace Policy: A Framework for Balanced Decision on the Design and Use of Airspace', at paragraph 2.72. The Applicant stated that this policy (and the LOAEL values) had been examined and used consistently in recent aviation planning decisions. The Applicant argued that the ExA's justification for its LOAELs had nothing to do with the characteristics of Gatwick, instead deriving an opinion about the necessary internal environment of any residential properties based on British Standard 8233, and then applying a 5dB reduction derived from British Standard 4142.The Applicant's position is that if the Secretary of State were to adopt the ExA's conclusions on the LOAEL values, it would have precedential application to a wide range of projects across the UK, and effectively reset existing national noise policy.

55. The Secretary of State notes the representations provided by the JLA and CAGNE on the issue of LOAELs. The JLA, at paragraph 4.2 of its submission from the 9 June 2025, stated that Gatwick has significantly more night flights than London Heathrow or London Stansted, and that the night-time LOAEL proposed by the ExA matches that proposed by the JLAs during the Examination. CAGNE provided submissions by expert consultants Suono at Appendix 2 of its representation of the 9 June 2025. At paragraph 17, Suono noted that if the ExA's proposed LOAEL thresholds are to be taken as the relevant thresholds for Gatwick Airport, then the noise chapter and associated appendices of the ES should be updated, accompanied by a full further consultation. At paragraph 18, Suono stated that if the ExA's proposed thresholds are not progressed, there is clear benefit in undertaking another consultation, due to the amount of time given to LOAELs during the Examination. This is highlighted by several matters contained in Appendix A of [REP8-145] which were not covered in detail during the Examination, and which gave rise to serious concerns with regards to noise effects related to the scheme, namely:

- lack of up to date ES noise chapter (addressed at paragraph 115)
- details of implementing the noise insulation scheme (addressed at paragraphs 62 - 92)
- errors with the fixed mechanical plant noise assessment (addressed at paragraphs 127 - 128), and
- myriad issues with the ground noise assessment, including missing noise results and contours (addressed at paragraphs 124 - 126)

56. The Secretary of State has considered the arguments provided by the Applicant and Interested Parties regarding the issue of daytime and night-time LOAELs. She was initially minded to accept the LOAEL values proposed by the ExA (see paragraph 143 of her minded-to letter). However, in light of the further reasoning and justification provided by the Applicant, the Secretary of State now considers that the values proposed by the Applicant are appropriate and consistent with policy. She agrees that the Applicant's approach to adopt the LOAELs, as set out at paragraph 2.72 of the 'Consultation Response on UK Airspace Policy: A Framework for Balanced Decision on the Design and Use of Airspace', is appropriate, with the Applicant having regard to the noise assessment principles set out in the national policy on airspace, as stated at paragraph 5.53 of the ANPS. She notes that the LOAELs have been set at the same level in recent aviation planning decisions for London Stansted, London City and London Luton. The Secretary of State notes the arguments put forward by CAGNE, and having had regard to information contained in the Noise and Vibration chapter of the ES, she is satisfied that it sufficiently supports the adoption of the Applicant's LOAELs and considers that it addresses the significant effects of the Proposed Development and that Interested Parties have had a sufficient opportunity to comment on them.

Daytime and Night-Time SOAELs (Significant Observable Adverse Effect Levels)

57. The Applicant in paragraph 3.6 of Annex 2 to its response has set out the difference between the SOAEL values applied by it and the ExA in relation to the Proposed Development (see Table 2 below).

Table 2: Comparison of the Applicant and ExA's proposed SOAELs

	SOAEL LAeq 16 h	*SOAEL LAeq 8 h*
Applicant	*63dB*	*55dB*
ExA	*54dB*	*48dB*

58. The Secretary of State notes paragraph 2.22 of the NPSE, which states that it is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. Not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available. The Applicant set out its understanding of established policy with regard to SOAELs at paragraphs 3.13-3.17. The Applicant set out, at paragraph 3.13, that the Applicant in part defined SOAEL by reference to Government expectations of compensation and noise insulation schemes and the Government has set out what noise insulation it considers necessary and in this respect the Aviation Policy Framework (APF) remains the only definitive statement of Government policy. The Applicant highlighted paragraph 3.39 of the APF, which states that "as a minimum the Government would expect airport operators to offer financial assistance towards acoustic insulation to residential properties which experience an increase in noise of 3dB or more, which leaves them exposed to levels of noise of 63 dB LAeq,16h or more." At paragraph 3.16 of Annex 2 of its representation, it highlighted the policy paper Aviation 2050: the Future of UK Aviation, which consulted on extending the noise insulation policy threshold beyond the current 63dB LAeq 16hr (daytime) contour to 60dB LAeq 16hr (daytime). The Applicant stated

that this policy remains in draft and set out that it does not redefine daytime SOAEL at 60dB. However, the Applicant explained that its Noise Insulation Scheme (NIS) already significantly exceeded that draft policy expectation, providing contributions for mitigation measures for properties in the 54 dB LAeq 16 h contour. Further to it setting out its understanding of established policy, the Applicant highlighted in paragraph 3.18 precedent in recent aviation planning decisions of London Stansted, Bristol and London Luton, in which all three applications adopted the SOAEL limits of 63 dB LAeq 16 has put forward by the Applicant. The Applicant concluded, at paragraph 3.35, that the NIS proposed by the Applicant met and substantially exceeded the expectations of published and draft policy, and significantly exceeded any existing package of noise mitigation at other airports.

59. The JLA, at paragraph 4.2 of their 9 June 2025 response, considered that one awakening contour is also a SOAEL, a view that is reflected in their London Heathrow Airport's June 2019 Noise Insultation Policy. The JLA highlighted CAP 2251, which suggested that the one awakening contour at Gatwick equates to the 48 dB LAeq 8hr (night-time) noise level. The JLAs, therefore, were in agreement with the ExA that a night-time SOAEL can be aligned with the 48 dB LAeq 8hr (night-time) contour.

60. The Secretary of State notes London Heathrow Airport's June 2019 Noise Insulation Policy, which outlines SOAEL values of 63 dB LAeq 16 hr (daytime) and 55 dB LAeq 8 hr (night-time), as well as one additional awakening per night (using 92-day summer averages as a measurement tool). The Secretary of State notes that the London Heathrow's June 2019 Noise Insulation Policy document was consulted upon as part of the airport's proposals to expand, but the document was a draft and the expansion proposals were not implemented. The Applicant modelled additional awakenings that would be produced by the Proposed Development at ES Chapter 14: Noise and Vibration [APP-039]. At paragraph 14.12.20, the Applicant measured that in the slow fleet transition scenario, the effect of the Proposed Development is to increase awakenings in 2032 by an average of 0.11 additional awakenings per person. The extent of increased awakenings will be higher where the additional flights are closest to populations. The Applicant in its Air Noise Modelling considered the area, where the additional 12 night flights are forecast in 2032 as a result of the Proposed Development. The Applicant anticipated this would create the highest noise levels across the study area on an average summer night and concluded that in this location the effect of the change in L_{max} levels when summed across all aircraft would create an average 0.8 additional awakenings per night per person. The Applicant highlighted that there is a relatively small population who will experience these 12 additional flights [paragraph 7.4.7, APP-172]. The Secretary of State notes that through the Applicant's Noise Insulation Scheme Document ("NISD"), the properties are forecast to be within the "inner zone" and therefore will have access to the full suite of receptor-based mitigation measures. The Secretary of State therefore considers that it would be disproportionate to adopt the SOAELs proposed by the JLA, given the minimal effect the Proposed Development would have on awakenings across the majority of the study area.

61. The Secretary of State acknowledges that there are differences in view between the Applicant, ExA and Interested Parties on the appropriate figure for noise limit values and that she was initially minded to accept the SOAEL values proposed by the ExA (see paragraph 143 of her minded-to letter). However, in light of the further reasoning and justification provided by the Applicant summarised above, the Secretary of State now considers that the values proposed by the Applicant are appropriate and

consistent with policy. She further notes that recent aviation planning decisions have used the same approach and arrived at similar limits to those proposed by the Applicant.

Noise Insulation Scheme ("NIS")

62. The Applicant, at Annex 2, Section 4, paragraph 4.37 of its response of the 24 April 2025, considered the ExA's recommended requirement 18 to be completely inappropriate, and that it is contrary to paragraph 4.9 of the ANPS and established planning policy on conditions and requirements.

63. The Applicant's view (paragraph 5.1) is that the NIS submitted with the DCO and developed through the Examination is fully policy compliant. It set out its concerns in section 4 regarding the drafting of the ExA's recommended requirement 18 for receptor-based mitigation, which included:

- the definition of potentially eligible premises (paragraphs 4.6 – 4.15),
- involvement of the local planning authority (paragraphs 4.16 – 4.24),
- timing and process (paragraphs 4.25 – 4.31), and
- the requirement to buy property (paragraphs 4.32 – 4.36).

64. The Applicant considered what further enhancements it can make in Section 5 to the form of the requirement, to give comfort to the Secretary of State that the proposal meets the policy requirement in paragraph 5.68 of the ANPS (paragraph 5.1). The Applicant proposed a revised NISD (Appendix 2 to Annex 2), and a re-drafted requirement 18 to secure this.

Potentially eligible premises

65. At paragraphs 4.8-4.9, the Applicant outlined that the ExA defined a single group of properties by reference to its chosen SOAELs (as set out in Table 2). The Applicant set out that the ExA's SOAELs are unprecedented and unjustified. As discussed at paragraphs 57 - 61 above, the Secretary of State agrees with the Applicant, and has defined the SOAELs as 63dB LAeq 16 hr (daytime) and 55dB LAeq 8 hr (night-time). Therefore, she is satisfied that the Applicant has utilised SOAEL limits which will comply with paragraph 5.68 of the ANPS, as part of its revised NISD.

66. The Secretary of State notes that the Applicant, as part of its revised NISD (paragraphs 14-15), included other noise-sensitive non-residential buildings (hospitals, libraries, places of worship and noise sensitive community buildings) (paragraph 11) affected by a LAeq 16 h 63 dB (daytime) noise level, either from air noise, or ground noise alone or in combination with air noise, which is above ambient noise. The mitigation for non-residential premises will be approved by the relevant LPA, with the relevant measures being defined in the revised NISD. The Secretary of State is satisfied that the Applicant has included this provision, providing greater comfort to local communities.

67. At paragraphs 4.11-4.15, the Applicant outlined its approach to ground noise. The Applicant had previously explained why ground noise did not need to be included in the NIS. This was in part because ambient noise, mainly from road traffic, in much of the relevant area near Gatwick Airport is higher. Suono, in Appendix 2 of CAGNE's representation of the 9 June 2025, set out that were the Applicant to not include premises where ambient noise levels are in line with the thresholds proposed by the ExA (LAeq 16 h 63 dB (daytime)), over 90% of all premises might not be eligible for

noise mitigation (paragraph 31). The Applicant welcomed the JLA's acceptance, as set out on page 9 of its representation of 17 January 2025, that a property should only be eligible for noise insulation if the combined air and ground noise level is above the ambient noise level (paragraph 4.13 of Appendix 2). Furthermore, the Applicant outlined it would undertake an extensive road traffic noise modelling exercise to quantify ambient noise in determining eligibility (paragraph 4.14 and the revised NISD, paragraph 19). The Secretary of State agrees with this approach, noting the JLA's acceptance.

Involvement of the Local Planning Authority (LPA)

68. The Applicant set out why it thought it would be inappropriate for LPA involvement. The Applicant highlighted that the standard approach, repeated through numerous (DCO and non-DCO) planning decisions is for the consent to set out the terms of the insulation scheme, and to require its implementation in terms which are enforceable. Ordinarily, implementation would involve engagement with individual homeowners, rather than case-by-case negotiation with the LPAs (paragraph 4.18). The Applicant queried the need or benefit for LPA approval of each package of measures to be provided to a particular premises, and to impose that requirement exceptionally here would require a specific justification if it were to meet the relevant tests of necessity and reasonableness (paragraph 4.19). As there are more than 4,000 properties in scope, the Applicant further asked the Secretary of State to consider the scale of resources that LPAs would need to undertake this task in a timely manner and ask whether that is proportionate or necessary (paragraph 4.20).

69. In its revised NISD, the Applicant clarified that measures will only be installed where agreed by the relevant homeowner (paragraph 5.3.6). If a homeowner considered that the offered package does not meet the standard set out in the revised NISD, they can refer this to a new, independent dispute resolution panel. The Applicant set out that this strikes a proportionate balance between ensuring oversight and accountability on the measures offered by the Applicant to eligible premises, whilst not requiring unduly burdensome and resource-intensive LPA approval of each package of measures (paragraph 5.3.2).

70. The Applicant argued that the ExA's proposed requirement provides drafting that fails the tests of precision and enforceability required of planning conditions and requirements (paragraph 4.23). The Applicant highlighted sub-paragraph (4) of the ExA's requirement, which requires submitted mitigation designs to "have due regard" to certain, specified guidance but also "other guidance as relevant." The Applicant stated that this is unhelpfully vague and does not specify to what degree that guidance must inform the designs, nor does it indicate what types of material may constitute other guidance leaving significant scope for disagreement (paragraph 4.21). Furthermore, sub-paragraph (5) indicates that the LPA can refuse to approve a design for the main residence "because it considers internal living conditions would be unacceptable". The Applicant has set out that this confers unacceptably broad and unconstrained discretion on the LPA, allowing it to refuse a design based on its own consideration (paragraph 4.22).

71. In Section A of its revised NISD, the Applicant outlined it aimed at providing a reduction in aircraft noise from outside a home to inside of 35dB using relevant acoustic measures (paragraph 3), and that the specification of these have regard to industry guidance and British Standards 8223 (paragraph 4). The Secretary of State is satisfied, therefore, that the Applicant has clearly defined the noise reduction that will be

delivered through its revised NISD, and the industry guidance and standards it will follow to achieve this.

Timing and Process

72. The Applicant set out that the ExA's proposal was clearly unfeasible to insulate more than 4,000 properties in the approximately 4 years before commencement of dual runway operations, particularly if extensive time is required to agree the mitigation package for every home with the LPA. As a result, the Applicant concluded that this nationally significant infrastructure would inevitably be seriously delayed (paragraph 4.26), and the scale of this work would pose an unacceptable risk to the DCO programme (paragraph 4.28).

73. The Applicant, in its revised requirement 18 NISD, set out a revised timeline. The Applicant will submit a list of eligible premises to the local planning authority within 3 months of the commencement of Works Nos. 1, 2 and 18, and in the following 3 months, notify the owners and occupiers of all eligible premises. Following this, the Applicant considered it preferable to prioritise installation at those properties that will experience higher noise levels sooner, rather than unrealistically requiring a survey of all properties above the 54dB contour within the same timescale (paragraph 4.29), and proposed to accelerate the time period within which the Applicant must survey eligible premises from 24 months to 12 months for premises in the LAeq 16 h 60 dB (daytime) contour or above, to reflect the new wider scope of the 'inner zone' as redefined (paragraph 5.3.5).

74. Subject to a homeowner having made a timely application and agreed the package of measures, as well as any necessary consents, the Applicant must install and commission measures before the later of the commencement of dual runway operations, or the year in which the premises is forecast to experience the level of noise that renders it a potentially eligible premise. The Applicant explained that this ensures that no premises will experience significant adverse effects from noise due to a delay installation of mitigation measures (paragraph 5.3.8). The Secretary of State is content that this presents a more proportionate approach for the Applicant to be able to deliver the noise mitigation measures at scale, whilst also ensuring that significant adverse impacts on health and quality of life from noise are avoided, in line with paragraph 5.68 of the ANPS.

75. The Applicant highlighted that no financial limits are set by the ExA for the extent of insultation works to any property, in contrast to other schemes which define the necessary works and provide for full insulation of properties most affected, and tiered, reduced contributions at lower levels of noise. The Applicant set out that the ExA's recommended requirement is potentially open ended and goes far beyond the requirements of paragraph 5.68 of the ANPS which requires only that significant adverse impacts are avoided and other adverse impacts are mitigated and minimised (paragraph 4.30).

76. In its revised NISD, the Applicant has removed the financial cap for insulation for all eligible residential premises in the LAeq 16 h 60 dB (daytime) contour or above (now defined as the inner zone, alongside the LAeq 8 h 55 dB (night-time) contour). The Applicant stated that this ensures that there is no financial limit for the mitigation for all residential premises at or above the SOAEL established by the Applicant and set out in the APF, but also for those in the 60 dB contour, which the Applicant submits are below the SOAEL. The Applicant explained that this seeks to provide additional

comfort that significant adverse effects will be avoided and, even where there are not significant adverse effects, that the Applicant will contribute to the improvement of health and quality of life by providing uncapped mitigation to those in the 60 dB contour (paragraph 5.3.4). The Secretary of State is content that this approach is compliant with paragraph 5.68 of the ANPS, and the Applicant has made efforts to contribute to improvements to health and quality of life.

The Requirement to Buy Property

77. The Applicant highlighted that if agreement is not reached on any property about the precise detail of noise insulation, no clear recourse is provided, with the Applicant being obliged to buy the property instead. The Applicant set out that given that more than 4,000 properties are caught by this requirement, this represents an extremely significant potential financial liability (paragraph 4.31). Airports UK, in its letter of the 24 July 2025, agreed, stating that the requirement on the airport to potentially purchase properties is well beyond necessity and proportionality.

78. As highlighted at paragraph 5.3.2, and further discussed at paragraph 5.3.7 of the Applicant's response, the Applicant proposed a dispute resolution mechanism independent of the Applicant or the LPA, which would allow the Applicant, homeowners, and/or the relevant LPA to refer specified matters to a "noise insulation scheme independent panel" where there is disagreement, allowing independent arbiters with relevant expertise to determine what is required by reference to the terms of the requirement and the revised NISD. The Secretary of State agrees that this is a reasonable inclusion that would allow for the fair determination of the suitability of noise mitigation measures and allow for confirmation to be provided to the Applicant, homeowners and the LPA that the measures offered comply with the Applicant's obligations.

79. The Applicant highlighted that sub-paragraph (5) of the ExA's recommended requirement provides that, if agreement cannot be reached between the Applicant and LPA on the design of receptor-based mitigation, the Applicant must offer to buy the premises at open market rate and pay reasonable moving expenses, fees and costs incurred by the owner. The Applicant considered that no cap is put on these costs, and as outlined above, no process is provided for mediating disputes over it being justified to mandate purchase nor the value or costs of the purchase (paragraph 4.32). The Applicant made the point that the ExA's drafting of this requirement is an entirely unjustified recommendation with no policy basis, and that it is well-established that planning conditions (and therefore requirements) that place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness (Use of planning conditions, MHCLG (updated July 2019)) (paragraph 4.33). The Applicant set out that it is only at the highest levels of noise impact that Planning Policy Guidance on noise requires noise impacts to be "prevented," and that the well-established industry standard approach is offer a home relocation assistance scheme, not a property purchase scheme (paragraph 4.35). The Applicant, in its revised requirement 18, maintained its approach to moving costs, as proposed in its submission of the 23 December 2024.

80. The Secretary of State is satisfied that the Applicant's revised NISD and re-drafted requirement 18 brings forward further enhancements which would ensure compliance with paragraph 5.68 of the ANPS, providing additional comfort to local communities that the effects of aircraft noise from the Proposed Development would be mitigated.

81. The Secretary of State consulted on the Applicant's revised NISD and requirement 18 as part of her consultation letter of the 28 April 2025. The Secretary of State notes the JLA's representation of the 9 June 2025, which highlighted several concerns regarding the Applicant's wording of its proposed requirement 18, which included:

    - Trigger Requirements
    - Inner Zone Definitions
    - Moving Costs
    - Planning Authority Interaction
    - Overheating
    - Review of Actual Noise Levels
    - Independent Panel

    Trigger Requirements

82. The JLA noted at paragraph 4.5 that reference to Work Nos. 1-7 (as defined at ER 1.3.13 as airfield works) had been used throughout the DCO process as the trigger by both the Applicant, and the ExA in their recommended DCO. The JLA saw no reason for this to be deleted by the Applicant at this stage in the process. The Applicant's addition of Work No.18 (for the replacement of the western noise mitigation bund) as a trigger was welcomed by the JLA, as this had been raised as a concern throughout the DCO process. The Secretary of State is content to agree with the JLA, and include this provision within the re-drafted requirement 18, to ensure the prompt timing of the installation of noise mitigation.

    Inner Zone Definitions

83. The JLA maintained their position, as set out in their closing statement of the Examination [REP9-151], that the inner zone should be defined at 60 dB LAeq 16 h (daytime) and 48 dB LAeq 8 h (night-time) for noise exposure (paragraph 4.6), as they believe that the Applicant's proposal does not offer adequate protection to residents of properties within the 48 dB LAeq 8 h (night-time) contour (paragraph 4.7). The JLA highlighted throughout the Examination process their concerns regarding impacts on residents living within the one additional awakening contour, which the JLA consider a SOAEL in line with London Heathrow Airport's June 2019 Noise Insulation Policy. The JLA considered the 48 dB LAeq 8 h (nighttime) contour as representative of the one additional awakening contour, and strongly recommended the Applicant consider this as part of its revised NISD, that includes the 48 dB LAeq 8 h (nighttime) contour as part of the Inner Zone (paragraph 4.8). The JLA outlined they would be amenable to a "sub-Inner Zone" or "Inner Zone 2", that could be applied to the range between 48 and 55 dB LAeq 8 h that provides no limit to insulation costs for bedrooms only as an alternative to the Inner Zone, which provides no limit of costs for insulation to all habitable rooms of a property (paragraph 4.9). This position was supported by Tunbridge Wells Borough Council, in its representation dated 6 June 2025. As noted at paragraph 60, London Heathrow's June 2019 Noise Insulation Policy document was consulted upon as part of the airport's proposals to expand, but the policy was a draft and the expansion proposals were not implemented. The Secretary of State notes that the limits proposed by the JLA would go far beyond the SOAEL limits proposed by the Applicant. She considers that the Applicant's adopted SOAELs aligned with recent aviation planning decisions which have used the same approach, and with

Government's noise policy. The Secretary of State therefore concludes that the inner zone definitions provided by the JLA would place a disproportionate financial burden on the Applicant to deliver noise mitigation measures beyond the position set out in policy.

Moving Costs

84. The JLA noted that the Applicant's requirement 18 would cap total moving costs at £40,000. The JLA outlined that anyone selling a property over £750,000 will be out of pocket (paragraph 4.12), as the level of stamp duty and estate agent fees would exceed the amount proposed by the Applicant. The JLA suggested that the Applicant's requirement be rewritten to state that stamp duty and estate agent fees will be met in full (up to 1% of the purchase price), as well any other reasonable moving costs e.g. removals and storage (paragraph 4.13). The Secretary of State notes that whilst this would require a further financial contribution from the Applicant, she is satisfied that that this would be proportionate to the scale of the Proposed Development, given the reasonably small number of eligible premises that will be affected by the LAeq 16 h 66 dB (daytime) air noise contour.

Planning Authority Interaction

85. The JLA suggested that the timescales put forward by the Applicant in sub-paragraph (10)(a) of its revised requirement 18 should be amended from 6 weeks to 8 weeks, to align with the normal planning process (paragraph 4.15). The Secretary of State agrees with this amendment.

86. The JLA proposed a change to the wording of sub-paragraph (13) of the Applicant's revised requirement, so that it would be clear that air modelling of airport related noise will be undertaken by the Applicant and with the addition that the undertaker with the relevant planning authority will identify additional potentially eligible premises or adjustments to the specification of the measures provided, and the addition of annually is in line with the ExA's wording at sub-paragraph (7) of the recommended DCO (paragraph 4.17). The Secretary of State is content with this amendment.

Overheating

87. The JLA outlined that the highest noise levels occur at Gatwick in the summer months (paragraph 4.19). Given the performance of the noise insulation is dependent on windows being kept shut in the summer months, the JLA maintain that the Applicant must commit to undertake and provide a dynamic thermal modelling report, which assumes windows are shut, for properties within the Inner Zone. The dynamic thermal modelling report should be undertaken in line with the requirements set out in the Chartered Institution of Building Services Engineer's TM59 'Design methodology for the assessment of overheating risk in homes' (2017) (paragraph 4.20). This would ensure that adequate overheating mitigation measures are applied to individual properties, so occupants can maintain good internal temperatures while keeping windows closed to mitigate against aircraft noise (paragraph 4.21). The Secretary of State agrees that it is reasonable to adopt this approach for eligible properties within the inner zone, to ensure that measures for those properties most affected by aircraft noise avoid significant adverse impacts to health and quality of life caused by overheating.

Review of Actual Noise Levels

88. The JLA wished to see the Applicant include a commentary on internal noise levels with reference to the design requirements in BS 8233. The commentary would be expected to include reference to predicted external noise levels from the Applicant's noise models and the measured façade performance. The JLA would welcome the opportunity to review and approve testing reports for individual properties subject to developing a suitably streamlined approach (paragraph 4.25). The Secretary of State noted above that the Applicant's revised NISD and requirement 18 will consider industry guidance and British Standards in the provision and installation of its noise mitigation measures. The Secretary of State is therefore satisfied the Applicant has already provided for this, and that any disagreements as to whether the Applicant is meeting this requirement can be brought forward to the NIS independent panel.

Independent Panel

89. The JLA noted the NIS independent panel and suggested that there is one representative from the local authorities on this panel, and/or suitable consultation is undertaken with the JLA in selecting members of the NIS panel (paragraph 4.26). The Secretary of State agrees that the JLAs' input into selecting members would be an invaluable part of maintaining the independence of the panel and therefore agrees that the JLA are consulted in relation to its formation.

Conclusion on Receptor Based Mitigation

90. The Secretary of State agrees with the Applicant's approach to LOAELs, as they are well-established in aviation policy, and have been used in several recent aviation planning decisions.

91. The Secretary of State also agrees with the Applicant's approach to SOAELs, as they have been used in several recent aviation planning decisions. Whilst she has noted the JLA proposals that the nighttime SOAEL is reduced to 48 dB LAeq 8 h (nighttime), and the agreement of Interested Parties with the ExA's proposed SOAELs, she notes that these proposals would far exceed established policy as set out in the APF and Aviation 2050.

92. The Secretary of State is satisfied that the Applicant's revised NISD and requirement 18 would allow consent to be granted, as it meets the aims for the effective management and control of noise within the context of Government policy of sustainable development, as set out at paragraph 5.68 of the ANPS. Furthermore, she considers that the amendments suggested by the JLA regarding trigger requirements, planning authority interaction, overheating and the assembly of the independent panel in the revised NISD and requirement 18 would provide further security and comfort for local communities.

Air Noise Limits

93. The Applicant originally proposed air noise limits based on its Central Case ("CC") fleet transition forecast, later revised during the Examination to an updated Central Case ("UCC") reflecting a slower transition post-COVID, in which the rate of fleet transition was delayed by about five years and which would result in higher noise levels than the CC [ER 6.3.25].

94. The CC set out the Applicant's air noise limit proposals within a noise envelope, based on what it considered to be the most likely rate of fleet transition from current aircraft

to the quieter and more fuel-efficient 'next generation' aircraft [ER 6.3.24]. The CC calculated the air noise limits and the air noise contour (the area enclosed by the noise limit) for the end of the first year of dual runway operations as 51 dB during the 16 hour day period, with a contour of 146.7 km^2 and 45 dB during the 8 hour night period, with a contour of 157.4 km^2 [APP-039, paragraph 14.9.192]. This was based on the average noise levels during the 92-day summer season because it represents the season when the Airport would be at its busiest and hence noisiest.

95. Paragraph 160 of the minded to letter details the Applicant's proposed air noise limits and contours based on the UCC, which for the opening year to year 9 was 16 hour day period 51 dB = 135.5 km^2 and 8 hour night period 45 dB = 146.9 km^2 [REP10-011, paragraph 6.1.8], to be monitored annually by an independent air noise reviewer to report and identify any breaches [REP10-011, paragraph 7.1.2]. As with the CC, this would be substantially stepped down after year 9 of dual runway operations or when the Airport reached 382,000 air traffic movements. Under the UCC, the Applicant noted that the air noise contours would experience equivalent noise levels in future years as they did in 2019 when only one runway was in operation [REP10-011, paragraph 1.1.7]. The Secretary of State notes that the Applicant themselves have selected 51 dB and 45 dB as appropriate noise level values [Environmental Appendix 14.9.5 (APP-175), 2.5.14].

96. The ExA did not accept the Applicant's position that data supported a slowing in fleet transition following the pandemic; which the ExA considered to favour the position of the Legal Partnership Authorities ("LePAs") that the CC should be used. After further exploring this matter during Examination, the ExA considered that the original CC remained the most appropriate basis for setting air noise limits and contours. Specifically, the ExA recommended a daytime air noise contour of 125km^2 for the first five years of dual runway operations, which it felt best reflected CAA data that showed a continued upward trend in fleet transition during summer periods [ER 6.4.117 - 6.4.118].

97. The ExA also considered that these limits and contours would more appropriately share the benefits of noise reduction from new technology with local communities and more effectively mitigate and minimise adverse noise impacts on health and quality of life, in line with paragraph 5.60 of the ANPS and paragraph 3.29 of the APF [ER 6.4.129 - 6.4.130]. As a result, the ExA proposed a revision to requirement 15 of the Order, to reflect its recommended air noise limits and contours, with the Applicant required to report on these annually. Although the air noise contours were stepped down in the Applicant's proposals, the ExA's showed that after the initial five years, only the nighttime air noise contour would reduce, with the daytime remaining at 125km^2. On reviewing the ExA's assessment, the Secretary of State recognised that the revised air noise contours were not properly tested with parties during Examination. She therefore sought the Applicant's further consideration of the proposed requirement via her consultation letter of 9 December 2024 and then again in her minded to letter of 27 February 2025.

98. In its responses of 23 December 2024, 24 April 2025 and 6 June 2025, the Applicant stated that remaining within the initial limits and contour set by the ExA may require significant operating restrictions [Annex 1 of response dated 24 April 2025, paragraph 2.6]. The Applicant set out that this would restrict both capacity and growth, leading to a delay in the benefits of the Proposed Development; at odds with Government aims of securing growth for the UK [response dated 23 December 2024, page 2]. With the

benefit of the Report, the Applicant's response of 24 April 2025 considered that the ExA had determined the air noise limits and contours based on flawed conclusions regarding both fleet transition and future growth, with the ExA predicting fewer future air traffic movements than the Applicant and then equating this to the potential for lower noise levels. However, any reduction in air traffic movements would be unlikely to occur in summer, which is the period over which noise impacts are measured. The Applicant further submitted that potential misinterpretation by the ExA may have led it to rely on the out-of-date CC and inappropriately propose the initial 5-year air noise contour of 125km^2 in recommended requirement 15.

99. The Applicant provided further evidence in the form of the CAA's Noise Exposure Contours for Gatwick Airport 2024 ERCD Report 2502 ("the ERCD Report"), annexed to the response dated 6 June 2025. The Applicant argued that the ERCD Report supports a slower rate of fleet transition and therefore justifies the use of the UCC for calculating air noise limits and contours [Response dated 6 June 2025, final paragraph on page 1]. Most notably, the Applicant explained that the ERCD Report measures the number of aircraft meeting the latest International Civil Aviation Organisation ("ICAO") Chapter 14 Noise Standards; many of which are current generation aircraft that operate at Gatwick but not considered 'next generation' aircraft within the fleet mix at Gatwick. As a result, the Applicant contends that the ExA's comparisons between ERCD Report data that refer to the number of aircraft that met the latest Chapter 14 Noise Standards and its own figures on next generation aircraft in the fleet mix, as referenced at ER 6.4.116 - 6.4.118, did not use comparable data.

100. The Applicant further explains that during the pandemic, older, noisier and less efficient aircraft were temporarily withdrawn from service, resulting in a quieter operating fleet than pre-COVID-19. However, as air traffic recovered, these relatively older, noisier aircraft have returned to operation, and the ERCD Report data shows a subsequent decrease in the proportion of Chapter 14-compliant aircraft. The Applicant therefore maintains that the overall fleet at Gatwick has not continued transitioning to quieter 'next generation' aircraft compared to the 2019 baseline [Annex 1 to response dated 25 April 2025, paragraph 3.8].

101. The Applicant's case remains that the UCC fleet transition is most likely and that as this forecasts a 16 hour day period 51 dB = 135.5 km^2 contour area in 2032, this is the most appropriate contour limit [Annex 1 to response dated 25 April 2025, paragraph 2.4]. However, the Applicant did accept the ExA's suggestion to shorten the first air noise contour period to five years from its proposed nine-year period [Response dated 23 December 2024, page 10]. As set out in the ES, the Applicant notes there would be no changes to the conclusions on the assessment of likely significant effects should the UCC be adopted [Annex 1 to response dated 25 April 2025, paragraph 2.4].

102. When the Secretary of State queried this matter with the ExA on 14 May 2025, the ExA confirmed its position and reasoning remained as per the Report, without providing any additional clarification.

103. The Secretary of State has noted the other representations received, including those from the JLA, the Gatwick Area Conservation Campaign ("GACC") and Communities Against Gatwick Noise Emissions ("CAGNE"). The JLA response dated 9 June 2025 is generally supportive of the ExA's proposed air noise contours in requirement 15 which they view as being in line with the Applicant's CC scenario [paragraph 3.4]. They note in particular that the Applicant's response is reverting to its original proposals for the area of the noise envelope, with none of the benefits that were introduced as a

result of discussion throughout the Examination such as a reduction in the noise envelope in 2038 / 382,000 commercial air traffic movements and as such represents the worst case scenario. This would provide fewer assurances and protections from the detrimental noise effects from the Proposed Development [paragraph 3.9].

104. However, the main comment from the JLA on the ExA's proposed requirement is the loss of a review mechanism for the noise envelope and their suggestion of inserting an addition to allow for a review of the air noise contour area nine years from opening or when the airport reaches 384,000 air traffic movements, whichever occurs first [paragraph 3.5]. The JLA also note that the current drafting of the ExA's proposed requirement 15 is retrospective and does not allow a forward-looking mechanism which would allow action to be taken before exceedances are identified. As drafted, the proposed requirement 15 would only identify exceedances to the air noise limits and contours retrospectively (based on the previous year's operations) [paragraph 3.6]. In summary, the JLA have suggested two amendments to the ExA's proposal to link slot release to forward looking noise modelling to ensure no breach of the noise contour and a review of the noise envelope after nine years, with a view to reducing the air noise contours [paragraph 3.23].

105. The loss of a review mechanism for the noise envelope was also raised by GACC. In its response of 9 June 2025, GACC stated that every stakeholder involved in the Examination, including the Applicant, proposed that there should be a process for renewing the noise envelope periodically, with a general expectation that limits would reduce over time. Without a mechanism to require longer term noise reductions, there would be no incentive for the Applicant to continue to reduce noise, which does not align with the ANPS to ensure that the noise envelopment would remain relevant.

106. The Secretary of State notes that GACC's primary concern is that the air noise limits and contours, as proposed by both the Applicant and the ExA, go against the expectations of the ANPS and APF regarding the sharing of benefits. GACC's position is that the test in the APF that noise should reduce as capacity grows is not met. They point out that the future baseline case (without the Proposed Development), encloses a lower contour area than either the Applicant or the ExA have proposed from first operation of the Proposed Development.

107. The Secretary of State is aware that the Report highlighted paragraph 3.12 of the APF which states that, "Government's overall policy on aircraft noise is to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise, as part of a policy of sharing benefits of noise reduction with industry" [ER 6.4.93]. It also referenced paragraph 3.29 of the APF and paragraph 5.60 of the ANPS, which set out that the benefits of future technological improvements should be shared between the airport and its local communities to achieve a balance between growth and noise reduction [ER 6.4.94 - 6.4.95]. The Secretary of State notes the ExA also reference the OANPS at ER 6.4.96, detailing the government's overarching policy on aircraft noise.

108. While acknowledging GACC's concerns, the Secretary of State is mindful of the wording in the APF and ANPS, which is that there is a balance to be reached between growth and noise reduction. She also considers the wording in the OANPS to be particularly relevant, in that *"the impact of aircraft noise must be mitigated as much as is practicable and realistic to do so, limiting, and where possible reducing, the total adverse impacts on health and quality of life from aircraft noise."* It is clear the aim of the policy is to ensure significant adverse effects from noise are avoided and remaining

adverse effects from noise are mitigated and minimised as much as possible, not to remove additional noise completely. The specific policies regarding the sharing of benefits ensures the balance can be delivered by aligning any benefits to the Applicant from growth, to benefits to the community from reducing noise effects, for example as new aircraft technology advances, but does not state that these must happen at the same time but rather as soon as reasonably practical. There is also a connection to noise receptor mitigations, as set out below, which are part of the overall approach to noise and which work to mitigate the impacts of aircraft noise. The Secretary of State will set out her conclusions on the compliance with policy requirements, in relation to this Application, in the conclusion paragraph below.

109. CAGNE's representation of May 2025, appended detailed submissions regarding noise from its instructed noise expert consultants Suono. In respect of air noise limits, Suono agree with the approach of using the Applicant's original CC to establish the limits and contours given this was provided as part of the core Application documents in 2023, sometime after the pandemic, indicating the Applicant was confident it was still relevant. While agreeing with the ExA on air noise limits in the main, Suono state there is a clear need for the noise chapter and associated appendices of the ES to be updated to account for any new requirements, thresholds and information that make up the reasons why the ExA is recommending approval of the Proposed Development [paragraph 53].

The Secretary of State's Conclusions on air noise limits and contours

110. After fully reviewing all of the representations received and evidence provided, the Secretary of State has determined that the air noise limits and contours should be set as follows:

Air Noise Limit	Contour from the first to fifth year of dual runway operations	Contour from the sixth year of dual runway operations
51 dB (daytime)	135km^2	125km^2
45 dB (nighttime)	146km^2	135km^2

111. This will be supported by a provision that the Applicant will review the limits every five years following the ninth year of dual runway operations or when commercial air traffic movements reach 382,000, whichever is sooner.[1] To address concerns raised by the JLA and other Interested Parties, the Secretary of State confirms that the Applicant will be required to produce five-year forecasts of compliance with the air noise limits.

[1] The figure of 382,000 is the figure proposed in the Applicant's noise envelope document [REP10-011]. In its response dated 23 December 2024, the Applicant referred to a figure of 380,000 but the reasons for using this figure were not explained and the Secretary of State considers it appropriate to use the figure that reflects the Applicant's updated central case.

112. The CAA will act as the independent assessor of both annual compliance and five-year forecasts. Its role will be to verify the Applicant's data and provide assurance to stakeholders that noise limits are being met and future projections are credible.

113. The Secretary of State considers that there is merit to the Applicant's argument that a comparison of different aircraft data could have led to an unintentional miscalculation regarding fleet transition. She agrees with the Applicant that the ERCD Report supports a slower transition than that assumed by the ExA. In light of this, the Secretary of State has revised her position from that set out in her minded to letter and, on review of evidence set out by the Applicant, now accepts that the UCC is the most appropriate basis to reflect the particular circumstances of this Application. She has therefore agreed that the air noise contours provided by the Applicant in its responses of 23 December 2024 and 24 April 2025 should be used as detailed above.

114. The Secretary of State acknowledges that there are differences in view between the Applicant, ExA and Interested Parties on the appropriate figure for noise limit values and that she was initially minded to accept the values and drafting of requirement 15 proposed by the ExA (see paragraph 181 of her minded to letter). However, in light of the further reasoning and justification provided by the Applicant in response to her minded to letter, the Secretary of State now considers that the limits proposed by the Applicant are appropriate and consistent with policy. The Secretary of State has reflected on the importance of enabling the best use of the proposed infrastructure improvements, seeking the acknowledged policy aim of a balance between growth and noise reduction. She feels that this approach best strikes that balance, especially in a holistic consideration of the approach to noise issues. Whilst proceeding with the Applicant's proposed limits, she has ensured that the noise receptor mitigation package available to the affected community is strengthened, appropriately mitigating where noise impacts are felt.

115. Noting that there is a need for consistency in decision-making, the Secretary of State is content with the noise level values for the limits that were proposed by the Applicant. She notes that individual airports will have different considerations, and that is reflected in a consistent but not identical approach to noise envelopes. The Secretary of State is further satisfied with the Applicant's response that the use of the UCC does not materially alter the assessment of likely significant effects presented in the ES. She therefore also considers that it is not necessary to update the ES.

116. The Secretary of State acknowledges and agrees with the concerns raised by the JLA, GACC and other Interested Parties regarding the need for a robust review mechanism. This is to ensure the air noise limits and contours remain relevant over time, particularly as technological advances in aircraft design are realised. The Secretary of State agrees with GACC that this is consistent with paragraph 5.60 of the ANPS, which states that "*suitable review periods should be set in consultation with the parties mentioned above (local communities and relevant stakeholders) to ensure that the noise envelope's framework remains relevant*". She also acknowledges GACC's concern that failure to incorporate such a review mechanism could lead to unacceptable consequences for communities around the airport. As such, the Secretary of State has determined that the final air noise limits and contours will be accompanied by a formal review provision. This will include a provision for the Applicant to produce forward-looking projections on compliance, which will be subject to independent assessment by the CAA. She considers that this approach will provide all parties with assurance that air noise limits and contours continue to be relevant and

remain responsive to change so that benefits of quieter technology will be shared with the communities as appropriate.

117. As set out at paragraphs 173 - 181 of the minded to letter, the Secretary of State noted the Applicant's request to include a clause within its proposal to be able to amend the noise contours in relation to any extraordinary review circumstances, which would include circumstances outside of the Airport's control. The Secretary of State also noted the opposition to this, including from the JLA, on the basis that this would go against policy by not providing certainty for communities over noise levels [paragraph 3.13 of the JLA response dated 9 June]. In her minded to letter, the Secretary of State therefore invited views from the Applicant on how such a process would work, and how relevant parties could be involved in the process. In its response of 24 April 2025 (Appendix 1 to Annex 1), the Applicant detailed its proposed wording for a revised requirement 15.

118. The Secretary of State is satisfied that the Applicant's proposed wording for the process is reasonable and notes this is similar to the provisions within the London Luton Airport DCO for amending air noise contours in extraordinary circumstances. However, to ensure clarity and certainty for those affected, the Secretary of State considers changes should be made to this wording to provide for greater detail in relation to the application for a review of the contour and the expected time limits/scales for this. She has therefore directed that any application for a review of the air noise contour in extraordinary circumstances is accompanied by such details of the circumstances surrounding the request and the expected timeframe for resolution, for the Secretary of State's consideration. She has also directed a period of 4 weeks for consultation, which could be varied upon request from the Applicant and where the Secretary of State considers the circumstances appropriate to do so.

119. Overall, the Secretary of State is satisfied that her revisions to requirement 15 are necessary to achieve a balance between allowing the Airport to grow, with the associated economic benefits through infrastructure improvement, and mitigating and minimising adverse impacts of noise on health and quality of life on local residents. She is further satisfied that the inclusion of a review mechanism ensures any noise reduction benefits, particularly those arising from technological advancements, are shared with the local community. With her amendments to requirement 15 in place the Secretary of State has been able to reach a different conclusion both on air noise limits and contours and on compliance with policy requirements than those reached by the ExA and set out by the ExA at [ER 6.4.129 - 6.4.130]. The Secretary of State considers that her adopted approach will ensure compliance with the policy requirements set out in paragraphs 3.29 of the APF and 5.60 of the ANPS to sufficiently share the benefits and further considers that the approach aligns with the aims of the OANPS and the aims at paragraph 5.68 of the ANPS to mitigate and minimise adverse impacts on health and quality of life. Requirement 15 of the Order will secure appropriate monitoring and reviewing of the air noise limits and contours, to both identify issues of projected non-compliance in advance, but also to ensure the limits and contours remain appropriate at key points in the Airport's growth so that as dual runway operations progress, the impacts are lessened or mitigated as much as is practicable to do so. The detail of the amendments to requirement 15 are set out in Schedule 2 to the DCO and in the Development Consent Order and Related Matters section of this letter.

120. In coming to this conclusion, the Secretary of State has had due regard to all information available and is content that this information has also been presented to all parties, either during Examination or in the Secretary of State's subsequent letters, including those of 3 January 2025 and 28 April 2025 which invited comments from Interested Parties. The Secretary of State is satisfied that the final air noise limits and contours are not so significantly or materially different as to require a new Application as these have been proposed by the Applicant and Interested Parties have had the opportunity to comment on them in response to the 'minded to' letter. She is therefore satisfied that appropriate opportunities have been provided to allow all parties to comment on any aspect of the proposals, and that no party has been disadvantaged.

Assimilated (EU) Regulation 598/14

121. The assimilated European Regulation 598/2014 ("Regulation 598") requires the Secretary of State, as the competent authority, to ensure rules and procedures are followed before introducing a noise-related operating restriction at an airport, in accordance with the International Civil Aviation Organisation's Balanced Approach to Aircraft Noise Management. The air noise limits and contours proposed as a requirement of the granting of development consent for this Application is considered to be a noise-related operating restriction, which is required to be considered under Regulation 598. The report detailing that consideration is therefore annexed to this letter.

Outdoor Noise

122. The Secretary of State notes the letter from Chris Coghlan MP dated 15 July 2025 raising concerns on behalf of two of his constituents living at a property within the SOAEL area. In particular, the letter raises the issue of outdoor noise and impact on amenity. The Applicant's ES assessment and LOAEL and SOAEL values were based on the totality of impacts for residential properties, that is, inside and outside the property if it includes outside space ([APP-039], ES Chapter 14, paragraph 14.4.68) and the overall conclusion was that, in respect of the properties referred to in the MP's letter, there would be major adverse significant effects ([APP-039], ES paragraph 14.9.104). These properties qualify for the "inner zone" of noise insulation, and therefore there is no financial limit on the mitigation measures such properties can receive. The ES sets out that noise insulation does not reduce noise levels outside and so some disturbance in outside activities is likely for properties with outdoor space (APP-039, ES paragraph14.9.199) and attributes a moderate adverse significant effect (APP-039, ES paragraph 14.13.22). Non-residential noise sensitive receptors were also considered in the Applicant's ES at, for example, ES 14.4.11, ES 14.4.57-59, ES 14.4.69 and ES 14.13.23. The Secretary of State has no reason to doubt the assessments carried out or conclusions reached on likely significant effects on both residential and non-residential properties.

123. The issue of outdoor noise was not raised further in the ExA's report outside of the study areas for heritage assets [ER 13.3.2], or in the various consultations and responses before the MP's letter referred to above. Nonetheless, the Secretary of State considers that a small number of properties may experience significant adverse noise effects outdoors (APP-039, ES paragraph 14.13.20). However, given the small number of properties affected and that noise effects are likely to be lower at night due to existing night flight restrictions (APP-039 ES paragraph 14.13.21), the Secretary of State ascribes these impacts on amenities with limited negative weight in the overall planning balance.

Ground Noise

124. The Secretary of State notes CAGNE's representation of the 9 June 2025, which included Suono's submission at Appendix 2. At paragraph 37, Suono highlighted that they had made extensive criticisms of the Applicant's ground noise assessment throughout the Examination, and that this topic was largely absent from the ExA's report. At paragraph 41, Suono stated the Applicant had not modelled the average summer day metric within their ground noise assessment, but rather the 100% mode summer day metric. Suono outlined that as these are clearly distinct indices in aviation noise modelling, they do not directly correlate to each other and produce results covering different areas (and therefore different dwellings), and at paragraph 43, Suono asserted that all of the Applicant's evidence is presented using the wrong index, and must be given little to no weight if paragraph 142 of the Secretary of State's minded to letter is followed. Furthermore, Suono highlighted, at paragraph 42, that the ground noise assessments only considered the UCC. Suono concluded, at paragraphs 44-45, that there was a need to update the noise chapter and associated appendices, accompanied by a full further consultation, as without this update, there is no possibility of identifying significant adverse effects from whichever scheme is progressed.

125. The Secretary of State notes paragraph 5.52 of the ANPS, which states that the Applicant is required to provide a noise assessment, which includes the characteristics of the existing noise environment, including noise from aircraft, noise exposure maps, and from surface transport and ground operations associated with the project, the latter during both the construction and operational phase of the project. She notes that the ExA did not provide a final conclusion on the Applicant's assessment of ground noise. The Applicant explained at paragraph 3.1.3 of [REP6-065], that there is no clear guidance on noise standards for ground noise so the LOAEL and SOAEL values have been drawn from guidance on air noise. The air noise LOAEL and SOAEL values apply to an average summer day. Ground noise has been modelled on the basis of the air traffic forecast for the same average summer day, but the noise contours presented are for easterly or westerly operating days/nights (single mode of operation), rather than the average of easterly and westerly used for air noise assessment. The Applicant concluded that the noise contours presented at the SOAEL values can therefore be considered as precautionary, since they represent single mode of operation rather than the average. The Secretary of State agrees that this is an appropriate method of assessment, given it models a conservative scenario, relative to the average method used for the assessment of air noise. As noted at paragraph 113 the Secretary of State considers that the Applicant's usage of the UCC to model ground noise was appropriate, based on the information provided in the ERCD report.

126. The Secretary of State is content to conclude that the Applicant's approach to the assessment of ground noise is appropriate, and in line with paragraph 5.53 of the ANPS.

Fixed Plant Noise

127. The Secretary of State notes CAGNE's representation of the 9 June 2025, which included Suono's submission at Appendix 2. Suono stated at paragraph 47 that there is no reference to fixed plant noise within the ExA's report, and that during the Examination they highlighted basic errors in the Applicant's fixed plant noise assessment, and concluded that it was not clear how this noise source had been determined to not have a significant adverse effect. Section 3 of [REP2-070] further set out Souno's position during the Examination. The Applicant outlined its approach

to assessing fixed plant noise at section 7 of [APP-173, ES Appendix 14.9.3 Ground noise modelling].

128. The Secretary of State set out in paragraph 182 of the minded to letter the issue of construction noise and vibration. Whilst she notes that the ExA did not specifically address the issue of fixed plant noise within the report, the ExA concluded at [ER 6.4.138] that the Applicant's approach to assessment and mitigation of construction noise and vibration was in line with paragraph 5.53 of the ANPS. The ExA considered that the regulatory regime outlined at [ER 6.4.136-7] was sufficient to the extent that this would achieve policy compliance [ER 6.4.139].

Overall conclusion on Noise and Vibration

129. In accordance with paragraph 5.53 of the ANPS, the Secretary of State is content that the Applicant has appropriately assessed operational noise, with respect to human receptors, using the principles of the relevant British Standards and other guidance. In assessing the likely significant impacts of aircraft noise, she is satisfied that the Applicant has had regard to the noise assessment principles, including noise metrics, set out in the national policy on airspace. As set out above, the Secretary of State agrees with the Applicant's approach to the setting of the LOAELs and SOAELs.

130. With regard to the assessment of construction noise, in accordance with paragraph 5.53 of the ANPS, the Secretary of State is satisfied that the Applicant has undertaken a prediction, assessment and management of construction noise in accordance with British Standards and other guidance. She agrees that the Applicant's approach to assessment and mitigation, as set out at paragraph 182 of the minded to letter, is appropriate, and that there are existing regulatory regimes that will enable any outstanding concerns that a LPA might have in relation to policy compliance to be addressed [ER 6.4.138 - 6.4.139].

131. As set out at paragraphs 110 - 120 of this letter, the Secretary of State has reached an alternative conclusion on air noise limits and compliance with policy requirements to those reached by the ExA. The Secretary of State considers that her adopted approach will ensure compliance with paragraph 5.60 of the ANPS, allowing the benefits of future technological improvements to be shared between the Applicant and its local communities, helping to achieve a balance between growth and noise reduction. Requirement 15 of the Order will secure an appropriate monitoring and review mechanism of the air noise limits.

132. As set out at paragraph 71, the Secretary of State is satisfied that the Applicant's revised NISD and requirement 18 meets the aims for the effective management and control of noise, as set out at paragraph 5.68 of the ANPS. She considers that the amendments suggested by the JLA, which she has incorporated into requirement 18, would provide further security and comfort for local communities.

133. In conclusion, having taken into account national policy on aviation noise, relevant sections of the NPSE, National Planning Policy Framework ("NPPF") and the Government's associated planning guidance on noise, as well as the ANPS as the primary policy on noise, in accordance with paragraph 5.67 of the ANPS, the Secretary of State is satisfied that the overall proposals will meet the aims for the effective management and control of noise, within the context of Government policy on sustainable development, as set out at paragraph 5.68:

- Avoid significant adverse impacts on health and quality of life from noise;

- Mitigate and minimise adverse impacts on health and quality of life from noise; and
- Where possible, contribute to improvements to health and quality of life.

134. The Secretary of State therefore concludes that neutral weight should be given to the issue of noise and vibration in the overall planning balance of the Proposed Development (with the exception of outdoor noise, to which she has given limited negative weight).

Air Quality

135. The Secretary of State has had regard to the Applicant's assessment of air quality matters, set out in Chapter 13 of the ES [ER 7.3.1] and notes the consideration given to the potential effects on air quality during construction and operation by the Applicant [ER 7.3.3 - ER 7.3.4].

136. The Secretary of State notes that with the implementation of the mitigation measures set out in the Code of Construction Practice ("CoCP") and secured in the draft Order, the Applicant concluded that the construction and operation of the Proposed Development would not cause any significant residual air quality effects [ER 7.3.7 and 7.3.14].

Issues considered during the Examination

137. The Secretary of State notes that the Joint Surrey Councils and the Joint West Sussex Local Authorities ("JWSLA") raised a number of concerns in their Local Impact Report ("LIR") relating to air quality, including the matters set out at [ER 7.4.1].

138. In response to the ExA's first written questions (ExQ1) on air quality matters [ER 7.4.2], the Applicant stated that:

- The delay in the ban of petrol and diesel cars would not change their assessment's conclusions;
- No local authority would be required to extend or create any new Air Quality Management Areas as the national air quality standards would not be exceeded as a result of the Proposed Development; and
- They will include a dust management plan as an annex to the CoCP alongside other measures which align with best practice industry guidance [ER 7.4.3].

139. The Secretary of State is aware that the Legal Partnership Authorities (LePAs) raised a number of further concerns on the Applicant's CoCP in that they wish to see more detail on air quality matters including dust monitoring and management measures [ER 7.4.4]. In response to the Applicant's answers to ExQ1 the LePAs raised more concerns regarding ongoing monitoring, the variability of air quality readings and the potential for 'hot spots' [ER 7.4.5]. While the Secretary of State notes that the LePAs remained in disagreement on a number of matters relating to the Applicant's air quality assessment and proposed mitigation measures, she is aware that it did not disagree with the Applicant's overall conclusion that the operation of the Proposed Development would not cause significant air quality effects [ER 7.4.9 – 7.4.10]. She is also aware that by the end of the Examination, the Applicant and the LePAs agreed on air quality arrangements, set out in their section 106 agreement [ER 7.4.11].

140. The Secretary of State notes the recognition by the ExA regarding the practical difficulties in the measurement and monitoring of odour during construction and

operation. In the context of considering air quality issues against the ANPS and that the ExA considered the Applicant's proposals to be sufficient [ER 7.4.12].

141. The Secretary of State also agrees with the ExA that the Applicant's revised article 47 in the draft Order is appropriate [ER 7.4.13], and sees no reason to disagree with the ExA's conclusion that discrepancies in the baseline (present and future) would be different to the values calculated in the ES, and, therefore, no significant residual effects in relation to air quality can be concluded [ER 7.5.2].

142. In response to her fourth consultation, the Secretary of State notes CAGNE's response dated 9 June 2025 in relation to air quality. In this submission and others during the Examination [REP9-223 and REP8-145], CAGNE have made clear that in their opinion the Applicant's air quality modelling in relation to road traffic emissions was not fit for purpose, and that the ExA failed to address this issue during the Examination [paragraph 29 of its response]. CAGNE have commissioned a separate assessment on the ExA's approach to the air quality section of the ER, authored by Kalaco (June 2025), that sets out their principal issues and provides further recommendations that include new requirements in the DCO for additional air quality monitoring and an associated air quality action plan to limit impacts on human health [paragraph 30]. The Secretary of State notes that CPRE (Sussex and Kent), Warnham Parish Council, the South East Coast Ambulance Service NHS Foundation Trust and a number of individual representations to the Secretary of State's consultations also expressed concern in relation to air quality and human health.

143. In line with the conclusions of the ExA, the Secretary of State is content that Schedule 1 to the section 106 agreement with the LePAs [REP10-019] sufficiently addresses issues raised in relation to air quality, with the inclusion of an air quality monitoring, an air quality action plan, annual meetings with the local authorities and further work into Ultra Fine Particles [ER 7.5.3].

The Secretary of State's Conclusions on Air Quality

144. The Secretary of State agrees with the ExA's conclusion that no evidence has been put forward which refutes the Applicant's conclusion that the construction and operation of the Proposed Development would not cause any significant adverse air quality effects [ER 7.5.1]. She also notes that while the ExA considered that there would be a larger change in traffic volume due to inaccuracies with the Applicant's assessment baseline (explored further in the Traffic and Transport section), it concluded that there would still be no significant residual air quality effects due to the predicted total concentrations remaining the same [ER 7.5.2]. The Secretary of State sees no reason to disagree with this.

145. The Secretary of State agrees with the ExA's conclusion that the outstanding areas of disagreement between the LePAs and the Applicant would not result in the Proposed Development failing to align with the requirements set out in paragraphs 5.33 and 5.43 of the ANPS [ER 7.5.4]. The Secretary of State therefore agrees with the ExA's recommendation that the Proposed Development's impact on air quality matters should be considered as neutral and weigh neither for nor against the making of the Order [ER 7.5.5].

Greenhouse Gas Emissions

Policy and Legislative Context

146. The Secretary of State has had regard to the Applicant's assessment of greenhouse gas ("GHG") emissions, as set out in Chapter 16 of the ES [ER 8.1.1], with supporting figures and appendices as detailed at ER 8.3.1 – 8.3.2 together with detail of the assessment methodology [ER 8.3.3 - 8.3.10], assessment of effects [ER 8.3.11 - 8.3.23], cumulative effects [ER 8.3.24 – 8.3.25] and the Applicant's conclusion [ER 8.3.26].

147. The Secretary of State notes the overview of the policy and legal considerations relating to this matter [ER 8.2.1 – 8.2.5]. The amended section 1 of the Climate Change Act 2008 ("CCA2008") sets a legally binding GHG emissions reduction target for the UK of 100% by 2050, compared to a 1990 baseline. The Climate Change Committee ("CCC") recommends five-year national carbon budgets [ER 8.2.2], which are to be set 12 years in advance to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the fourth ("4CB"), fifth ("5CB") and sixth ("6CB") carbon budgets are 2023-2027, 2028-2032 and 2033-2037 respectively. The 6CB was the first to fully reflect the revised net zero target for 2050 and formally includes emissions from international aviation [ER 8.2.3].

148. The Secretary of States notes the representations provided by CAGNE in relation to the consideration of the seventh carbon budget ("7CB"). On the 26 February 2025, the CCC provided its statutory report for the 7CB, covering the period 2038-2042 to the UK Government, which recommended a non-binding amount of 535 million tons of carbon dioxide equivalent ("MtCO2e"). The Secretary of State notes that the CCC's position is a recommendation to Government only and that the level of the 7CB (535 MtCO2e) has not yet been set. The 7CB must be set by 30 June 2026 by the Secretary of State for Energy Security and Net Zero through secondary legislation, following approval by Parliament.

149. The Secretary of State has had regard to the relevant policy, as set out at ER 8.2.4 – 8.2.9. The Secretary of State has noted CPRE Sussex's response of 9 June 2025 to the Secretary of State's consultation letter of the 28 April 2025, which set out that the ANPS wording with regards to GHG emissions is outdated by all the work on aviation emissions since its designation. As set out in the minded to letter at paragraphs 20-21 and noted by the ExA at ER 3.5.13, the ANPS is the primary policy against which the Proposed Development as a whole should be tested. The Secretary of State does not agree that the policy in the ANPS with regard to GHG emissions is outdated and notes that the recently adopted National Networks National Policy Statement ("NNNPS" which was adopted in May 2024 following a review of changes in climate change law and policy) reflects the same principles for decision-making.

150. The 'Decarbonising Transport – A Better, Greener Britain' (2021) ("TDP") sets out Government's commitments and the actions needed to decarbonise the entire transport system in the UK. It sets out the pathway to net zero transport in the UK, the wider benefits net zero transport can deliver and the principles that underpin the Government's approach to delivering net zero transport (TDP, page 18). The TDP recognises that the technology pathway to zero emissions is not yet certain for aviation (TDP, page 30) and accepts that where positive emissions remain in transport sectors, these will need to be offset by negative emissions elsewhere across the economy (TDP, page 46). However, it also highlights that with the right investment and the

emergence of new zero emission technologies, it could be possible for achieving even deeper cuts in greenhouse gas emissions from aviation (TDP, page 46).

151. The JZS sets out the Government's strategy and policy for decarbonising the aviation industry. It states that Jet Zero can be achieved without Government intervention to directly limit aviation growth (JZS, paragraph 3.57). It sets out policies that will influence the level of aviation emissions the sector can emit and maximise in-sector emissions reductions through a mix of measures that will ensure the UK aviation sector reaches net zero by 2050 (JZS, paragraph 3.1). These measures include improving the efficiency of the existing aviation system; sustainable fuels; new technology; markets and removals; sustainable travel choices for consumers; and addressing non-CO2 emissions (JZS, page 26). The JZS also sets out how the aviation sector will achieve net zero aviation by 2050 and introduces a carbon emission reduction trajectory that sees UK aviation emissions peak in 2019, with residual emissions of 19.3 MtCO2e in 2050, compared to 23 MtCO2e residual emissions in the CCC's Net Zero Balanced Pathway (JZS, paragraph 3.58). The "JZS: One Year on" (July 2023) policy paper sets out progress and achievements made since the launch of the JZS and the next steps to deliver net zero aviation by 2050. The JZS modelling includes the Proposed Development as a capacity assumption (see paragraphs 3.17, 3.18 and Annex D of the Jet Zero modelling framework) [ER 4.2.41].

The Applicant's assessment of carbon emissions

152. Paragraphs 5.76-5.77 of the ANPS, and paragraph 5.17 of the NNNPS, set out the necessary requirements of the Applicant's assessment of carbon emissions. Paragraphs 5.31-5.35 of the NNNPS 2024 are also relevant considerations.

153. The Applicant's assessment of carbon emissions divided emissions streams into construction, airport buildings and ground operations ("ABAGO"), surface access and air traffic movements [ER 8.3.1] with all emissions reported as million tons of carbon dioxide equivalent ("$MtCO_2e$").

154. The Secretary of State notes the Applicant set out, in Revised Table 16.9.13 in the Greenhouse Gases Technical Note, that the total contribution of the Proposed Development would result in an impact of 0.032% of CB4 (0.627 $MtCO_2e$), 0.055% of CB5 (0.945 $MtCO_2e$) and 0.657% of CB6 (6.344 $MtCO_2e$). This would take the airport's overall contribution to 0.293% of CB4 (5.722 $MtCO_2e$), 0.323% of CB5 (5.580 $MtCO_2e$) and 3.459% of CB6 (33.382 $MtCO_2e$) [REP9-120, Table 3, Revised Table 16.9.13 of the ES Chapter 16].

155. For aviation emissions, the Applicant's assessment in the Greenhouse Gases Technical Note concluded that the contribution to CB6 of the Proposed Development's aviation emissions would be 0.578% (5.577 $MtCO_2e$), based on the JZS High-ambition scenario assumptions. For the airport's overall aviation emissions, a contribution of 3.092% to CB6 (29.841 $MtCO_2e$) is assessed [REP9-120, Table 1, Revised Table 16.9.10 of the ES Chapter 16]. ER Figure 8.221 compares residual emissions on a with-Project basis (comprising all airport aviation including Jet Zero assumptions) with the Jet Zero High Ambition scenario trajectory. This shows emissions from Gatwick flights increase out to 2032 under the with-Project scenario before emissions begin to decrease on a downward trajectory to 2050. The Applicant concluded that aviation emissions would result in a minor adverse, not significant effect, given the context of emissions from Gatwick compared to UK carbon budgets [ER 8.3.17].

156. The Applicant considered it was appropriate to rely on the Jet Zero High-ambition scenario as it represented current Government policy on aviation [REP4-005, paragraph 16.2.25]. GACC, in its representation of 9 June 2025, argued that emissions are uncertain (due to the assumptions in the JZS) and it is also uncertain that they will be mitigated (by carbon removal technologies). In part, GACC stated this is because the High Ambition scenario used by the Applicant to estimate future GHG emissions is not the worst-case and that a likely or expected scenario should also have been considered (page 10). The Secretary of State acknowledges that there is uncertainty given the JZS includes reliance on new and emerging technology but notes paragraph 1.10 of the JZS, which sets out that the Government is committed to the Jet Zero High-ambition scenario, and the Secretary of State agrees with the Applicant and the ExA that this is a reasonable approach for it to adopt.

157. In accordance with paragraph 5.77 of the ANPS the Applicant's assessment in the ES includes a GHG worst-case assessment, which the Applicant has interpreted as both the year of highest aggregated emissions and the year in which emissions differ to the greatest extent from the baseline. The worst-case emissions are shown in ES Table 16.9.12 of REP4-005 [ER 8.3.21]. The Applicant submitted a sensitivity case, which also considered the Slow Fleet Transition ("SFT") scenario under which newer aircraft are not brought into service as quickly as the core-case scenario [ER 8.3.4]. The Applicant noted the difference in net aviation emissions arising from the Proposed Development is an increase of 0.586% (5.654 $MtCO_2e$) in CB6 under the SFT scenario, compared to an increase of 0.578% (5.577 $MtCO_2e$) under the core-case scenario set out in REP9-120, Revised Tables 16.9.10 and 16.9.11 [ER 8.3.19]. The Applicant considered that due to the minor scale of change arising from the SFT, its assessed future aviation emissions would align with the Government's trajectory as presented in the JZS. On this basis, the Applicant concluded that the SFT scenario would result in a minor adverse, not significant effect [ER 8.3.20 and REP4-005, paragraph 16.9.84].

158. For construction emissions, the assessment shows that for all periods construction emissions are higher than those in the future baseline but do not exceed 0.1% of total emissions in any carbon budget period. Reflecting the commitments to mitigate emissions (Carbon Action Plan (CAP) APP-091), the Applicant concluded that construction impacts would result in a minor adverse not significant effect [ER 8.3.13 and REP4-005, Table 16.9.4].

159. For ABAGO emissions, the GHG assessment shows that these emissions increase from the baseline position under the with-Project scenario. Comparison of ABAGO emissions to the carbon budget show that they are very small for all periods and do not exceed 0.01% of the total emissions for any budget period. The Applicant concluded that ABAGO would result in a minor adverse not significant effect [ER 8.3.14 and REP4-005, Table 16.9.6].

160. For surface access, the GHG assessment set out that the comparison of surface access emissions to the carbon budgets indicate that they do not exceed 0.1% of the total emissions for any budget period. Surface access emissions increase from the baseline position but broadly align with a decarbonisation trajectory out to 2050 from the CCC Balanced Net Zero Pathway for surface transport. The Applicant concluded that surface access would result in a minor adverse not significant effect [ER 8.3.15 and REP4-005, Table 16.9.8].

161. The Applicant's ES stated that an assessment to examine how the impacts arising from the Proposed Development might cumulatively impact upon individual receptors is not appropriate for the assessment of GHG emissions, as impacts arising from GHG emissions have the same impact whether they are located near to Gatwick or in another region/country [ER 8.3.24]. The inappropriateness of undertaking a cumulative assessment is reflected in the IEMA Guidance, and the comparison of each emissions category to the UK carbon budgets, and to a sector-based net zero trajectory, provides the cumulative assessment. Additionally, the overall comparison of emissions from all aggregated sources to the carbon budgets provides a cumulative appraisal [ER 8.3.25]. The Secretary of State agrees. The Secretary of State considers that the inclusion of any third runway at Heathrow as part of a cumulative assessment would be inappropriate, given that the proposed scheme is early within the planning stage, no application for a DCO has been submitted, there is presently no detail of the likely GHG impacts of any third runway proposal available and, in any event, the Government's position is that all Heathrow proposals should demonstrate how they are compatible with the UK's legal, environmental and climate obligations.

162. In aggregating the appraisal of the GHG emissions the Applicant concluded that the Proposed Development's contribution to the UK's carbon budgets was very small for all periods except for CB6, where it assumes the application of policy to deliver net zero aviation by 2050, and support for the decarbonisation of the aviation section, to achieve this [ER 8.3.23]. Additionally, the Applicant concluded that the overall impacts arising from the Proposed Development are not so significant that the Proposed Development would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets [ER 8.3.26], and aligns with paragraph 5.82 of the ANPS. On this basis, the Applicant's overall assessment concluded that the Proposed Development has a minor adverse, not significant impact [ER 8.3.26].

Issues raised during the Examination

Policy Context

163. The ExA noted that the many of the issues raised by Interested Parties during the Examination questioned how GHG emissions generated by the Proposed Development should be addressed in policy terms, which were in fact questioning Government policy. In the ExA's opinion, these are matters that extend beyond the Applicant's DCO application and on which it was not necessary or appropriate for the ExA to reach a conclusion [ER 8.4.13]. The Secretary of State agrees.

164. The ExA noted an issue raised by several Interested Parties was in respect of the CCC's recommendation, as part of its 2023 progress report, to stop airport expansion without a UK-wide capacity management framework. The Government subsequently determined that demand management is not necessary [ER 8.4.8]. The Secretary of State notes that the CCC's 2024 progress report repeated that recommendation (Table 4.2), with the Government responding on 17 December 2024 that it recognised a role for airport expansion where it provides economic growth and is compatible with our legally binding net zero target and strict environmental standards [R202 3-037]. The CCC, in its statutory report providing advice to the Government for CB7, presented limiting airport expansion as playing a supplementary role. [The Seventh Carbon Budget, Box 7.6.2]. The Secretary of State notes that the CCC's position is to advise Government, which the Government is not required to accept and that the Government's policy position (as set out in the JZS and confirmed in a subsequent

decision taken by the Secretary of State for Transport in October 2023) is that it is not necessary to limit aviation growth in order to achieve its net zero targets.

165. Paragraph 5.38 of the NNNPS 2024 sets out that the Secretary of State for Energy Security and Net Zero regularly assesses whether the UK has sufficient policies and proposals to meet the UK carbon budgets, with a view to meeting the net zero target [ER 8.4.9], as required by section 13 of the CCA2008. This is reflected in the Carbon Budget Delivery Plan ("CBDP"). The Secretary of State notes that there has been a successful challenge to the CBDP and that the Government is required to produce a revised CBDP within the next 12 months *(see R (Friends of the Earth) v Secretary of State for Energy Security and Net Zero [2024] EWHC 995).* This date was subsequently amended to 29 October 2025. The CBDP was not quashed, remains government policy and sets out the Government's commitment to comply with carbon budgets and the nationally defined contribution in the Paris Agreement.

166. The Secretary of State has taken account of the concerns of Interested Parties about the uncertainty surrounding the means to achieve the objectives in the JZS, however, she notes the ExA's view that the policy itself is robust and that there are mechanisms to review and adjust the policy as necessary [ER 8.4.11]. Consequently, there is no reason why the weight given to the JZS trajectory should be reduced and that the policy must be considered in the context of the CCA2008, and the requirement to meet national GHG emission reduction targets [ER 8.4.10 – 8.4.12].

167. The Secretary of State has had regard to the representation made by GACC dated 9 June 2025, which sets out that the increase in GHG emissions arising from expanded airport weigh significantly against approval, particularly given the uncertainty arising from the Jet Zero High-ambition scenario and the need to align with 1.5 degrees of warming. GACC argued that no account appeared to have been taken of the economic harm on other parts of the economy that will be required to cut GHG emissions faster and harder as a result of the Proposed Development. The Secretary of State notes that each planning application is decided on its merits at the time it is determined and is not persuaded that the analysis sought (but not provided) by GACC would provide information that would assist her in determining the application.

Non-CO_2 Emissions

168. The Applicant considered its approach to non-CO_2 emissions reflected the guidance in the JZS [ER 8.4.14]. The Applicant's assessment noted the likelihood of non-CO_2 emissions contributing to changes in climate, but given that there is no well-established methodology for quantifying non-CO_2 emissions impacts, and uncertainty on how to identify the magnitude of impact, the Applicant's assessment does not attempt to quantity them [ER 8.4.15 and REP4-005, paragraphs 16.4.12 – 16.4.14].

169. New Economics Foundation ("NEF"), Gatwick Obviously Not, Aviation Environment Federation ("AEF") and GACC shared the view that the Applicant should have modelled the non-CO_2 impacts of the Proposed Development using the multiplier for company reporting [ER 8.4.19]. The Department for Energy Security and Net Zero ("DESNZ") in "Government Greenhouse Gas Conversion Factors for Company Reporting", recognises the non-CO_2 effects from aviation and that there is currently no better way of taking these effects into account than applying an aggregate multiplier and a multiplier of 1.7 is recommended based on the best available scientific evidence [ER 8.4.17]. NEF noted that in the aviation unit of DfT Transport Analysis Guidance (TAG), DfT suggested that this 1.7 multiplier can also be applied as a sensitivity test

in a scheme's core socioeconomic assessment [REP1-241, paragraph 3.5]. CAGNE argued that the judgement of the High Court in *Bristol Airport Action Network v SSLUHC [2023] EWHC 171 (Admin)* ("Bristol Airport") did not conclude that non-CO_2 emissions should be ignored by decision makers, nor did it find that the lack of a settled methodology prevented the use of a valid methodology to provide helpful information [ER 8.4.20].

170. The Applicant noted the uncertainty over the magnitude of non-CO_2 impacts, and that a multiplier is not a straightforward CO_2 equivalent metric, which does not reflect accurately the different relative contributions to climate change over time. Consequently, the use of a 1.7 multiplier had to be seen in the context of significant and acknowledged uncertainties in this area [ER 8.4.22].

171. Furthermore, the Applicant argued a modified emissions estimate could not be contextualised, as directed by the IEMA guidance, as there is no recognised benchmark against which to compare the impact of non-CO_2 emissions. Additionally, the uncertainties about their assessment meant that modelling is not part of the information that is reasonably required in the ES. The Applicant has committed within the Carbon Action Plan ("CAP"), secured within the DCO, to monitor and respond to emerging policy relating to non-CO_2 emissions as this comes forward [ER 8.4.23]. The Applicant quoted the High Court judgment in Bristol Airport, which stated in respect of the BEIS multiplier of 1.9 that was in issue in that case: "*there is very far from being any scientific consensus that it is a relevant tool in determining non-CO_2 emissions from aviation other than in company reporting"* [ER 8.2.24].

172. NEF [REP1-241] also indicated that the benefit-cost assessment had not included non-carbon GHG emissions, which delivered most of aviation's negative impacts on the climate, and would significantly increase the scheme's cost. At close of the Examination, NEF identified the cost of non-CO_2 emissions would increase the environmental cost of the scheme from £5.1 billion to £9 billion. This assessment was based on adjustments, which took account of DfT's TAG, and DESNZ guidance on GHG emissions company reporting. As this evidence was submitted at the close of the Examination, the Applicant did not have an opportunity to respond to it [ER 8.4.25].

173. The Applicant's response to NEF earlier in the Examination referenced the Needs Case Appendix 1 – National Economic Impact Assessment [APP-251], which addressed the rationale behind the exclusion of non-CO_2 effects from the environmental costs modelled. This impact assessment recognised that due to significant uncertainty around the magnitude of these impacts, the costs arising from non-CO_2 pollutants were not quantified. The Applicant noted that the approach followed the latest DfT guidance, suggesting that a qualitative approach was more appropriate [ER 8.4.26 and REP3-076, paragraphs 2.1.5-2.1.6].

174. The ExA highlighted that non-CO_2 impacts from aviation are recognised and referenced in the 6CB, the JZS and the Applicant's ES. The likelihood of non-CO_2 emissions contributing to climate change is also acknowledged, but there is no agreed methodology for quantifying impacts, or the magnitude of impacts. There was no agreement between Interested Parties to the application about whether any multiplier appropriately addresses the magnitude of non-CO_2 impacts let alone what multiplier should be applied, and difficulties also occur in contextualising impacts as set out in the IEMA guidance [ER 8.4.27]. The ExA were unconvinced that non-CO_2 impacts should be excluded from the overall assessment given its potential scale, and whilst recognising the possibility of further research and action as set out in the JZS and

CAP, concluded that this does not assist in determining the impact of non-CO_2 emissions on climate change arising from the Proposed Development. The ExA also stated concerns that when taking into account the full costs of non-CO_2 emissions presented by NEF, the full impact of non-CO_2 emissions had not been addressed [ER 8.4.28]. The ExA agreed with CAGNE's comment that the lack of a settled methodology does not prevent the use of a valid methodology but that any methodology needs to produce plausible outcomes and too many uncertainties create problems for quantifying results. The ExA concluded that in the consideration of the effect of non-CO_2 emissions caused by the Proposed Development, a qualitative judgement would be more appropriate. In line with DfT advice, the ExA considered that that these emissions would mean that the Proposed Development would add to the magnitude of effects and likely have a net warming effect [ER 8.4.29]. The Secretary of State agrees that a qualitative judgement would be more appropriate for assessing the economic cost of non-CO_2, given the uncertainties for quantifying the results.

175. The Secretary of State notes the representations made by CAGNE, NEF and GACC in response to her consultation letter of the 28 April 2025 regarding non-CO_2 emissions. CAGNE, in its response of the 9 June 2025, set out four arguments as to why the Secretary of State should adopt a quantitative, as well as qualitative assessment:

a. The ExA and the Secretary of State accepted in the London Luton Airport Expansion DCO decision that it is methodologically possible to assess the extent of non-CO_2 emissions. CAGNE argued that non-CO_2 emissions are effects of the Proposed Development, which can be contextualised in the same way as Scope 3 emissions. CAGNE stated that, the assumption of, and reliance on, future controls was directly contrary to paragraph 108 of the *R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2024] UKSC 20* ("Finch") judgment, which CAGNE submits precludes reliance on the assumption that other pollution control regimes will address an impact as a basis for excluding assessment of that impact.

b. CAGNE noted the CCC's advice on the 7CB report, that while the report still accepts that there are uncertainties (non-CO_2 emissions), it nevertheless takes a different approach to evaluating non-CO_2 emissions compared to that used in the 6CB report, on the basis that "non-CO_2 effects likely make up the dominant part of the UK aviation sector's contribution to current global warming". CAGNE argued that a proper, precautionary approach, compliant with legal obligations under the precautionary principle (and now reflected in the CCC's approach) can no longer rely on uncertainties to avoid assessment and consideration of non-CO_2 emissions, particularly given the methodological approaches now available.

c. CAGNE noted that as of 1st January 2025, aircraft operators under the purview of the EU Emissions Trading Scheme are now obliged to monitor and report non-CO_2 effects. The European Commission published guidance in February 2025, which CAGNE argued provided a clear methodology by which emitters

can themselves monitor and determine non-CO_2 impacts, supporting the quantitative approach.

d. CAGNE noted the December 2024 update to the NPPF that now makes expressively clear at paragraph 163 that "the need to mitigate and adapt to climate change should also be considered in preparing and assessing planning applications, taking into account the full range of potential climate change impacts." CAGNE argued that "the full range" clearly includes non-CO_2 emissions.

176. CAGNE concluded that given the scientific consensus around the significant impact of non-CO_2 emissions from aviation, the ExA were wholly correct to conclude these could not be left out of account, and that further evidence points in favour of going beyond a qualitative approach and requiring a quantitative approach to assessment. NEF, similarly, cited the IEMA guidance when contextualising non-carbon emissions, which states "where quantified carbon budgets or a net zero trajectory is lacking, a more qualitative or policy based approach to contextualising emissions to evaluate significance may be necessary. In these instances, uncertainty and the likelihood of effect should be discussed." Annex 1 to GACC's representation attempted to quantity the effect of non-CO_2 emissions and compare it to the UK's carbon budgets.

177. The Secretary of State notes the ExA's conclusions, and the representations following the publication of the minded to letter. In reaching her conclusion, she has taken into account CAGNE's submissions as summarised above. She has also taken into account paragraph 3.64 of the JZS, which highlights "that roughly two thirds of aviation's historical climate impacts are due to non-CO_2, and that, whilst non-CO_2 emissions can have both warming and cooling effects, the net warming rate is likely to be around three times that of CO_2." The Secretary of State recognises the impact of non-CO_2 emissions, and therefore has noted the three strategic objectives, on page 57 of the JZS, which includes developing and implementing policies to address and reduce non-CO_2 impacts.

178. In response to representations arguing that the Applicant should quantify non-CO_2 emissions, the Secretary of State is disappointed that the Applicant did not take a precautionary approach and attempt to quantify these, in line with the developing guidance produced by DESNZ or DfT. However, she notes that there is no established methodology, as cited within the Bristol Airport judgment, where scientific consensus would guide the quantifying of these emissions in relation to a planning decision. She therefore agrees that a qualitative assessment is appropriate in the circumstances and agrees with the ExA's conclusion at ER 8.4.29] that non-CO_2 emissions produced by the Proposed Development would add to the magnitude of impacts and likely have a net warming effect. However, the Secretary of State is content that through the strategic objectives set out within the JZS, and the commitments made within the CAP, the Applicant will monitor and respond to emerging policy relating to non-CO_2 emissions as this comes forward and be able to mitigate these effects. She therefore considers that, contrary to NEF's representations, the impacts of non-CO_2 emissions have now been taken into account insofar as it is possible to do so.

Finch Case and Downstream Effects

179. The Secretary of State notes the Supreme Court judgement in the case of Finch was handed down on 20 June 2024, and comments on this ruling were provided by the

Applicant, LePAs and CAGNE [ER 8.4.30 – 8.4.31]. The Applicant's approach to the implications of Finch took the view that representations on this matter covered three areas: a) the need to assess carbon emissions from inbound flights; b) the relationship between indirect economic effects and the assessment of carbon effects; and c) the need to include Well-To-Tank ("WTT") emissions, related to the creation of aircraft fuel, within the carbon assessment [ER 8.4.32]. The Secretary of State agrees with the Applicant's assessment of the representations.

180. On point a) the Applicant's position at the start of the Examination was that the ES had appropriately assessed the emissions from outbound aircraft (both domestic and international) but not inbound flights [ER 8.4.33]. The Applicant indicated that the standard international approach was for aviation emissions to be accounted for at the source location. (As set out in Government guidance "*Technical note: A comparison of aviation emissions methodologies"*).[2] Inbound flights had been excluded to provide context against the UK's GHG inventory, and against the JZS, to be consistent with the methodology used to calculate and set the carbon budgets [ER 8.4.34 and REP9-120].

181. In response to the Finch judgement, the Applicant accepted that the Proposed Development may give rise to significant downstream GHG emissions in respect of inbound flights and provided evidence for this consideration alongside its original ES [ER 8.4.48]. The Applicant provided an assessment of total inbound emissions, based on a simple doubling of emissions associated with outbound flights [ER 8.4.38]. This revised assessment disregarded geographic boundaries by including international emissions, ignoring the potential for double-counting of emissions [ER 8.4.48]. The Applicant outlined that carbon emissions from domestic inbound flights are extremely small and would reduce substantially over time as a result of the JZS, but they do fall within the scope of the UK's carbon budgets [ER 8.4.39]. However, the Applicant explained that inbound international emissions were not within the scope of the JZS and contextualising them against the UK's carbon budgets would not be meaningful and was inconsistent with IEMA Guidance (which advises assessment against a trajectory towards net zero, which in the UK is statutory carbon budgets). The Applicant also referred to the principle set out in the Finch judgment that a reason not to assess carbon emissions could be that they were reasonably judged not to be significant. Nonetheless, the Applicant provided a contextualisation of total aviation emissions against an ICAO sector-based scenario, which models similar levers and aligns with the Jet Zero High-Ambition scenario [ER 8.4.38, REP7-079, paragraphs 37-47 and REP9-120, paragraphs 2.3.1-2.3.5]. The Applicant concluded that modelling outbound and inbound emissions in this way, the total of 1.022 $MtCO_2e$ would represent 0.11% of 2050 global international aviation emissions, and an even smaller proportion of global emissions, and that this proportion was "minimal" [paragraphs 2.3.8 and 2.3.9, REP9-120]. The Applicant further highlighted that with WTT emissions included, this would account for 0.13% of 2050 global international aviation emissions, which the Applicant regarded as "*plainly insignificant"* [ER 8.4.100]. The ExA stated at ER 8.4.108 that contextualising international inbound aviation emissions against an ICAO sector-based scenario, indicating a contribution of 0.13% with WTT, which for a single project did not appear to be insignificant, but doubts about using ICAO are not unreasonable.

[2] As the Government guidance explains, the UN Framework Convention on Climate Change guidelines assign all emissions from flights leaving airports to the country of departure.

182. The Secretary of State notes the representations made by the Applicant, the ExA and Interested Parties, and acknowledges that there is a need to take into account the effect of inbound international emissions following the Finch judgment. She agrees with the Applicant's argument that these are not in the scope of the JZS, and that contextualising them against the UK's carbon budgets would not be meaningful and would be inconsistent with the IEMA guidance. While the Secretary of State notes the usage of the ICAO sector-based scenario, which provides contextualisation at a global level, she considers that there was not sufficient evidence provided by the Applicant that would allow the Secretary of State to utilise it as an appropriate benchmark to assess the impact of international inbound emissions. In coming to this judgement, she notes paragraph 81 of the judgment of *R (on the application of Andrew Boswell) v The Secretary of State for Energy Security and Net Zero [2025] EWCA Civ 669 (22 May 2025),* which states "*nor is there any legal principle which requires a public authority deciding whether to grant a development consent to "contextualise" the GHG emissions or to compare them with a benchmark. It is not unlawful for the decision-maker, for example, to conclude, as in this case, that the GHG emissions will be managed across the economy to ensure consistency with carbon budgets and the 2050 net zero target."* The Secretary of State considers that it is not possible to carry out a meaningful assessment of significance on a quantitative basis using a national, international or sectoral benchmark because there is a lack of an appropriate and justified international benchmark and it is inappropriate to assess against the UK's carbon budgets (as per the IEMA Guidance). The Secretary of State has, however, given further consideration to these emissions insofar as it is possible to do so in her overall conclusions as set out at paragraphs 207 - 211 below.

183. On point b), the Applicant acknowledged there would be direct economic effects that produce carbon effects which can be assessed. However, while indirect and induced economic effects, may involve a range of activities which can be assessed financially, in relation to potential carbon emissions they were beyond any realistic assessment [ER 8.4.45]. The Applicant considered that, as set out in its response to ExQ2.CC.2.1 [REP7-079, paragraphs 12-36] and the Greenhouse Gases Technical Note [REP9-120, section 3.1], it did not envisage that any further assessment of emissions resulting from economic activity would lead to a conclusion of any significant effect [ER 8.4.46]. The ExA considered that in respect of the indirect economic effects, while there may be effects which can be assessed financially, potential carbon emissions would not be capable of meaningful assessment and the possibility of an environmental effect being demonstrated was not likely. Consequently, the ExA concurred that no further assessment, beyond that which had already been carried out, was required [ER 8.4.50]. The Secretary of State agrees.

184. On point c), various representations and LIRs commented that the carbon assessment should adopt a whole life carbon approach. Following discussion at ISH6 [EV11-001] the Applicant explained [REP4-036] how a whole life carbon assessment had been applied in the submission through Supporting Greenhouse Gas Technical Notes: Appendix A – Whole Life Carbon Considerations [REP4-020]. It confirmed that the assessment took account of the extent of available information, and that the assessment was aligned with the IEMA Guidance in informing the assessment of significance, which remained unchanged [ES 8.4.51].

185. When WTT emissions are added to those for construction, ABAGO, surface access and aviation for the Proposed Development between 2018 and 2050 an increase from 20.063MtCO_2e to 24.041MtCO_2e would occur, equating to an increase of 19.83%

[REP4-020, Table 1]. With 64% of WTT emissions associated with aviation fuel produced outside the UK in 2022, and therefore outside of the scope of UK carbon budgets, the increase in the portion of WTT emissions from aviation fuel produced within the UK was 7.55%. When contextualised against UK carbon budgets the effect of including domestic WTT emissions increased the contribution of the Proposed Development to CB6 from 0.604% to 0.649% that is an increase of less than 0.05% of the carbon budget for this period. This was considered by the Applicant to be not significant [REP4-020, paragraphs 1.4.6-1.5.1]. Additionally, with the inclusion of inbound flight emissions incorporating WTT emissions there would be no material difference to the contextualisation against global aviation emissions. The Applicant therefore concluded that aviation emissions with WTT emissions would not be significant [ER 8.4.57 and REP7-079, paragraphs 48-53]. The Secretary of State agrees with the Applicant that the inclusion of WTT emissions does not materially affect her conclusions on significance.

186. In response to the Secretary of State's consultation letter of the 28 April 2025, NEF and GACC provided representations regarding the Finch judgement, and the uplift on the scheme's overall carbon emission output. The Secretary of State notes the ExA's conclusion that although neither the ANPS nor the NNNPS refer to whole life carbon impacts, the NNNPS 2024, which is capable of being an important and relevant matter does address the issue. It confirms at paragraph 5.31 that national networks infrastructure projects should include a whole life carbon assessment at critical stages in the project lifecycle, referencing both TAG and PAS2080. The ExA found that the Applicant's approach to whole life carbon to date, and going forward, is both appropriate and proportionate [ER 8.4.58]. The ExA noted that evidence had been provided clarifying the effect of including WTT emissions for domestic aviation fuel, whilst excluding the much larger proportion of imported fuel. The effect of including WTT emissions on the overall assessment is addressed below [ER 8.4.59].

Mitigation and Aviation Emissions Controls

Carbon Action Plan ("CAP")

187. The Secretary of State notes the concerns raised by Interested Parties regarding the effectiveness of the measures in the Applicant's CAP [ER 8.4.60]. Paragraph 5.83 of the ANPS requires evidence of appropriate mitigation measures to demonstrate that the carbon footprint is not unnecessarily high. The Applicant set out that the CAP would be secured through requirement 21 of the DCO, and that it had been developed to commit to specific climate mitigation "outcomes" for construction, ABAGO and aviation. In respect of aviation emissions, the primary action would arise from Government strategy at a sectoral scale, rather than directly through the influence of individual airport operators [ER 8.4.61]. The Applicant noted that its commitments as part of the CAP were in line with Government policy, particularly its commitments in respect of Scope 1 and 2 ABAGO emissions to be net zero by 2030, and to achieve zero emissions by 2040 [ER 8.4.62]. The Applicant noted the IEMA guidance (section 6.5) requires assessments to consider the certainty of mitigation proposals and whether they are realistic and achievable. The CAP requires the Applicant to publish annual monitoring reports. If CAP commitments are not met, the Applicant must prepare an action plan and submit a copy to the Secretary of State and CBC for information [ER 8.4.64].

188. The Applicant, in its closing submissions, stated that the primary action to reduce emissions from aircraft will arise from Government strategy at a sectoral scale and that

the Applicant's role was to actively support the transition. Its position was that where the Government considered the Applicant had not adequately addressed/incorporated any relevant updates from Government aviation and climate change policy through the review exercise, it is envisaged that it would notify the Applicant and direct such updates as necessary consistent with the Government's general obligations and responsibility to ensure the decarbonisation of the aviation sector in line with the JZS and its legally binding net zero targets [ER 8.4.64 and REP9-112, paragraph 8.4.86]. A failure to comply with the outcomes committed in the CAP would represent an impediment to the Government's implementation of the JZS, and other carbon reduction commitments, which would be matters for enforcement by Government through the governance arrangements under the JZS [ER 8.4.64 and REP8-054, paragraphs 4.4.7-4.4.9].

189. The ExA noted the concerns raised by Interested Parties, however, the ExA accepted that the approach of not having prescriptive measures and allowing flexibility is appropriate. The Secretary of State is content that the CAP is secured through requirement 21 of the DCO, and she has a major role in overseeing its effectiveness [ER 8.4.78].

Environmentally Managed Growth ("EMG"), Aviation Emission Controls and Carbon Cap

190. The JLA proposed an EMG Framework, to ensure that the growth of the airport is managed in line with its impacts [ER 8.4.67]. They proposed the EMG Framework should manage the environmental effects in relation to ABAGO and surface access transport. The Applicant considered the EMG Framework, in respect of control over GHG emissions at a local authority level, to be unjustified and unnecessary [ER 8.4.68]. The ExA concluded that the JLA's EMG Framework proposed to control GHG emissions in respect of ABAGO and surface access would largely duplicate the Applicant's approach, as secured through the CAP and requirement 21. The Secretary of State agrees with this conclusion. In respect of aviation emissions, the Secretary of State notes the JLA accepted that these are matters for Government, and no other Interested Parties provided a cogent reason why aviation emissions should be controlled at a local level. The ExA concluded that controls at a national level are appropriate as is the CAP, and the Secretary of State agrees [ER 8.4.79].

191. Several Interested Parties raised concerns about the lack of Government controls over emissions at Gatwick [ER 8.4.70], with the AEF, CAGNE, GACC, and CPRE Sussex supporting a cap for annual emissions [ER 8.4.72 – 8.4.76]. The Secretary of State notes the Applicant's response that CAGNE's proposed carbon cap would be more onerous than the EMG Framework proposed by the JLA, as a carbon cap contemplates scope 3 aviation emissions to fall within the scope, which the JLA acknowledged are matters for Government [ER 8.4.77 and REP9-121, Table 1, row R17d.10]. The Secretary of State has taken into account the representations made by CPRE Sussex and CAGNE, in response to her consultation letter of the 28 April 2025, arguing for the inclusion of a carbon cap within the DCO. She notes paragraph 3.57 of the JZS, which states that Jet Zero can be achieved without Government intervention to directly limit aviation growth.

Carbon Trading and Offsetting Schemes

192. Several representations questioned whether Carbon Offsetting and Reduction Scheme for International Aviation ("CORSIA") and the UK Emissions Trading Scheme

("UK ETS") should be relied upon as mechanisms to control aviation emissions [ER 8.4.80]. The Applicant noted that the UK ETS and CORSIA are widely recognised as appropriate measures to mitigate impacts [ER 8.4.81]. It also noted that, it is important to view the CORSIA and ETS regimes as sitting within the existing government strategy to meet Jet Zero in the aviation sector, which itself has been set out within the broader legal obligation to meet net zero by 2050 [ER 8.4.81 and REP9-112, paragraph 8.4.91].

193. The ExA accepted that there is uncertainty around CORSIA. However, the Government has committed to either roll forward, or replace CORSIA, and has a legal obligation to do so. As separate pollution control regimes, the UK ETS and CORSIA can be assumed to operate effectively and therefore in accordance with the NPPF and can be relied on as relevant mitigation [ER 8.4.83]. The Secretary of State agrees and notes that the policy measures set out on page 26 of the JZS outlines in relation to markets and removals that "the implementation of carbon markets…. is vital to achieving Jet Zero."

The Significance of Emissions

194. The Applicant's assessment criteria are based on IEMA guidance and contextualised against national carbon budgets [ER 8.4.104]. A representation by RBBC [REP5-110] argued that contextualisation should be against CCC's Balanced Net Zero Pathway [ER 8.4.87]. The ExA concluded [ER 8.4.104] and the Secretary of State agrees, that basing the assessment criteria on IEMA Guidance and contextualising against national carbon budgets where possible means there is no reason to contextualise against the CCC Balanced Net Zero Pathway. Additionally, assessing the Proposed Development against UK carbon budgets means that an assessment is made against Paris Treaty obligations as carbon budgets are linked to those obligations. [ER 8.4.104]. The ExA further considered that the there is no reason to assess effects at a local level, as it is not a requirement of legislation or national policy [ER 8.4.105]. The Secretary of State agrees.

195. The ExA set out that the Applicant had revised its findings about the contribution which the Proposed Development makes to UK carbon budgets throughout the Examination, with an increased contribution when domestic inbound flight emissions, WTT emissions and emissions from waste incineration are taken into account. The Applicant's revised assessment indicated that the Proposed Development's total emission contribution to CB6 is 0.657% [REP9-120, Table 3, Revised Table 16.9.13 of the ES Chapter 16], and that Gatwick Airport's total emissions contribution to CB6 is 3.459%. Both figures do not include inbound international flights, fuel produced outside of the UK, or non-CO_2 emissions, as these cannot be contextualised against the UK's carbon budgets. The Applicant has assessed until the end of the CB6 (2037), and not the period up to 2050 [ER 8.4.106].

196. The ExA stated that the test of significance is not governed by an increase in emissions, but by alignment with net zero [ER 8.4.105] (which reflects the IEMA guidance). Section 6.3 of the IEMA guidance sets out that the indicative threshold of 5% of the UK's carbon budget over an applicable time period, at which the magnitude of GHG emissions irrespective of any reductions is likely to be significant. [ER 8.4.86]. The ExA noted that no definitive evidence was provided by Interested Parties to demonstrate that the indicative threshold of 5% has been reached, however, considerable doubts were raised about the Applicant's assessment that the Gatwick Airport's total, future emissions (including the Proposed Development) would result in

a 3.459% contribution to CB6. The ExA's judgement was that when other elements which cannot be contextualised against UK carbon budgets are considered, the 5% threshold is likely to be reached for Gatwick Airport as a whole and a rise beyond 2037 could push the Proposed Development to being a significant adverse effect in EIA terms [ER 8.4.109].

197. The Applicant, at paragraph 7.6 of its 24 April 2025 (Annex 4) response to the Secretary of State's minded to letter, highlighted that the 3.459% figure represents the airport as a whole, and does not relate to the increase in emissions attributable to the Proposed Development and is contrary to IEMA Guidance. The Applicant highlighted its Revised Table 16.9.13 of [REP9-120], which states that the highest contribution the Proposed Development would make to 6CB is 0.657%, but noting at paragraph 7.3 that this was the figure that relates to 'the increase in carbon emissions resulting from the project' for the purposes of paragraph 5.82 of the ANPS. The Applicant therefore concluded that there is no reason to believe that, even factoring in the other emissions that the ExA considered not to have been quantified and contextualised against UK carbon budgets, the IEMA threshold of 5% of the UK carbon budget would be exceeded (paragraph 7.6). At paragraph 7.12, the Applicant considered that the correct approach is to conclude that the increase in carbon emissions resulting from the project is clearly not so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. At paragraph 7.13 the Applicant submitted that the ExA's conclusion of moderate adverse weight in relation to GHG emissions was unsound.

198. The Secretary of State notes the representations provided by NEF, GACC and CAGNE, in response to her consultation of the 28 April 2025, regarding the significance of emissions. CAGNE's representation, of the 9 June 2025, highlighted the ExA were aware that the 3.459% figure was in relation to the entire airport's emissions, as demonstrated by the text at ER 8.5.12. Furthermore, at paragraph 23, CAGNE highlighted four elements of the ExA's approach:

    a. At [ER 8.4.106] the ExA cited the Applicant's 3.459% figure, but then set out several matters which the Applicant's assessment excluded;
    b. At [ER 8.4.109] the ExA set out that Interested Parties had raised doubts about the Applicant's assessment that the Project would result in a 3.459% contribution in relation to 6CB, which the ExA accepted as a matter of judgement open to the ExA on the facts;
    c. The ExA did the best it could on the available information and took an overall qualitative approach to come to a determination about the likelihood of that the 5% indicative threshold would be reached for the Proposed Development as a whole;
    d. At [ER 8.5.10] where the ExA explicitly reiterates "our doubts regarding the Applicant's assessment of the contribution of the Proposed Development to the 6CB and carbon budgets" when coming to the other assessment provided for in the IEMA guidance as to whether a GHG impact will be major or moderate adverse.

199. CAGNE stated at paragraph 23, that the ExA had come to an overall qualitative approach. They argued that given the uncertainties around future aviation emissions, non-CO_2 effects (at that point), and the UK's net zero trajectory, the ExA took a properly precautionary approach. CAGNE set out that this is what the IEMA guidance

recommends where there are difficulties contextualising against carbon budgets or a net zero trajectory. CAGNE concluded at paragraph 24 that the Proposed Development unlocks existing capacity, as well as changing the scale of the airport overall, altering demand levels and airline behaviour across the entire operation, it would have been appropriate for the ExA to take the total airport's emissions into account when seeking to assess the overall significance of the scheme.

200. NEF's representation stated at paragraph 2.12 that the Proposed Development would lead to one of the largest net negative impacts on the climate of any decision taken in the UK. NEF set out that given there were no mitigations proposed that would remove that impact, and no mitigations at all are in place for non-carbon GHGs, NEF believed that the impact should be assigned "major" weight against the Proposed Development. GACC's representation of 9 June 2025 provided a similar argument that the Proposed Development increase emissions by a significant amount and should be judged as major adverse and given major weight against the Proposed Development in the planning balance.

201. Taking into account the views provided by the Applicant, the ExA and Interested Parties during the Examination and throughout the decision stage, the Secretary of State considers that it is appropriate to assess significance on the basis of the Proposed Development's contribution to CB6, which would be 0.657%. She agrees with the Applicant's statement at Annex 4, paragraph 7.3, of its representation of 24 April 2025, that the figure addresses "the increase in carbon emissions resulting from the Project (Proposed Development)", for the purposes of paragraph 5.82 of the ANPS. The Secretary of State notes this is also consistent with paragraph 5.2 of the IEMA guidance, which states "the assessment should seek to quantify the difference in GHG emissions between the proposed project and the baseline scenario (the alternative project/solution in place of the proposed project)." The Secretary of State therefore disagrees with the ExA that it is appropriate to use the figure for the emissions arising from the airport as a whole (as set out at ER 8.4.109) because the assessment carried out by the ExA does not reflect the applicable policy or IEMA Guidance. An overall consideration of the Secretary of State's assessment of significance is set out in the conclusion below.

The Secretary of State's Conclusions on Greenhouse Gas Emissions

202. The Secretary of State notes that the Applicant undertook an assessment of the likely significant climate factors, assessing the carbon impact of four emissions streams, and assessed worst-case scenarios in accordance with paragraph 5.77 of the ANPS. This has been done before and after mitigation, as required by paragraph 5.76 of the ANPS [ER 8.5.5]. The Secretary of State is therefore satisfied with the methodology adopted for the Applicant's assessment of GHG emissions.

203. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development needs to be considered in the context of existing and emerging policy and legal requirements to achieve the UK's trajectory towards net zero.

204. The Secretary of State notes that approximately 95% of the emissions from the Proposed Development are attributable to aviation emissions. These are regulated at a national and international level, with potential reductions driven by a range of national aviation policy statements and activities, including the Jet Zero High-ambition

scenario, and the TDP [ER 8.5.8]. The Secretary of State, therefore, considers that over time the net carbon emissions resulting from the Proposed Development's operation will decrease as measures to reduce emissions from aviation are delivered.

205. The Secretary of State notes the Applicant's evidence that direct aviation emissions are doubled to 44.689MtCO_2e when inbound flights and WTT are included, and that the inclusion of WTT emissions increases the total emissions by over 20% between 2018 and 2050, which the ExA noted was a substantial change [ER 8.4.107]. She notes the Applicant's reasoning for contextualising inbound international aviation emissions against an ICAO sector-based scenario; however, she agrees with the ExA's statement at ER 8.4.108 that doubts about using ICAO are not unreasonable and further considers that the use of the ICAO benchmark has not been sufficiently justified by the Applicant. The Secretary of State, as outlined earlier, agrees with the Applicant that inbound international emissions are not within the scope of the JZS, however, contextualising them against ICAO's sector-based scenario would not be meaningful, and no other benchmarks for international aviation emissions were set out during the Examination or decision stage. She therefore concludes that whilst inbound international emissions are an effect, it is not possible to carry out a meaningful quantitative assessment against a relevant benchmark. However, taking into account the quantum of emissions produced and the fact that these emissions will, as with outbound emissions, reduce over time following aircraft technology improvements, the impact of decarbonisation policies in the JZS and the Sustainable Aviation Fuel Mandate, introduced on the 1 January 2025, the Secretary of State does not consider that the effects of inbound flight emissions materially affect her overall conclusions on significance and are not on their own or in combination with the total GHG emissions of a scale to justify refusing consent. The Secretary of State is further satisfied that although inbound emissions are not accounted for in UK carbon budgets, where applicable they will be managed and mitigated through emissions trading schemes such as UK ETS and CORSIA, which covers States that have volunteered to participate in it and represents nearly 80% of international aviation activity (page 48, JZS). Furthermore, the adoption of a global goal for international aviation of net zero CO_2 emissions by 2050 places the sector on a trajectory firmly aligned with the Paris Agreement's 1.5C global temperature target (page 6, JZS: one year on).

206. The Secretary of State is aware that there are uncertainties regarding non-CO_2 emissions. Paragraph 3.64 of the JZS states that non-CO_2 impacts from aviation on climate are eight times more uncertain than those resulting from CO_2, and although non-CO_2 emissions can have both warming and cooling effects, the net warming rate is likely to be around three times that of CO_2. The Secretary of State welcomes the Applicant's commitment with the CAP to monitor the development of Government policy regarding non-CO_2 emissions and reflect such policy in mitigating non-carbon effects accordingly in future updates to the CAP [paragraph 4.3.3, APP-091]. The Secretary of State notes the strategic objectives outlined on page 57 of the JZS, for Government to:

- Work closely with academia and industry, and monitor global developments in this area, to better develop our understanding of non-CO_2 impacts and potential mitigations,
- Develop and implement policies to address and reduce non-CO_2 impacts.
- Work with industry and academia, including the CCC, to explore a means of estimating and tracking non-CO_2 emissions from the UK aviation industry.

207. The Secretary of State is satisfied that the Applicant has adopted an appropriate approach with regard to non-CO_2 emissions, however, she agrees with the ExA at ER 8.4.29 that a qualitative assessment is appropriate and that these emissions would mean that the Proposed Development would add to the magnitude of impacts and likely have a net warming effect.

208. The Secretary of States considers the Applicant has put forward sufficient mitigation measures to limit the carbon impact of the Proposed Development through the CAP and SAC, which are secured in the DCO, and include controls to be exercised by the Secretary of State and relevant local authorities. She is satisfied that the Applicant has complied with paragraph 5.78 of the ANPS, and 5.19 of the NNNPS.

209. The Secretary of State notes the representation made by the Applicant, at paragraph 7.13, Annex 4 of its 24 April 2025 response that the ExA's conclusion of moderate, weight against the Proposed Development for GHG emissions is unsound. She notes the Applicant's overall assessment concluded that the Proposed Development has a minor adverse, not significant impact [ER 8.3.26].

210. Regarding significance, the Secretary of State has considered Box 3 of the IEMA Guidance, which provides practitioners with examples of how to distinguish different levels of significance. She considers that the Applicant has been fully consistent with applicable existing policy and has provided flexibility and scope within its CAP to adapt to emerging policy, and the Proposed Development would be fully consistent with good practice design standards for projects of this type. The Secretary of State considers that the Proposed Development would lead to an increase in GHGs, both carbon and non-CO_2, and that the scale of the effects from the Proposed Development would fall short of fully contributing to the UK's trajectory towards net zero, although this would be mitigated in the long-term by the policies brought forward in the JZS.

211. Paragraph 5.82 of the ANPS states "any increase in carbon emissions alone is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the project is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets." [ER 8.5.12]. The magnitude of the increase in carbon emissions resulting from the Proposed Development is predicted to be a maximum of 0.657% of any carbon budget [ER 8.4.103].

212. The Secretary of State is satisfied that the Proposed Development is compatible with the Government's JZS, and that the Proposed Development can be managed within Government's overall strategy for meeting net zero, and the relevant carbon budgets. The Proposed Development will not materially impact the Government's ability to meet its net zero targets in accordance with paragraph 5.82 of the ANPS and 5.18 of the NNNPS, nor will it lead to a breach of any international obligations that result from the Paris Agreement or Government's own polices and legislation relating to net zero. Therefore, the Secretary of State considers that while the effects of the Proposed Development are significant, they do not meet the threshold for a major, significant adverse effect, and she has therefore placed moderate, adverse weight against the making of the Order.

Climate Change

Climate Change Resilience

213. The Secretary of State has had regard to the Applicant's assessment of the potential effects of current and future climate change on the Proposed Development set out in Chapter 15 of the ES [ER 9.2.1]. She is aware that the potential effects on, and the contribution of the Proposed Development to the climate was set out separately in Chapter 16 of the ES: Greenhouse Gases [ER 9.2.2] which she has considered in the Greenhouse Gas Emissions section of this letter.

214. The Applicant's climate change resilience ("CCR") assessment considered how the resilience of the Proposed Development may be impacted by climate change [ER 9.2.8]. With the implementation of the embedded mitigation measures listed in Table 15.8.4 of the ES [APP-040], the Applicant's CCR assessment concluded that there would be no high or very high risks in both the construction and operational periods. The CCR assessment therefore stated that no further mitigation was required, and no monitoring was proposed as the existing and embedded mitigation was considered by the Applicant to be sufficient (paragraph 1.1.3, [APP-187]) [ER 9.2.12 – 9.2.13].

215. The Applicant's in-combination climate change impacts ("ICCI") assessment considered the extent to which climate change exacerbates a potential effect of the Proposed Development on an environmental receptor [ER 9.2.15]. The ICCI assessment concluded that no significant impacts were identified during the construction or operational periods given the embedded mitigation proposed, which is set out in Table 15.9.1 of the ES. As with the CCR assessment, no monitoring was proposed as the existing and embedded mitigation identified was considered by the Applicant to be sufficient (paragraph 1.1.8, [APP-188]) [ER 9.2.18].

216. In response to the concerns raised by Interested Parties on climate change matters, the Secretary of State notes that the Applicant produced a number of Supporting Climate Change Technical Notes [ER 9.3.3]. These are considered in the following four paragraphs.

Assessment Methodology in the Climate Impact Assessments

217. CBC and WSCC raised concerns that the climate impact statements provided by the Applicant lacked consistency as the statements had a cause but no end 'impact' [ER 9.3.4]. The Secretary of State notes that as a result of the Applicant clarifying in the Climate Change Technical Note [Appendix B, REP4-039] that the end 'impact' is presented as an overall combined consequence rating, both CBC and WSCC considered their concerns to be addressed in their Statements of Common Ground [ER 9.3.5 – 9.3.6].

Wildfire and Fog

218. The Secretary of State is aware that CBC and WSCC raised concerns that the Applicant's assessment had not considered wildfire as a possible climate hazard and the potential risks associated with fog were also not included in the assessment [ER 9.3.7]. The Climate Change Technical Note concerning wildfire and fog submitted by the Applicant [Appendix A, REP4-039] clarified that no further mitigation was required as the CCR Assessment did not identify any high or very high risks for wildfire during construction or operation [ER 9.3.8]. The Secretary of State notes the Statements of Common Ground between the Applicant, CBC and WSCC on this matter and is satisfied that these concerns have been addressed [ER 9.3.9].

Adverse Weather Plan

219. CBC, WSCC, Reigate and Banstead Borough Council ("RBBC") and SCC raised concerns that the Applicant had not undertaken a detailed identification and assessment of construction-related climate risks and had not distinguished areas that are particularly vulnerable which may require specific adaptation measures to be in place [ER 9.3.10]. In response to the concerns, the Applicant confirmed that they would be implementing the measures recommended by the Climate Change Technical Note concerning the adverse weather plan [Appendix C, REP4-039] which would be in line with relevant good practice documents [ER 9.3.11]. The Secretary of State notes the Statements of Common Ground between the Applicant, CBC, WSCC, RBBC and SCC on this matter and is satisfied that these concerns have been addressed [ER 9.3.12].

Drainage, Flood Resilience and Water Environment

220. CAGNE raised concerns on the impact of increased rainfall as a result of climate change and how this would affect flooding in the area. The Applicant's response explained that the Proposed Development was not expected to increase flood risk, and this was demonstrated by the Applicant's flood risk assessment [ER 9.3.13]. As set out in the Water Environment section, the Secretary of State agrees with the ExA that the requirements proposed in the recommended Order would result in no outstanding or operational flood risk caused by the Proposed Development [ER 11.4.1]. The Secretary of State is therefore satisfied that the concerns raised by CAGNE have been addressed via these requirements. Full consideration of flood risk matters is set out in Chapter 11 of the ExA's report and under the Water Environment section of this letter.

221. The Secretary of State notes that while National Highways ("NH") raised a concern on the lack of proposed operational preparedness or embedded mitigation set out in the ICCI Assessment, it was confirmed by NH in the signed Statement of Common Ground between NH and the Applicant that the Framework Agreement signed by the parties afforded NH the necessary level of protection to ensure that its concerns regarding drainage infrastructure and flood resilience can be agreed for the purposes of the Examination [ER 9.3.15 – 9.3.16]. She also notes that the signed Statement of Common Ground between the Environment Agency and the Applicant set out that there were no issues relating to climate change and that in respect of the water environment all issues were agreed [ER 9.3.17].

Overheating Relating to Noise Insulation Scheme

222. The Secretary of State has considered the concerns raised by the JWSLA and Mole Valley District Council on the Noise Insulation Scheme under the Health and Wellbeing section of this letter.

The Secretary of State's Conclusions on Climate Change

223. The Secretary of State agrees with the ExA's conclusion that the Applicant's assessment of the impact of climate change on the Proposed Development is appropriate and accords with the requirements of the ANPS and other relevant legislation and policies [ER 9.4.1].

224. The ExA also concluded that there are unlikely to be any significant effects associated with climate change. The ExA were satisfied that there are no features of the design critical to the operation of the Proposed Development which may be seriously affected by more radical changes to the climate beyond that projected [ER 9.4.1]. While noting the Applicant's acknowledgement of the inherent uncertainty in

long-term climate projections [APP-040, section 15.6], the Secretary of State sees no reason to disagree with the conclusion reached by the ExA on this matter.

225. Like the ExA, the Secretary of State is satisfied that the Proposed Development would accord with the requirements set out in paragraphs 4.46-4.52 of the ANPS and paragraph 4.37 of the NNNPS in respect of climate change. She therefore agrees with the ExA's conclusion that the impact of climate change on the Proposed Development should be considered as neutral in the planning balance [ER 9.4.3].

Socioeconomics

226. The Secretary of State notes the Applicant's assessment of socioeconomic matters are primarily set out at Chapter 17 of the ES [ER 10.1.1] and summarised by the ExA at ER 10.1.8 - 10.1.12. The ExA identified that the main issues for further examination were:

- Socioeconomic assessment methodology;
- Economic effects and benefits;
- Effects on the housing market;
- Section 106 agreement (Schedule 5 and Appendix 6); and
- Gatwick Community Fund [ER 10.2.2].

Socioeconomic assessment methodology

227. The Secretary of State notes the concerns raised by several local authorities that given the absence of an impact assessment to identify effects at local authority level there was a risk of impacts at that level which may not have been assessed [ER 10.2.6 - 10.2.7].

228. The Secretary of State considers that the matters set out by the ExA at ER 10.2.3 - 10.2.5, regarding the absence of UK legislation or guidance to prepare a socioeconomic assessment, and the information it set out at ER 10.2.8 - 10.2.20 regarding the approach taken by the Applicant for their assessment, explains why the Applicant adopted this approach and how they consider it appropriate and proportionate, particularly when the socioeconomic impacts for the local economies around Gatwick are all highly interconnected [ER 10.2.9]. Noting the Applicant's response, the Secretary of State agrees with the ExA that the ANPS does not specifically require an assessment at local authority level [ER 10.2.22]. The Secretary of State further agrees the Applicant has undertaken an appropriate assessment in terms of socioeconomics and that the assessment adequately identifies effects arising from the Proposed Development [ER 10.2.23].

Economic effects and benefits

Catalytic Employment Assessment

229. The ExA states that a number of local authorities raised concerns regarding the methodology by which catalytic effects of the Proposed Development had been assessed [ER 10.2.27] and that the main unresolved area of disagreement was the scale of catalytic employment and the methodology used to assess the catalytic employment benefits [ER 10.2.25]. The ExA also highlighted that this topic was identified as an issue in several of the LIRs [ER 10.2.29]. The Secretary of State notes

the concerns raised by KCC about whether the wider benefits expected as a result of the Proposed Development had been overstated [ER 10.2.28].

230. The ExA reports that the matter of catalytic impacts was widely discussed throughout the Examination. The Secretary of State has considered the ExA's extensive summary of these discussions, and the additional evidence submitted by the Applicant and other Interested Parties, such as York Aviation ("YA") [ER 10.2.30 - 10.2.48].

231. The APF accepts that while there is broad agreement that aviation benefits the UK economy, both at a national and a regional level, views can differ on the exact value of this benefit depending on the assumptions and definitions used [APF, paragraph 1.3]. Having taken these differing opinions into account, the ExA concluded that the Applicant had sufficiently justified their approach and that the approach addresses the issues of displacement and causality [ER 10.2.50]. The Secretary of State agrees.

Sensitivity Analysis

232. As discussed in both the Need and Traffic and Transport sections of this letter, the ExA shared concerns about the Applicant's future baseline figures within the Transport Assessment. Therefore, the ExA requested that the Applicant undertake a sensitivity analysis, based on a range of potential future baseline scenarios provided by the JLA, to test any change in the magnitude of impact assessed within the Transport Assessment [ER 10.2.53]. The range of forecasts provided by the JLA, as prepared by YA, were:

- the 'York low' case, which proposed a 56.8mppa future baseline and 74.8mppa Proposed Development scenario in 2047; and
- the 'York high' case, which proposed a 60.5mppa future baseline and 80.2mppa Proposed Development scenario in 2047 [ER 10.2.54].

233. Although the Applicant did not consider either the York low or high cases to be realistic, the ExA noted that the Applicant provided a Future Baseline Sensitivity Analysis on a without prejudice basis, in addition to a further scenario consisting of a 60.1mppa future baseline and 75.3mppa Proposed Development scenario in 2047 [ER 10.2.55]. The Applicant's analysis found that there would be a slower increase in employment numbers initially in 2029 and 2032, when using the York scenarios, but that direct employment figures for 2038 and 2047 would be higher than those in the Applicant's ES [ER 10.2.56].

234. When using the Applicant's own further scenario, the employment increase would be higher initially than the York scenarios for 2029 and 2032 but would be lower than the York scenarios in 2038 and 2047 [ER 10.2.58].

235. The Applicant assessed that if the York figures were applied, a minor beneficial effect would be experienced rather than a moderate beneficial effect resulting from the original assessment forecasts in 2029 and 2032. However, for the 2036 and 2047 assessment years the overall impact would remain as major beneficial and the actual employment impacts would be higher [ER 10.2.57]. At a high-level summary, the Applicant reported that the assessments found that the differences in environmental effects between the scenarios would be relatively limited [ER 10.2.59].

236. Although acknowledging they do not have the expertise or tools that the Applicant or YA do, the ExA's view is based on all available evidence, and considers the more likely scenario at 2047 would be in the region of 60 - 61mppa for the future baseline and 76

- 77mppa with the Proposed Development. This results in a difference of 16 - 17mppa which is larger than the 13mppa assessed by the Applicant [ER 10.2.60].

237. The ExA considered that while the Applicant could achieve their forecasted passenger level of 80.2mppa sometime after 2047, the ExA was of the view that this is unlikely to cause any significant difference as ultimately, if it takes longer to reach the expected level of growth, then effects from this will also take longer to reach the expected level of growth, then effects from this will also take longer to materialise, or could potentially reduce should there be technological advances in the interim [ER 10.2.61].

Effects on the housing market

Construction Phase

238. The Secretary of State notes that Chapter 17 of the ES recognises that there may be a temporary increase in the need for housing during the construction phase of the Proposed Development, as some of the temporary construction workforce may choose to live locally while working [ER 10.2.62]. The Applicant's assessment of housing need assumed a maximum of 20% of the workers would require temporary accommodation [ER 10.2.63], which would peak in February 2027 (when the total workforce was expected to be at its maximum of 1400), and that the vast majority of the temporary accommodation would be required in the areas of Crawley and Reigate and Banstead. The nature of the accommodation was largely dependent on the duration of the worker's role and the income they have available to spend on housing [ER 10.2.66]. The Applicant stated this demand for temporary accommodation was unlikely to cause significant effects as even the peak number of workers would only represent a small proportion of the potential sources of supply that might meet this demand [ER 10.2.67].

239. Concerns were raised regarding the Applicant's use of out-of-date data within their assessment [ER 10.2.68 - 10.2.71] and a lack of affordable housing around the Airport restricting the ability of workers to afford to live locally. The Secretary of State notes that the ExA asked the Applicant to review the implications of using 2021 Census data for the assessment of housing need during construction as opposed to the 2011 data which was used for the assessment [ER 10.2.72 - 10.2.73].

240. The Applicant confirmed that a review had been undertaken and provided equivalent 2021 data. It stated that the overall impacts and conclusions of the socioeconomics assessment would be unchanged, if not strengthened, if the 2021 Census data was considered in place of the 2011 data [ER 10.2.74], including on the demand for temporary accommodation [ER 10.2.75]. CBC and the JWSLA disagreed with the Applicant's assessment [ER 10.2.78].

241. The Secretary of State is satisfied that the ExA sufficiently explored this matter, in addition to the further concerns of CBC regarding the post-covid deviation from long-term trends [ER 10.2.76 - 10.2.80]. Overall, the ExA was satisfied that the Applicant had adequately addressed the concerns regarding the use of out-of-date data and that the additional information provided by the Applicant confirmed that the impacts and conclusions of the socioeconomics assessment would be unchanged based on the 2021 Census data [ER 10.2.98]. The Secretary of State agrees.

242. During the Examination, further concerns were raised by CBC following their recent declaration of a 'housing emergency' due to a significant temporary accommodation and homelessness problem. The LePAs considered that if temporary workers contributed to the demand for short-term accommodation such as bed and breakfasts, hotels or local room-lets, that this would have implications for the overall cost of

existing temporary accommodation due to rising demand [ER 10.2.81]. Furthermore, the LePAs felt that the Proposed Development would put additional pressure on affordable housing demand [ER 10.2.84]; suggesting that this may be mitigated by the Applicant providing a Housing Mitigation Fund which could be used to create more temporary accommodation by incentivising houses in multiple occupation or expanding the stock of the private rental sector, freeing up bed and breakfast or hotel rooms being used as emergency accommodation [ER 10.2.85].

243. The Secretary of State acknowledges the Applicant's position that it does not consider the relatively limited number of construction workers requiring temporary accommodation would materially impact CBC's position regarding the declaration of a housing emergency. Any increase in housing demand attributable to the temporary construction workers would be negligible and transitory in nature and would not impact the demand for temporary, emergency accommodation [ER 10.2.83]. She also notes the Applicant's statements in relation to affordable housing, in that the Proposed Development would only increase demand if it attracted significant numbers of additional people to the area who met the criteria for affordable housing, which in the case of CBC is a five-year connection to the area. This would therefore be unlikely to apply to temporary construction workers but be more likely to apply to people living locally, employed in the jobs created by the Proposed Development. The Applicant therefore did not consider there to be any justification for a Housing Mitigation Fund [ER 10.2.86 - 10.2.87].

244. The ExA agreed with the Applicant that given the small proportion of workers requiring temporary accommodation, there would be no significant adverse effects on the availability of affordable housing or privately rented accommodation [ER 10.2.99]. However, during the Examination, the ExA proposed an addition to the Order requirements for the provision of a Housing Fund, which it considered necessary given the concerns raised regarding the pressures on affordable, temporary and emergency housing [ER 10.2.88]. The Applicant did not accept the rationale for such a fund whereas the LePAs were supportive of the requirement, although they required further detail on the content of the required housing fund plan to ensure it was deliverable and that it adequately mitigated the affordable and temporary housing issues [ER 10.2.89 - 10.2.90]. The Secretary of State notes that despite the Applicant maintaining their position that mitigation was not necessary, within their closing submission, the Applicant then provided an updated section 106 agreement containing a new schedule for a Homelessness Prevention Fund [ER 10.2.91], which is discussed below.

Homelessness Prevention Fund

245. In response to the ExA's queries regarding the addition of the Homelessness Prevention Fund, the Applicant acknowledged the change in circumstances in respect of homelessness since the start of the Examination [ER 10.2.93] and the potential for an increase in demand for short term accommodation from workers associated with the Proposed Development. The Applicant confirmed that the Fund was therefore aimed at providing housing support if needed [ER 10.2.92] and would only be used if evidence of increased homelessness because of additional demand from construction workers was provided [ER 10.2.94]. The Applicant's closing submission [REP9-112] acknowledged the JLA concern about direct costs accruing to them during the construction phase as a result of their statutory homeless duties [10.3.21, REP9-112] and the Applicant had therefore agreed to a contingency fund to be used in the event of evidence of impacts from the Proposed Development on the housing market and

homelessness that may otherwise lead to increased costs for the JLA [10.3.22, REP9-112]. The Homelessness Prevention Fund was capped at £1 million and would only be available during the construction phase of the Proposed Development, as the JLA had agreed that no housing impact would occur during the operational phase [ER 10.2.94].

246. Like the ExA, the Secretary of State is mindful of the housing emergency faced by CBC [ER 10.2.100] and, although she considers there would be no significant adverse effects on the availability of affordable housing or privately rented accommodation [ER 10.2.99], she agrees with the ExA that the provision of the Homelessness Prevention Fund could provide a necessary mechanism to address any potential housing effects [ER 10.2.101]. Although the Secretary of State has had regard to CAGNE's comments in their closing statement that the provision of a Homelessness Prevention Fund would not address the lack of land in Crawley that is available to build on [ER 10.2.96], she considers the primary purpose of the Fund is to, where necessitated as a result of the Proposed Development, financially support CBC where there is insufficient supply of short term or nightly paid accommodation [ER 10.2.92]. Noting the Applicant and local authorities are in agreement, the Secretary of State agrees with the ExA that this can be appropriately secured via the section 106 agreement rather than by a requirement in the Order [ER 10.2.101]. Further, as the Applicant has identified an appropriate measure to compensate for potential adverse effects, the Secretary of State agrees with the ExA that this complies with the objectives in the ANPS [ER 10.2.102].

Operational Phase

247. Chapter 17 of the ES notes that it is unlikely there would be additional pressure on housing supply during the operational phase of the Proposed Development. It was also noted that any operational employment generated by the Proposed Development was unlikely to result in more housing being required [ER 10.2.64]. As the ES concluded there would be no significant adverse effects in respect of housing supply, including the provision of temporary accommodation, the Applicant did not consider any specific socioeconomic mitigation was necessary during this phase [ER 10.2.65].

248. The Secretary of State notes that in its Statement of Common Ground, CBC agreed that any housing impacts from the operational phase would not cause significant adverse effects and so did not need to be mitigated [ER 10.2.97]. The Secretary of State therefore finds no reason to disagree with the Applicant's conclusions.

Section 106 agreement (Schedule 5 and Appendix 6)

249. As part of their Application, the Applicant submitted an Employment, Skills and Business Strategy ("ESBS"), the purpose of which was to set out how they would maximise the economic benefits brought about by the Proposed Development by creating conditions for 'sustainable employment, skills development and career progression for communities, and enhancements to the productivity and growth of businesses' [ER 10.2.103]. In addition to the strategy, an accompanying fund of £20 million is also proposed, with the aim of enhancing the benefits set out in the ESBS and increasing the significance of the effects by supporting local businesses and residents. The Secretary of State notes that the ESBS and accompanying fund is expected to be secured via a section 106 agreement [ER 10.2.108]. Appendices 5 and 6 of Schedule 5 to the section 106 agreement detail the ESBS and draft Implementation Plan respectively [ER 10.2.104]; the Implementation Plan being the

control for delivering the proposed measures, which would be approved by an ESBS Steering Group [ER 10.2.107].

250. The ExA highlighted four main issues linked to the ESBS that were considered during the Examination:

- the securing mechanism for the ESBS Implementation Plan;
- the content;
- how the ESBS benefits health and wellbeing; and
- justification for the size of the fund [ER 10.2.109].

Securing mechanism

251. The Secretary of State notes the discussion during Examination about whether the ESBS Implementation Plan would be best secured via an Order requirement or by the section 106 agreement. She has had regard to all parties' views on this matter and to the potential wording of any Order requirement as set out at ER 10.2.110 - 10.2.118. However, as noted at ER 10.2.119 - 10.2.120, the Applicant and the JLA reached an agreement that the ESBS is most suitably provided for within a section 106 agreement and that such an agreement had subsequently been signed by all relevant parties. Given this, the ExA was content that the section 106 agreement was an appropriate securing mechanism rather than the use of an Order requirement [ER 10.2.143]. The Secretary of State is likewise content.

Content

252. The LePAs raised concerns over the initial iteration of the ESBS and Implementation Plan which they felt had not provided adequate information on the baseline of the local area and that it was not evident whether the Applicant had conducted an adequate review of the current baseline or arrangements for skills and training within the local areas, and therefore may not have identified existing skills gaps [ER 10.2.121]. The LePAs also raised concerns regarding the absence of a coherent and fully formed Implementation Plan, which they considered was necessary so that the final version could be something which would be capable of being implemented at the earliest opportunity, should the Proposed Development be consented. This was considered particularly important so as to ensure benefits for the local labour force and local businesses could be secured from the outset of the Proposed Development [ER 10.2.122]. As highlighted at ER 10.2.123, similar concerns were expressed by the local authorities in their LIRs and Statements of Common Grounds regarding the content of the ESBS.

253. The Secretary of State is aware that the ESBS Implementation Plan continued to be developed during the Examination and that this was done in consultation with the LePAs, as well as other local authorities and key stakeholders [ER 10.2.124 - 10.2.127]. The Secretary of State notes that by the close of Examination, the joint position statement of the Applicant and the JLA confirmed that “the parties agree that all issues raised/submissions made in relation to Employment, Skills and Business elements of the socioeconomics topic area during the examination have been adequately addressed” [ER 10.2.128]. After a review of this, the ExA was satisfied that the amendments and additional provisions the Applicant had made to the ESBS and Implementation Plan, including the tailoring of delivery to local needs [ER 10.2.124], could provide suitable conditions for delivering sustainable employment, skills development and career progression for communities as well as enhancements

in productivity and growth of businesses [ER 10.2.142]. The Secretary of State finds no reason to disagree and is satisfied that the Applicant has provided a mechanism for maximising the economic benefits and opportunities created by the Proposed Development [ER 10.2.137].

Health and Wellbeing

254. The Secretary of State notes that Chapter 18 of the Applicant's ES concludes that the ESBS would help reduce adverse health effects for vulnerable groups, as it includes a commitment to advertise and interview for jobs within the local area, specifically promoting employment opportunities through channels accessible by vulnerable groups [ER 10.2.129]. Furthermore, with a sustained intervention targeting those with existing disadvantages (such as young adults not in education, employment or training), the ES concluded that in 2032, 2038 and 2047, the residual operational benefits would be significant and the inequalities for vulnerable groups would be improved [ER 10.2.130].

255. The ExA considered that the initiatives set out in the ESBS at Appendix 5 of the section 106 agreement would aid in removing barriers to employment and enable greater accessibility to employment for vulnerable groups in the local area, promoting and increasing health equity [ER 10.2.140]. In addition, the ExA considered the ESBS an appropriate measure to compensate for potential adverse health effects and therefore the Applicant has complied with objectives in the ANPS [ER 10.2.141]. The Secretary of State agrees with the ExA and recognises that good quality employment can have positive influences on overall health and wellbeing [ER 10.2.139].

Justification for the size of the fund

256. Although the LIRs for the JWSLA and Joint Surrey Councils ("JSCs") initially questioned the level of funding for the ESBS, which the Applicant had set at £14 million, the ExA noted that the Applicant did not provide any real justification for this figure or how it would support the delivery of the objectives within the ESBS [ER 10.2.131 - 10.2.134]. The Explanatory Memorandum to the section 106 agreement submitted during the Examination confirmed that the fund had increased to £20 million but again did not provide justification, neither for the increase nor for how the final financial contributions had been arrived at [ER 10.2.135 - 10.2.136]. Noting the Applicant's assertion that the value of the fund was agreed between the Applicant and the JLA [ER 10.2.135] and also noting that the section 106 agreement has been signed by all parties [ER 10.2.120], the Secretary of State believes that this does not warrant any further consideration. Despite the justification for the size of the fund being unclear, the Secretary of State has set out above why she is satisfied that in terms of the ESBS, the Applicant has provided a mechanism for maximising the economic benefits and opportunities created by the Proposed Development [ER 10.2.137].

Gatwick Community Fund

257. The Applicant proposed the Gatwick Community Fund as a measure to mitigate the intangible and residual effects of the Proposed Development on the quality of life of those most affected by the operation of the Airport [ER 10.2.144]. It is proposed that the total fund would comprise three distinct area funds, administered through the existing Community Foundations in Sussex, Surrey and Kent with governance through a decision-making panel comprising representatives of the Airport, the Community Foundations and the relevant county authority. The fund would be secured via Schedule 4 of the section 106 agreement [ER 10.2.145].

258. The Secretary of State has noted the ExA's exploration and consideration of the level of the proposed funding, following concerns raised in the LIRs, which is set out at ER 10.2.146 - 10.2.153. The Secretary of State notes that ultimately, the Applicant and the JLA have reached an agreement on the terms of the Gatwick Community Fund and agree that this will be appropriately provided for within the section 106 agreement [ER 10.2.154]. Having reviewed the key principles and proposed governance arrangements of the Gatwick Community Fund, the ExA considered them to be appropriate and that they would respond directly to the prolonged effects of the Proposed Development [ER 10.2.155]. As the ExA considered the Gatwick Community Fund a proportionate response to the potential community effects identified, they are satisfied this accords with paragraph 5.247 of the ANPS [ER 10.2.156]. The Secretary of State agrees.

The Secretary of State's Conclusions on Socioeconomics

259. For the reasons set out in Section 10 of the Report, the ExA considered that socioeconomic matters attract moderate weight in favour of the Order being made [ER 10.3.6]. In reaching this conclusion, the ExA recognised there is not a standardised methodology for socioeconomic assessment nor is there a test to assess significance of socioeconomic effects [ER 10.3.1]. However, the Applicant's socioeconomic assessment was conducted in line with the Inspectorate's '*Annex to Advice Note 7'* and the policies within the ANPS [ER 10.2.22 and 10.3.5]. Furthermore, the ExA was satisfied that this assessment adequately identifies effects arising from the Proposed Development [ER 10.2.23 and 10.3.3].

260. The Secretary of State notes the representations of GACC and NEF (June 2025), which state that the Applicant has overstated the level of economic wealth benefit that would arise from the Proposed Development, as they consider expansion would take further spending abroad rather than into the UK and contribute to a growing tourism deficit. However, the Secretary of State has noted that the APF sets out that there is broad agreement that aviation benefits the UK economy both at a national and local level with significant economic benefits. She is content that the APF allows for different views on the exact value of economic benefits, and these benefits can extend beyond tourism or direct contribution to UK wealth [APF, paragraphs 1.1 - 1.49]. She has additionally noted the support for the Proposed Development in the Sussex Chamber of Commerce's email of 10 June 2025, for the benefits that the project will bring to the region and wider UK. They consider that Gatwick Airport has generated economic growth for the region and that the Proposed Development offers global business connections, the jobs and skills growth and a significant economic boost to the area which will support the economy and increase resilience and job prosperity. This will strengthen the diversity of the area and success of the region.

261. While accepting that uncertainties exist within the socioeconomic assessment the Secretary of State notes that the ExA were satisfied that the Proposed Development would provide significant beneficial effects in terms of availability of labour due to the airport attracting additional staff and direct, indirect and induced employment. The ExA further noted that Gatwick Airport is already an important employer in the area and currently supports a significant level of local employment and the potential benefits from the Proposed Development if realised would undoubtedly result in both local and national economic growth [ER 10.3.2]. Along with the significant employment benefits created by the Proposed Development, the Secretary of State has noted the initiatives that would be secured by the ESBS and Implementation Plan and that would assist in

maximising the employment and skills development opportunities created by the Proposed Development [ER 10.2.138]. The ExA took account that the availability of employment lies at the heart of inclusive economic growth and the alleviation of poverty and the wide acceptance that good quality employment can have positive influences on an individual's overall health and wellbeing [ER 10.2.139]. The ExA noted that the initiatives set out in section 8.6 of the ESBS at Appendix 5 of the section 106 agreement would both promote and increase health equity by enabling greater accessibility to employment for local vulnerable groups and such measures would assist in removing barriers to employment [ER 10.2.140].

262. The ExA considered that the key principles of the proposed Gatwick Community Fund were appropriate and that the proposed governance arrangements would allow affected communities to be part of the process in delivering the benefits that would come from the fund and that this would respond directly to the effects of the development over a prolonged period and in line with paragraph 5.247 of the ANPS the ExA were satisfied that the proposed fund was a proportionate response [ER 10.2.155 and 10.2.156].

263. Taking everything into account, the Secretary of State considers that the beneficial effects that flow from the ESBS, the £20 million ESBS Fund, the Homelessness Prevention Fund and the Gatwick Community Fund provide a comprehensive and targeted package of socioeconomic mitigation and enhancement. She considers that these measures are appropriately tailored to local needs, support vulnerable groups, and offer mechanisms to address both temporary and long-term impacts on housing, employment and community wellbeing.

264. Overall, the Secretary of State agrees with the ExA that the Applicant's assessment shows that significant beneficial effects of direct, indirect and induced employment would be brought about by the Proposed Development that would support both local and national economic growth [ER 10.3.2 and 10.3.4]. However, she also believes that taken together, these provisions represent a proactive strategy to maximise the socioeconomic benefits, and the Secretary of State attaches great weight to the overall effect of these benefits arising from the Proposed Development. Accordingly, the Secretary of State disagrees with the conclusion reached by the ExA on weight and considers that this attracts great positive weight in the overall planning balance.

Water Environment

265. The main issues examined by the ExA relating to the water environment concerned flood risk, wastewater, water supply and water quality which are set out at ER 11.3.1 – 11.3.46. As explained in the minded to letter, the Secretary of State has considered the Applicant's assessment of the water environment contained in Chapter 11 of its ES and supporting documents and measures to mitigate potential impacts on the water environment during construction and operation [ER 11.2.1 - 11.2.5]. She has further considered the concerns raised by interested parties during and after the Examination, alongside the Applicant's responses to those concerns. As set out in paragraphs 185 - 217 of her 27 February 2025 letter, the Secretary of State was minded to agree with the conclusions of the ExA in relation to the water environment. However, she requested further information in relation to the agreement between the Applicant and Thames Water Utilities Limited ("TWUL") on TWUL's wastewater treatment capacity.

266. In its response on 24 April 2025, the Applicant set out confirmation from TWUL the unlikelihood that the required hydraulic modelling, confirming whether wastewater

flows could be accommodated by its existing infrastructure, would be completed prior to the revised statutory deadline of 27 October 2025. The Secretary of State notes that as a result of this, the Applicant and TWUL have reached an agreement on the wording of requirement 31. This wording confirms that the commencement of dual runway operations cannot take place until either TWUL have confirmed the existing wastewater treatment works can accommodate the additional flows from the airport or that the on-site wastewater treatments works have been completed and the application for the necessary permits submitted to the Environment Agency ("EA"). The Secretary of State notes the representation made by CAGNE on 9 June 2025 that wastewater treatment should be fully operational prior to dual runway operations. However, she is content that in the event an on-site wastewater treatment works is needed, the timescales included within the requirement wording allows a sufficient period for the EA to consider potential impacts on the receiving watercourse and set appropriate permit limits to protect the environment accordingly. The Secretary of State notes the matter of wastewater was agreed between the Applicant and the EA in their Statement of Common Ground, and the ExA reported that this was EA's preferred approach [ER 11.3.33] indicating the EA foresee no issue or adverse effect resulting from wastewater. The Secretary of State is satisfied that the outstanding concerns regarding the management of wastewater have now been addressed.

267. Noting the agreement between the Applicant and TWUL on wastewater management, the Secretary of State agrees with the ExA's conclusion that the Proposed Development accords with the ANPS, NNNPS and other relevant policy requirements and legislation and therefore agrees that water environment matters should be given neutral weight in the overall planning balance [ER 11.4.5].

268. In her further consideration of the Water Environment, the Secretary of State also notes that since the Examination, new Flood and Coastal Erosion Risk Data was produced by the EA following the release of its 'National assessment of flood and coastal erosion risk in England 2024' report. The new data relevant to planning was published on 28 January 2025, with additional data published on 25 March 2025 and further updates to flood risk datasets being produced every 3 months and coastal erosion datasets every 12 months thereafter. The Secretary of State expects the Applicant to work with the EA to consider what impact, if any, the new data may have and to produce any revised assessments as required. She has also inserted a new requirement in Schedule 2 of the Order to require the Applicant to consider the EA's flood risk and coastal erosion data in its flood risk assessment. The Secretary of State has provided further detail in the 'Draft Development Consent Order and Related Matters' section in this letter.

Landscape and Townscape

269. This section should be read as an addendum to the Secretary of State's minded to letter dated 27 February 2025 [paragraphs 218 to 226].

270. The Secretary of State notes that the main topics for discussion during the Examination included [ER 12.3.14 - 12.3.27]:

- Details of construction compounds;
- Pentagon Field;
- Landscaping proposals for proposed car parks X, Y, purple parking and North Terminal;

- Effects on residents of Longbridge, Balcombe Road and others identified in the LIRs;
- Mitigation for vegetation loss during highway works;
- Use of WIZAD / Noise Preferential Route 9; and
- Effects upon Nationally Designated Areas (both National Landscapes (‘’NL’’) and National Parks (“NP”) and the proposed extension to the Surrey Hills National Landscape [ER 12.3.13].

271. The impacts are considered below and weighed in the overall balance in the conclusion section.

Construction/Contractor Compounds

272. Both WSCC and Joint Surrey Councils LIRs raised concerns about the visual impact of construction/contractor compounds, particularly for walkers and cyclists [ER 12.3.4 and 12.3.6]. In the Applicant’s responses, they confirm that the Code of Construction Practice (“CoCP”) sets out measures to minimise the visual impact from construction compounds, with appropriate positioning of furniture and lighting within the compound and with boundary treatments retaining visually significant vegetation where possible [ER 12.3.10 and 12.3.12]. Further, the Applicant states that there are general measures within the CoCP and the Public Rights of Way Management Strategy to mitigate the impacts on public footpaths during construction [ER 12.3.11]. The ExA explored this further with the Applicant and obtained further details regarding the likely lighting details, height and colour of the cabins, stockpile heights and areas where the compounds may be visible from [ER 12.4.5]. The Secretary of State notes that Reigate and Banstead Borough Council appear to have outstanding concerns regarding the proposed construction compound at Car Park B, however the ExA is satisfied that the information provided by the Applicant provides sufficient comfort on this issue [ER 12.4.6]. The Secretary of State sees no reason to disagree.

Pentagon Field

273. Pentagon Field lies on the eastern edge of the Airport, with airport car parking areas surrounding its northern and western sides [ER 12.4.7]. The Secretary of State notes that the Applicant intends to use the field initially as a spoil receptor site which would later be landscaped [ER 12.4.8] but that the Legal Partnership Authorities have fundamental concerns over the lack of controlled soil deposition, soil volume and height, flood risk and impact on footpath No.359/Sy [ER 12.4.9]. This echoes concerns raised in the LIR of the joint Crawley Borough, Horsham and Mid Sussex District Councils and the WSCC [ER 12.3.4]. The Applicant confirmed that 4.6ha of the 8.8ha field would be used for spoil arisings and that requirement 29, requirement 8 and Schedule 12 of the draft Order would ensure works followed a soil management plan and detailed design would be in line with the agreed Design Principles document [ER 12.4.10].

274. Although harm will arise during construction works and mitigation planting may take time to establish, the Secretary of State agrees with the ExA that there would be sufficient control for the relevant authorities through the Order to manage the use of Pentagon Field for spoil deposition and to ensure that the field is appropriately landscaped post construction [ER 12.4.11].

Proposed car parks

275. The Secretary of State notes concerns were raised by Interested Parties regarding visual impacts from car parks as a result of the substantial amounts of new built form [ER 12.3.7], tree loss [ER 12.3.4], and visual impacts from construction [ER 12.3.27]. The Secretary of State notes that the ExA requested further information on landscaping proposals for the proposed car parks X, Y, Purple and the North Terminal Long Stay car park [ER 12.3.13].

Purple parking

276. The ExA concluded that the design controls within the Design Principles [REP9-062] and the consultation requirements under requirement 4 of the draft Order would be adequate to control the design of the Purple car park and ensure that no landscape or townscape harm would arise from this aspect of the Proposed Development [ER 12.4.17].

North Terminal Long Stay car park

277. The Secretary of State notes the proposal to change the existing north terminal surface car park into a decked two-level car park and the concerns raised over the potential visual effect of the decked car park on Charlwood Park Farmhouse, a Grade II* listed building. As concluded in the Historic Environment section of this letter, the Secretary of State agrees with the ExA that the proposed North Terminal Long Stay car park would cause harm to this listed building and that harm would equally be caused to the landscape. The Secretary of State notes that as landscaping matures the visual effects would lessen, but it is likely that harm from higher level lighting would largely endure [ER 12.4.18].

Car Park X

278. Car Park X is an existing, reasonably substantial linear surface level car park, and the Proposed Development would retain surface level parking on the western side with the eastern end having two levels of decked car parking. There is currently a thin line of landscaping between the car park and Charlwood Road, and it is proposed to retain this apart from some removal for access. [ER 12.4.19]. The Secretary of State agrees with the ExA that although additional planting is proposed to bolster the existing landscaping in the area closest to Charlwood House, the proposed Car Park X would cause harm to the setting of Charlwood House, and would equally cause harm to the landscape, particularly from the height of the proposed decked car park and associated lighting [ER 12.4.20].

Car Park Y

279. The Secretary of State agrees with the ExA that the proposed substantial multi storey Car Park Y of six floors would be highly visible to staff and visitors to the airport site as well as people travelling on the A23 and potentially to the residential area beyond. The scale and size of the car park would cause harm to the local landscape and townscape [ER 12.4.21].

Requirement 4(8) Developments (previously Schedule 12 in the rDCO)

280. Having reviewed the impact of the proposed car parks on landscape and townscape, the Secretary of State agrees with the ExA that Car Park X, Y and the North Terminal Long Stay car park should be contained within requirement 4(8) of the Order. This would allow for works to be subject to design approval from CBC, giving the local

planning authority design control over the developments within this requirement [ER 12.4.22-12.4.24]. As such, the Secretary of State is content to agree with the ExA that effects may lessen over time due to landscaping proposals, with the exception of Car Park Y, where effects will only be softened at the local level through landscaping.

Living Conditions of Nearby Residents

281. The Secretary of State notes the concerns raised regarding the visual effects of the Proposed Development on the living conditions of residents on the residential edges of Horley [ER 12.4.25]. In response to the ExA the Applicant provided an assessment on several properties which concluded that there would be a moderate to minor adverse effect to the properties assessed during the period 2024-2038 and largely negligible effects after this period. The Secretary of State notes the exception to this was number 74 Longbridge Road, for which the residents are forecast to experience major adverse effects between 2024 and 2038 [ER 12.4.26].

282. The Secretary of State agrees with the ExA that although the CoCP would assist in mitigating effects from construction works residual harm would remain [ER 12.4.27].

A23 Margins, Replacement Planting and Crawley Borough Council Policy CH6

283. The Secretary of State has considered the matter of the proposed replacement planting mitigation for the loss of vegetation, and the compliance with CBC Policy CH6, in the Ecology section of this letter.

284. The Secretary of State agrees with the ExA and SCC that tree planting and other vegetation-based mitigation would take time to establish and, in the meantime, landscape harm would be caused as a result of the highway works proposed as part of the Proposed Development. The revised requirement 39 would assist to a certain degree on this matter but harm would remain until landscaping matured [ER 12.4.32].

Use of WIZAD

285. The Applicant acknowledges that the flight path WIZAD would be used more as a result of the Proposed Development [ER 12.4.37] but that no new flight paths would be created directly because of the Proposed Development [ER 12.4.36]. The concerns regarding airspace were considered by the Secretary of State at paragraphs 78 and 79 of the minded to letter and she remains of the view that the CAA airspace change process is a separate regulatory regime to the DCO Application, and that this will consider the environmental implications of any such airspace changes [ER 4.4.34].

Effects on Nationally Designated Areas

286. Section 85(A1) of the Countryside and Rights of Way Act 2000 places a duty on the Secretary of State, as the relevant authority, 'to seek to further' the statutory purposes of a NL. Three NLs are affected by the Proposed Development, namely Surrey Hills ("SHNL"), Kent Downs ("KDNL") and High Weald ("HWNL"). Section 11A(1A) of the National Parks and Access to the Countryside Act 1949 places a similar duty on the Secretary of State with regard to NPs. South Downs National Park ("SDNP") would also be affected by the Proposed Development.

287. In its report, the ExA concluded that the Proposed Development would not compromise the purposes of designation of the relevant nationally designated areas. With regard to the duty under section 85 of the Countryside and Rights of Way Act 2000 (as amended by section 245 of the Levelling Up and Regeneration Act 2023),

the ExA considered that the Proposed Development would conserve such areas but would not enhance them [ER 12.4.40]**.**

288. The Secretary of State has considered the statutory duties under section 85(A1) of the Countryside and Rights of Way Act 2000 and section 11A(1A) of the National Parks and Access to the Countryside Act 1949. These require her to seek to further the statutory purposes of NL and NP, respectively.

289. Since the ExA's Report, the Court has considered the duty to "conserve and enhance" in section 85 and concluded that, by analogy with the positive duty to "*preserve or enhance*" a historic building or conservation area, the duty in section 85 is discharged where development leaves the relevant landscape unharmed (see *New Forest NPA v SSCLG* [2025] EWHC 726 at paragraphs 82-83).

290. In light of the case law, the issues for the Secretary of State are (1) whether the proposed development interferes with the fulfilment of the purposes of the nationally designated areas; (2) if so, whether and if so why approval of the Application is justified; and (3) whether and if so how the Proposed Development might be mitigated in order to address the identified conflict with the statutory purposes, including consideration of whether any compensatory measures are available which might offset the identified conflict with the statutory purposes.

Fulfilment of the purposes of Nationally Designated Areas

291. The ExA set out that on the Applicant's evidence, it is clear that on a worst-case basis, the Proposed Development would result in a 20% increase in overflights over HWNL and SHNL and although there are increased flights over the SDNP, the planes would be at a higher level at this point [ER 12.4.34]. The Secretary of State agrees with the ExA that a 20% increase is not insignificant and that the noise and visual effects of the increased planes that would be generated would adversely affect the tranquillity of the nationally designated areas, although in reaching this conclusion she recognises that such effects would be reasonably limited due to the height of the planes in general and the frequency of them [ER 12.4.35]. Therefore, the Secretary of State accepts that limited harm will be experienced to the tranquillity and dark skies of the nationally designated areas. The Secretary of State therefore does not consider that the Proposed Development would be consistent with the statutory duty to seek to further the statutory purposes of the designated landscapes in that the harm will diminish opportunities for the understanding and enjoyment of the nationally designated landscapes.

292. The Secretary of State has taken note of the final Statement of Common Ground between the Applicant and Natural England ("NE") which amongst other matters confirmed that the increase in overflights over nationally designated areas is negligible, resulting in minor adverse impact that would not require mitigating [ER 12.4.39]. The Secretary of State has also taken account of the ExA's review in drawing together the issues concerning nationally designated landscapes. She notes its view that the increase in overflights that the Proposed Development would generate is low and that additional harm would be minimal and does not require mitigating. The effects on HWNL are slightly higher given its proximity and the projected increase in flights on specific flight paths, but that the adverse effects would still be low. She further notes the view of the ExA that the Proposed Development would not compromise the purposes of the designation of the relevant nationally designated areas [ER 12.4.40].

Whether approval is justified

293. The Secretary of State acknowledges that while there is harm to the nationally designated areas that harm has been assessed as low and she notes no additional mitigation is required. This is an assessment on which NE has agreed. The Secretary of State will conclude whether approval is justified, notwithstanding the harm identified, in the planning balance.

Mitigation and Compensation

294. While the Secretary of State has accepted that no additional mitigation is required, she has taken the view that it would be appropriate for the Applicant to make a financial contribution to the nationally designated areas to promote matters set out in their management plans, in particular regarding tranquillity and the dark skies.

295. On 27 February 2025, the Secretary of State requested that the Interested Parties came together to reach agreement on what might be needed to meet this duty and provide any agreed provisions to be included in the Order. In its response dated 24 April 2025, the Applicant confirmed that it had met with SHNL, KDNL and SDNP to attempt to reach a resolution in relation to the duty. Through these meetings it was suggested that contributions to aid in delivering the respective Management Plans with a particular focus on dark skies and tranquillity would help to meet the amended duty. A Dark Skies Initiative costing approximately £80,000 per each designated landscapes would include the funding of a dark skies assessment, associated programme of advice and guidance for the public (paragraph 2.27). The Applicant has suggested a one-off financial contribution of £320,000, to be provided to SDNP for onward distribution to the other NL bodies as agreed between them (paragraph 2.25). In its letter dated 10 April 2025 the High Weald Joint Advisory Committee stated that they had declined to participate in further discussions regarding the measures which might be necessary as they did not believe it appropriate for them to be involved because they did not believe that demonstrating the duty has been applied could be achieved by identifying some enhancement measures. High Weald Joint Advisory Committee also set out the Defra guidance which they considered required the Secretary of State to firstly be demonstrably satisfied that harms are avoided/minimised/mitigated, prior to considering any compensatory enhancement measures necessary to address any residual harms. Other responses to the Secretary of State's consultation including those from CPRE (Kent and Sussex) and CAGNE, support the line of thought that a financial contribution is not appropriate in this instance, on the basis that steps to avoid, minimise and mitigate harm should be explored before compensatory measures are considered.

296. In further consultation responses received on 23 April 2025, the KDNL and SHNL stated that there remained disagreement on the level of financial contribution required to ensure the duty has been met and proposed a minimum figure of £750,000 to be shared between each of the authorities. SDNP, KDNL and SHNL consider this to be proportionate given the amount that was secured in the London Luton Airport Development Consent Order (£250,000) for the Chilterns NL. SDNP, KDNL and SHNL argue that as four designated landscapes are to be impacted in this instance, the £750,000 identified is more appropriate in relation to the impacts identified. The Applicant disagrees, citing the increased impact assessed on the NL in the Luton case, in comparison to the identified impacts within this Application justifies the smaller figure (per NL). The Applicant considers that impacts are demonstrably small in scale and considers their figure of £320,000 to be proportionate in this instance. In addition to

this, in its letter to the Secretary of State of 4 June 2025, the SHNL explained that after further consultation with the Chair of the Board for the SHNL, their view was that the £750,000 figure was not high enough to ensure the duty would be met. The letter states the reasoning for this as being the long-term impact of the new runway, the degree of harm from the Proposed Development on tranquillity on the SHNL, the large area that the NLs cover that will be impacted by the runway, the relative proportion of the contribution vs the total cost of the project, and that £750,000 is not a meaningful contribution between the four NLs and that a figure of £4,000,000 is more appropriate.

297. In their response (dated 6 June 2025) to the Secretary of State's further consultation, the Applicant set out numerous reasons why it considered that a financial contribution of £320,000 would be sufficient to ensure the Secretary of State could fulfil her duty in this instance. The Applicant highlighted that SDNP had suggested a contribution of £80,000 per NL to fund dark skies and tranquillity studies (which amounted to a total of £320,000 across the four designated landscapes). The Applicant refuted the arguments that compared the payment with the contribution made to the Chilterns Conservation Board in relation to the London Luton Airport Development Consent Order. The Applicant rejected claims that the Proposed Development will generate noise impacts over a much larger area compared with Luton, that there is a higher volume of air traffic associated with this Proposed Development and the fact that the level of harm is not increased due to there being four NL affected (compared to one in Luton). The Applicant additionally notes the position of the HWNL but explains that no amendments to the noise management controls or additional controls have been suggested by the HWNL to limit the harm. In any case, the Applicant recognises the additional controls proposed through the Order, including the cap on aircraft movements, the noise envelope and a detailed regime of receptor-based noise mitigation associated with the Proposed Development. Without any specific additional proposals from HWNL, the Applicant's view was that it was not possible or appropriate to conclude that these measures in addition to the relevant existing regimes to regulate noise at Gatwick Airport are not already effective and consistent with both policy and the legal duties which fall to the Government. As pointed out in their response, the Applicant considered that the duty would be observed in granting the Order, particularly with the inclusion of an additional requirement which would secure a contribution of £320,000 towards one or more projects that further the purposes of conserving or enhancing the relevant protected landscape; and in a manner consistent with the management plan in effect from time to time.

298. In line with the Defra guidance issued in December 2024 and given the scale and impact of the Proposed Development on each of the nationally designated areas, the Secretary of State considers that in this particular case, the identified harms have been mitigated insofar as it is possible to do so but, in addition, a financial contribution to support the delivery of the Management Plans for the four designated landscapes is sufficient and necessary to meet the respective duties under section 11A(1A) of the National Parks and Access to the Countryside Act 1949 and section 85(A1) of the Countryside and Rights of Way Act 2000. Noting the comments from various parties on this matter, the Secretary of State is aware that there remains disagreement on the amount of the financial contribution and that the amounts currently proposed by the Applicant and the NL bodies are quite far apart. As noted above there are a range of figures from £320,000 to £4,000,000. The Secretary of State's preliminary view is that, on balance, she considers that a figure towards the lower end of that range to be appropriate, as the figures proposed are proportionate to the scale of the harm and

have been arrived at by reference to specific proposals for work that could be done to compensate for the harm to tranquillity that has been identified. Without pre-judging the outcome of any further discussions or adjudication, the Secretary of State is currently of the view that a contribution of £750,000 would seem to represent an appropriate figure, for the reasons given by SDNP, KDNL and SHNL. However, the Secretary of State also recognises that the parties may wish to discuss matters further in light of her conclusions and that specific considerations may arise for each NL. She has therefore added a provision to the Order to allow the financial amount to be agreed by all parties (reflecting a similar provision at article 65 of the Lower Thames Crossing DCO). Should a dispute arise, the Secretary of State considers this is best addressed by dedicated arbitrators or an independent assessor, as agreed by parties, who will have the necessary skills and expertise to manage such a matter and provide a recommendation to the Secretary of State to enable her to make a final decision on the amount. Costs involved in the resolution of any dispute are to be covered by the Applicant including reasonable costs incurred by the NL bodies. With the inclusion of article 54, the Secretary of State is satisfied that the respective duties under section 11A(1A) of the National Parks and Access to the Countryside Act 1949 and section 85(A1) of the Countryside and Rights of Way Act 2000 have been met.

299. The Secretary of State is content that the Order requirement secures that the financial contribution will be used to contribute to the aims and objectives of the respective Management Plans of the nationally designated areas, with an intended focus on measures that respond to the specific harms arising from the Proposed Development (tranquillity and dark skies have been particularly mentioned, however the wording of the proposed requirement allows for a degree of flexibility for other projects within the respective Management Plans to be considered). In their letter dated 24 June 2025, the SDNP stated that the contribution would be used to address policy 3, contributing to the conservation of the Dark Skies Reserve through allocation towards light monitoring and reporting, the Annual Dark Night Skies Festival, and the creation of a Dark Night Skies Engagement Lead role. Alongside the Dark Skies Initiative, the SHNL would fund a tranquillity assessment and associated programme of advice, guidance and public engagement. SHNL explained in their 4 June 2025 letter that the contribution would be directed and administrated by the Surrey Hills Trust Fund, the trustees of which would consider how best to invest donations and contributions to projects that will enhance the NL in line with the aims and objectives of the Management Plan. The Secretary of State is content that with this provision in place, the respective duties will be satisfied.

Secretary of State's conclusion on Landscape and Townscape

300. The Secretary of State is content that the correct assessment in relation to landscape and visual effects has been undertaken in accordance with the relevant sections of the ANPS, the NPPF and the NNNPS. The Secretary of State agrees with the ExA and the conclusions of the Applicant's ES in relation to the adverse effects of the Proposed Development on locations/receptors listed in table 12.5 of the Report [ER 12.4.45]. She also agrees with the ExA that harm would be caused at; Pentagon Fields, North Terminal Long Stay Car Park, Car Park X, Car Park Y, and the A23 Highways works [ER 12.4.46 and 20.2.33].

301. In addition, some harm would be caused to the SHNL (and its proposed extension areas), the KDNL, and the SDNP. Slightly higher, but still minor, levels of harm would be caused to the HWNL. The Secretary of State considers that those harms have been

mitigated as far as possible through the measures secured by the Order which mitigate for noise impacts. For the reasons set out above, the Secretary of State does not consider that the Proposed Development conserves or enhances the designated national landscapes. However, the Secretary of State is satisfied that as the relevant authority in this regard, a financial contribution to the aforementioned Management Plans of the NLs and NP will meet the section 11A(1A) and section 85(A1) duties. This is in line with paragraph 189 of the NPPF.

302. The Secretary of State is aware that paragraph 189 of the NPPF requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks and National Landscapes which have the highest status of protection. The Secretary of State is aware that various Interested Parties have suggested that no measures have been taken by the Applicant to reduce the impacts on these designated landscapes but for the reasons set out above, the Secretary of State considers that the relevant statutory duties and national policy have been complied with.

303. Therefore, although she has reached her own conclusions on the impacts on national landscapes and compensation, and having given greater weight to the need to conserve and enhance landscape and scenic beauty in NL and NPs, the Secretary of State agrees with the ExA that overall little harm on matters relating to landscape and townscape should be ascribed against the making of the Order [ER 20.2.36].

Historic Environment

304. The ExA's consideration of archaeology and the historic environment is set out in Chapter 13 of the Report. The Secretary of State notes the Applicant's assessment of the historic environment is set out in Chapter 7 of the Environmental Statement ("ES") and accompanying appendices [ER 13.3.1]. The ExA have summarised the Historic Environment Baseline Report [ES Appendix 7.6.1] at ER 13.3.3 - 13.3.11 and have set out in Tables 13.2 - 13.4 works which the Applicant has concluded will have a significance of effect on heritage assets, that are higher than negligible, over specific time periods during construction and operation [ER 13.3.12-13.3.14].

305. The Secretary of State notes that the Applicant's ES concluded at 7.13.27 that none of the identified impacts on heritage assets would represent substantial harm and that designated heritage assets would experience less than substantial harm to their significance.

306. The Secretary of State has had regard to the representations made during the Examination regarding the historic environment, primarily concerning the noise and disturbance from increased flights and the effect of this on the settings of heritage assets [ER 13.4.1]. She has also had regard to the conclusions in the LIR; the Statement of Common Ground with Historic England ("HE"); the comments from Hever Castle; and the Applicant's responses to these as summarised by the ExA [ER 13.4.2 - 13.4.16]. Additionally, the Secretary of State has noted the additional representations made by Hever Castle Ltd concerning the adverse impact of increased aircraft noise on the significance of Hever Castle, given its status as a Grade I listed building set within a Grade I registered historic park and garden, which were made in response to the Secretary of State's minded to letter of 27 February 2025 and her consultation letter of 28 April 2025.

307. The Secretary of State agrees with the ExA's evaluation of the main outstanding areas of disagreement at ER 13.4.17 and notes that these were given further consideration during the Examination under the following headings:

- Archaeology; and
- Other heritage assets.

Archaeology

308. The Secretary of State notes the evolvement of the Written Schemes of Investigation ("WSIs") for archaeological investigations in Surrey and West Sussex and that, at the close of the Examination, all details were agreed aside from an outstanding query relating to pre-construction trial trenching at Car Park H [ER 13.4.17 and 13.5.2].

309. The ExA observed that the electrical services and drainage documents provided by the Applicant, in addition to the document '*The Historical Development of Gatwick Airport Including a Review of the Extent of Past Ground Disturbance*', showed any surviving archaeological features in the area of Car Park H would likely be truncated due to previous drainage and surface works. As such, the ExA agreed with the Applicant's conclusions that this site was likely to have low archaeological potential and so considered that pre-construction trial trenching was not required [ER 13.5.3 - 13.5.4]. The Secretary of State finds no reason to disagree. Further, she is content that requirement 14 of the draft Order secures post-consent archaeological investigations for Surrey and West Sussex, ensuring works are to be carried out in line with the WSIs [ER 13.3.16]; that the WSIs are themselves certified documents under the Order; and that such documents provide adequate control and mitigation for archaeological purposes [ER 13.5.5].

Other heritage assets

310. While the ExA predominantly agreed with the conclusions in the ES relating to heritage assets, they considered that harm would still occur to Charlwood House and Charlwood Park Farmhouse. The Applicant updated the Design Principles document to recommend further design details are included for proposed works near Charlwood Park Farmhouse. However, the ExA considered that the proposed works for construction of substantial new car parks in their vicinity, particularly the North Terminal Long Stay car park, would still adversely affect their setting, both visually and audibly, during construction. The Secretary of State acknowledges that planting mitigation will lessen the visual effects in the longer term but agrees with the ExA that harm would still occur [ER 13.5.6].

311. KCC and other interested parties highlighted the potential effects of increased air traffic over significant heritage assets in Kent, which are under flight paths, and the Secretary of State notes that the ExA observed current noise effects at these locations during site visits. However, the ExA concluded that the Applicant had correctly carried out the appropriate HE noise metric test and, on the basis of the test results and the conclusions of HE, the ExA considered that the Proposed Development would not increase harm to the setting of the heritage assets. The Secretary of State agrees with these conclusions and is satisfied that the Applicant has complied with the requirements of the ANPS [ER 13.5.7].

312. Although Historic Parks and Gardens within the High Weald National Landscape were not defined within the Examination, assessment of noise impacts on the High

Weald National Landscape is considered within the Landscape and Townscape section of this letter [ER 13.5.8].

The Secretary of State's Conclusions on Historic Environment

313. Like the ExA, the Secretary of State has had regard to the requirements of relevant legislation and local and national policies and is satisfied that the Applicant has provided a suitable description of the significance of the heritage assets affected by the Proposed Development as well as the contribution of their setting to that significance [ER 13.5.1].

314. Notwithstanding the Applicant's proposed mitigation measures outlined in the ES, the Secretary of State agrees with the ExA that harm would occur to the heritage assets as summarised in Table 13.5 [ER 13.5.9]. The harm to the assets identified here would be less than substantial, and the ExA is satisfied that the Proposed Development would not result in substantial harm to any designated or non-designated heritage assets [ER 13.5.10]. Within the range of less than substantial harm, harm would be at the lower end of the scale, for all identified assets and with some of the assets the harm would only be temporary. Nevertheless, where there is harm, the Secretary of State must give that harm considerable importance and weight [ER 13.5.11]. Due to the number of assets identified where harm would occur, the ExA considered that this attracts moderate weight against the making of the Order [ER 13.5.13]. The Secretary of State agrees. In accordance with paragraphs 5.191 - 5.192 and 5.200 - 5.205 of the ANPS, this harm will be weighed against the public benefits of the Proposed Development.

Ecology

315. The Secretary of State has noted the scope and methods adopted by the Applicant in assessing impacts on ecology as set out within Chapter 9 of the ES [ER 14.2.1].

316. The Secretary of State has considered the proposed mitigation and compensation measures set out in the final versions of the Outline Landscape and Ecology Management Plan ("oLEMP"), the CoCP, the Biodiversity Net Gain ("BNG") Statement and the environmental commitments contained within the Register of Environmental Actions and Commitments ("REAC") [ER 14.2.3].

317. The Secretary of State notes that the ExA identified the following issues as requiring further consideration through the Examination:

- BNG;
- Loss of woodland habitat;
- Landscape scale approach;
- Statutory designated sites;
- Protected habitats and species; and
- Loss of pond habitats and invasive species.

BNG

318. The Secretary of State notes the ExA's consideration of the Applicant's approach to its BNG calculation and, in particular:

- that the approach taken by the Applicant does not align with the Defra guidance, '*Calculate biodiversity value with the statutory biodiversity metric*',

which states that on-site calculation will need to include *"everything that exists within a development's red line boundary*" [ER 14.3.6]; and

- that habitat trading rules, which are set to prevent a net gain being delivered through the incorporation of large areas of low value habitat at the expense of higher value habitats, had not been adhered to [ER 14.3.12].

319. If the Applicant had applied the Defra guidance on calculating biodiversity value, the Proposed Development would achieve 7% BNG instead of the claimed 20% BNG [ER 14.3.1 and 14.3.5], with the net loss of woodland habitat units being replaced with grassland, heathland, shrub and wetland units [ER 14.3.12].

320. The Secretary of State notes that NE confirmed in its Statement of Common Ground [REP0-090] that the mandatory BNG with which the Defra guidance is concerned does not yet apply to NSIPs [ER 14.3.3], and that in any event the proposed habitat trading units for the loss of woodland habitat were deemed to be acceptable in this instance due to the interest of aircraft and public safety so that new areas of woodland should not be planted within the Order limits [ER 14.3.14].

321. As NSIPs are not yet subject to mandatory BNG, the Secretary of State agrees with the Applicant and the Legal Partnership Authorities ("LePAs") that the section 106 agreement for a landscape and ecology enhancement fund and associated dedicated officer is adequate to resolve any concerns surrounding BNG, along with the submission of the oLEMP sets out that each LEMP submitted to the relevant for approval for each part of the Proposed Development will include an explanation of how the plan will contribute to BNG which is secured through requirement 8 of the recommended Order [ER 14.3.8 and 14.3.10].

322. However, the Secretary of State also recognises that BNG commitments have not been secured within a requirement in the proposed Order, against the advice from NE and the Sussex Wildlife Trust (in a letter dated 06 June 2025 to the Secretary of State's consultation) which reduces the benefit of BNG which NE and the LePAs were seeking [ER 14.3.18].

Loss of woodland habitat

323. The Secretary of State notes the various issues in relation to the loss of woodland habitat that were raised during the Examination by a number of Interested Parties namely:

- restrictions in relation to the creation of woodland habitat within the Order limits [ER 14.3.19 and 14.3.20];
- a realistic worst-case scenario for the loss of trees [ER 14.3.21 to 14.3.24];
- the time delay associated with the maturing of habitat planting [ER 14.3.25 to 14.3.29]; and
- the replacement tree planting [ER 14.3.30 to 14.3.35].

324. At the close of the Examination, the key remaining concerns of the LePAs were the failure to provide adequate mitigation or compensation for the loss of 3.12ha of woodland and the failure to demonstrate a worst-case approach to tree loss during the design had been applied [ER 14.3.35]. The Secretary of State agrees with the ExA that the time delay between the loss of habitat and the subsequent provision would result in moderate adverse effects until the replacement planting matures [ER 14.3.37],

which is expected to be in 2060 [APP-034, ES Chapter 9, paragraph 9.9.66] at which point the effect would fall below the level of significance.

325. The Secretary of State is content that the following proposed measures are required as the magnitude of the tree loss will cause significant effects that cannot be avoided:

- Requirement 28 and the submission of an arboricultural and vegetation method statement ("AVMS") for approval before vegetation clearance takes place;
- Requirement 8 and the submission of a LEMP to identify areas of advanced planting;
- Requirement 39 and the calculation of the number of trees to be provided based on how many are to be lost, in accordance with Policy CH6 of CBC's Local Plan; and
- A contribution to the Gatwick Greenspace Partnership.

326. The Secretary of State further agrees with the ExA and the LePAs that the revised version of requirement 39 would secure the replacement tree planting in line with Policy CH9 of the CBC Local Plan as proposed within the recommended Order [ER 13.3.38 - 13.3.39].

A landscape scale approach and biodiversity opportunity areas

327. The Secretary of State has noted the concerns of the JLA regarding the need for a landscape scale approach to assessing and addressing ecological impacts and the associated mitigation [ER 14.3.40-14.3.44].

328. The Secretary of State notes that the Applicant did provide an assessment of ecological impacts beyond the Order Limits and that the section 106 agreement with the JLA satisfies their concerns through the creation of a landscape and ecology enhancement fund with a dedicated officer having strategic oversight as to where this fund may be directed to address landscape scale impacts of the Proposed Development. The Applicant demonstrated that it had considered a study area beyond the application site. The Secretary of State therefore agrees with the ExA that this concern has been addressed [ER 14.3.60].

329. The Secretary of State further agrees with the ExA that the aims of paragraph 5.104 of the ANPS and paragraph 5.33 of the NNNPS which requires her to consider whether opportunities for building in beneficial biodiversity in and around developments have been maximised have not been met [ER 14.3.61]. This is also in line with the new statutory commitment in section 104 of the Environment Act 2021 as identified by the Joint Surrey Councils in their Local Nature Recovery Strategies. The emerging Surrey Local Nature Recovery Strategy is to be heavily based on Biodiversity Opportunity Areas ("BOAs"), and within Surrey the Joint Surrey Councils would be keen for habitat creation and ecological enhancements and offsetting to take place in these areas [ER 14.3.46].

330. Like the ExA, the Secretary of State feels that more could be done on a strategic level to maximise biodiversity, in particular by improving nearby BOAs that are not included in the proposed site improvements within the Order Limits. However, the ExA suggested that the section 106 agreement – which includes the employment of an associated ecologist in respect of the distribution fund through WSCC or CBC - could be sufficient to maximise biodiversity over a wider area in line with the ANPS and the NNNPS [ER 14.3.61]. Given the JLA's confirmation that their concerns regarding a

landscape scale approach have been addressed by the section 106 agreement [ER 14.3.60], the Secretary of State agrees that it is reasonable to consider that the aims of the relevant paragraphs of the ANPS and NNNPS have been met.

Statutory designated sites

331. The Secretary of State notes the concerns raised by NE in relation to the assessment of air pollution impacts on nationally designated sites [ER 14.3.63-14.3.64] and responses to her consultation from the Wealden District Council in a letter dated 8 June 2025. However, at the close of the Examination, NE confirmed in their Statement of Common Ground that they were satisfied with the results of the additional assessments undertaken by the Applicant of SSSIs within 200 m of the Affected Road Network ("ARN"), including on Westerham Wood SSSI which is adjacent to the M25. The Statements of Common Ground between the Applicant and NE showed that NE confirmed that there will be no significant impacts on the SSSIs included within the assessment [ER 14.3.65-14.3.66].

332. No other Interested Parties raised concerns surrounding air quality on nationally designated sites from the Proposed Development [ER 13.6.67] and the Secretary of State has no further concerns on this issue.

Protected habitats and species

Ancient woodland

333. The Secretary of State is content that the measures within the oAVMS and requirement 7 and requirement 28 of the Order prevents impacts upon ancient woodland and provides protection for retained trees, therefore addressing concerns from Interested Parties about the protection of ancient woodland during the construction phase [ER 14.3.68 - 14.3.71].

Protected species

334. The Secretary of State notes that Letters of No Impediment ("LoNIs") have been issued in relation to great crested newts and badgers [REP9-126 and REP9-127] and that NE confirmed in both LoNIs that it saw no impediment to a licence being issued should the Order be granted. She is therefore satisfied that no barriers to issuing licences should arise in relation to these protected species [ER 14.3.72].

335. In relation to bats, the Secretary of State notes that the issues discussed included loss of habitat, noise impacts and pre-construction surveys leading to impacts on commuting, foraging and roosting activity of bats [ER 14.3.74]. Multiple Interested Parties raised concerns about the volume of woodland habitat that is to be lost [ER 14.3.87. However, the Secretary of State is satisfied that the section 106 agreement regarding the Landscape and Ecology Enhancement Fund would help mitigate these impacts [ER 14.3.76]. The Secretary of State is further satisfied with the measures included in the CoCP to ensure that a dark corridor along the Gatwick Stream and connectivity for bats is maintained [ER 14.3.75].

336. The Secretary of State also notes that the Applicant has undertaken further survey work to better understand noise impacts on bats to the satisfaction of NE [ER 14.3.83 and 14.3.85], and has committed to pre-commencement surveys for trees that are to be felled in order to mitigate impacts on bats on advice from the Ecological Clerk of Work ("ECoW") [ER 14.3.86]. As the proposed mitigation would be secured through requirement 7 and requirement 8 of the recommended Order, the Secretary of State is satisfied that the concerns regarding bats have been addressed [ER 14.3.87].

Other matters

337. The Secretary of State notes that the loss of pond habitats without compensation was a concern raised by the JWSLA and other Interested Parties [ER 14.3.88] in line with paragraph 5.105 of the ANPS.

338. The Secretary of State notes that Chapter 9 of the Applicants ES indicates that Ponds A, F and FFJ are not NERC section 41 Habitat and that the Applicant stated in response to the LIRs [REP3-078] that the two ponds (pond A and F) impacted by the Proposed Development are surface water management features, not section 41 Priority ponds, which are considered to have local ecological value. The loss of these ponds was considered to be a minor adverse effect [ER 14.3.89].

339. The Secretary of State notes and agrees with the ExA's conclusion that it is reasonable for the Applicant not to provide replacement ponds considering that the BNG Statement identifies a net gain of 10 units in relation to wetland habitat [ER 14.3.92].

340. In relation to invasive non-native species ("INNS"), the Secretary of State notes that the Applicant submitted an INNS Management Strategy in response to concerns from the EA that biosecurity or INNS management had not been included in the CoCP [ER 14.3.93]. The EA confirmed in its Statement of Common Ground [REP10-015] that all matters relating to INNS had been agreed. No other Interested Parties raised concerns regarding INNS [ER 14.3.94]. The INNS Management Strategy must be submitted to and approved by CBC and forms part of the CoCP which is secured by requirement 7 in the DCO. The ExA considered that the Applicant's approach to INNS management is acceptable [14.3.95] and the Secretary of State considers that this issue has therefore been resolved.

The Secretary of State's Conclusions on Ecology

341. The Secretary of State is satisfied that the Applicant's assessment is sufficient for the purposes of decision making. The Secretary of State is also satisfied that the CoCP, the environmental commitments in the REAC, Schedule 6 of the section 106 agreement and requirements 7, 8, 28 and 39 of the recommended Order would ensure that construction impacts on biodiversity will be minimised in accordance with the relevant legislation and policy within the ANPS and other policy requirements [ER 14.4.1 and 14.4.4].

342. The Secretary of State notes that agreement was reached between Interested Parties and the Applicant on most other matters including protected habitats and species, statutory designated sites and INNS. NE also had no outstanding issues in relation to biodiversity as per their Statement of Common Ground [REP9-090] and LONIs [ER 14.3.72]. The Secretary of State has also taken the responses to her consultations held post-examination into account when drawing conclusions in relation to ecology.

343. Little positive weight has been attributed to the provision of BNG due to the lack of any commitment to its delivery within a requirement in the Order and the issues surrounding habitat trading and establishing the BNG baseline. Factors weighing against the grant of development consent are the significant time lag between habitat loss and the maturing of compensatory habitats. Although these effects are inevitable, the period of time is significant. Overall, the Secretary of State agrees with the ExA's conclusion that little weight should be ascribed against the Order in relation to Ecology [ER14.4.5].

Health and Wellbeing

344. The Secretary of State has had regard to the Applicant's assessment of health and wellbeing as primarily contained within Chapter 18 of the ES with supporting appendices [ER 15.1.1 - 15.1.2].

345. With the implementation of the mitigation measures listed in Table 18.7.1 of the ES and the Mitigation Route Map, the Applicant considered that the Proposed Development would not give rise to any residual significant adverse effects [ER 15.1.3 - 15.1.4]. The Applicant did, however, identify a residual significant beneficial effect due to the operational increase in direct, indirect and induced employment opportunities which it reported to be long-term, permanent and applying to years 2032, 2038 and 2047 [ER 15.1.4].

346. The ExA were satisfied based on the Applicant's application documents that they had satisfactorily assessed health and wellbeing impacts [ER 15.2.1] but the ExA noted that over 550 relevant representations still raised concerns about impacts from the Proposed Development on health and wellbeing. The ExA considered the following issues should be further considered:

- the need for a standalone Health Impact Assessment;
- section 106 agreement – Schedule 7: Hardship Fund;
- air quality - ultrafine particles; and
- Noise Insulation Scheme – overheating and ventilation [ER 15.2.2].

Health Impact Assessment

347. The Secretary of State notes that the LIRs of the JWSLA, the ESCC and JSCs raised concerns that the separate local authorities could not understand the specific health impacts on each local authority population because the Applicant had not completed a standalone health impact assessment or integrated a health impact assessment to the same quality, scope and scale as a standalone assessment [ER 15.2.4 - 15.2.5]. As the health impacts would vary across authority areas, the Councils argued that separate health impact assessments were required and should have been presented transparently rather than being integrated within an existing ES Chapter [ER 15.2.5].

348. The Secretary of State notes the consideration given to this matter by the ExA at ER 15.2.6 and 15.2.9 together with the Applicant's response [ER 15.2.10]. The ExA was satisfied that the Applicant's Health Impact Assessment adequately assessed the potential effects on human health as a result of the Proposed Development and considered that the assessment applied recognised health impact assessment guidance, combined with the regulatory requirements defined for equality impact assessments, to investigate, inform, assess and effectively communicate how and where health issues and opportunities are addressed [ER 15.2.12]. The Secretary of State agrees with this conclusion.

349. WSCC maintained that a standalone health impact assessment was necessary, notwithstanding the Equality Statement prepared by the Applicant [ER 15.2.11]. In response, the Applicant stated that a standalone assessment was not deemed necessary as:

- the geographic reporting of an assessment by impact related study area rather than by individual local authority was a proportionate approach;

- The assessment findings were based on the local evidence base for each local authority, and not an average;
- the results were not an averaged effect that relied on multiple local authorities to be assessed together to avoid significant adverse effects; and
- adverse effects would not become more or less significant if a local authority was considered individually [ER 15.2.9].

350. Given that the assessment findings were based on local evidence data sets for each local authority, and results were not averaged, the ExA was content that the scale of the Health Impact Assessment was appropriate [ER 15.2.13]. The Secretary of State has no reason to disagree.

351. While the Equality Act 2010 sets out the need for an equality impact assessment, like the ExA, the Secretary of State is satisfied that this only applies to public sector organisations or authorities who must comply with the Public Sector Equality Duty and that it was therefore not necessary for the Applicant to undertake such an assessment [ER 15.2.14]. The Secretary of State's full consideration of the Public Sector Equality Duty is set out in the Equality Act 2010 and Public Sector Equality Duty section of this letter.

352. The ExA concluded that the Health Impact Assessment complied with paragraph 4.72 of the ANPS and paragraph 4.81 of the NNNPS insofar as the assessment undertaken identified and set out any likely significant health impacts [ER 15.2.15]. The Secretary of State agrees with this conclusion.

Section 106 Agreement – Schedule 7: Hardship Scheme

353. The Secretary of State has had regard to the Hardship Scheme included in Schedule 7 of the updated version of the draft section 106 agreement [ER 15.2.16], which states that a fund will be made available up to and including 31 December 2047 and would be available on an annual basis for the purpose of mitigating hardship suffered by individuals living in relevant areas because of the Proposed Development. Schedule 7 sets out the eligibility criteria for the fund, the intended purpose of the funding and the proposed amount of funding per annum [ER 15.2.17].

354. The Secretary of State notes the consideration given by the ExA to the content of Schedule 7 [ER 15.2.18 - 15.2.21] and that the Legal Partnership Authorities considered that there should be an increase in the quantum of the overall fund and they emphasised the need for a better package than that currently proposed [ER 15.2.22]. In response to the comments made by the Legal Partnership Authorities, the Applicant then confirmed an increased level of funding being made available [ER 15.2.23].

355. While the ExA stated that it was pleased with the introduction of the Hardship Fund, it considered that the rationale behind the proposed level of funding was unclear and that the justification in the '*Section 106 Agreement – Explanatory Memorandum*' [REP9-106] subsequently provided by the Applicant failed to provide clarification for the final financial contributions [ER 15.2.26-15.2.29]. The Secretary of State concurs. However, as the Local Authorities who were signatories to the section 106 agreement had agreed with the monies proposed by the Applicant [ER 15.2.29], the ExA concluded that it was satisfied that the provision of the Hardship Scheme and associated funding could provide a mechanism for the mitigation of potential health impacts on vulnerable residents [ER 15.2.30].

356. While the Secretary of State considers that further clarification would have been helpful to assist her understanding of the rationale behind the proposed level of funding, given that the Local Authorities were content with the amount of funding proposed, she is of the view that it is reasonable to conclude that the Hardship Scheme and associated funding would be sufficient to mitigate the potential health impacts on vulnerable residents.

357. With regard to whether the use of a requirement to secure the Hardship Fund would have been more appropriate than a section 106 agreement, the Secretary of State agrees with the ExA that the use of a section 106 agreement is an appropriate approach in view of the agreement between the Applicant and Joint Local Authorities [ER 15.2.30] and taking into account the guidance on the use of requirements and development consent obligations in paragraphs 4.9 and 4.10 of the ANPS and paragraph 4.11 of the NNNPS.

358. The ExA concluded that the provision of the Hardship Scheme, as agreed with the Local Authorities, complied with the ANPS and NNNPS objectives insofar as the Applicant had identified an appropriate measure to compensate for potential adverse health effects [ER 15.2.31]. The Secretary of State agrees with this conclusion.

Air quality – Ultrafine particulates

359. The Secretary of State has had regard to the concerns raised in both the JSC LIR and the JWSLA LIR regarding the changes in $PM_{2.5}$ concentrations not being a good indicator of the general risk associated with exposure to fine and ultrafine particulates [ER 15.2.32]. In addition, the issue of air quality and particularly ultrafine particulates was an issue of concern for several interested parties throughout the Examination [ER 15.2.33]. The Secretary of State has also considered the concerns raised throughout the Examination in respect of the possible links between air pollution and health effects [ER 15.2.40].

360. The ExA noted the representations from the United Kingdom Health Security Agency and the Office for Health Improvement and Disparities which clearly stated their view that the Proposed Development would not result in any significant adverse impacts on public health. The ExA concluded that there was no evidence which would lead them to disagree with this view in relation to ultrafine particulates [ER 15.2.41]. The Secretary of State concurs.

361. At the close of Examination, disagreement remained between the Applicant and Mole Valley District Council, Tandridge District Council and Reigate and Banstead Borough Council [ER 15.2.38] as the Councils were concerned that while the Applicant had agreed to increase funding for air quality monitoring, this would not be implemented prior to particulate matter standards being published and the funding would not cover the costs of equipment purchase and operation. The Councils further considered that proactive monitoring in advance of standards should be undertaken by the Applicant to gather a set of baseline data [ER 15.2.39].

362. The ExA concluded that the Councils' concerns were not sufficient to compromise the Proposed Development when compared to the requirements of paragraphs 1.37 and 4.73 of the ANPS and paragraph 4.82 of the NNNPS and considered that it was not necessary to recommend any changes to the Requirements in Schedule 2 of the draft Order with regard to ultrafine particulates [ER 15.2.42]. The Secretary of State finds no reason to disagree with this conclusion and considers air quality further in the Air Quality section of this letter.

Noise Insulation Scheme – overheating and ventilation

363. The Secretary of State has noted the concerns expressed by several Local Authorities, Interested Parties and the Legal Partnership Authorities with regard to the Applicant's proposed Noise Insulation Scheme [ER 15.2.44 – 15.2.45]. The Secretary of State's consideration of the adequacy of the Applicant's Noise Insulation Scheme (including the specific concerns listed at ER 15.2.45), are more fully detailed in the Noise and Vibration section of this letter.

364. The Secretary of State has had regard to the concerns raised in the JWSLA LIR that no provision had been made to prevent overheating in the residential properties subject to noise insulation measures as part of the NIS, and to Mole Valley District Council's ("MVDC") request that the Applicant undertake an overheating assessment [ER 15.2.47] to demonstrate adequacy of the ventilation scheme [ER 15.2.49]. The Secretary of State has also noted the Applicant's position that due to the diverse range of housing stock it would not be feasible to carry out any meaningful assessment of the risk of overheating of all affected properties and that the potential for internal rooms to overheat because of noise insulation would be reduced due to the ventilation measures and the Applicant's comments in its Closing Submissions that ventilators do not completely negate the need to open windows in certain circumstances [REP9-112] [ER 15.2.48].

365. The ExA concluded that they could not be certain that the concerns regarding overheating would be adequately addressed by the provisions in the Applicant's final draft Order because acoustic ventilators would not address the wish or need for occupants to open windows in certain circumstances [ER 15.2.51] and did not find the Applicant's preferred approach to be satisfactory overall [ER 15.3.2]. However, the ExA considered that the adoption of its revised requirement 18 in the recommended DCO would satisfactorily address any issues [ER 15.2.52]. The Secretary of State notes the ExA's recommended requirement suggested that for approved premises, the package of measures could also include methods to reduce solar gain to achieve an internal living environment consistent with guidance [ER Table 22.1].

366. In response to the Secretary of State's consultation letter dated 9 December 2024, the Applicant, in its 23 December 2024 response, stated that it disagreed with the proposed wording of requirement 18 and proposed an alternative version. With specific regard to overheating, the Applicant maintained that the noise insulation scheme provides three measures to address overheating, which are all consistent with Government policy on both noise and sustainable development. The Secretary of State requested further information as part of her minded to letter of the 27 February 2025, and she notes the Applicant's response of 24 April 2025, which set out an enhanced requirement 18 at Annex 2 of its response, to be supported by a new Noise Insulation Scheme Document set out in Appendix 2 to Annex 2. Section B of the Noise Insulation Scheme Document set out the package of measures to be offered to eligible residential premises included '*Low solar gain glass – within acoustic double glazing to windows in full sun to reduce overheating'* in addition to the acoustic ventilators, thermal insulation of roof spaces and blinds previously provided. The Applicant was content that its enhanced requirement 18 built upon the ExA's drafting of their recommended requirement and which clearly satisfied the policy tests in the NPSE and ANPS [paragraph 2.5 of Annex 2].

367. As set out in further detail at paragraph 87, the JLA's representation of the 9 June 2025, the JLA maintained that the Applicant must commit to undertake and provide a

dynamic thermal modelling report, which assumes windows are shut, for properties within the inner zone. This should be undertaken in line with the requirements set out in the Chartered Institution of Building Services Engineer's TM59 'Design methodology for the assessment of overheating risk in homes' (2017) (paragraph 4.20). This would ensure that adequate overheating mitigation measures are applied to individual properties, so occupants can maintain good internal temperatures while keeping windows closed to mitigate against aircraft noise (paragraph 4.21). The Secretary of State notes this adopts a similar approach to that used by the ExA in its revised requirement 18.

368. The Secretary of State is assured that with the specific measures outlined by the Applicant, and included in its Noise Insulation Scheme Document, which will mitigate overheating, and the additional check of a dynamic thermal modelling report for inner zone eligible properties most affected by aircraft noise, as proposed by the JLA and the ExA, significant adverse impacts to health and quality of life caused by overheating will be avoided.

The Secretary of State's Conclusions on Health and Wellbeing

369. The Secretary of State found no reason to disagree with the ExA that the Applicant's assessment of health and wellbeing was appropriate and accords with the requirements of paragraphs 4.70 - 4.73 of the ANPS and paragraphs 4.81 - 4.82, 5.7 and 5.195 of the NNNPS [ER 15.3.1]. She is content that the amendments provided by the Applicant and the JLA that have been incorporated into requirement 18 are appropriate and provide her and local communities with assurance that overheating effects will be addressed. Like the ExA, the Secretary of State is satisfied that the Proposed Development would accord with the ANPS, the NNNPS, other relevant legislation and policy requirements [ER 15.3.3].

370. Although the Secretary of State has taken a different approach to the ExA in accepting the revised requirement 18 which incorporates comments from the Applicant and JLA, she nonetheless agrees with the ExA's original conclusion that the health and wellbeing effects of the Proposed Development should be considered as neutral and would weigh neither for nor against the making of the Order [ER 15.3.4].

Land Use and Recreation

371. The Secretary of State has had regard to the Applicant's assessment of land use and recreation, set out in Chapter 19 of the ES [ER 16.1.1] and supported by the documents listed in ER 16.1.2.

372. The ExA considered the following issues should be examined in greater detail:

- agricultural land and soil resources;
- replacement open space; and
- Museum Field located at the Gatwick Aviation Museum, Charlwood [ER 16.2.2].

Agricultural Land and Soil Resources

373. The Secretary of State notes that the construction of the South Terminal roundabout improvements would require a mix of both permanent and temporary agricultural land take:

- temporary loss of 12.1 hectares of lower quality subgrade 3b land [ER 16.2.3];

- 10.1 hectares of permanent land take associated with ground lowering to create a flood compensation area in Museum Field [ER 16.2.4]; and
- permanent loss of agricultural land from six land holdings [ER 16.2.6] but the Applicant confirmed that the loss would not result in any significant adverse effects in respect of existing farming activities [ER 16.2.7].

374. The Applicant confirmed that no Best and Most Versatile Land resources would be affected by both the temporary and permanent agricultural land take [ER 16.2.5]. A Soil Management Plan would also be required prior to the commencement of the construction which would be secured by requirement 29(1) and must be substantially in accordance with the Soil Management Strategy [ER 16.2.10].

375. The Secretary of State acknowledges that while the Proposed Development would result in some elements of permanent agricultural land loss, this would be relatively minimal in scale and would not result in any loss of Best and Most Versatile Land [ER 16.2.11]. She therefore agrees with the ExA's conclusion that in accordance with the requirements set out in paragraphs 5.168 of the NNNPS and 5.115 of the ANPS the Applicant has sought to minimise impacts on Best and Most Versatile agricultural land by utilising poorer quality land [ER 16.2.12].

376. The Secretary of State also agrees with the ExA's conclusion that the Soil Management Plan secured through requirement 29 of the Order represents a reasonable approach to ensure safeguarding of soil resources during construction operations and that the areas of temporary land take would be properly managed post-construction [ER 16.2.13].

Replacement Open Space

377. The Secretary of State notes the areas of open space which the Applicant confirmed would need to be acquired permanently for the delivery of the Proposed Development, which are summarised at ER 16.2.14. Additionally, the Applicant sought acquisition rights over open space land for the delivery of the Proposed Development, as summarised at ER 16.2.16. The Secretary of State notes that the majority of the rights to be acquired would be required in respect of the delivery of the highway improvement works. As these are only required temporarily, the ExA was satisfied that section 132(4B) of the 2008 Act is satisfied, and no replacement land would be required [ER 16.2.17]. The Secretary of State agrees.

378. The Applicant set out land which would be developed as replacement open space as part of the Proposed Development, which is summarised at ER 16.2.15. The ExA was satisfied that the areas of replacement open space would be in proximity to those areas of land being acquired and thus would be accessible to those communities currently served by the existing open space, and the provision of the proposed footpath link and the provision of a pedestrian footpath would ensure that accessibility by foot is also maintained [ER 16.2.21]. The ExA also noted that the replacement open space would comprise a significantly larger area of open space when compared to the areas which would be permanently acquired for the Proposed Development [ER 16.2.22].

379. The ExA highlighted the replacement open space would be delivered in accordance with the open space delivery plan, which is required to be submitted to, and approved in writing by, CBC under article 39 of the Order. Further details in respect of the proposed landscaping and planting for each of the open space area are provided within the oLEMP, secured through requirement 8 of the Order [ER 16.2.23]. The ExA was satisfied that the Applicant's proposal satisfied paragraph 5.123 of the ANPS [ER

16.2.25]. The Secretary of State agrees and considers this also satisfies paragraph 5.181 of the NNNPS (5.194 of the 2024 NNNPS) [ER 16.2.24]. The Secretary of State notes that the Applicant is not relying on the provision of "replacement land" under section 131(4) of the 2008 Act [ER 16.2.24], however, she is content that the giving of other land in exchange is not necessary, as set out under section 131(5) of the 2008 Act, given that the new, highway owners will not suffer a net loss in land under their control and, following discussions with the JLA, they have communicated that they do not wish to be vested with the replacement open space [section 2.2 of REP9-104]. The ExA were satisfied that an appropriate resolution between Interested Parties and the Applicant had been reached by the close of the Examination and considered the wording of article 39 of the Order to be appropriately drafted and secured [ER 16.2.26].

Museum Field

380. There would be permanent land take associated with the provision of the flood compensation area in Museum Field. The Applicant proposed the provision of a new circular recreational route around the flood compensation area to the east of Museum Field. The commitment to the provision of the footpath in included at paragraph 4.4.2 of the oLEMP which is secured by requirement 8 of the Order [ER 16.2.27]. CBC raised concerns throughout the Examination, stating that due to the relatively poor condition of the current permissive path to the site, the Applicant should consider the creation of a new path to allow the Museum Field to be more readily accessible to nearby residents, and assist in the connectivity of newly created wildlife and recreational assets [ER 16.2.28]. At the close of the Examination, this issue remained unresolved between parties [ER 16.2.32]. The Secretary of State notes the ExA's observation that any further submission from CBC or the Applicant after the close of the Examination may be available to the Secretary of State who may wish to follow up the matter prior to making a decision [ER 16.2.34]. The Secretary of State considers that the release of her minded to letter and the ExA's report on the 27 February 2025, has provided sufficient time for the Applicant or CBC to provide further information regarding this issue. Whilst the issue remains unresolved, the Secretary of State notes that there is a clear commitment in the oLEMP to provide a circular route to the existing permissive path by the Applicant, which is adequately secured within the Order. The Secretary of State, therefore, is satisfied to agree with the ExA that the existing accessibility situation would not be degraded because of the Proposed Development [ER 16.2.33].

The Secretary of State's Conclusions on Land Use and Recreation

381. The ExA found that the Proposed Development, in respect of land use and recreation, would accord with the ANPS, NNNPS and other relevant legislation and policy requirements. [ER 16.3.4]. The Secretary of State agrees with this conclusion. The Secretary of State agrees with the ExA's weight that land use and recreation effects of the Proposed Development can be considered neutral, and do not weigh for or against the making of the Order [ER 16.3.5].

Other Matters

382. The Secretary of State notes the ExA's consideration of the section of the Report entitled 'Other Matters' where topics with no significant issues were identified. This included the consideration of alternatives, geology, ground conditions, health and well-being, major accidents and disasters, resource and waste management and cumulative combined effects [ER 17.1.1]. The Secretary of State has considered these topics, as set out below.

Consideration of Alternatives

383. Consideration of Alternatives were addressed in ER 17.2 and was not a topic that was explored in detail during the Examination. Interested Parties raised issues in relation to MBU and the validity of the proposal in relation to the potential London Heathrow North West Runway ("LHR NWR") and these points have been considered further under the 'cumulative effects' section below [ER 17.2.13], as well as continued safeguarding of land for a future southern runway [ER 17.2.15]. The Secretary of State notes the Local Plan Inspector's conclusion of 31 January 2024 that the land safeguarded for future runway capacity is in line with national policy [ER 17.2.16 and REP7-083, row "GEN2.1"] and sees no reason to disagree. Along with the conclusions drawn in relation to interactions with the LHR NWR project below, the Secretary of State agrees with the ExA that the consideration of site selection and alternatives would weigh neither for nor against the Order being made [ER 17.2.22].

Geology and Ground Conditions

384. The Secretary of State notes the ExA's consideration of potential effects of the Proposed Development on geology and ground conditions at ER 17.3. The Applicant considered the effects associated with geology and ground conditions during construction and operation of the Proposed Development in Chapter 10 of its ES [ER 17.3.2] and that the Applicant concluded in Table 10.13.1 of APP-035 that any effects during construction and operation were not significant [ER 17.3.3].

385. The JWSLA raised concerns with regard to the potential sterilisation of safeguarded clay, and whether the suggested mitigation measures were sufficient to meet the requirements of paragraph 5.121 of the ANPS for appropriate mitigation [ER 17.3.4]. WSCC's Statement of Common Ground with the Applicant confirmed that the Construction Resources and Waste Management Plan appended to the CoCP [REP9-031] had been sufficiently updated to include mineral safeguarding policies to protect the Weald clay formation and LePA's Closing Statement contained no references to outstanding geology and ground condition matters. [ER 17.3.8 – 17.3.9]. The Secretary of State, like the ExA, is content to consider that the CoCP, as secured by requirement 7, is sufficient to address effects relating to geology and ground conditions. She therefore agrees with the ExA that neutral weight should be given to the issue of geology and ground conditions in the overall planning balance [ER 17.3.10].

Major Accidents and Disasters

386. The ExA considered the potential effects of the Proposed Development in relation to major accidents and disasters at ER 17.4, and the Secretary of State notes that the main issues covered in the Examination include the loss of the 'emergency runway', increased chances of terrorism and safety issues associated with dual runway operations [ER 17.4.3]. In the JWSLA LIR, the Councils asked for consideration of the potential impact of the Proposed Development on the West Sussex Fire and Rescue Service and the Applicant stated that during construction the contractor would comply with the requirements of the local fire service and that specific fire prevention measures would be developed as set out in section 4.10 of the CoCP [ER 17.4.5]. The Statement of Common Ground between WSCC and the Applicant records that concerns in relation to fire safety were agreed and the ongoing engagement would take place with the West Sussex Fire and Rescue Service during development of the detailed design and construction [ER 17.4.6].

387. The Secretary of State acknowledges that in regard to overall aircraft safety and the threat of terrorism, the Applicant confirmed that existing emergency response arrangements will be extended to cover the Northern Runway and the Proposed Development would not introduce fundamentally new or bigger hazards than those already taken into account in the airport's emergency planning [ER 17.4.7]. On the loss of the 'emergency' runway, the Secretary of State is aware that it is not a CAA requirement to have a standby runway, and has noted the response provided by the CAA that Gatwick, as with all airports, has established procedures in place should a runway need to be closed, and these are not solely reliant on the use of its northern runway [ER 17.4.8].

388. The Secretary of State has noted the ExA's understanding that in terms of major accidents and disasters the Proposed Development would not introduce any new risks that could not be dealt with by the airport's existing emergency procedures and that the loss of the standby runway would not present any new additional risks [ER 17.4.10]. The Secretary of State sees no reason to disagree with the ExA's conclusion that the Proposed Development would accord with the ANPS and other relevant legislation and policy requirements and she therefore accepts the ExA's conclusion that major accidents and disasters should have neutral weight in the planning balance [ER 17.4.14].

Resource and Waste Management

389. The Secretary of State notes the Applicant's consideration of resource and waste management matters were not included in the ES, but instead the Scoping Report set out that a waste management strategy including a Site Waste Management Plan ("SWMP") would be produced and included as a technical appendix to the ES [ER 17.5.1].The Applicant acknowledged in their Construction Resources and Waste Management Plan that as waste forecasts for the Proposed Development have not been defined, it cannot be predicted whether waste facilities in West Sussex would be capable of managing waste from the Proposed Development in line with the principle of net self-sufficiency [ER 17.5.13]. It is also noted that a new Central Area Recycling Enclosure ("CARE") facility will replace the existing food waste to energy plant on site and will operate as a waste sorting facility only [ER 17.5.14 and 17.5.17].

390. During the Examination, the Applicant was questioned on why likely significant effects in relation to waste management were not assessed in the ES as well as why there was not an estimate of the type and quantity of all expected waste during the construction phase [ER 17.5.18]. The Applicant's response outlined that the management of waste had been referenced across the ES, and any potential residual effects would be addressed through the SWMP [ER 17.5.19]. The Secretary of State is aware that the Applicant provided a Waste Management Signposting Document [REP6-017] to help set out where the effects of construction waste have been considered across the ES [ER 17.5.21].

391. The Secretary of State notes that requirement 30 of the dDCO was added by the Applicant [ER 17.5.23]. It requires the approval of the SWMP by the relevant waste authority, allowing them appropriate input into how likely significant effects in this regard can be avoided. Similarly, requirement 25 requires that an Operational Waste Management Plan is submitted to and approved by the relevant planning authority to ensure control over operational waste management is handled appropriately [ER 17.5.33 and 17.5.34].

392. Further topics considered during the Examination in relation to waste management included the Project Change 2 (removal of biomass CARE facility for a sorting facility), the design of the new facility, and transporting operational waste and how this may impact traffic assessments within the ES [ER 17.5.24 - 17.5.30 and 17.5.35 - 17.5.37]. The Secretary of State agrees with the ExA's conclusions that the Applicant's assessment of resource and waste management has been appropriately undertaken in line with the ANPS and NNNPS. She also agrees that the mitigation provided through requirements 25 and 30 of the DCO will minimise the amount of waste sent to landfill and would control negative environmental effects of the new waste facility. Subsequently, the Secretary of State is content to agree with the ExA that matters relating to resource and waste management weigh neutrally in the planning balance [ER 17.5.38].

Cumulative Effects

393. The Secretary of State notes that the Applicant's assessment on cumulative and combined effects is set out in Chapter 23 of the ES and the ExA's consideration of these matters is set out at ER 17.6. This included the assessment of the potential for in-combination effects of the project with the potential LHR NWR, assuming that that runway would be operational by the mid-2030s. However, the Secretary of State understands that a full cumulative assessment pursuant to Advice Note 17 ("Nationally Significant Infrastructure Projects: Advice on Cumulative Effects Assessment") cannot be undertaken as sufficient information on the LHR NWR project is not currently available [ER 17.6.4]. Despite concerns from local authorities that cumulative impacts had not been properly considered by the Applicant, the Secretary of State notes that the Applicant had, as far as possible, undertaken a qualitative assessment of the impact of LHR NWR [ER 17.6.4] and is content to agree with the ExA that the approach is reasonable in the circumstances that an official application in relation to Heathrow Airport has not been put forward at the time of assessment [ER 17.6.16]. She also notes that in the final Statement of Common Ground with WSCC no issue relating to cumulative effects was recorded, although the Statement of Common Ground with Horsham District Council recorded that they still had concerns about cumulative impact that had not been addressed [ER 17.6.15].

394. Similarly, the Secretary of State sees no reason to disagree with the conclusions drawn by the ExA that the cumulative effects of local development sites have also been properly considered in relation to traffic [ER 17.6.19]. As a result of the mitigation measures proposed, the Applicant's assessment concluded that there would be no further significant residual cumulative effects than those identified in the Landscape and Townscape section. The Secretary of State therefore agrees with the ExA that cumulative effects should be given neutral weight within the planning balance [ER 17.6.20].

Good Design

395. The Secretary of State recognises that good design covers a wide range of matters and is considered within various chapters of the Applicant's ES. The Secretary of State has had regard to this and to the Applicant's specific Design and Access Statement ("DAS") [ER 18.2.1]. A summary of the content of the five volumes of the DAS is provided by the ExA at ER 18.2.2 - 18.2.8.

396. The Secretary of State notes the relevant representations did not mention good design, preferring to concentrate on the individual elements of the Proposed

Development, which may or may not fall under the wider umbrella of good design. WSCC noted that the design principles on which the detailed design of the Proposed Development would be secured had no stakeholder input, were insufficiently detailed and contained ambiguous wording. It also viewed the DAS as not being comprehensive as some development was excluded and that there was a general lack of detail for some of the works, site context and no comprehensive commentary of the phasing plans [ER 18.3.1]. The LIR of the JWSLA considered that there had been little meaningful engagement on design matters and that the level of information provided on the proposed plans and the level of detail contained in the control document would give the authorities insufficient control over design details [ER 18.3.3 - 18.3.4]. The Secretary of State notes that the ExA thoroughly explored this matter during Examination, as set out at ER 18.3.5 - 18.3.28, and highlighted the following matters as requiring further consideration:

- Design Detail
- Design Controls
- Other Works (raised by the LePAs)
- Other Design Matters

Design Detail

397. Design details are primarily contained in the DAS and Appendix 1 (Design Principles) [ER 18.4.1] and are supplemented by various plans and documents [ER 18.4.2], which were updated during Examination in response to comments received and changes made to the Proposed Development [ER 18.4.3]. In considering the range of documents provided and the revisions made during the Examination, the ExA concluded that it was content that the level of design detail was sufficient [ER 18.4.5]. The Secretary of State is likewise content and agrees that in accordance with the ANPS, the Applicant has demonstrated how the design process was conducted and how the proposed design evolved, taking into account alternatives [ER 18.4.5]. While the ExA considered that the design of various elements of the Proposed Development could be more detailed, it concluded that it was reasonable for the Applicant to maintain some design flexibility for the Proposed Development for the reasons set out at ER 18.4.6. The Secretary of State agrees.

398. While the Secretary of State notes the concern of the LePAs who considered that the relevant design sections of the documents set out at ER 18.4.1 - 18.4.2 should be joined to form one coherent design document, like the ExA she is satisfied that it is reasonably clear to read across the various documents and no harm arises from design advice falling within the different documents [ER 18.4.7 and 18.4.33].

Design Controls

399. The Secretary of State notes that control over the design of the Proposed Development is secured within the Order with the relevant documents to be certified contained in Schedule 12 [ER 18.4.8]. Like the ExA, the Secretary of State is reassured that the inclusion of requirement 5 providing detailed design for local highway works and requirement 6 providing detailed design for national highway works in the Order will ensure that the highway elements of the Proposed Developments are subject to the level of control required and secure good design. In accordance with the ANPS this should ensure that both functionality and aesthetics will be considered. With regard to design controls for surface and foul water drainage, the Secretary of State agrees

with the ExA that requirements 10 and 11 will ensure these details will be carried out in accordance with approved details and subject to the Design Principles [ER 18.4.9].

400. The Secretary of State notes that in addition to individual elements of the Proposed Development having their own requirements related to detailed design, requirement 4 also specifically confirms that no part of the Proposed Development can be commenced until CBC has been consulted on the design. Specific works listed within requirement 4(8) (previously Schedule 12 in the rDCO) would also require additional details to be submitted and approved by the relevant planning authority [ER 18.4.10]. The Secretary of State notes that the ExA agreed with the list of works in Schedule 12 for the reasons set out at ER 18.4.12 but recommended the addition of the works for the North Terminal Long Stay Car Park. As considered in the matters of Landscape and Townscape and Historic Environment, the ExA found that the North Terminal Long Stay Car Park could have an adverse effect on the landscape and on the setting of the Grade II listed Charlwood Park Farmhouse. Given the proximity of this building to the Order limits, the ExA considered that it warrants extra control and its inclusion within requirement 4(8) would help to ensure that any adverse effect was minimised through good design [ER 18.4.13]. The Secretary of State agrees.

401. While the ExA considers that a Design Review Panel for wider elements of the Proposed Development would have been of benefit, it noted that the works listed at ER 18.4.11 would fall within the remit of a "suitably qualified and experienced independent Design Advisor" who would review designs, consult with relevant bodies, and provide recommendations for improvement, prior to details being submitted to the local authority. Details of the review and response to recommendations would be included in the details to the relevant planning or highway authority under requirements 4, 5 and 6 [ER 18.4.11]. Like the ExA, the Secretary of State welcomes the introduction of a Design Advisor and agrees that the potential advisor selected by the Applicant could have a considerable positive effect on the works listed at paragraph 1.4.1 of Annex A of REP9-062 [ER 18.4.14].

Other Works (raised by the LePAs)

402. Concerns over several other elements of works were raised by the LePAs, and where appropriate, are considered by the ExA in the relevant sections of the Report [ER 18.4.15]. A summary of the ExA's consideration and the outcome of each issue is provided at ER 18.4.16 - 18.4.24. For the avoidance of doubt, the Secretary of State agrees with the conclusions reached by the ExA.

Other Design Matters

403. In her consideration of good design, the Secretary of State has had due regard to the aims of the ANPS, and to the NNNPS with regard to the highway related elements of the Proposed Development, as detailed at ER 18.4.25. The Secretary of State notes the ExA gave further consideration to: terminal facilities; noise; flooding; surface access and sustainability under the remit of good design: [ER 18.4.26 - 18.4.31]. The Secretary of State agrees with the conclusions reached by the ExA on each of these issues. Although she has set out elsewhere in this letter where she has chosen a revised view to the ExA in terms of the requirements for noise and surface access, the Secretary of State is satisfied the revisions do not alter the overall conclusion that this will mitigate and minimise adverse impacts on health and quality of life in the context of sustainable development. With regard to flooding, the Secretary of State's

consideration of the new Flood and Coastal Erosion Risk Data can be found in the Water Environment section of this letter.

404. In the minded to letter dated 27 February 2025, the Secretary of State noted that in relation to the design of the Proposed Development, that Building Research Establishment Environmental Assessment Method (‘‘BREEAM’’) certification had not been pursued for sustainability and energy assessment categories for the built environment and invited the Applicant to set out what further measures could be brought forward to prioritise sustainable design and in turn reduce carbon emissions during construction and operational phases of the Proposed Development. In its response dated 24 April 2025 the Applicant confirmed that it would amend Design Principle BF4 in the Design Principles [REP9-062] to obtain an ‘Excellent’ rating for BREEAM energy in relation to new building design to include the following: *"New buildings will be designed to maximise energy and water efficiency and to meet the standards for BREEAM ‘Excellent’ rating (or equivalent at the time of concept design) except where the building typology dictates that it is not practical. The requirements will be fixed to the most recent version of BREEAM available at concept design stage."*

405. The Secretary of State notes that the Applicant will make this minor amendment to the final version of the Design Principles before it submits that document for certification in accordance with article 50 of the Order. She is satisfied that with this amendment these measures will prioritise sustainable design and in turn reduce carbon emission during construction and operational phases of the Proposed Development. This is in line with the requirements in paragraph 4.32 of the ANPS which states that sustainable design is an important and relevant consideration in decision making, and paragraph 159(b) of the NPPF (2023) which provides that new development should be planned in ways that reduce GHG emissions. Like the ExA, the Secretary of State is content that the Proposed Development satisfies the provisions of the ANPS and the NNNPS in relation to good design [ER 18.4.36].

Conclusion on Good Design

406. The ExA concluded that, taking into consideration the matters set out at ER 18.4.34, the inclusion of the North Terminal Long Stay Car Park to requirement 4(8) of the recommended Order, further requirements in the recommended Order for noise and surface access and the Applicant’s proposed controls for flooding, sustainability and surface access, the Proposed Development would meet the provisions of the ANPS and the NNNPSN in relation to wider matters of good design [ER 18.4.35].

407. The ExA considered that the Proposed Development would be as sustainable, and as aesthetically sensitive, durable, adaptable and resilient as it could reasonably be, having regard to regulatory and other constraints and including accounting for natural hazards [ER 18.4.36].

408. The Secretary of State agrees with the ExA’s conclusions on good design and is satisfied that her revisions to the requirements for noise and surface access do not alter these conclusions. In reaching her decision, the Secretary of State, like the ExA, has considered the ultimate purpose of the infrastructure and the operational, safety and security standards which the design has to satisfy [ER 18.4.36], together with the Applicant’s commitment to achieving BREEAM ‘Excellent’ in relation to energy in building design.

409. The ExA set out that it considered that the Proposed Development presented an opportunity to deliver a substantially improved urban environment at the airport and its

surrounds [ER 18.4.37] and stated that should the Secretary of State decide to grant consent, it would strongly urge the Applicant to adopt the approach of the former Beehive terminal to put passenger comfort as a priority [ER 18.4.37]. The Secretary of State endorses this position.

410. Like the ExA, the Secretary of State is content that matters of good design should attract a little positive weight towards the making of the Order, which is subject to the North Terminal Long Stay Car Park being included in requirement 4(8) [ER 18.4.39].

Habitats Regulations Assessment

411. This section should be read alongside the Secretary of State's Habitats Regulations Assessment for an Application under the 2008 Act – Gatwick Airport Northern Runway Project (21 September 2025).

412. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ("the Habitats Regulations"), the Secretary of State as the competent authority is required to consider whether the Proposed Development (which is a project for the purpose of the Habitats Regulations) would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site. The purpose of the likely significant effects ("LSE") test is to identify the need for an 'appropriate assessment' ("AA") and the activities, sites or plans and projects to be included for further consideration in any AA.

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

414. The Secretary of State has considered the application in line with her duty under the Habitats Regulations. The Secretary of State agrees with the ExA that the Proposed Development is not directly connected with, or necessary for the conservation management of a European site [ER 19.1.10].

415. She has considered the potential impact of the Proposed Development on seven European protected sites which have been scoped into the Habitats Regulations assessment using methodology set out at section 1 of the Applicant's HRA Report [REP3-043].

416. The sites are Mole Gap to Reigate Escarpment Special Area of Conservation (''SAoC''), the Ashdown Forest SAoC and Special Protection Area (''SPA''), the Mens SAoC, the Ebernoe Common SAoC, the Thames Basin Heaths SPA and the Thursley, Ash, Pirbright and Chobham SAoC [ER 19.2.2]. The Secretary of State notes the qualifying features and pathways for effects on these sites as set out in Tables A1.1 to A1.7 in Annex 1 of the Report on Implications of European Sites [PD-026] [ER19.2.3]. No interested parties, including Natural England, identified any other European sites or additional qualifying features for inclusion in the screening assessment [ER 19.2.5].

417. The Secretary of State has taken note of the conclusions of the ExA and the Applicant that likely significant effects alone or in combination with other plans or projects may be excluded beyond reasonable scientific doubt on the qualifying features of the Mens SAoC, Ebernoe Common SAoC and Mole Gap to Reigate Escarpment SAoC. The Secretary of State notes that this conclusion was agreed by Natural England [RR-3223] [ER 19.2.11 and 19.2.12].

418. Based on the Applicant's information the Secretary of State agrees with the ExA and the Applicant that likely significant effects cannot be excluded from; Thames Basin Heaths SPA, Thursley, Ash, Pirbright and Chobham SAoC, Ashdown Forest SPA and Ashdown Forest SAoC as a result of air quality impacts from the Development [ER 19.5.3].

419. The Secretary of State therefore considered that an AA should be undertaken to discharge her obligations under the Habitats Regulations.

420. The European sites and qualifying features for which LSE were identified were further assessed by the Applicant to determine if they could be subject to adverse effects on integrity ("AEoI") from the Development, either alone or in combination. The outcomes of the Applicant's assessment of effects on integrity are summarised in Table 5.3.1 of the Applicant's HRA Report [REP3-043]. The Applicant concluded that the Proposed Development would not adversely affect the integrity of any of the European sites and features assessed, either alone or in combination with other projects or plans. No mitigation measures were relied on to reach the conclusions of no AEoI [ER 19.4.13]. The Secretary of State has noted that Natural England and the ExA agree with the Applicant's conclusion of no AEoI in respect of the above European sites [RR-3223 and ER 19.4.15].

The Secretary of State's Conclusions on the Habitats Regulations Assessment

421. The Secretary of State is satisfied that the Development would not result in any implications for the achievement of the conservation objectives for all of the European sites identified from the Development alone and in combination with other plans or projects.

422. The Secretary of State, as the competent authority for the purposes of the Habitats Regulations has therefore concluded that it is permissible for her to grant development consent for the Development.

Planning Balance

423. The ExA's consideration of the planning balance and its recommended weightings, in respect of both the Applicant's draft Order and the ExA's recommended Order, was set out at paragraphs 228 - 229 of the minded to letter.

424. The Secretary of State's final view on the planning balance and her final weightings on the matters examined is set out in the following paragraphs.

425. The Secretary of State has carefully considered the matters listed immediately below and she agrees with the ExA's conclusions and the recommended weighting for each listed matter. Therefore, in the planning balance, the Secretary of State has applied the same weight to these matters as the ExA, following the findings and reasoning set out in the relevant sections of the Report. Should any additional reasoning have been set out by the Secretary of State within this letter, it will be referenced as [paragraph XX].

- The principle of the Proposed Development and the Need case - moderate positive weight on the basis of the clear need for additional airport capacity set out in the ANPS, and that the need that the Proposed Development would partially satisfy would be additional to, or different from that which would be met by any Heathrow scheme [ER 20.2.5];
- Air Quality - neutral weight [ER 20.2.13];
- Greenhouse Gas Emissions - moderate negative weight [ER 8.5.14]
- Climate Change - neutral weight [ER 20.2.23];
- Water Environment - neutral weight [ER 20.2.32] and [paragraph 267];
- Historic Environment - moderate negative weight due to the number of heritage assets that will experience harm as a result of the Proposed Development [ER 20.2.42];
- Ecology - slight negative weight on the basis of the long-term timeframe for the mitigation measures to produce a beneficial effect [ER 20.2.47];
- Land Use and Recreation - neutral weight [ER 20.2.53];
- Other Matters (including consideration of alternatives, geology and ground conditions, major accidents and disasters, resource and waste management, and cumulative effects) - neutral weight [ER 20.2.54 – 20.2.61]; and
- Design - slight positive weight as the Proposed Development satisfies the provisions of the ANPS in relation to good design, and the additional controls introduced in the Order in relation to design of specific elements of the Proposed Development, are more demanding than under the provisions of the Town and Country Planning (General Permitted Development) Order 2015. The Applicant's amendments to the Design Principles, particularly in relation to new buildings meeting the standards of an 'excellent' rating for BREEAM are also welcomed [ER 20.2.63 - 20.2.65] and [paragraph 410].

426. In addition, the Secretary of State has reached a different conclusion on the following matters, for the reasons given within the relevant sections of this letter:

- Traffic and Transport - slight negative weight on the basis that increased traffic from the Proposed Development would create additional stress on already congested networks but which will be reduced due to the additional controls introduced in the Order requirements [Paragraphs 42 - 49];
- Noise and Vibration - neutral weight [Paragraphs 129 - 134];
- Landscape and Townscape - slight negative weight on the basis of adverse effects on certain locations and receptors, including nationally designated areas [Paragraphs 302 - 305]; and
- Socioeconomics – great positive weight to reflect the overall effects of these benefits arising from the Proposed Development in supporting economic growth both locally and nationally. This includes the significant positive effects from the availability of labour, direct, indirect and induced employment [ER 10.3.2 and 20.2.28 - 20.2.29], which is at the heart of inclusive economic growth and the alleviation of poverty [ER 10.2.138]. Together with the significant employment benefits, the beneficial effects provided by targeted measures such as the Employment, Skills and Business Strategy, the Homelessness Prevention Fund, and the Gatwick Community Fund, all enhance the overall significance and reach of the socioeconomic impacts;
- Health and wellbeing - neutral weight [Paragraphs 369 - 370].

The Secretary of State's Conclusions on the Planning Balance

427. Having carefully considered all matters and the additional information received, the Secretary of State is satisfied that the need for the Proposed Development has been established and that this need should be afforded moderately positive weight given the contribution it would make to increasing aviation capacity, outlined in the ANPS. The Secretary of State has weighed the expected benefits of the Proposed Development against the potential negative effects that may occur, and she is of the view that any potential negative impacts have been reduced as a result of amended requirements/controls now within the Order meaning they are substantially outweighed by the need, the social and economic benefit and the benefit of good design expected from the Proposed Development. She is also satisfied that all legislative and policy tests have been met.

Compulsory Acquisition and Related Matters

428. The Secretary of State notes that the Order contains compulsory purchase powers enabling the Applicant to acquire land and rights over land and the imposition of restrictive covenants, and to take temporary possession of land [ER 21.3.2]. The powers being sought by the Applicant are set out in the Statement of Reasons (paragraph 3.3.4 REP9-009) and Explanatory Memorandum (REP9-008) [ER 21.3.1]. In her consideration of the compulsory acquisition and temporary possession powers being sought, the Secretary of State has also had regard to the legislative requirements and national guidance set out by the ExA at ER 21.2.1 - 21.2.11, in addition to the "Planning Act 2008, Guidance related to procedures for the compulsory acquisition of land" (Department for Communities and Local Government, September 2013) ("the CA Guidance") and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ("the CA Regulations").

Persons with an interest in Land ("affected persons")

429. In considering the objections and issues raised by landowners and individuals with an interest in land the Secretary of State has had regard to the CA Guidance and the need for applicants to have made reasonable efforts to negotiate the acquisition of land by agreement before exercising compulsory acquisition powers. The ExA's conclusions in relation to representations made by affected persons are set out at ER 21.6.3 - 21.6.133.

430. Taking into account all evidence, the Secretary of State has considered and agrees with the conclusions reached by the ExA and its reasons for reaching them, in relation to the compulsory acquisition powers sought for the following affected persons:

- Britannia Hotels Limited [ER 21.6.12 - 21.6.14];
- Mr David Jonathan Smith [ER 21.6.17 - 21.6.19];
- DBM Contractors Limited [ER 21.6.23 - 21.6.25];
- Horley Estates Limited [ER 21.6.29 - 21.6.30]; and
- Walnut Gardens Limited [ER 21.6.35 - 21.6.37].

431. In relation to Airport Industrial Property Trust ("AIPUT"), the Secretary of State notes that AIPUT had agreed to confirm in writing the withdrawal of its objection should an option agreement be completed [ER 21.6.45]. The Secretary of State has not received any such correspondence from AIPUT and therefore considers their objection extant.

The Secretary of State has considered the criticism provided by AIPUT as to the efficacy and timeliness of the Applicant's willingness to engage over land matters and acknowledges the disappointment expressed by the ExA that negotiations were unable to progress to a conclusion [21.6.47]. She agrees with the ExA's conclusions that the Applicant's approach in relation to the compulsory acquisition powers sought in respect of this land and rights is acceptable and in the absence of agreement the compulsory acquisition of the relevant interests in the land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so [ER 21.6.49].

432. In relation to Marathon Asset Management MCAP Global Finance (UK) LLP ("MAM"), the Secretary of State notes the specific concerns raised in respect of land take [ER 21.6.52] and has considered their concerns over the status and speed of discussions [ER 21.6.59]. However, MAM's letter of the 16 December 2024 confirmed an agreement with the Applicant was complete and therefore MAM's objections to the Application were withdrawn.

433. In relation to Gatwick Green Limited ("GGL"), an agreement in principle had been reached but this agreement was subject to National Highways' approval [ER 21.6.65] but no finalised voluntary agreement was confirmed during Examination [ER 21.6.67]. The Secretary of State has not received any such correspondence from GGL and therefore considers their objection extant. She has considered and agrees with the ExA that the Applicant's approach in relation to the CA powers sought in respect of this land and rights is acceptable and in the absence of agreement the compulsory acquisition of the relevant interests in the land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so [ER 21.6.69].

434. In relation to the Arora Group ("AG"), an extant objection remains in relation to land outside the Sofitel Hotel (plot 1/209), whereby AG raised concerns over the potential effect on the use of this parcel of land and the wider implications for the hotel with concern being raised in respect of the possibility for significant noise disturbance from any works [ER 21.6.72]. The Secretary of State has considered the criticism provided by AG as to the efficacy and timeliness of the Applicant's willingness to engage over land matters and notes the disappointment expressed by the ExA that negotiations were unable to progress to a conclusion [ER 21.6.76]. However, the Secretary of State has considered and agrees with the ExA that the Applicant's approach in relation to the compulsory acquisition powers sought in respect of this land is acceptable and in the absence of agreement the compulsory acquisition of the relevant interests in the land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so [ER 21.6.81].

435. In relation to Cheshire West and Chester Borough Council ("CWCBC"), voluntary negotiation was not concluded during Examination [ER 21.6.87]. The Secretary of State has not received any such correspondence from CWCBC and therefore considers their objection extant. She has considered and agrees with the ExA that the Applicant's approach in relation to the CA powers sought in respect of this land and rights is acceptable and in the absence of agreement the compulsory acquisition of the relevant interests in the land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so [ER 21.6.88].

436. In relation to Malhurst South East Limited ("MSEL"), the Secretary of State has considered and agrees with the ExA that the CoCP would secure adequate mitigation

in respect of measures to protect access to the existing commercial enterprise [ER 21.6.94] addressing concerns of viability in relation to the Esso petrol filling station [ER 21.6.91]. Whilst it is noted that agreement was not reached through negotiation during the Examination, the Secretary of State agrees with the ExA that the Applicant's approach in relation to the compulsory acquisition powers sought in respect of this land is acceptable and in the absence of agreement the compulsory acquisition of the relevant interests in the land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so [ER 21.6.95].

437. In relation to RBBC, the Secretary of State notes the raised concerns of RBBC in their capacity as landowner [ER 21.6.98], and that negotiations on land acquisition appear to have taken place in the latter stages of the Examination [ER 21.6.101]. The Secretary of State agrees with the ExA that the Applicant's approach in relation to the compulsory acquisition powers sought in respect of this land is acceptable and in the absence of agreement the compulsory acquisition of the relevant interests in the land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so [ER 21.6.103].

438. In relation to SCC, the Secretary of State notes that two of the three areas under negotiation (Gatwick Dairy Farm and land owned by SCC as the local highway authority) have had either Heads of Terms agreed in principle or have had concerns resolved [ER 21.6.107]. In relation to Bayhorne Farm, the Secretary of State acknowledges the argument put forward by SCC [ER 21.6.109 – 21.6.121]. However, she is in agreement with the ExA that given the lack of technical information available, it would not be appropriate or feasible for the Applicant to design and develop a permanent fourth spur to the South Terminal Roundabout to enable the Horley Strategic Business Park [ER 21.6.123]. The Secretary of State further agrees that given the technical constraints, the proposed location of the attenuation pond is the most appropriate [ER 21.6.124]. The Secretary of State further agrees that given the existing controls within the recommended DCO the interests of SCC are adequately protected and that no bespoke protective provisions are required [ER 21.6.125]. She also agrees that the Applicant's approach in relation to the compulsory acquisition powers sought in respect of this land is acceptable [ER 21.6.126].

439. In relation to WSCC and SCC as local highway authorities, the Secretary of State agrees with the ExA that article 21 of the recommended DCO provides adequate protection for the concerns expressed and a bespoke approach is unnecessary [ER 21.6.132]. She also agrees that the Applicant's approach in relation to the compulsory acquisition powers sought in respect of this land is acceptable in that it is a reasonable balance between public benefit and the competing factors and interests of the Affected Parties [ER 21.6.133].

Statutory undertakers

440. Section 127 of the 2008 Act applies to land if the land has been acquired by an SU for the purpose of their undertaking, a representation has been made before completion of the Examination and the representation has not been withdrawn and as a result of the representation the Secretary of State is satisfied that the land is used for the purposes of carrying on the SU undertaking or an interest in the land is held for those purposes. Section 138 of the 2008 Act also provides for the extinguishment of a right or the removal of a SU's apparatus if the Secretary of State is satisfied that it is necessary for the carrying out of the Proposed Development.

441. The Secretary of State notes that agreement has either been reached or no objection has been received from those statutory undertakers listed at ER 21.7.3 – 21.7.5. There are three parties whose objections remain and are relevant to sections 127 and 138 of the 2008 Act. These are National Highways, Esso Petroleum Company Limited, and Thames Water Utilities Limited.

442. In relation to National Highways, the Secretary of State has considered and agrees with the ExA [ER 21.7.15] that the inclusion of a bond and uncapped indemnity in the Order, suggested by National Highways in respect of paragraph 18 of Schedule 9, Part 3 [ER 21.7.14], is necessary to avoid serious detriment to the carrying on of the undertaking under section 127 of the 2008 Act. On this basis, the Secretary of State is satisfied that the Order may include the provision authorising the compulsory acquisition of National Highways land.

443. In relation to Esso Petroleum Company Limited ("EPCL"), the ExA was satisfied that the powers sought were consistent with section 127 of the 2008 Act in that the protective provisions contained in Schedule 9, Part 7 of the Order ensure that the land can be purchased and not replaced without serious detriment to the carrying out of EPCL's undertaking [ER 21.7.19]. However, the Secretary of State also notes that the ExA state that EPCL had not objected to any powers in the Order [ER 21.7.16]. The Secretary of State therefore considers that the consideration of serious detriment contained in section 127(3) 2008 Act does not apply as section 127(1) has not been satisfied. Regardless, the Secretary of State is mindful of the ExA's conclusion and agrees that in any event the protective provisions ensure no serious detriment to the carrying out of EPCL's undertaking, under section 127 of the 2008 Act. In relation to section 138, the Secretary of State agrees with the ExA that the powers sought by the Applicant are necessary for the Proposed Development and consistent with section 138 of the 2008 Act [ER 21.7.19].

444. In relation to Thames Water Utilities Limited ("TWUL"), the Secretary of State has considered and agrees with the ExA's conclusion that the inclusion of a bond and a capped indemnity of £20 million would be applicable to each potential event to avoid serious detriment to the carrying on of the undertaking under section 127 of the 2008 Act [ER 21.7.28].

445. Overall, the Secretary of State is satisfied that the protective provisions contained in Schedule 9 of the Order would ensure that an appropriate degree of protection would be given to all affected SUs such that there would be no serious detriment to the carrying out of their undertakings. She further agrees that interference with apparatus and extinguishment of rights would be necessary and proportionate for the purposes of carrying out the Proposed Development [ER 21.7.31].

Crown Land

446. Section 135 of the 2008 Act ensures that the Order may include provision authorising the compulsory acquisition of an interest in Crown land, only if it is an interest which is for the time being held otherwise than by or on behalf of the Crown and the appropriate Crown authority consents to the acquisition. Secondly, section 135(2) ensures that the Order may include any other provision applying in relation to Crown land, or rights benefitting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision [ER 21.8.2].

447. The Secretary of State notes that crown consent under section 135(1) and (2) of the 2008 Act in relation to the Proposed Development has been granted by the Office for National Statistics and the Secretary of State for Transport [ER 21.8.7].

448. In relation to crown consents required of the Ministry of Housing, Communities and Local Government ("MHCLG"), HM Revenue and Customs ("HMRC"), and UK Visas and Immigration (''UKVI''), the Applicant confirmed in its consultation response of 17 January 2025 that the interests held by MHCLG and HMRC have variously been assumed by the Home Office and/or are no longer held (in respect of occupation of premises at the airport). The Applicant, therefore, confirmed that MHCLG and HMRC no longer held any relevant interests and / or rights within the Order limits for the purposes of the relevant provisions of the 2008 Act. The Applicant also explained that the interest of the Home Office as 'UKVI, Home Office' has for similar reasons been replaced with 'Home Office'. The Applicant, in its representation of 29 January 2025, confirmed that a co-operation agreement had been reached with the Home Office, and that consent under section 135 of the 2008 Act had been provided.

449. The Secretary of State is satisfied that the Order may authorise the compulsory acquisition or temporary possession of those plots of land and / or interests which are Crown land contained in Part 4 of the Book of Reference.

Special Category Land

450. Sections 131 and 132 of the 2008 Act operate so that an Order which authorises the CA of common land or open space, or rights over such land, would be subject to Special Parliamentary Procedure unless an exception applies [ER 21.3.13]. The Applicant is seeking compulsory acquisition powers over special category land, and the Note on the Acquisition of Special Category Land and Provision of Replacement Open Space ("the Note") set out that 1.16ha of designated open space is proposed to be permanently acquired. The Note set out the proposed provision of 1.95ha for replacement land [paragraph 2.1.4, REP9-104 and ER 21.3.14].

451. The JLA confirmed that none wished to be vested in the replacement land [21.9.4]. Paragraphs 2.2.3 – 2.2.4 of the Note set out that the replacement open space would not qualify as 'replacement land' under section 131(4) of the 2008 Act as it is not to be vested in the entities (the JLA) from which the Applicant would be acquiring the special category land [ER 21.9.5] and also, that some open space would require National Highways to own and manage open space which the Applicant considers to be inappropriate. Section 131(5)(a) is therefore relied on by the Applicant for the acquisition of the Special Category Land as it will all be required for the highway improvement works [ER 21.9.2 and paragraphs 2.2.5 – 2.2.6, REP9-104]. The Secretary of State has considered and agrees with the ExA that section 131(5)(a) applies in relation to the Proposed Development, due to the plots of special category land being required for the highway improvement works, namely widening or drainage, and this therefore removes the need for Special Parliamentary Procedure in relation to the compulsory acquisition of land [ER 21.9.12 – 21.9.15].

452. In relation to the test of necessity contained in section 131(5)(b), the Secretary of State agrees with the Applicant that, in relation to the designated open space currently in highway authority ownership, those landowners will not suffer a net loss in land under their control [ER 21.9.3]. In relation to the remaining designated open space land, the JLA have expressed that they do not wish to be vested in the said land. Furthermore, they will be satisfied if the land is to vest in or remain vested in the

Applicant provided that the Applicant has laid out and maintained suitable replacement open space for the benefit of the public and provided a commitment as regards maintenance of this open space [ER 21.9.4]. In respect of the approach in securing the provision of replacement land this commitment is contained in article 38 the rDCO. The ExA were satisfied that given the drafting of article 38 it would mean that the Applicant could not acquire any special category land until it had the means to provide all identified replacement open space and had submitted and obtained approval of a plan setting out the timetable for doing so to CBC, in consultation with RBBC and Mole Valley District Council [ER 21.9.11].

453. The Secretary of State considers that in relation to the additional rights proposed to be acquired over the western and southern edges of Church Meadows for the future maintenance of the pedestrian bridge, the exception provided for in section 132(3) applies. This is on the basis that the order land, when burdened with the right, will be no less advantageous than it was before to the persons whom it is vested, other persons entitled to rights and the public [REP9-104, paragraph 2.2.10]. These rights would solely facilitate access for periodic inspections and, where necessary, remedial maintenance work to the pedestrian bridge. The infrequency of the exercise of these rights, coupled with the limited disturbance to Church Meadows during times of their exercise, render the parcel of land in question no less advantageous to those holding an interest in the land and the public [REP9-104, paragraph 2.2.11].

454. In relation to the rights proposed to be acquired over the western and southern edges of Church Meadows, land south of the A23 Brighton Road and along the southern edge of Riverside Garden Park, the Applicant considered that section 132(4B) applies. This section provides an exception to the Special Parliamentary Procedure where open space is 'being acquired for a temporary (albeit possibly long-lived) purpose'. These rights are required over these areas to facilitate construction activity on neighbouring plots of land. The rights acquired will allow temporary use of these areas in connection with these activities, while the highway improvement works and works to construct the pedestrian bridge over the River Mole to the west of Church Meadows take place. Once construction has concluded, these rights will no longer be necessary [REP9-104, paragraphs 2.2.8 and 2.2.9]. The Secretary of State is satisfied that the exceptions provided for in sections 132(3) and 132(4B) apply for the reasons outlined by the Applicant. She notes that the ExA were satisfied that as far as appropriate the tests of section 132 in relation to special category land are satisfied [ER 21.9.15].

Whether all Reasonable Alternatives to Compulsory Acquisition Have Been Explored

455. Paragraph 8 of the CA Guidance requires that the Applicant should be able to demonstrate that all reasonable alternatives to compulsory acquisition have been explored. The Secretary of State notes that the Applicant's Statement of Reasons sets out the stages of the Proposed Development process, which demonstrates the options, identification and selection process undertaken by the Applicant and that sections 6.2.13 to 6.2.20 of the Applicant's Statement of Reasons [REP9-009] provides a summary of the alternatives considered by the Applicant during the optioneering and design process [ER 21.10.4]. The Secretary of State has considered and agrees with the conclusions of the ExA that they were satisfied that the Applicant has adequately considered alternatives to the Proposed Development and that there are no matters relating to the consideration of alternatives which would weigh for or against the Order being made [ER 21.10.5].

456. On the question of alternatives which arose in the specific context of land rights, sections 6.2.13 to 6.2.20 of the Statement of Reasons detail the alternative options considered by the Applicant and sections 6.2.21 to 6.2.23 detail alternatives to compulsory acquisition [ER 21.10.6]. The ExA acknowledged that there are few alternatives available to the Applicant and that they were satisfied that the Applicant has explored all reasonable alternatives to compulsory acquisition. The Secretary of State notes that as such the ExA concluded that there are no reasonable alternatives to the compulsory acquisition powers sought [ER 21.10.11]. The Secretary of State agrees with that conclusion.

Diligent inquiry and clarity on use of the land

457. An Applicant must undertake diligent inquiry to identify the categories of persons set out in sections 44 and 57 of the 2008 Act [ER 21.10.12]. The Secretary of State has considered and agrees with the ExA's conclusions that the Applicant has undertaken (and continues to undertake) land enquiries in a diligent fashion, and that the requirements under sections 44 and 57 regarding categories of APs have been satisfactorily applied [ER 21.10.15].

Extent of Land and Rights for Compulsory Acquisition and Temporary Possession

458. The ExA is satisfied that the Applicant has demonstrated how it intends to use the land rights which it proposes to acquire and the land for which it seeks CA and TP. The Secretary of State is likewise satisfied and agrees with the ExA that the Applicant's Statement of Reasons, Book of Reference and the 'Compulsory Acquisition and Temporary Possession – Status of Negotiations' are comprehensive, confirming the purposes for which any land which would be compulsorily acquired or temporarily possessed [ER 21.10.22].

The Availability and Adequacy of Funding

459. Paragraph 9 of the CA Guidance states that applicants should be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition being made available. An application should also be accompanied by a statement explaining how it will be funded providing an indication of how any potential shortfalls are intended to be met [Paragraph 17 of CA Guidance]. Furthermore, the applicant should demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the Order being made and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of [Paragraph 18 of CA Guidance].

460. The ExA noted that the Applicant's Funding Statement indicates that the cost of implementing the Proposed Development would be approximately £2.2 billion [ER 21.10.24] with the property cost estimate being approximately £121 million [ER 21.10.25]. The Secretary of State notes that the Applicant proposes to fund the Proposed Development through a blend of debt, equity and airport charges and that blight has been considered within the Funding Statement [ER 21.10.26]. The Secretary of State has considered and agrees with the conclusions of the ExA that the information provided in the Funding Statement, and the further submissions of the Applicant [ER 21.10.23 – 21.10.29], demonstrate that the Applicant has a reasonable prospect of the requisite funds for acquisition becoming available [ER 21.10.30] The Secretary of State notes that a period of 7 years for compulsory acquisition is proposed and recommended.

461. The Secretary of State considers that the Applicant has demonstrated that adequate funding is likely to be available to enable compulsory acquisition within this period.

The Need to Obtain Operational and Other Consents

462. The CA Guidance provides that any potential risks or impediments to implementation of the Proposed Development should be properly managed [Paragraph 19, CA Guidance]. The Secretary of State has considered and agrees with the ExA that the Applicant has demonstrated that there is no impediment to obtaining any operational or other consents which may be necessary to construct and operate the Proposed Development [ER 21.10.31]. The Secretary of State considers therefore that CA guidance, specifically paragraph 19 has been observed.

The Secretary of State's Conclusions on Compulsory Acquisition and Related Matters

463. The Application includes a request for compulsory acquisition of the land to be authorised, and the Secretary of State agrees with the ExA that:

- the land is required for, or incidental to, the Proposed Development and the requirements of section 122(2)(a) and (b) are therefore met [ER 21.10.40 and 21.11.1];
- there are no suitable alternative sites to the land proposed for the Proposed Development [ER 21.11.3];
- the Applicant had explored all reasonable alternatives to compulsory acquisition [ER 21.11.3];
- the Applicant has demonstrated a clear idea of how it intends to use the land rights it proposes to acquire [ER 21.11.3];
- the Applicant has shown that there would be a reasonable prospect of the requisite funds both for acquiring the land and implementing the Proposed Development would be available within the statutory timescale [ER 21.11.3]; and
- the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by the affected landowners and thus there is a compelling case in the public interest for the land to be acquired compulsorily given the need for the Proposed Development [ER 21.11.4].

464. The Secretary of State has considered and agrees with the conclusion of the ExA that following consideration of the need and benefit of the Proposed Development [ER 21.10.42], and that there is a compelling case in the public interest for compulsory acquisition [ER 21.10.47] and that the Applicant has sought to minimise and mitigate private loss wherever possible [ER 21.11.2]. The Secretary of State agrees with the ExA that the private loss of land would be relatively modest given that most of the Proposed Development would be on existing airport land or on the Strategic Road Network and therefore the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected, to enable the construction, operation and maintenance of the Proposed Development [ER 21.10.45]. Any interference with human rights is therefore for legitimate purposes, is proportionate and justified in the public interest [ER 21.11.8].

465. The Secretary of State notes the ExA's consideration of the Human Rights Act 1998 and agrees that the Order engages a number of articles which are considered at ER 21.10.48 – 21.10.60. The Secretary of State agrees that these rights are qualified and can be interfered with in certain circumstances [ER 21.10.54], and that the powers sought would be no more than is required to secure the interests of the wider community and would not place an excessive burden on those whose human rights could be affected, particularly due to the fair compensation available within the Order. Therefore, the Secretary of State considers that there has been no violation of Article 1 of the First Protocol or Article 8 [ER 21.10.57]. Overall, the Secretary of State is satisfied that the benefit of the Proposed Development would clearly outweigh any interference with the human rights of those affected and that such interference would be for legitimate purposes, proportionate and justified in the public interest [ER 21.10.60 and 21.11.8].

466. The ExA was satisfied, and the Secretary of State agrees, that the Application and its Examination procedurally accord with the 2008 Act and related guidance, all objections submitted to the Examination have been considered and that there is therefore nothing to suggest that parties have not had a reasonable chance to put forward their case or have been put at a substantial disadvantage in relation to other parties [ER 21.10.58]. The Secretary of State also agrees, for the reasons stated in ER 21.10.58, that there has been no violation of Article 6.

467. In relation to sections 127 and 138 of the 2008 Act in respect of objections that were made and not withdrawn the ExA has recommended wording, which has been before the parties during the Examination for the Secretary of State to include in the Schedule 9 Protective Provisions [21.11.6]. The Secretary of State is therefore satisfied that the overarching aims of the Human Rights Act 1998 and relevant CA guidance has been met [ER 21.10.59].

468. Overall, the Secretary of State is satisfied that the requirements of sections 120, 122, 123, 126, 127, 135 and 138 of the 2008 Act are met as well as the relevant parts of the CA Guidance and the CA Regulations as considered at ER 21.10.67 - 21.10.68, 21.12 and by way of the Applicant's letter of 29 January 2025. The Secretary of State agrees with the conclusions of the ExA and so has determined that the recommendations contained in ER 21.11.9 be adopted.

DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

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

Preamble

The subject heading is 'infrastructure planning' and not 'national infrastructure planning' as originally drafted. All titles to statutory instruments must start with the word 'The'. In the final paragraph of the preamble the Secretary of State has noted that the vires for this instrument was incomplete and has made the necessary insertions to allow the instrument to operate fully and lawfully.

Article 2 (interpretation):

The main changes to article 2 are:

- References to the 1972 Act (because the term is not used), the 1982 Act (inserted into Schedule 2) and the 2017 Regulations (no longer needed) have been removed.
- The definition of 'development' has been removed as it was not immediately clear what value it would have and is not usually regarded as needing to be defined.
- The definition of 'highway works' is also considered to be unnecessary and has been removed.
- The definition of 'tribunal' has been moved to what is now article 44 (disregard of certain improvements, etc.).

Article 8 (consent to transfer of benefit of Order)

the EM provides that article 8(4) is justified because the SoS will be able to consider such transfers through the examination. It refers to transfer to highway works being well precedented and likewise the transfer identified works. However, there is a lack of clarity on the face of the order regarding the identify of persons and/or the works to be undertaken. On this basis paragraph (4) has been removed.

Article 18 (traffic regulations)

In paragraph (4)(b) the usual time limits have been inserted as there is no explanation for the differing time limit that was originally inserted.

In Article 29 (compulsory acquisition of land – incorporation of the mineral code):

Paragraph (3) dealing with section 10(2) of the 1965 has been removed as it would appear to have no operative effect.

Article 30 (statutory authority to override easements and other rights)

The Secretary of State is unclear on the rationale for including this provision. The EM provides very limited consideration to explain the need for this provision and takes the view that insufficient justification has been provided for it. The Secretary of State has on this basis removed the provision.

Article 33 (application of the 1981 Act)

This article was previously numbered 34. This provision has been amended to remove the reference to the modification of the 2017 Regulations. The Secretary of State notes that paragraphs 7.33 and 7.34 of the EM that the intention of the modification is to facilitate the compulsory acquisition of land and rights for the benefit of third parties or statutory undertaker. The difficulty for the Secretary of State is that while paragraph 7.34 sets out that the significant component of surface access works are to be carried out by relevant highway authorities or NH. The reference to article 26 of the Manston Order contains no amendments to the vesting declaration regulations and in relation to the Luton order the amendments to these regulations were removed as there was insufficient clarity on the way the provisions would be used. While there is greater explanation provided in the EM the Secretary of State is concerned that there should be greater clarity and transparency on the face of the Order so all parties that might be affected are provided with sufficient information of the Applicant's intentions. **Article 36 (temporarily use of land for carrying out the authorised development)** This article was previously numbered 37. In paragraph (2) there was reference to a notice

period of 14 days before the undertaker enters onto land. The more usual provision is 28 days. No justification is provided in paragraph 7.44 of the EM to explain the need for a shortened period. Since the rights of landowners being interfered with it is important to provide sufficient notice of that interference and so the Secretary of State takes the view that 28 days is appropriate. **Article 45 (use of airspace within the Order land)**

The Secretary of State has noted the limited justification in the EM for the inclusion of this provision. She is therefore unclear on the need for this provision; how it would be used; and the category of landowner that might be affected. She takes the view that there is a licensing mechanism available to the Applicant and this can be used at the point there is a need to use airspace.

Article 54

This is a new article dealing with the financial contribution to be made for the benefit of protected landscapes.

Article 55

This article is no longer required since the text within Schedule 11 has been either incorporated into Schedule 2 or removed.

Schedule 1 (authorised development)

Article 2(3) (interpretation) makes provision for distances and measurements (with the exception of capacity) to be approximate. It therefore means that in citing distances in the scheduled works there is no need to refer to those distances being approximate.

Schedule 2 (requirements)

Requirement 1(1) (interpretation)

The term ‘airport passengers’ has been added (December response from Applicant) because it ties in with requirements 20 and 37.

The new requirement 1(4) suggested by the Applicant in paragraph 4(2) of Annex 1 to its response of 25 April 2025 has not been incorporated due to insufficient clarity and apparent contradiction to what has been set out in the explanatory memorandum.

Requirement 2 (phasing scheme)

The amendments dealing with the concerns raised by National Highways have been incorporated.

Requirement 6 (national highway works)

Sub-paragraph (2) and (3) reflect consequential changes arising from the need to renumber the Parts within the protective provisions Schedule.

Requirement 15 (air noise limits)

The Applicant’s suggested wording from Annex 1 of its 25 April response but with the addition of sub-paragraphs (7) and (8) to cover the monitoring arrangements the Secretary of State considers appropriate. Sub-paragraph (4)(c) provides for the notification of the decision on its request for an extraordinary review. The Secretary of State requires the Applicant that notification on a website that it maintains or some other publicly accessible website. The detail of this requirement has been considered fully within the body of the decision letter.

Requirement 18 (receptor-based noise mitigation)

This is based on the Applicant's proposed wording from Annex 2 to its 25 April response but incorporates JLA suggestions from their June response and considered fully within the body of the decision letter.

Requirement 19 (airport operations)

The definition of 'passenger throughput' has been incorporated.

Requirement 20 (surface access)

The Applicant's suggested drafting from Appendix 2 to Annex 3 to the response date 25 April 2025 has been incorporated with the criterion concerning the completion of highway works being reworked and considered fully within the body of the decision letter.

Requirement 23 (flood compensation delivery plan)

New sub-paragraph (2) has been added to reflect the need for the Applicant to consider the Environment Agency's Flood and Coastal Erosion Risk Data.

Requirement 31 (construction sequencing)

Incorporates wording agreed between the Applicant and Thames Water.

Requirement 37 (car parking spaces)

Incorporates the Applicant's drafting from its December response.

Requirement 39 (tree balance statement)

Incorporates the Applicant's further drafting suggestions from its December response and drafting suggestions from the CBC/JLA January response regarding the updated Policy DD4 and the Local Plan 2023-2024.

Schedule 3

Removal of the reference to 'approximately' as article 2(3) already makes provision that distances are approximate.

Schedule 4

Removal of the reference to 'approximately' as article 2(3) already makes provision that distances are approximate.

The Applicant may wish to check the following entries. The first entry regarding the segregated cycle track between the points marked c20 on Sheet 1 which is marked with a blue solid hatch and whether it should be a reference to pink. The second entry regarding the share use cycle track between the points marked c21 on Sheet 1 which is marked with a pink solid hatch and whether this should be a reference to blue. The third entry regarding the footway between the points marked c34 on Sheet 1 marked with a green solid hatch and whether this should be a reference to blue.

Schedule 5

Removal of the reference to 'approximately' as article 2(3) already makes provision that distances are approximate.

Schedule 6

Removal of the reference to 'approximately' as article 2(3) already makes provision that distances are approximate.

There are entries in Part 3 of this Schedule where no details of the order being varied or revoked have been included in column (3) of that Table. There is no explanation provided in paragraph 9.84 of the EM for the insufficient detail of these orders. The insufficient details means there is no clarity or transparency in what orders are being amended or revoked and so the entries where this has occurred have been removed.

Schedule 8

Reference to the 2017 Regulations have been removed.

Schedule 9

Each Part of the Protective Provisions is required to continue with the numbering of paragraphs rather than starting the numbered paragraphs afresh.

Schedule 11

The first part of this Schedule (dealing with the procedure and discharge of requirements has been moved to the end of Schedule 2 in what is now Part 2 to that Schedule.

The remaining part of this Schedule dealing with the appeal process has been removed in its entirety. The Secretary of State is not sufficiently well placed to deal with such matters and takes the view that matters of disagreement are matters for the parties to resolve either by way of an agreed resolution process or the use of the arbitration provision.

This means that article 55 is no longer needed and has been removed.

Schedule 12

The table in Schedule 12 has been moved to the end of requirement 4 in Schedule 2 and this Schedule has now been removed

New Schedule 12

The documents to be certified have included where relevant the revised versions provided in consultation responses.

Explanatory note

The explanatory note has been revised to reflect the reference for new Schedule 12.

GENERAL CONSIDERATIONS

Equality Act 2010 and Public Sector Equality Duty

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

471. In the managing of the Examination and in coming to its conclusions in the Report, the Secretary of State is satisfied that the ExA has had due regard to the duties under

this legislation. The Secretary of State notes and agrees with the ExA that there is no evidence that implementation of the Proposed Development would disproportionately affect persons who have a protected characteristic, nor would there be any adverse effect on the relationship between such persons and persons who do not share a protected characteristic [ER 21.10.66].

472. The Secretary of State has also had regard to the Public Sector Equality Duty in making her determination.

Natural Environment and Rural Communities Act 2006

473. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 has to consider what action she can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective and, in accordance with regulation 7 of the Decisions Regulations, have regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992. She has had regard to both of these when deciding on whether to grant development consent.

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

THE SECRETARY OF STATE'S OVERALL CONCLUSION AND DECISION

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

Challenge to Decision

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

Publicity for the Decision

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

Yours faithfully,

Kayla Marks

ANNEX A

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

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

The Gatwick Airport Northern Runway Development Consent Order 2025 (as made) is being published on the Planning Inspectorate website at the following address:

https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR020005

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

APPENDIX 6

Neutral Citation Number [2021] EWHC 2697 (Admin)

Case No: CO/1160/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/10/2021

Before :

THE HONOURABLE MR JUSTICE DOVE

- -

Between :

EFW Group Limited	**Claimant**
- and -	
Secretary of State for Business, Energy and Industrial Strategy	**Defendant**

- -
- -

Michael Humphries QC and **Mark Westmoreland Smith** (instructed by **Keystone Law**) for the **Claimant**
Ned Westaway (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 13th and 14th July 2021

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE DOVE

Mr Justice Dove :

1. This is an application for judicial review pursuant to section 118 of the Planning Act 2008 ("the 2008 Act") seeking to quash the defendant's decision dated 19th February 2021. The application before the defendant included two separate and discrete proposals. The first proposal was for the Wheelebrator Kemsley North ("WKN") and the second was for the Wheelebrator Kemsley K3 ("K3"), both of which were proposals for energy from waste described in greater detail below. Whilst the name of the claimant company changed between the determination of the application and the commencement of these proceedings nothing turns on the fact that the claimant's name has altered.

The Facts

2. The claimant is the developer and operator of a pre-existing waste-to-energy plant at Kemsley, Kent which was granted planning permission on 14th June 2019 and has been fully built out ("the Kemsley plant"). It supplies heat to an adjacent paper mill, and has permitted capacity of up to 49.9MW with a waste throughput of 550,000 tonnes per annum. It was commissioned in July 2020.

3. The claimant contemplated two further development projects. Firstly, K3, which amounted to a proposal to increase the generating capacity of the consented Kemsley plant from 49.9MW to 75MW, and increase the total waste tonnage throughput from 550,000 to 657,000 tonnes per annum. This project simply involved an increase in the permitted capacities of the facility and did not require any physical works in order to achieve them. The second proposal was WKN, which was a new waste-to-energy facility capable of processing 390,000 tonnes of waste and generating 42MW of electricity. WKN was intended to supply energy to the adjacent paper mill when the Kemsley plant was offline for maintenance and was designed to be combined heat and power ("CHP") ready in order to take advantage of any future developments. The K3 project fell within the definition of a nationally significant infrastructure project ("NSIP") as defined by section 15 of the 2008 Act (which is dealt with in greater detail below), on the basis that the final capacity for the Kemsley plant following the consenting of the K3 proposal would lead to a generating station which had a capacity in excess of 50MW. The WKN project did not satisfy that criterion and therefore did not fall within the definition of an NSIP.

4. As part of the preparation of the application for the projects, on 1st June 2018 the claimant wrote to the defendant to request that the defendant exercise the power under section 35 of the 2008 Act to direct that the WKN facility be treated as a development for which development consent is required, and thereby bring it within decision-making processes of the 2008 Act. The section 35 application explained that the WKN proposal was "an entirely stand-alone facility, and not an extension to [the Kemsley plant]". Given the close physical proximity between the K3 and the WKN proposals, on the basis that they were proposed to be developed on adjacent sites, the application emphasised the added efficiency to the decision-making process which would arise were they to be considered as part of the same application for a Development Consent Order ("DCO") for both proposals.

5. On 27th June 2018 the defendant granted the section 35 application. In doing so the defendant noted that the development did not currently fall within the definition of an

NSIP and therefore it was appropriate to consider use of the power in section 35 of the Act. The defendant was satisfied, on the basis that the WKN proposal sat on the same site as two significant applications, including the K3 proposed application, that cumulatively the developments located on the same site could "comprise a significant facility of national sustainable energy supply". The defendant directed that an application for the form of development described in the request of 1st June 2018 was to be treated as a proposed application for which a DCO was required, and that any consultation carried out prior to the date of the section 35 direction was to be treated as complying with the consultation requirements under the 2008 Act notwithstanding that it had been carried out prior to the date of the direction.

6. On 11th September 2019 the claimant applied for a DCO in relation to both the K3 and the WKN projects. Although, as noted above, the projects were separate and distinct, in the application they were combined, as anticipated by the section 35 application, within an application for a single DCO. Pursuant to section 55 of the 2008 Act the application was accepted for examination on 8th October 2019. The examination began on 19th February 2020 and concluded on 19th August 2020.

7. The examination proceeded in the form of a series of written exchanges provided in accordance with a structure of eight Deadlines for the submission of material. One of the issues which the examination addressed was the question of whether or not there was sufficient waste arising in order to support the proposed facilities whilst complying with principles of the waste hierarchy and the proximity principle. Participants in the examination included Kent County Council ("KCC") who are the waste planning authority for the area within which the proposals lie. KCC, assisted by BPP Consulting, who had provided them with advice in relation to the Early Partial Review of the Kent Minerals and Waste Local Plan ("the EPR"), presented submissions to the examination at the stage of Deadline 1 contending that there was no robust evidence to justify the need for the facilities in terms of the availability of appropriate waste to support the proposed energy from waste capacity. KCC contended that whilst the claimant's evidence in relation to additional suitable waste capacity produced in support of the application stated it lay within a range of 495,540 tonnes per annum and 840,463 tonnes per annum, BPP Consulting had undertaken a sensitivity analysis using the Environment Agency's WDI 2018 data and the claimant's methodology and found that the range actually fell between -760,390 tonnes per annum and -373,473 tonnes per annum.

8. At Deadline 3 of the examination, the claimant submitted evidence disputing the validity of the sensitivity analysis produced by KCC and BPP Consulting. The claimant indicated that it had tried to replicate the BPP Consulting figures but was unable to do so. The claimant produced its own table which reproduced the two original analyses, firstly, produced by the claimant in support of the application and, secondly, produced by KCC at Deadline 1, and then added a further calculation based on the WDI 2018 data that showed a remaining level of need ranging between 306,554 tonnes per annum and 680,032 tonnes per annum. Whilst this showed a reduction over the original calculation supporting the application, the claimant contended that there was still a substantial need for residual waste treatment capacity even after both of the proposals had been consented.

9. Immediately after Deadline 3, on 23rd April 2020, the Inspector's report on the examination of the EPR was published. As the name of the document implied, the

EPR contained a number of proposals to modify the Kent Minerals and Waste Local Plan adopted in 2016, including KCC's position that it was no longer proposed to produce a Waste Sites Plan following a reassessment of the need for waste facilities over the plan period. The evidence base for the EPR included a further assessment of need. The EPR Inspector set out the essence of that exercise and the conclusions arising in the following terms:

> "20. The Capacity Requirement for the Management of Residual Non-Hazardous waste (CRRNH) has assessed the need for provision for residual non-hazardous waste arising in Kent, including Local Authority Collected Waste (LACW) and Commercial and Industrial (C&I) waste, as well as some waste originating from London. The calculation of need takes into account revised recycling rates which are based on government guidance and the actual rates achieved. The forecast requirement is based on continuing reductions in landfill.
>
> 21. The CRNNH considers the capacities of existing consented facilities and the extent to which they would satisfy identified need. A permitted facility at Barge Way has not been built. Irrespective of whether there is any uncertainty as to whether that facility will be provided, the strategy for waste management capacity does not depend on its provision. Waste arisings are forecast for intervals of 5 years up to the end of the Plan period in 2030/31. The proposed diversion of LACW and C&I waste from landfill is greater than that in the KMWLP. The proportions of those waste streams that are to be subject to other recovery instead of recycling/composting are greater in the EPR than in the KMWLP, taking into account the re-assessed recycling rates.
>
> 22. Since the adoption of the KMWLP, a significant new waste recovery facility has been built at Kemsley and is being commissioned. This provides capacity of 525,000 tonnes per annum (tpa). Policy CSW7 of the KMWLP identifies a recovery requirement of 562,500 tpa but this requirement has been re-assessed in the CRRNH having regard to the revised recycling rates and revised figures for diversion of waste from landfill.
>
> 23. Table 9 of the CRRNH shows that there is no gap in capacity for other recovery treatment of residual non-hazardous waste throughout the Plan period and demonstrates that the Kemsley facility together with the existing Allington facility will provide a surplus of other recovery capacity. On this basis there is no need to allocate sites. However, Policies CSW6 and CSW7 provide flexibility in that they are permissive policies that would allow for other recovery facilities to be developed should they be required."

10. In its response at Deadline 4, KCC did not submit any further calculation in response to that produced by the claimant, but placed reliance on the endorsement by the EPR Inspector of the data reports produced to support the EPR by KCC in the form of the CRRNH. In response to earlier submissions made by KCC the examining authority ("ExA") requested a copy of the representations made on behalf of the claimant to the EPR examination in support of the contention that the EPR was unsound.

11. In the claimant's response at Deadline 5, the claimant again noted that KCC had offered no explanation for its position beyond reliance upon the EPR Inspector's report. The claimant noted that the EPR report was very short and made no mention of third-party submissions, appearing to take the CRRNH at face value. The claimant made the observation that it was reasonable to assume that the inspector had not considered the analysis of empirical data in relation to need and waste available for incineration in detail at the examination of the EPR.

12. Within the material related to Deadline 5 and Deadline 7, KCC provided the claimant's representations to the EPR, and also made further submissions in relation to waste types and waste data addressing the potential available feedstock for the facilities. Within their Deadline 8 submissions the claimant pointed out that they had responded to the submissions made in Deadline 5 by KCC, and consistently demonstrated throughout their representations to the examination of the DCO that the level of fuel of an appropriate character available to the proposed development would be sufficient to demonstrate a need for both of the proposed developments and indeed still leave even further available capacity for the recovery of waste.

13. By contrast, in its Deadline 8 representations, KCC contended that they had undertaken further analysis of the claimant's data during the course of the examination and discovered that the quantity of waste reported as going to landfill that was suitable for incineration was a good deal less than the claimant had claimed. KCC submitted that no compelling evidence had been presented by the applicant to address their doubts in relation to the suitability or combustibility of the waste targeted by the proposals in the applicant's assessment, and that given the EPR had been found to be sound, on the basis that its waste needs assessment was robust, there was clearly insufficient need to support the additional capacity proposed.

14. At Deadline 8 the final version of the Statement of Common Ground ("the SOCG") was provided to the examination. Within the matters that were agreed in the SOCG the following appeared:

> "2.2.3 …
>
> (b) KCC has undertaken an Early Partial Review (EPR) of the Kent Minerals and Waste Local Plan (KMWLP), which has been found sound with the addition of main modifications. The parties agree that the relevant local waste plan would be the Kent Minerals and Waste Local Plan Early Partial Review, should that be adopted by the KCC prior to the application being determined. In advance of adoption, increasing weight ought to be given to the EPR, given it has now been approved by the Examining Inspector."

15. The SOCG also recorded matters which were not agreed. These matters included the relevance of national policy statements ("NPSs") to WKN. The claimant's position was that policies in NPS EN-1 and EN-3 (see below) were both "important and relevant" to the decision to be made in relation to WKN, firstly, because it was very close to having a capacity which would require it to be an NSIP, and, secondly, because its function, scale, and the nature of its impact was similar to that of K3. Further, it had been accepted by the defendant as being of national significance through the section 35 direction. KCC, by contrast, contended that the parts of the application which were not an NSIP should be determined in accordance with the development plan, and that those parts of the application included the expansion of waste throughput at K3 as well as the construction and operation of WKN.

16. On the 19th November 2020 the ExA completed his report, which contained a recommended decision, and it was passed to the defendant. The report is a lengthy and detailed document, and for present purposes what follows is a summary of those aspects of the report pertinent to this challenge. Within section 3 of the report, the "Legal and Policy Context", the ExA noted the provisions of sections 104 and 105 of the 2008 Act (which are set out in detail below), and that in essence section 104 applies to applications for a DCO where an NPS has effect, and section 105 applies to decisions where no NPS has effect. Where section 104 is in play, then by virtue of section 104(3) the application must be determined "in accordance with any relevant national policy statement", subject to a number of limited exceptions. By contrast, section 105 prescribes matters to which the defendant is to have regard to when making a decision without the statutory presumption set out in section 104(3). The ExA noted that the WKN proposal fell short of the threshold for it to be examined as an NSIP, a position which the ExA concluded was not altered by virtue of the section 35 direction. The ExA noted that neither NPS EN-1 nor EN-3 were worded to include a project subject to a section 35 direction. That said, the ExA noted that although the WKN did not meet the threshold for an NSIP, nonetheless the matters in NPS EN-1 and EN-3 could be taken into account in determining the WKN proposal to the extent that those matters were both important and relevant to the defendant's decision. Thus, the ExA concluded that whilst in relation to the K3 proposal the NPSs formed the primary policy context for the examination given the statutory duty imposed by section 104 of the 2008 Act, with respect to the WKN proposal the following was noted:

> "3.3.4 In relation to the WKN Proposed Development the NPSs are important and relevant matters to take into account in the view of the ExA, however the statutory duties as to the applicability of the NPSs do not apply in the same way as for development which is a nationally significant infrastructure project. The primary policy context is nevertheless found in the PA2008, namely s105 which requires the SoS to have regard to LIRs, matters prescribed by regulations in relation to development of the description to which the application relates; and other matters considered important and relevant which will include so far as relevant, the NPSs."

17. The section went on to assess the relevant policy framework and reached conclusions in relation to the applicable policy. In relation to NPS EN-1 and EN-3, the ExA

concluded that the need for the K3 proposal was established through the NPSs, whereas the WKN proposal generally conformed to high-level policy in NPS EN-1 and EN-3. In relation to the development plan, at paragraph 4.6.4 of the report the ExA recorded as follows:

> "4.6.4 There are no issues arising from development plan policies that necessarily conflict with relevant policy directions arising from NPSs. Whilst NPSs are the primary source of policy for a decision on an NSIP under PA2008 such as Project K3, development plan policies take precedence for a decision on Project WKN. None of the development plan policies indicate against the directions set in NPS EN-1 or NPS EN-3 and it follows that effect can be given to all relevant development plan policies in a manner which reinforces and adds local context and detail to NPS compliance where the NPSs apply."

18. Within this section the ExA set out the competing contentions in relation to whether or not there was a need for the facility in terms of available waste suitable for incineration. The concern raised by KCC was that if there were not adequate quantities of waste arising within their administrative area this would undermine the waste hierarchy and lead to a diversion of waste into Kent, with the potential to undermine wider regional planning objectives and the proximity principle. The ExA introduced his conclusions in relation to the planning issues for the examination by noting as follows:

> "4.10.96 In terms of the core decision-making section of NPS EN-3 (paragraph 2.5.70) it must be clear, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station would be in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England. I am not satisfied that this is the case with reference to the WKN Proposed Development because the increase in capacity which it would bring about would significantly increase the capacity gap already identified by KCC. For such provision to be made at this time for an additional 390,000 tonnes of waste per annum over the 50-year lifetime of the development would present a significant risk to meeting the waste hierarchy objectives set out in KMWLP as revised by the EPR, by pulling Kent waste that might otherwise be recycled down the hierarchy.
>
> 4.10.97 The EPR of the KMWLP has been found sound and the supporting Waste Needs Assessment is taken to be robust, and the arisings and forecasts are now reflected in the most recent Authority Monitoring Report released by KCC. Applying an assessment based on these values to the Proposed Development, the ExA is satisfied that the need for the additional capacity proposed to maintain net self-sufficiency in

> Kent throughout the Plan period while making reduced provision for London's waste, does not exist."

19. In relation to the principles of local policy, and the EPR in particular, the ExA noted that the adverse effects of creating a waste management facility that would be likely to draw waste in from further afield than Kent would include locking waste into feeding the plant that might otherwise be recycled, contrary to the waste hierarchy, as well as undermining the viability of more locally-based solutions which would accord better with the proximity principle. The ExA noted the strategy in the EPR to meet the area's objectively assessed needs. The ExA noted it was an important consideration that the EPR had dispensed with the preparation of a Waste Sites Plan, and that the purpose of this and the other provisions of the EPR were to avoid over provision of other recovery capacity which could discourage the development of recycling and composting capacity further up the waste hierarchy.

20. The ExA went on to consider the energy production issues and noted the following in that connection:

> "4.10.120. Generally, the power produced by both projects would be a benefit to be considered in the overall planning balance.
>
> 4.10.121. However in the case of the WKN Proposed Development, the electricity generation is allied to the sourcing of some 390,000 tpa of waste fuel which is a significant amount in itself, the composition of which should be scrutinised to see whether overall the proposed generation is justified by reference to such matters as the biogenic to fossil carbon ratio and its energy content, the confidence that can be placed on the assumed biogenic content, comparisons with other methods of electricity generation, and whether avoided emissions from landfill would actually materialise. Within that process, consideration of harm to KCC's strategy that underpins its WLP is not excluded."

21. The ExA then went on to consider the provisions of the Kent Minerals and Waste Local Plan Policy CSW4 and need and local capacity issues. The ExA's conclusions in relation to this issue were as follows:

> "4.10.122. I am not persuaded than even assuming 65% recycling is achieved (which is acknowledged to be a higher target than is set out in the KMWLP or EPR) there remains a need for the Proposed Developments in particular Project WKN. The WHFAA [APP-086] sets out in Table ES2 Summary of Fuel Availability Assessment and sensitivities, a projected surplus in the remaining fuel available in the Study Area compared to future capacity likely to be delivered, including taking account of both projects within the Proposed Development.

4.10.123. There is an obvious difference between the lower and upper estimates. This is predominantly due to the substitution of shortlisted waste types disposed to landfill rather than all Household/Industrial/Commercial (HIC) waste disposed to landfill. Clearly in my view the use of the former category is more appropriate since, as is clarified in the WHFAA, the HIC category in the WDI contains certain waste types that would be inappropriate for combustion in the Proposed Development, the use of which would result in an over-estimation of available fuel. Thus, under the WHFAA ones arrives at a remaining level of fuel availability to the tune of 992,540 tpa, which would be taken up by the Proposed Development leaving a shortfall in capacity of facilities equivalent to processing the remaining figure of 495,540 tpa.

4.10.124. However KCC's alternative calculation, based on the same methodology, including an allowance of 27% recycling to achieve the CEP 2035 target, and using the EA's WDI 2018 data as set out in [AS-010] would result in fuel availability of between 420,000tpa and 123,500tpa, which latter figure takes account of shortlisted waste types disposed to landfill within Study Area. Applying the proposed capacity of both projects within the Proposed Development, one arrives at negative figures whether shortlisted waste types or HIC waste disposed of to landfill are applied, indicating a surplus capacity of facilities in the Study Area. I find it significant that KCC's waste needs assessment has underpinned the EPR under which the development of increased waste recovery capacity follows a sustainable pattern of waste management to achieve overall net self-sufficiency, an approach found to be sound in the Examination of the EPR [REP4-016].

…

4.10.126. Turning to the Applicant's criticism of the Inspector's EPR Report [REP4-016] there is no reason to suppose that the Inspector did not properly examine the evidence on the capacity requirement for non-hazardous waste. The Applicant made several representations against the proposed changes in the EPR based on the evidence and appeared at the examination hearings to convey these objections to the Inspector. I asked for these representations which were supplied in full [REP5-040]. They clearly show that the Applicant was critical of the evidence base underpinning the EPR, however the Applicant accepted (p2 [REP5-040], that its own representations were:

"not submitted as in-depth need assessments for waste management in Kent; this is a task for KCC in preparing its development policy plan."

…

4.10.128. Paragraph 23 of the Inspector's Report [REP4-016] accepts that the "CRRNH" (Capacity Requirement for the Management of Non-Hazardous Waste) shows that there is no gap in capacity for other recovery treatment of residual non-hazardous waste throughout the Plan period and demonstrates that the "Kemsley facility" (ie the Consented K3 Facility) together with the existing Allington facility will provide a surplus of other recovery capacity. Paragraph 23 ends:

4.10.129. "*Policies CSW6 and CSW7 provide flexibility in that they are permissive policies that would allow for other recovery facilities to be developed should they be required*". (My emphasis).

4.10.130. I also note that the BPP report, Waste Topic Report 8 concluded the following on the need for Energy from Waste (EfW) capacity: "… sufficient sites should be identified such that new capacity in EfW could be provided for an additional 562,000 tpa. However, only 437,500 tpa new EfW capacity should be permitted until monitoring indicates that the provision of only this amount of EfW capacity would result in non-hazardous landfill capacity in Kent being used up before the end of the plan period. This will need one site to be identified in Kent that would not need to be developed until the long term, if at all." This conclusion underpins Policies CSW7 and CSW8 of KWMLP.

4.10.131. KCC's analysis and data are also more focussed on the particular geographical source of waste accepted at locations to which waste is removed as well as a more localised approach to investigating capacity, which in my view is more important to analysing the geographical need for EfW additional waste treatment capacity. It was found to be sound by the EPR Inspector.

4.10.132. On balance I prefer KCC's assessment in KCC WNA 2018, Capacity Requirement for the Management of Residual Non-Hazardous Waste [REP4-020] of fuel availability and future capacity likely to be delivered, to that of the Applicant. This does not imply that in general future treatment capacity would no longer be necessary, however in the case of the WKN Proposed Development to grant consent for an additional 390,000 tpa throughput would in my judgment seriously undermine the local and regional strategy for managing waste development in Kent and the south east region. This would be contrary to KMWLP Policies CSW2, CSW4, CSW6, CSW7 and CSW8."

22. The ExA's overall conclusions in relation to waste hierarchy issues in respect of both of the proposals were expressed in the following terms:

> "**Overall conclusions as to waste hierarchy related matters: K3**
>
> 4.10.139. The evidence underpinning the KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be contrary to the Waste Needs Assessment produced by KCC to support the EPR which has now been found sound by the examining Inspector. This evidence base found no need exists in Kent for additional capacity for the Plan period.
>
> 4.10.140. However, although the Applicant's position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance. Therefore, whilst the benefits of co-location of both facilities to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.
>
> 4.10.141. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.
>
> **Overall conclusion as to waste hierarchy related matters: WKN**
>
> 4.10.142. The generation of 42MW electricity would be a significant benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.

> 4.10.143. However, the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP. Therefore, in this respect I find the WKN Proposed Development inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed "in the places where it is acceptable in planning terms (paragraph 2.2.4)".
>
> 4.10.144. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste."

23. In section 6 of the report the ExA set out the conclusions reached in relation to the DCO application. So far as relevant to this case those conclusions were as follows:

> "**6.2. CONSIDERATIONS IN THE OVERALL PLANNING BALANCE**
>
> **Application of NPSs and development plan to the Proposed Development**
>
> 6.2.1. The designated National Policy Statements (NPSs) NPS EN-1 and NPS EN-3 provide the primary basis for the Secretary of State (SoS) to make decisions on development consent applications for energy based Nationally Significant Infrastructure Projects (NSIPs) in England, which includes the K3 Proposed Development.
>
> 6.2.2. In terms of Project WKN the NPSs may be considered "alongside" other national and local policies, however as the adopted local plan for waste matters, I consider the development plan and in particular the Kent Minerals and Waste Local Plan (KMWLP) to be the primary policy against which this element of the Proposed Development should be determined. The presumption in favour of determining the application in accordance with the NPS is absent here although

the relevant NPSs are important and relevant matters to be considered.

6.2.3. I disagree with the Applicant's response [REP5-011] to ExQ3.6.2 [PD-014] that EN-1 and EN-3 are so germane to the assessment of the WKN Proposed Development that it would be irrational not to give them primacy for the reasons they give. As to the reasons given for this proposition, the NPPF is not dispositive of the issue, and the s35 direction does not override s105(2)(c) PA2008. S105 PA2008 does not stipulate that the NPSs take precedence viz a viz local plan policies (although as The Queen (oao David Gate on behalf of Transport Solutions For Lancaster and Morecambe) v The Secretary of State for Transport v Lancashire County Council [2013] EWHC 2937 (Admin) would suggest they are capable of being important and relevant matters).

6.2.4. The Applicant suggested further in its reply [REP5-011] to ExQ3.6.2 [PD-014], that local plan policies would otherwise take precedence by default. Indeed, whatever the reason behind the lack of definitive statutory or judicial clarity over the issue, it would be sensible in my view to apply the statutorily adopted development plan as the primary consideration to a project that, but for the s35 Direction, would have fallen to be considered on that basis.

6.2.5. That said, conclusions on the case for development consent set out in the application are reached in the context of the policies contained in the NPSs, according to how important and relevant are the matters contained therein.

Need for and benefits of the Proposed Development

Project K3

6.2.11. In relation to NPS EN-1 and NPS EN-3 which apply to the K3 Proposed Development I find that the need for infrastructure covered by these national policies is assumed and must be accorded significant weight. The recovery of energy from the combustion of waste forms an important element of waste management strategies in England. Furthermore, the ability to generate an increased amount of electricity without change to the design of the Consented K3 Facility is an additional benefit, as is the potential to generate that amount without necessarily increasing the throughput of waste feedstock. The adverse impacts as a result of increase in throughput are considered separately.

6.2.12. Although there are marked uncertainties as to what if any net carbon benefit would be achieved by comparison to other forms of waste management, it is reasonable to assume

that it would perform better in Greenhouse Gas (GHG) emission terms than had it not been linked to an integrated CHP facility to serve the adjoining DS Smith Paper Mill. This is a further positive benefit that would align with the aspirations of NPS EN-1 and EN-3.

Project WKN

6.2.13. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be a benefit as such. As a fossil fuel generated supply, it could be brought online quickly when demand is high and shut down when demand is low, but the supply generated is not significantly high and the benefits would therefore be limited.

6.2.14. The economic impacts of the Proposed Development would be an additional acknowledged benefit, principally in the form of the anticipated job creation of up to 482 staff during the construction period and between 35 to 49 staff once the WKN Proposed Development is operational and would be a positive factor in support of the WKN Proposed Development.

6.2.15. Achievement of R1 recovery status is not guaranteed and would only be a positive factor insofar as the SoS considers it likely that R1 status would be achieved. The energy produced from the biomass fraction of waste is regarded as renewable under EN-3 although there is uncertainty as to the proportion of waste fuel that would be derived from this component.

6.2.16. However, recognising that EfW facilities have an important role to play in waste management, the key important and relevant matter contained in the relevant NPSs as far as concerns the WKN Proposed Development, is under EN-3: whether, with reference to the relevant waste strategies and plans, the proposed waste combustion generating station would be in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England.

6.2.17. I find on this issue that, as described in Chapter 4 and summarised further below, it has not been demonstrated that there is a need for the Proposed Development having regard to the WPA's Need Assessments and other evidence that has underpinned the formulation of KCC's revised development plan. The statutorily adopted development plan and relevant policies discussed, form part of the overall planning system adverted to in NPS EN-3, the role of which is to identify the types of infrastructure needed in the places where it is acceptable in planning terms.

Conformity with the Development Plan

6.2.18. As a preliminary matter it should be noted that it is likely that a final decision on adoption of the changes proposed by the EPR will have been taken by KCC at some point after the close of the Examination (see p2 KCC Closing Statement [REP8-016] which referred to its proposed meeting on 10 September 2020). Therefore, the SoS may wish to consider whether to confirm with KCC whether the changes discussed in this Report have been incorporated into the development plan and have now attained the same status as other development plan policies.

6.2.19.Both the K3 and the WKN Proposed Development would be in conflict with fundamental policies of the development plan, namely KMWLP Policy CSW6 which requires it to be: "demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan" and Policy CSW7 which would be permissive of new capacity to manage waste "provided that: 1. it moves up the Waste Hierarchy".

6.2.20. In addition, KMWLP Policy CSW4 as revised through the EPR, incorporates revised targets for management of waste in Kent, however waste recovery capacity is sufficiently met by the Consented K3 Facility and the EfW facility at Allington, and there is no proven need for the plant to be located in Kent. This presents a serious risk of prejudice to the principles of proximity and net self-sufficiency which underpin Policy CSW4, and the wider regional strategy in SEWPAG's Memorandum of Understanding (MoU)/"Statement of Common Ground" would clearly be undermined through any significant increase in the capacity gap located in Kent.

6.2.21. The weight attached to the harm thereby caused is however assessed in light of the specific circumstances pertaining to each of the two projects. The increased capacity provided by the K3 Proposed Development would be markedly less than that of Project WKN.

…

Waste Hierarchy

6.2.25. The evidence underpinning KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be contrary to the Waste Needs Assessment produced by KCC to support the EPR

which has now been found sound by the examining Inspector. This evidence base found no need exists in Kent for additional capacity for the Plan period.

6.2.26. Therefore the Proposed Development would be in conflict with KMWLP Policy CSW6 which requires it to be: "demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan" and Policy CSW7 "provided that: 1. it moves up the Waste Hierarchy".

6.2.27. However, although the Applicant's position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance.

6.2.28. Therefore, whilst the benefits of co-location of both facilities to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.

6.2.29. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.

6.2.30. As to the WKN Proposed Development, the generation of 42MW electricity would be a benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.

6.2.31. However, the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at

Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP.

6.2.32. Therefore, I find that the WKN Proposed Development would be inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed "in the places where it is acceptable in planning terms (paragraph 2.2.4)."

6.2.33. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would justifiably put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste.

…

6.3. OVERALL CONCLUSIONS ON THE PLANNING BALANCE

…

Project K3

6.3.4. The public benefits of the Proposed Development can be identified in the context of NPS EN-1's recognition of the need for energy generating infrastructure and the presumption in favour of granting consent for energy NSIPs whilst recognising that Energy from Waste (EfW) facilities play a vital role in providing reliable energy supplies.

6.3.5. The potentially adverse impacts of Project K3 and the concerns raised in submissions on the application have been considered. The ES identifies that the practical effect of the K3 Proposed Development would have no significant effects from construction, operation and decommissioning activities on the environment, or that the potentially significant effects identified can be mitigated as far as practicable by the package of controls that are appropriately secured in the Recommended DCO.

6.3.6. I have found that, as with the WKN Proposed Development the Applicant has not provided a sufficiently robust assessment of fuel availability in relation to assessed

capacity in facilities for its treatment. Nevertheless, taking account of the positive benefits of Project K3 as described above, and mindful of the limited harms identified, I find that it would generally accord with the waste hierarchy and would be of an appropriate type and scale so as not to significantly prejudice the achievement of local or national waste management targets. Therefore, all harmful effects would be within the scope envisaged in the relevant NPSs as policy compliant.

6.3.7. In conclusion, I find that the identified harms in relation to the K3 Proposed Development would be outweighed by the benefits from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised above.

6.3.8. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.

6.3.9. For the reasons set out in the preceding chapters and summarised above, I conclude that the K3 Proposed Development is acceptable, and that development consent should be granted therefor. This conclusion is taken forward in light of identified minor changes required to the DCO, described in Chapter 7 below.

Project WKN

6.3.10. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be of some benefit. In addition, there would be some positive economic advantages through job creation during the construction and operational phases of the facility.

6.3.11. However, the prospect of Project WKN becoming a viable CHP facility is uncertain. The lack of a clear and immediate sustainable source of steam/heat to local customers contrasts unfavourably with Project K3. With no guaranteed heat offtake, the proposed incineration would not qualify as Good Quality CHP. In my view this is an important and relevant factor to weigh in the balance, not least having regard to the need to transition to a low-carbon electricity market, as underlined by the UNFCCC Paris Agreement and the June 2020 Progress Report which indicates that plants without CHP should not be regarded as supplying renewable energy.

6.3.12. Moreover, the Applicant's assessment of fuel availability in relation to assessed capacity for its treatment, compares unfavourably with the Waste Planning Authority's

own assessments of need and capacity that underpin its strategy in revising targets within the KMWLP which aim to ensure that new facilities demonstrate that waste will be dealt in a manner that clearly moves its management further up the waste hierarchy. Therefore, the WKN Proposed Development would be in conflict with key policies of KMWLP including Policy CSW4, Policy CSW6 and Policy CSW7.

6.3.13. I have had regard to the other benefits of the WKN Proposed Development set out by the Applicant that may comply with other provisions of the development plan including both the Swale Local Plan and KMWLP. However my conclusion is that the provision of too much waste capacity in conflict with the waste hierarchy, represented by the WKN Proposed Development, is a serious conflict that would result in conflict with the development plan as a whole, the adverse impacts arising from which in my view would clearly outweigh the benefits of the facility.

6.3.14. It would also be in conflict with National Planning Policy for Waste (NPPW) which expects applicants to demonstrate that waste disposal facilities not in line with the Local Plan, would not undermine its objectives through prejudicing movement up the waste hierarchy. The WKN Proposed Development is a non-NSIP proposal and where the NPSs do not apply as such, the more recent NPPW that sets out detailed waste planning policies should in my view carry considerable weight.

6.3.15. I have had regard to NPS EN-1 at paragraph 5.2, that CO2 emissions are not reasons to place more restrictions on projects in the planning policy framework than are set out in the energy NPSs. However, as I have found that there is no need for the WKN Proposed Development, the GHG emissions would be an additional harm that would result, whether or not a conclusion could have been reached as to any net carbon benefit that would result.

6.3.16. To conclude, I find that the identified harms in relation to the WKN Proposed Development would outweigh its benefits from the provision of energy and by the other benefits of the application as summarised above.

6.3.17. For the reasons set out in the preceding chapters and summarised above, I therefore conclude that the WKN Proposed Development should not proceed at this time, and that development consent should not be granted, therefore.

6.3.18. However, should the SoS consider that the advantages of Project WKN outweigh the harm caused by the adverse effects as I have described, and is minded to grant consent, then

> consideration should be given to the Alternative Recommended DCO set out at Appendix E, which is the subject of minor changes required to the Applicant's Preferred DCO, and as described in Chapter 7 below."

24. In the light of these conclusions the ExA's recommendation was that a DCO should be granted in respect of the K3 proposal, but that the WKN proposal ought to be refused.

25. On 19th February 2021, having considered the report of the ExA the defendant issued his decision. Having set out the provisions of sections 104 and 105 of the 2008 Act and the approach taken to them by the ExA the defendant observed as follows:

> "4.6 The Secretary of State takes the view that the Application should be treated as a whole and determined under section 104 of the Planning Act 2008. This section, and section 105 would seem to be mutually exclusive and it would not be correct to determine different parts of the Application under different provisions. It is also noted that WKN is a type of generating station which would generally fall to be considered under EN-3 had it met the 50MW threshold by itself and was directed into the Planning Act regime on the basis of its combined significance with the WK3 project. In any event, the Secretary of State does not consider that determining the whole application under section 104 has a material impact on the overall outcome in this case. Section 104(2)(d) of the 2008 Act enables the Secretary of State to give consideration to any important and relevant matters appropriate to this aspect of the application as fully considered by the ExA."

26. In relation to the waste hierarchy and fuel availability the defendant set out a summary of the issues considered by the ExA, and then provided a summary of the ExA's conclusions together with the conclusions of the defendant as follows:

> "*Wheelabrator Kemsley K3* [ER.4.10.139 et seq]
>
> 4.18 While Kent County Council submits that there is no need in Kent for additional waste capacity for the period of the Kent Minerals and Waste Local Plan (up to 2030) and that neither WK3 nor WKN should benefit from the National Policy Statements' presumption in favour of energy development infrastructure, the Applicant submits that both projects are important and relevant to meeting a number of critical national needs including on net zero and waste management. The ExA notes that WK3 would, in addition to generating electricity, also provide steam and heat to local customers which is a factor in its favour. The ExA's overall conclusion is that the need for WK3 should carry significant weight in the decision-making process and the small increase in the proposed generating capacity with related increase in waste throughput would not

> prejudice the principles of sourcing waste locally and aiming for self-sufficiency.
>
> *Wheelabrator Kemsley North* [ER 4.10.142 et seq]
>
> 4.19 The project would contribute 42MW of electricity to the electricity grid. Whilst noting this, the ExA states that the Applicant has not provided robust arguments to support the new plant and that there is no proven need for it to be located in Kent. WKN would be inconsistent with the Kent Mineral and Waste Local Plan and the revisions to it that were the result of the 'Early Partial Review' carried out on the Plan. (The Early Partial Review is an independent report carried out by the Planning Inspectorate which checks whether local plans are 'sound'.) The ExA considered that WKN did not accord with paragraph 2.5.70 of NPS EN-3 as it was not in compliance with the Kent Minerals and Waste Local Plan and there was no evidence provided as to why an exception should be made. Following on from that, WKN would not satisfy the statement in paragraph 2.2.4 of NPS EN-1 that the planning system should provide a framework which permits the construction of the infrastructure needed in the place where it is acceptable in planning terms. Finally, the ExA noted that WKN would be in conflict with the National Planning Policy for Waste because it would put at risk the achievement of revised recycling and composting targets in the Kent Minerals and Waste Local Plan.
>
> 4.20 The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter."

27. The decision then records the defendant's conclusion that in relation to the various environmental and infrastructural issues considered by the ExA there was no reason to depart from the ExA's conclusions, nor any new information which justified a different approach. The defendant's decision then turns to the consideration of the planning balance and the conclusions of the defendant in that respect are set out as follows:

> "**6. The Secretary of State's Consideration of the Planning Balance**
>
> 6.1 All nationally significant energy infrastructure developments will have some potential adverse impacts. In the case of WK3 and WKN, most of the potential impacts have been assessed by the ExA as being acceptable subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely. As set out above, the ExA determined that consent should be granted for WK3 only. The adverse impacts for the WK3 project did not outweigh the significant weight attaching to the need case established by the National Policy Statements.

6.2 However, the ExA's consideration of all the issues, particularly in respect of arguments about where the incineration of waste stood in the waste hierarchy and how this related to adopted policies in relevant local plans, led to the conclusion that WKN, while offering some benefits (particularly from the 42MW of electricity that would be generated), did not accord with the relevant provisions in the National Policy Statements, the National Planning Policy Framework and in relevant local plans. The ExA recommended, therefore, that WKN should not benefit from the grant of consent.

6.3 As set out in above, sections 104 and 105 of the Planning Act 2008 set out the procedures to be followed by the Secretary of State in determining applications for development consent where National Policy Statements have and do not have effect. In both cases, the Secretary of State has to have regard to a range of policy considerations including the relevant National Policy Statements and development plans and local impact reports prepared by local planning authorities in coming to a decision. However, for applications determined under section 104, the primary consideration is the policy set out in the National Policy Statements, while for applications that fall to be determined under section 105, it is local policies which are specifically referenced although the National Policy Statements can be taken into account as 'important and relevant considerations'.

6.4 The Secretary of State adopts a different approach to the ExA's in this matter and is of the view that the whole application (including the benefits and impacts of WKN) fall to be considered under section 104 of the Planning Act 2008. This means that in the consideration by the Secretary of State, more weight has been given to the National Policy Statements. However, the Secretary of State does not consider that this different approach to the planning process results in a different conclusion to that reached by the ExA, namely that development consent should not be granted for WKN and that the benefits of WKN are outweighed by the non-compliance with policies elsewhere, in particular, the policies regarding compliance with the NPS EN-1 and the policies referencing both the waste hierarchy and local waste management plans in NPS EN-3.

6.5 The determination of applications for development consent for nationally significant infrastructure projects is a balancing exercise and the weight afforded to different elements of the matrix of impacts and benefits may affect the overall conclusion. The ExA identifies that there are undoubtedly concerns that WKN would have adverse impacts on local and

> regional targets for moving waste up the waste hierarchy. As noted, the ExA has had regard to these matters in framing its recommendation. However, the Secretary of State is not bound to follow that recommendation if he feels that the evidence presented to him can support a different conclusion.
>
> 6.6 The Secretary of State has considered the arguments in the ExA Report together with the strong endorsement of developments of the type that is the proposed Development. He notes the ExA's comments that WK3's anticipated provision of steam to nearby industrial facilities are a further benefit in its favour. He considers that the overall planning balance supports the grant of consent for the increase in generating capacity and an increase in waste-fuel throughput at WK3. As noted, whilst taking a different approach to the application of sections 104 and 105 of the Planning Act 2008 and consequently to the application of the planning balance in considering WKN, the Secretary of State nevertheless agrees with the ExA's conclusion that even though there are benefits from WKN, these do not outweigh the adverse impacts. The Secretary of State does not, therefore, consider that development consent should be granted for WKN."

28. The ultimate decision of the defendant was, therefore, that although he approached the decisions on the basis that section 104 of the 2008 Act applied to both the elements of the application, as distinct from the approach taken by the ExA (namely that K3 fell to be assessed under section 104 of the 2008 Act and WKN fell to be considered under section 105 of the 2008 Act), the substance of the decision which he reached would be the same, namely that a DCO should be granted for K3 but refused for WKN.

The Proceedings

29. The claimant brought these proceedings within the prescribed timescales and challenged the defendant's decision on the basis that, having correctly concluded that the application should be determined under section 104 because sections 104 and 105 of the 2008 Act were mutually exclusive, the defendant had failed to appreciate the fundamental difference that this made to decision-making, and ought to have unpicked the conclusions of the ExA prior to seeking to reach his own decision within the context of a different statutory framework. In particular, the decision failed to give effect to the conclusion that section 104 applied to the application as a whole in a variety of ways, which included a failure to properly reflect the presumption in favour of granting consent to applications falling within section 104 which accorded with NPS policies, in particular in the event of conflict with development plan policies. Other instances of the differences between the decision-making frameworks of sections 104 and 105 of the 2008 Act were also relied upon.

30. Four grounds of challenge were, and still are, advanced. Ground 1 is the failure to give proper effect to section 104 in the decision-making process and, in particular, the failure to give primacy to the relevant NPSs in accordance with section 104(3). It is alleged that the defendant allowed the primacy of the NPSs to be overtaken by the

application of the development plan's policies as an important and relevant consideration: the adoption of the conclusions of the ExA in their entirety, which were predicated upon primacy of the development plan policies not the NPS, demonstrates the defendant's error in this respect.

31. Ground 2 is the contention that the defendant failed to determine whether or not the WKN proposal complied with the NPSs judged as a whole, in particular, again, by adopting the ExA's conclusions which were made in the context of section 105 of the 2008 Act, without considering any conflict with the NPSs which the ExA found in the light of the section 104 duty to consider whether the application was in accordance with the NPS "judged as a whole". Ground 3 is the failure of the defendant to give adequate reasons in the context of his disagreement with the ExA. Ground 4 is the contention that the defendant failed to comply with the requirements of fairness: in the light of the fact that the defendant was proposing to make a decision on a different statutory footing to that which had been reached by the ExA, it was incumbent upon him to go back to the parties and invite their comments on the effect of such a change of approach.

32. In responding to the claim the defendant, having reflected on the position, concluded that the better view was that section 105 of the 2008 Act applied to WKN rather than section 104 and, therefore, that these sections were not mutually exclusive. In effect, therefore, the defendant conceded that he was at least arguably wrong in law to have solely applied section 104 of the 2008 Act to the whole application, and the approach of the ExA to these provisions was correct. However, the defendant went on to submit that this was not a material error of law, because in reality whilst the defendant had given more weight to the NPSs than the ExA in favour of the WKN proposal and the consideration of need, there was nothing to suggest that the defendant had in fact directly applied the policy provisions from NPS EN-1 or EN-3 to the WKN proposal, and therefore he had undertaken a lawful exercise in planning judgment. Further, it was submitted by the defendant that any legal error that may have occurred did not cause the claimant any prejudice and no relief should be granted as a matter of discretion. Further detailed submissions were advanced in relation to the claimant's grounds which it is unnecessary to rehearse fully at this point in the judgment.

The Law

33. The 2008 Act established a bespoke statutory code for addressing the granting of consent to certain types of project identified as NSIPs. It is an essential feature of the 2008 Act that a key part of the process for considering NSIPs is, as will have been gathered from the facts of the present case, the designation of NPSs. Section 5 of the 2008 Act gives power to the defendant to designate an NPS for the purposes of the 2008 Act if it is issued by the defendant and "sets out national policy in relation to one or more specific descriptions of development". Section 5(3) provides that prior to the designation of a statement as an NPS the defendant must carry out a sustainability appraisal of it, and section 5(4) provides that both specified consultation requirements and Parliamentary endorsement, in the form of the statement being approved by the House of Commons, have to be complied with prior to it being designated. Section 5(5) provides than an NPS may, in particular, set out in respect of a particular description of development "the amount, type or size of development of that description which is appropriate nationally or for a specified area".

34. NSIPs are defined by section 14 of the 2008 Act, and for present purposes they include, by virtue of section 14(1)(a), a project consisting of "the construction or extension of a generating station" and, by virtue of section 15(1)(c) such a project achieves NSIP status if the generating station when constructed or extended is expected to have a capacity of more than 50MW. Section 31 of the 2008 Act provides that consent under the 2008 Act is required for development to the extent that it is, or forms part of, an NSIP.

35. As set out above, the defendant made a direction under section 35 of the 2008 Act in relation to the WKN proposal. Section 35 of the 2008 Act provides as follows:

> "35 Directions in relation to projects of national significance
>
> (1) The Secretary of State may give a direction for development to be treated as development for which development consent is required. This is subject to the following provisions of this section and section 35ZA.
>
> (2) The Secretary of State may give a direction under subsection (1) only if –
>
> (a) the development is or forms part of –
>
> (i) a project (or proposed project) in the field of energy, transport, water, water waste or waste, or
>
> (ii) a business or commercial project (or proposed project) of a prescribed description,
>
> (b) the development will (when completed) be wholly in one or more of the areas specified in subsection (3), and
>
> (c) the Secretary of State thinks the project (or proposed project) is of national significance, either by itself or when considered with –
>
> (i) in a case within paragraph (a)(i), one or more other projects (or proposed projects) in the same field;
>
> (ii) in a case within paragraph (a)(ii), one or more other business or commercial projects (or proposed projects) of a description prescribed under paragraph (a)(ii)."

36. Sections 104 and 105, as alluded to above, relate to the approach to be taken to decisions where an NPS has effect (when section 104 provides the decision-making framework) and where no NPS has effect (where section 105 provides the decision-making framework). These sections, so far as material to the issues in the present case, provide as follows:

> "104 Decisions in cases where national policy statement has effect

(1) This section applies in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates.

(2) In deciding the application the Secretary of State must have regard to –

(a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"),

…

(b) any local impact report (within the meaning given by section 60(3) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),

(c) any matters prescribed in relation to development of the description to which the application relates, and

(d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

(3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.

(4) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.

(5) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.

(6) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.

(7) This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.

(8) This subsection applies if the Secretary of State is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

> …
>
> 105 Decisions in cases where no national policy statement has effect
>
> (1) This section applies in relation to an application for an order granting development consent (if section 104 does not apply in relation to the application).
>
> (2) In deciding the application the Secretary of State must have regard to –
>
> (a)any local impact report (within the meaning given by section 60(3) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),
>
> (b) any matters prescribed in relation to development of the description to which the application relates, and
>
> (c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision."

37. The effect of the statutory provisions is to create a separate statutory regime in relation to certain identified types of project, freestanding from other statutory regimes of development control. Projects that are within the scope of the regime created by the 2008 Act require a DCO before they can be implemented. As set out above, a key feature of the regime created by the 2008 Act is the NPS, a form of policy designated pursuant to a specific statutory process which includes Parliamentary approval. The NPS is key to the 2008 Act's regime, as NPSs play an important role in the determination of applications for NSIPs. As Holgate J observed in paragraph 46 of his judgment in *R (Client Earth) v Secretary of State for Business, Energy and Industrial Strategy* [2020] EWHC 1303 (Admin); [2020] PTSR 1709, the content and merits of an NPS are the responsibility of the defendant who, in that connection, is accountable to Parliament. The statutory process of designation, alongside the statutory prescription of those matters which may be part of an NPS, underline the national character of such policy statements.

38. An important part of the significance of the NPS is the role that it plays under section 104 of the 2008 Act in the determination of DCO applications in respect of applications for which the NPS has effect. By virtue of section 104(2) the defendant "must have regard" to any NPS which has effect in relation to the development. As Holgate J observed in paragraph 48 of *Client Earth*, section 104(3) goes further in requiring that the defendant "must decide the application in accordance with any relevant national policy statement except to the extent that one or more of subsections (4) to (8) applies". As was observed in the claimant's submissions, this decision-making framework is akin to that created in relation to planning permissions by section 38(6) of the Planning and Compulsory Purchase Act 2004. Obviously, in the context of the 2008 Act's regime there are the specific caveats contained within section 104(4) to (8), but the claimant was correct to observe that section 104(3)

creates a form of presumption in favour of a DCO which is in accordance with relevant NPSs.

39. In addition to these matters it is also to be noted that in the case of *R (Gate) v Secretary of State for Transport* [2013] EWHC 2937 (Admin) Turner J observed in relation to a challenge to a highway scheme for which there was no directly relevant NPS that, as a matter of the statutory construction of section 105(2)(c) of the 2008 Act, as well as common sense, a decision-maker is not precluded from taking into account matters incorporated within an NPS in determining an application to which section 105 applies, so long as they are both important and relevant to the decision under consideration. Turner J found there had been no legal error in that case arising from the ExA referring to NPSs in respect of ports and nuclear power generation where both a port and two nuclear power stations were matters of relevance to the decision being made (see paragraphs 55 to 58 of the judgment).

40. In relation to the claimant's grounds with respect to the defendant's reasons, it is to be noted that section 116 of the 2008 Act creates a requirement for the defendant to provide reasons when making a decision on a DCO application. In respect of the quality of those reasons, the claimant relies upon the well-known summary of the applicable legal principles contained within the speech of Lord Brown at paragraphs 35-36 in *South Bucks DC v Porter (No 2)* [2004] UKHL 33; [2004] 1 WLR 1953.

41. Turning to the requirements of fairness, whilst it is to be noted that a duty to reconsult the parties is provided by rule 19 of the Infrastructure Planning Examination Procedure Rules 2010, the circumstances giving rise to that duty do not apply in the present case, as the difference from the ExA arising in the defendant's decision did not relate to either a matter of fact, or any new evidence or new matter of fact, which gave rise to the defendant's reasons for disagreeing with the ExA. Rather, the claimant relies upon the principles of fairness within a process of this kind which was set out by the Court of Appeal in the case of *Hopkins Developments Ltd v SSCLG* [2014] EWCA Civ 470; [2014] PTSR 1145, in particular at paragraph 62.

Relevant Policy

42. There are two NPSs that are particularly relevant for the purposes of these proceedings. The first is EN-1, entitled Overarching National Policy Statement for Energy. It is important to appreciate that the document was published in July 2011, at which time the arrangements under the 2008 Act for decision-making were different from those at present. The version of the 2008 Act in force at that time provided that decisions on NSIPs were to be examined and determined by the Infrastructure Planning Commission ("the IPC"). The NPS notes at paragraph 1.3.1 that at the time of it being designated there were proposals in what was then the Localism Bill (which subsequently became the Localism Act 2011) proposing to abolish the IPC. Prior to the reforms of the Localism Act 2011, decisions where NPSs had effect were determined by the IPC pursuant to section 104 of the 2008 Act; where decisions were taken in relation to projects where there was not a designated NPS having effect, the decisions pursuant to section 105 of the 2008 Act were taken by the defendant. The reforms brought both types of decisions before the defendant for determination. Against that background, in paragraph 1.1.1 of the NPS it explains that the NPS has effect "on the decisions by the Infrastructure Planning Commission (IPC) on applications for energy developments that fall within the scope of the NPSs". At

paragraph 1.4.1 the NPS explains that it is part of a suite of NPSs dealing with energy and climate change. At paragraph 1.4.2 the NPS points out that the Act empowered the IPC to examine applications and make decisions on NSIPs in relation to energy generating stations generating more than 50MW of power which were onshore. This NPS is therefore only of application to proposals falling within the statutory definition of an energy NSIP.

43. Part 4 of EN-1 sets out Assessment Principles. In particular, so far as relevant to the present decision, these principles are expressed as follows:

> "4.1.2 Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the IPC should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008 referred to at paragraph 1.1.2 of this NPS.
>
> …
>
> 4.1.5 The policy set out in this NPS and the technology-specific energy NPSs is, for the most part, intended to make existing policy and practice of the Secretary of State in consenting nationally significant energy infrastructure clearer and more transparent, rather than to change the underlying policies against which applications are assessed (or therefore the "benchmark" for what is, or is not, an acceptable nationally significant energy development). Other matters that the IPC may consider both important and relevant to its decision-making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure."

44. The other relevant NPS is EN-3 which is entitled National Policy Statement for Renewable Energy Infrastructure. This was designated in July 2011 at the same time as EN-1. In paragraph 1.2.1 of the document it explains that this NPS, alongside EN-1, provides "the primary basis for decisions of the Infrastructure Planning Commission (IPC) on applications it receives for nationally significant renewable energy infrastructure". That relationship is emphasised in paragraph 1.3.1 in terms of the need and urgency for new energy infrastructure to be consented in order to make a contribution to sustainable development and to mitigate and adapt to climate change. EN-1 noted the need for specific technologies including the infrastructure to which EN-3 relates. At paragraph 1.8.1 the NPS points out that it covers renewable energy projects such as energy from biomass and/or waste in excess of 50MW. At paragraph 1.8.2 the NPS states that it "does not cover other types of renewable energy generation that are not at present technically viable over 50MW onshore". Paragraph 2.1.2 observes that reading EN-3 and EN-1 together, the position for the IPC is that

they "should act on the basis that the need for infrastructure covered by this NPS has been demonstrated".

45. Amongst the matters covered by the NPS in relation to biomass/waste impacts is the issue of waste management. The NPS notes that waste combustion generating stations need not disadvantage reuse or recycling initiatives where the proposed development accords with the waste hierarchy. In this connection it provides the following in relation to IPC decision-making:

> "2.5.70 The IPC should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England and local, regional or national waste management targets in Wales. Where there are concerns in terms of a possible conflict, evidence should be provided to the IPC by the applicant as to why this is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy."

46. In terms of development plan policy, as noted above, reference in the decision-making process was made to the Kent Minerals and Waste Local Plan 2013-2030 which was adopted in September 2020 in an amended form as a result of the EPR process. Particular reference within the decision-making process was made to policies CSW6 and CSW7 which provide as follows:

> "Policy CSW 6
>
> Location of Built Waste Management Facilities
>
> Planning permission will be granted for proposals that:
>
> a. do not give rise to significant adverse impacts upon national and international designated sites, including Areas of Outstanding Natural Beauty (AONB), Sites of Special Scientific Interest (SSSI), Special Areas of Conservation (SAC), Special Protection Areas (SPAs), Ramsar sites, Ancient Monuments and registered Historic Parks and Gardens. (See Figures 4, 5 & 6).
>
> b. do not give rise to significant adverse impacts upon Local Wildlife Sites (LWS), Local Nature Reserves (LNR), Ancient Woodland, Air Quality Management Areas (AQMAs) and groundwater resources. (See Figures 7, 8, 10 & 15)
>
> c. are well located in relation to Kent's Key Arterial Routes, avoiding proposalswhichwouldgiverisetosignificantnumbersoflorrymovementsthroughvillagesor on unacceptable stretches of road.

d. do not represent inappropriate development in the Green Belt.

e. avoid Groundwater Source Protection Zone 1 or Flood Risk Zone 3b

f. avoid sites on or in proximity to land where alternative development exists/has planning permission or is identified in an adopted Local Plan for alternate uses that may prove to be incompatible with the proposed waste management uses on the site.

g. for energy producing facilities - sites are in proximity to potential heat users.

h. for facilities that may involve prominent structures (including chimney stacks)- the ability of the landscape to accommodate the structure (including any associated emission plume) after mitigation.

i. for facilities involving operations that may give rise to bioaerosols (e.g. composting) to locate at least 250m away from any potentially sensitive receptors.

Policy CSW 7

Waste Management for Non-hazardous Waste

Waste management capacity for non-hazardous waste that assists Kent in continuing to be net self-sufficient while providing for a reducing quantity of London's waste, will be granted planning permission provided that:

1. it moves waste up the hierarchy,

2. recovery of by-products and residues is maximised

3. energy recovery is maximised (utilising both heat and power)

4. any residues produced can be managed or disposed of in accordance with the objectives of Policy CSW 2

5. sites for the management of green waste and/or kitchen waste in excess of100 tonnes per week are Animal By Product Regulation compliant (such as in vessel composting or anaerobic digestion)

6. sites for small-scale open composting of green waste (facilities of less than100 tonnes per week) that are located within a farm unit and the compost is used within that unit.

> Where it is demonstrated that waste will be dealt with further up the hierarchy, or it is replacing capacity lost at existing sites, facilities that satisfy the relevant criteria above on land in the following locations will be granted consent, providing there is no adverse impact on the environment and communities and where such uses are compatible with the development plan:
>
> 1. within or adjacent to an existing mineral development or waste management use
>
> 2. forming part of a new major development for B8 employment or mixed uses
>
> 3. within existing industrial estates
>
> 4. other previously developed, contaminated or derelict land not allocated for another use
>
> 5. redundant agricultural and forestry buildings and their curtilages
>
> Proposals on greenfield land will only be permitted if it can be demonstrated that there are no suitable locations identifiable from categories 1 to 5 above within the intended catchment area of waste arisings. Particular regard will be given to whether the nature of the proposed waste management activity requires an isolated location."

Submissions and Conclusions

47. As set out above, the claimant's ground 1 is the contention that the defendant failed to properly apply section 104 of the 2008 Act. As will be apparent from the history of both the decision-making and also the submissions in these proceedings, there is clearly a preliminary issue arising in relation to the question of whether or not section 104 and section 105 of the 2008 Act are mutually exclusive, or whether it is appropriate, as the ExA did, to apply those sections differentially where there are two freestanding and distinct projects within the scope of a single application for a DCO and the NPSs apply to one of those projects but not the other.

48. The claimant contends that, in principle, the defendant was correct in making his decision by applying section 104 of the 2008 Act to the application as a whole. The claimant advances this position on the basis of two principal lines of argument. The first is that the mutual exclusivity arises from the specific language of the statute. Both section 104 and section 105 of the 2008 Act refer to those sections applying "in relation to an application for an order granting development consent" (emphasis added). Thus, it is clear from the language of the legislation itself that where there is an application for which the NPS has effect it is to be decided within the section 104 framework.

49. Furthermore, the claimant submits that this language is to be contrasted with the language of section 14 of the 2008 Act which defines an NSIP in terms of being "a

project", consisting of one of the types of infrastructure identified within section 14(1). The selection of the word "application" in section 104 and 105 of the 2008 Act is clear and deliberate, and has the effect of attracting the section 104 decision-making framework to applications like the present where there is more than one free-standing development or proposal comprised within the same application, albeit that one of those projects or developments is not one which falls within the definition of an NSIP for which an NPS has effect.

50. The second line of argument pursued by the claimant places reliance upon the section 35 direction which was given in the present case. The claimant submits that when section 35 of the 2008 Act provides that the defendant "may give a direction for development to be treated as development for which development consent is required" this is in the first place a reference back to section 31 of the 2008 Act, which provides as follows:

> "31 When development consent is required
>
> Consent under this Act ("a development consent") is required for development to the extent that the development is or forms part of a nationally significant infrastructure project."

51. The claimant contends that when section 35(1) of the 2008 Act describes the effect of the direction as being that development subject to the direction is "to be treated as development for which development consent is required" it means what it says. In other words, the effect of the section 35 direction is to lift the development proposed into section 31, and thereafter to bring it within scope of section 104 of the 2008 Act, on the basis that it is to be treated as NSIP development. Thus, reading all of these provisions together, and observing the subtlety in the statutory language, where as here there are two projects falling within an application, and one of them falls within the definition of an NSIP, and the other does not but has been subject to a section 35 direction, then the application containing these two projects requires each of them to be determined applying the framework provided by section 104 of the 2008 Act.

52. Finally, the claimant contends that in effect the position for which the defendant argues reads words into section 104 of the 2008 Act, by treating it as if it included words to apply the provisions of section 104 to part only of an application.

53. As set out above, although the defendant disagreed with the ExA and approached his decision on the basis that sections 104 and 105 of the 2008 Act are mutually exclusive, the position which he now adopts is that the ExA was correct to apply section 104 and section 105 separately to the individual standalone proposals comprised within the application. The analysis presented in the defendant's submissions commences from the observation that the 2008 Act creates a specific and bespoke statutory framework for approving particular kinds of development within what was intended to be a streamlined process of determination. A key feature of this bespoke statutory framework is the NPS which, pursuant to the broadly drafted provisions of section 5 of the 2008 Act, is specified in advance and has a special status and a particular process to produce it including Parliamentary approval.

54. Against this background the defendant submits, firstly, that the starting point for addressing the question of whether section 104 applies is to examine whether an NPS

applies to the project which is being evaluated. In this case a clear policy choice was made in the designation of the NPS that it should only apply to projects fulfilling the statutory definition of an NSIP, and therefore that it cannot apply to the WKN proposal. Once that is understood, if section 104 of the 2008 Act were to be deployed to determine the WKN proposal this would have the effect, in practice, of expanding the application of the NPS to a scale of project for which it had never been intended. Such an approach would be quite inconsistent with the centrality of the NPS within the statutory framework devised by the 2008 Act. As noted above, the contents of an NPS are not open to question within the decision-making process, and that includes the thresholds adopted for the application of the NPS in the policy.

55. Furthermore, the defendant submits that the section 35 direction in the present case does not assist the claimant. When section 35 speaks of treating the proposal as an NSIP that does not and could not have the effect of altering the terms of the NPS policy framework and the choices which have been made in designating the scale of proposals to which it will apply: it cannot give rise to an assumption that the proposal is bigger than in fact it is. The reference to section 31 is also contended to be of no avail to the claimant. Sections 31 and 35 are in a different part of the 2008 Act, Part 4, to the part of the Act containing sections 104 and 105, namely Part 6, and the purpose of section 35 is simply to bring qualifying proposals for which a direction is granted within the 2008 Act's decision-making processes.

56. In short, the defendant submits that sections 104 and 105 of the 2008 Act are mutually exclusive on the basis that the language of section 104 precludes its application to a proposal such as WKN which does not fall within the scale of projects to which the NPS specifically applies. This is as a result of the clear intention to be derived from the structure of the 2008 Act which places the NPS at the heart of the statutory framework as well as ensuring that NPSs are only applied within their identified scope. The defendant submits that section 105(1) can, in the context of the intent of the statutory framework, be read more broadly as including "where" or "to the extent that" section 104 does not apply to the proposal and so as to be consonant with the statutory purpose.

57. In my view the ExA was correct in his approach to sections 104 and 105 of the 2008 Act in the context of the present proposals. Clearly there is no dispute, firstly, that it is possible to include more than one project or development within the same application for a DCO and, secondly, that the K3 Project was one for which the NPS had effect, and therefore to which section 104 applied. Whilst I can see the force in the submissions of the claimant in relation to the use of the word "application" in both sections 104 and 105, the use of this word needs to be understood in the context of the statutory framework as a whole.

58. To suggest that by incorporating a project in respect of which the NPS has no effect within an application for a separate free-standing project which does fall within the scope of an NPS it is possible effectively to enlarge the scope of the NPS so as to include a project to which it was not designed to apply would clearly run contrary to the overall statutory scheme. That overall statutory scheme places the NPS at the heart of the decision-making process, and prescribes specific procedures, including endorsement by Parliament, prior to its designation. The contents of the NPS cannot be questioned in the decision-making process: so much is made clear in sections such as section 106(1) which applies in the decision-making context, and which entitles the

defendant to disregard representations which "relate to the merits of policy set out in a national policy statement". Similar provisions are contained in section 87(3) respecting like representations to the ExA, and section 94(8) in relation to like representations made at hearings. It would be inconsistent with the centrality of the NPS within the statutory decision-making framework for its scope to be enlarged and its provisions bypassed by the manner in which an application has been formulated.

59. Whilst specific circumstances of the kind presented by the application in the present case may not have been directly foreseen by those framing the 2008 Act, it is clear that the overarching approach of the legislation is that decisions should be reached in relation to proposals for development in respect of which an NPS has effect deploying the framework within section 104 of the 2008 Act, whereas proposals for development within the statutory framework's decision-making process for which there is no applicable NPS having effect are to be decided pursuant to the framework provided by section 105 of the 2008 Act. Such an approach clearly reflects the language of section 104(1) which refers to an NPS having effect "in relation to development of the description to which the application relates". It is less consistent with a literal reading of section 105(1), but when that text is placed in the context of the purpose and structure of the legislation as a whole, it is clear that section 105(1) should be interpreted as applying to those discrete elements of an application which comprise proposals for development for which no NPS which has effect. I accept the submission of the defendant that section 105 of the 2008 Act should be interpreted as applying to free-standing parts of an application to the extent that "section 104 does not apply in relation to the application". Such an approach reflects the purpose and intent of the legislation without unduly disturbing the effect of the statutory language. Thus, the ExA was correct to take the approach which he did.

60. The question arises as to whether or not the section 35 direction which was made in relation to WKN has the effect of bringing it within the scope of the decision-making framework pursuant to section 104. In my view it does not. I am unable to accept the submission that the terms of section 35(1) have the effect of turning a project or development which does not fall within the definition of NSIPs provided within sections 14 and 15 of the 2008 Act into a project which has such a designation. The words "be treated as development for which development consent is required" simply have the effect of making the proposed development subject to the decision-making framework contained within the provisions of the 2008 Act. They do not change the understanding of the proposal as not being within the definition of an NSIP, any more than they change the physical nature of what is comprised within the development. More particularly, they cannot have the effect of altering the scope of an NPS which has been drafted specifically to apply only to those projects that are within the definition of an NSIP.

61. There are clear advantages of the 2008 Act incorporating a provision like section 35, both procedurally in terms of the economy of dealing with projects which are not NSIPs alongside those which are leading to more efficient decision-making, as well as enabling a project of national significance which does not fulfil the definition of an NSIP to take advantage of the DCO regime, for instance in the form of the exemptions from other consenting processes comprised within section 33 of the 2008 Act. It is pertinent to the understanding of the intention of section 35 that it appears in the same Part of the 2008 Act as section 31 and 33 which all refer to the requirement

for development consent, rather than that part of the Act containing sections 104 and 105 which deals with the processes of deciding applications.

62. The cross reference made by the claimant to section 31 of the 2008 Act does not assist. It is clear that the purpose of section 35 is not to make a project which is not and does not form part of an NSIP into an NSIP. Its purpose is more modest, namely to enable the defendant to bring within the scope of the 2008 decision-making framework projects which satisfy the requirements of section 35(2), and are of a particular type of infrastructure which either by themselves or when considered with other specified types of project are of national significance. They are then able to take advantage of the streamlined decision-making processes as well as the available exemptions from other consenting regimes.

63. In the light of these conclusions it is clear that the defendant clearly did misdirect himself when issuing his decision in relation to the WKN project in relation to the statutory framework for determining that part of the application which related to it. Section 104 did not apply to the WKN project, unlike the K3 project, and the defendant ought to have assessed the WKN project deploying the section 105 decision making framework. In the light of these conclusions, albeit contrary to the claimant's submissions on the preliminary issue, the clear outcome is that the defendant has reached a decision incorporating a misdirection and an error of law. The defendant, however, contends that the error of law is not material and that relief should be refused as a matter of discretion. These are matters which are returned to below, following consideration of the claimant's grounds.

64. To deal with the balance of ground 1, it is contended on behalf of the claimant that the defendant ought, in applying section 104, to have accorded primacy to the NPS, accepted that need had been demonstrated for the WKN and, to the extent necessary, have unpicked the conclusions of the ExA in order to reach a lawful decision. In effect, this ground is predicated on the basis that the defendant was right to apply the section 104 decision-making framework to the WKN project, but that he failed to faithfully apply that framework in practice. In reality, in the light of the conclusions in relation to the applicability of section 105 to the WKN project this ground no longer arises. The claimant's ground 2 is similarly predicated upon the WKN proposal needing to be evaluated against the decision-making framework in section 104 of the 2008 Act. For the reasons which have been explained that is not the case. There was no need for the presumption in favour of the proposal pursuant to section 104(3) to be applied, nor was the NPS the primary decision-making tool in the assessment of the application, against which the WKN proposal was required to be judged as a whole. Although within ground 2 the claimant complains that the defendant found a conflict with the waste hierarchy provisions of paragraph 2.5.70 (by adopting the ExA's conclusions in that regard) but failed to judge that conflict against the NPS taken as a whole, in the light of the conclusion that section 104 did not apply to the appraisal of the merits of the WKN proposal there is no substance in this criticism.

65. Turning to ground 3 the claimant's contentions in relation to the failure to give reasons relate, firstly, to the failure of the defendant, when purporting to consider the WKN proposal within the context of section 104, to properly analyse the weight to attach to the need established through the NPS for the electricity which it would generate and the benefit that would bring. Adoption of the ExA's conclusions, forged through the application of section 105 of the 2008 Act was inappropriate, and the

difference between the ExA and the defendant was not properly explained. Again, in the light of the conclusions reached as to the applicable decision-making framework these criticisms are to some extent moot. They are criticisms which do not arise since the defendant was wrong to have sought to reach his decision by solely applying the framework derived from section 104 of the 2008 Act.

66. Further criticisms of the reasons provided by the ExA, giving rise to errors on behalf of the defendant, relate to, firstly, what is said to be a muddling or conflation of the issues in relation to electricity generation and the waste hierarchy. The claimant contends that in the ExA's report, in particular for example at paragraphs 6.2.11 and following, the reasoning of the ExA conflates two separate issues, namely energy need on the one hand, and compliance with the waste hierarchy or the need for further waste facilities on the other. This muddling of the benefits arising from meeting the need for further sustainable energy generation, with the impact on the waste hierarchy of the proposal occurs again in paragraphs 4.18–4.20 of the defendant's decision to accept the conclusions of the ExA on these matters.

67. Having examined these paragraphs, and the ExA's report as a whole, I am not satisfied that there is any legitimate complaint in relation to the reasons that are provided by the ExA in connection with these issues. It is important, obviously, for the ExA's report to be read in its entirety. Further, both in paragraphs 6.2.13-6.2.17, 6.2.25–6.2.33 as well as in paragraphs 6.3.10-6.3.17, the conclusions of the ExA are clear in relation to the benefit to be recognised from the energy generated by the WKN proposal but also (and bearing in mind the differences in the increase in capacity between the K3 proposal and the WKN proposal) the impact of the WKN proposal upon the interests of the waste hierarchy. The reflection of these conclusions in the decision letter again clearly identifies the assessments in relation to electricity generation and impact on the waste hierarchy. The issues are not in my judgment muddled: it was necessary in terms of the applicable policy for the ExA and the defendant to form conclusions in relation to the benefits of energy generation as well as any impact on the waste hierarchy since both are material issues in relation to the operation of the proposed facility. Both the ExA and defendant undertook an analysis of these considerations and then brought them into their analysis of the planning balance. The conclusions arrived at in the decision-making process with respect to these issues are clearly spelt out. They are treated separately, as they should be and as the policy framework required, in the light of the fact that they are both individual elements of the overall planning appraisal as well as integrally related to the operation of the facility which is under consideration.

68. The second aspect of the reasoning with which the claimant takes issue is that pertaining to the dispute set out above in respect of waste arisings and the availability of fuel for the application proposals. It is contended on behalf of the claimant that there was a clear issue joined between itself and KCC in relation to the volumes of waste arising which fell to be considered when examining the availability of fuel for the proposal. It is said by the claimant that the ExA, and thereafter the defendant, provided no reasons which grappled with this difference in the figures, nor did the ExA or the defendant provide any understanding as to why the claimant's analysis of the waste arisings had been rejected.

69. I am unable to accept these criticisms. In my view the basis upon which the ExA reached his interconnecting conclusions about, firstly, the evidence in relation to

available waste as fuel, secondly, the conclusions to be drawn from this evidence as to the proposal's impact on the waste hierarchy and, therefore, thirdly, the relationship between the proposals and the policies of the EPR and NPS EN-3 at paragraph 2.5.70 are all clearly expressed. In respect of the competing positions as to volumes of waste, and the available capacity of additional waste fuel, paragraphs 4.10.122-4.10.132 of the ExA's report quoted above provide clearly articulated conclusions resolving the issues. The ExA explains why he prefers the KCC assessment, noting that the EPR inspector had accepted KCC's consultant's analysis as a sound evidence base for the revised plan. These paragraphs also explain the relationship between these conclusions and, alongside paragraphs 4.10.139-4.10.144, their impact in relation to the merits of the WKN project upon the interests of the waste hierarchy. Subsequent paragraphs within the ExA's analysis of the overall planning balance further reflect these conclusions and explain them. In my judgment this material is more than adequate to clearly explain the reasons for the ExAs conclusion that the KCC assessment was to be preferred to that of the claimant, as well as the further consequences for the assessment of the merits of the WKN project against the relevant planning policies.

70. Ground 4 is the contention that in the light of the difference between the approach of the ExA and that of the defendant, fairness required the defendant to return to the parties for submissions on the impact that this change of approach would have upon the decision-making process. In particular, the claimant contends that submissions would have been made on the primacy of the NPS within the section 104 decision-making framework, together with the establishment by the NPS of the need for the electricity which was being generated. Further submissions could have been made on matters covered by section 104(7) of the 2008 Act on how these issues should be weighed in the overall balance to determine the merits of the proposal.

71. In my judgment, the difficulty with this submission is that it is necessary for the claimant, in reliance upon the principles of procedural fairness set out in *Hopkins Developments Ltd*, to establish there has been any relevant or material prejudice as a result of the failure to reconsult. As set out above, there was no requirement pursuant to the 2010 Rules to revert to the parties in these circumstances. The reality is that all of the matters which the claimant contends would have been raised upon the matter being referred back to them are matters which were already before the defendant: the claimant had emphasised the importance of the benefits arising from electricity generation at the WKN proposal, and the importance of the policies contained in the NPS. In any event, these matters pertained to the application by the defendant of the section 104 decision-making framework which for the reasons already given was not the correct approach to reaching a decision in connection with the WKN proposal. I do not consider, therefore, that there is any substance in the claimant's ground 4.

Relief

72. The defendant contends that the claimant should be deprived of relief, in particular in relation to the quashing of the decision, either in so far as it relates to the WKN proposal, or in its entirety. In order to evaluate this submission, it is important to start with the error of law which has been identified. In this case the error of law is the application by the defendant of section 104 of the 2008 Act to both the K3 and WKN proposals whereas, in accordance with the findings set out above, the defendant should have applied section 105 of the 2008 Act to the WKN proposal. Since this is

an application for judicial review the framework for considering this submission is set out in section 31(2A) of the Senior Courts Act 1981, and amounts to the question of whether or not it was highly likely that the outcome would not have been substantially different.

73. The approach to this question has been the subject of consideration in a number of cases in recent years and it is important to observe that it sets a high threshold to be overcome before relief can be withheld. It is less strict than that which applies in statutory reviews which requires that the court be satisfied that the decision would have been the same (see *Simplex GE (Holdings) Limited v Secretary of State for the Environment* [2017] PTSR 1041), albeit as Coulson LJ observed in the recent case of *R (on the application of Hudson) v Royal Borough of Windsor and Maidenhead* [2021] EWCA Civ 592 at paragraph 80, the precise formulation of the test whether in the terms of the section 31(2A) test, or the alternative test derived from the *Simplex* case that the decision would inevitably have been the same, may not matter in practice, save in a very unusual case.

74. The court must be cautious about straying into assessing the merits of the application in evaluating this question, which is the reserve of the defendant as decision-maker. This point has been observed in several of the relevant authorities dealing with the discretion to withhold relief both under section 31(2A) and also the *Simplex* jurisdiction: see *SSCLG v South Gloucestershire Council* [2016] EWCA Civ 74 at paragraph 25 and *R(Plan B Earth) v Secretary of State for Transport* [2020] PTSR 1446 at paragraph 273 for instance. Obviously, the proper evaluation of the question posed by section 31(2A) is one which will vary from case to case and no single analysis will be capable of resolving all of the many scenarios which courts will have to address. In addressing the question in the present case I have found the following approach helpful.

75. As the *South Gloucestershire* case demonstrates, it is useful, firstly, to clearly identify the error of law infecting the decision, and secondly, those findings or elements of the decision-making process or of the decision itself which are untainted by illegality. This can then enable an analysis of the decision to be undertaken which properly tests the proposition that the decision would have been the same, or would not have been likely to be substantially different. The *South Gloucestershire* case is a helpful illustration of the necessary analysis: in that case the Inspector's error related to the absence of a five-year housing land supply, but Lindblom LJ was satisfied that so strong were the considerations in favour of the grant of permission that even had the Inspector taken into account, as he should have done, that the local planning authority could demonstrate a five-year housing supply, he would still have granted consent as he did in the decision under challenge: see paragraph 26 of the judgment in particular.

76. In considering these questions in relation to the present case it is important to observe, firstly, that the contentions of the claimant in relation to any error of law in the ExA's report have not been upheld. Secondly, in relation to the waste hierarchy and fuel availability, the Secretary of State adopted the ExA's conclusions. He also adopted the ExA's conclusions in relation to all of the other environmental and infrastructure considerations which were examined, and in paragraphs 4.18-4.20 accepted the overall conclusions reached by the ExA in relation to each of the individual proposals. The defendant noted at paragraph 4.6 his view that determining the whole application under section 104 of the 2008 Act did not have a material impact on the overall

outcome in relation to the case. This observation is further justified at paragraphs 6.4-6.6 in which the defendant explains that whilst taking a different approach to the ExA and, as a result of considering both projects under section 104 of the 2008 Act according "more weight" to the NPS, nevertheless his balancing of the issues did not result in a different conclusion to that which was reached by the ExA, namely, that the benefits of the WKN project were outweighed by its non-compliance with policies in NPS EN-1 and EN-3 related to the issues associated with the waste hierarchy and local waste management plan policies.

77. The effect of the defendant's conclusions set out above is that the defendant's assessment of the planning balance did not favour the grant of consent for the WKN project whether it was considered under section 104 of the 2008 Act (with the additional weight being afforded to the NPS in assessing the merits), or whether it was assessed under section 105 of the 2008 Act. It follows that on the basis of the defendant's assessment, the overall outcome of the application would have been the same even if he had adopted the decision-making framework contained within section 105 of the 2008 Act. That assessment is unsurprising because, as the defendant's reasons explain, even applying greater weight to the NPS as required by section 104 of the 2008 Act, and adopting a more favourable approach to the balance than that afforded by the ExA, the adverse impacts of the WKN proposal would still outweigh its benefits. It follows that the decision of the defendant would have been the same, and certainly the outcome would not have been substantially different, without commission of the error of law which has been identified in his decision, and therefore I have formed the view that the claimant is not entitled to relief by way of the quashing of the decision.

Conclusions

78. For the reasons set out above whilst I am satisfied that there was an error of law in the defendant's decision in relation to the application, in the very particular circumstances of this case I do not consider that the claimant is entitled to relief on the basis that the decision would have been the same, and certainly unlikely to have been substantially different, even if the error of law had not been committed by the defendant.

APPENDIX 7

Neutral Citation Number: [2013] EWHC 2937 (Admin)

Case No: CO/5073/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
(sitting at Manchester Civil Justice Centre)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/10/2013

Before :

MR JUSTICE TURNER

- -

Between :

THE QUEEN (oao DAVID GATE on behalf of TRANSPORT SOLUTIONS FOP LANCASTER AND MORECAMBE)	**Claimant**
- and -	
THE SECRETARY OF STATE FOR TRANSPORT	**Defendant**
-and-	
LANCASHIRE COUNTY COUNCIL	**Interested Party**

(Transcript of the Handed Down Judgment of
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165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Mr Richard Turney (instructed by **Leigh Day & Co**) for the **Claimant**
Mr Richard Kimblin (instructed by **T/Sols**) for the **Defendant**
Mr Vincent Fraser QC (instructed by **Lancashire County Council**) for the **Interested Party**

Hearing dates: 22nd and 23rd July 2013

- -

Approved Judgment

Judgment
As Approved by the Court

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The Hon Mr Justice Turner:

THE BACKGROUND

1. For a very long time, Lancashire County Council ("Lancashire") has wanted to provide a road to link the M6 Motorway to the port of Heysham on Morecambe Bay. Its wish was eventually granted by The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 ("the Order"). The Order is now challenged by the claimant, Mr Gate, on behalf of a campaigning group called "Transport Solutions for Lancaster and Morecambe" the members of which are united in a common conviction that, whatever might be the right transport solution for Lancaster and Morecambe, this is not it. Fortunately, it is not the job of this court to decide if this proposed new road is a good idea but merely to determine whether or not the decision to make the Order permitting it to be built was lawful.

THE ROAD

2. The development comprises a 4.8km (about three miles) long dual carriageway road. It connects a previously built length of the A683 Heysham to M6 Link, at its junction with the A589 Morecambe Road near Torrisholme, to junction 34 on the M6 near Halton. It includes a combined footway and cycleway along its full length and 23 major structures including bridges over the West Coast Mainline Railway, the Lancaster Canal and the River Lune. By way of convenient shorthand, I will refer to the project as a whole as the "Heysham/M6 development".

GROUNDS OF CHALLENGE

3. The claimant challenges the decision to give development consent on five grounds:

    i) Ground One. The defendant had no power to make the order.

    ii) Ground Two. The consultation process was flawed.

    iii) Ground Three. The defendant wrongly took into account inapplicable National Policy Statements.

    iv) Ground Four. The defendant wrongly dismissed alternative alignments of the proposed route.

    v) Ground Five. Inadequate consideration was given to otter welfare.

4. I propose to deal with each ground in turn.

GROUND ONE

Development consent

5. The Planning Act 2008 ("the 2008 Act") introduced a new approach to the planning process applicable to certain types of development. The summary contained in the Explanatory Notes to the Act provides:

> "Parts 1 to 8 of the Act create a new system of development consent for nationally significant infrastructure projects. The new system covers certain types of energy, transport, water, waste water and waste projects. The number of applications and permits required for such projects is being reduced, compared with the position under current legislation."

6. Thus different consent regimes apply depending upon whether or not any given project falls within the scope of the 2008 Act. Lancashire and the defendant proceeded on the basis that the Heysham/M6 development qualified for consent under the 2008 regime and set about obtaining development consent on this basis. The claimant contends that the development fell outside the scope of the scheme of the 2008 Act and therefore the whole process was irremediably flawed.

7. To resolve this issue it is necessary to analyse the basis upon which it is to be determined whether or not any given project falls within the purview of the 2008 Act.

8. Section 115(1) of the Planning Act 2008 provides:

> "Development for which development consent may be granted
>
> (1) Development consent may be granted for development which is—
>
> (a) development for which development consent is required, or
>
> (b) associated development."

9. Section 115(2) of the 2008 Act provides insofar as is relevant:

> "(2) "Associated development" means development which—
>
> (a) is associated with the development within subsection (1)(a) (or any part of it)…"

10. This of course poses the question as to what types of development are those for which development consent is required. The answer is to be found in section 31 of the 2008 Act:

> "When development consent is required
>
> Consent under this Act ("development consent") is required for development to the extent that the development is or forms part of a nationally significant infrastructure project."

11. Throughout the trial the term "nationally significant infrastructure project" was referred to as an NSIP (and pronounced en-sip).

12. Combining the effects of section 115 and 31 of the 2008 Act therefore generates three categories of development for which development consent may be granted:

i) development which is an NSIP,

ii) development which forms part of an NSIP, and

iii) associated development.

What is an NSIP?

13. Section 14 of the 2008 Act lists no fewer than sixteen types of project which are categorised as NSIPs. They include by way of example: the construction of railways, development relating to underground gas storage facilities, airport-related developments and the construction or alteration of hazardous waste facilities. The category with which this case is concerned is to be found in section 14(1)(h): "highway-related development".

14. As one might reasonably expect, not every "highway-related development" falls within the 2008 regime, otherwise even the most trivial of works would automatically attract the full weight of a process designed to be proportionate only to cases involving nationally significant infrastructure. Accordingly, the 2008 Act imposes a narrow definition of "highway-related development" to retain the distinctive nature of NSIP projects.

15. Section 22 of the 2008 Act provides the relevant definition:

> "Highways
>
> (1) Highway-related development is within section 14(1)(h) only if the development is—
>
> (a) construction of a highway in a case within subsection (2),
>
> (b) improvement of a highway in a case within subsection (3), or
>
> (c) alteration of a highway in a case within subsection (4).
>
> (2) Construction of a highway is within this subsection only if the highway will (when constructed) be wholly in England and—
>
> (a) the Secretary of State will be the highway authority for the highway, or
>
> (b) the highway is to be constructed for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority.

(3) Improvement of a highway is within this subsection only if—

(a)the highway is wholly in England,

(b) the Secretary of State is the highway authority for the highway, and

(c) the improvement is likely to have a significant effect on the environment.

(4) Alteration of a highway is within this subsection only if—

(a) the highway is wholly in England,

(b) the alteration is to be carried out by or on behalf of the Secretary of State, and

(c) the highway is to be altered for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority."

16. In this case, paragraph 11 of the Order provides for the Secretary of State to be the highway authority for those roads described in Schedule 5 thereto. In effect, these roads are those relating to the link with the M6. Lancashire is to be the Highway Authority in respect of the rest of the development roads. Applying the section 22 definition, therefore, the claimant must concede that at least part of the Heysham/M6 development is an NSIP even if the rest is not. He is constrained to argue that there ought therefore to have been two processes for the obtaining of consent, one of which proceeded under the 2008 regime and the other outside it. To treat the whole of the development as falling within the provisions of the 2008 Act was, he argues, wrong in law.

The whole scheme approach

17. In an argument most fully developed on behalf of Lancashire, it is contended that the consented project was one complete scheme. The following points are made:

i) The layout of junction 34 is unsuitable for its current use. Over the last five years accidents involving injury have exceeded the rate of one every two months.

ii) The works relating to roads for which the defendant will be the highway authority are very considerable both in terms of the lengths of such roads and the proportionate cost of this part of the project.

iii) The development will involve works to the junction which are likely to take about two and a half years and will have an impact on very substantial volumes of traffic.

iv) The national importance of the development as a whole is reflected in the fact that 90% of the cost is to be borne by national government.

v) The 2008 Act was intended to provide a "one stop shop" and splitting up homogenous projects would be contrary to this policy aim.

18. Notwithstanding these features, I do not accede to the submission that the development as a whole should be treated as an NSIP. This is because:

i) The wording of section 14 of the 2008 Act establishes that a "nationally significant infrastructure project" means a project "which consists of any of the following…" In their ordinary meaning the words "consists of" require that the project must fall entirely within the relevant definition of an NSIP to fall within the scope of section 14. Otherwise, the word "includes", or an equivalent, would have been used.

ii) Within the context of section 22(2)(a) of the 2008 Act, this development "includes" but does not "consist of" a highway in respect of which the defendant will be the highway authority.

iii) If it were possible to categorise a highway development as comprising an NSIP even when not all of the highway was intended to fall within the responsibility of the Secretary of State as highway authority then there would be no clear means of determining where the statutory line could be drawn.

iv) Section 22(2)(b) equips the decision maker to bring a project within the 2008 scheme where a highway is to be constructed which is for a purpose "connected with" a highway for which the Secretary of State is to be the highway authority. The application of a literal interpretation to section 22(2)(a) thus increases certainty in the scope of its application without undermining the greater level of flexibility introduced by section 22(2)(b).

This, of course, raises the question of just how flexible section 22(2)(b) is intended to be.

Connected purpose

19. A central issue is thus whether, under section 22(2)(b), that part of the Heysham/M6 development which does not fall within schedule 5 to the Order is a highway to be "constructed for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority."

20. Much time and energy was devoted in argument to the issue of what the words "a purpose connected with" mean. I was taken upon a jurisprudential voyage of discovery during the course of which I was afforded glimpses of cases variously involving a railway shed in New Zealand in the 1920s[1] and a schoolboy and others discovered in possession of computer hard drives containing extreme political material[2]. Indeed, starting with section 44 of Chelsea and Kilmainham Hospitals Act 1826 there are no fewer than 464 examples in which this or a closely similar phrase has been deployed in statutes or subordinate legislation.

[1] Hatrick v R [1923] AC 213
[2] R v Zafar [2008] QB 810

21. In addition, I was invited (and agreed *de bene esse*) to look at Hansard to see what light, if any, it might shed upon the proper interpretation of the section.

22. Ultimately, however, I conclude that:

    i) "A purpose connected with" are ordinary English words which can and should be given an ordinary English meaning.

    ii) The meanings of common words and phrases, particularly (as in this case) those which are conceptually abstract, may well vary in accordance with the statutory context in which those words are to be found. Divorcing interpretation from context may tend to mislead rather than to inform.

    iii) There is no ambiguity, obscurity or absurdity about the language of the section which entitles me to have regard to Hansard (in any event, I did not find the passages which were brought to my attention to be of particular help).

    iv) If Parliament had intended to elaborate further upon the meaning of these words then it could easily have done so. I see no benefit, in the circumstances of this case, in attempting to put a gloss on the words themselves. In Re Sevenoaks Stationers (Retail) Ltd [1991] Ch 164, Dillon LJ, referred to judicial statements on section 6 of the Company Directors Disqualification Act 1986 which he described as "ordinary words of the English language", at page 176F:

> "Such statements may be helpful in identifying particular circumstances in which a person would clearly be unfit. But there seems to have been a tendency, which I deplore, on the part of the Bar, and possibly also on the part of the official receiver's department, to treat the statements as judicial paraphrases of the words of the statute, which fall to be construed as a matter of law in lieu of the words of the statute. The result is to obscure that the true question to be tried is a question of fact – what used to be pejoratively described in the Chancery Division as 'a jury question'."

    In my view, these observations apply with equal force to the wording of section 22(2)(b) of the 2008 Act.

23. In the circumstances of this case I am entirely satisfied that the dual carriageway which is intended to fall within the auspices of Lancashire as highway authority ("the Lancashire highway") was indeed constructed for a purpose connected with the highway in respect of which the defendant is intended to be the highway authority (the defendant's highway").

24. These are my reasons:

    i) Part of the purpose of the 2008 Act was to streamline the process of obtaining consent for national projects. By the operation of section 33 of the Act, where a proposed project falls within the parameters of "development consent" then it is not necessary to obtain any of that wide range of other consents,

permissions and authorisations which would otherwise burden the developer. If section 22(2)(b) were given too narrow an interpretation then the danger would arise that many projects would be doubly encumbered by the need to obtain development consent in respect of one part of it and the requirement to comply with the residual panoply of consents which would otherwise be covered by section 33 in respect of the rest. Far from being streamlined, the process would become unattractively more elaborate than under the old regime. This is precisely the result which would ensue if the claimant were to succeed on this point in the circumstances of this case.

ii) The purpose of a motorway is not fulfilled merely by the provision of junctions. The roads which lead from those junctions are all likely to be connected to the purpose of the junctions which they serve to a greater or lesser extent and over a distance which will vary from case to case. The point at which any given road leading from a motorway junction could be said to be sufficiently remote so as no longer to be connected with the purpose of the junction is a matter of judgment which the decision maker with the requisite combination of expertise and familiarity with the detail of the proposed development and its context will usually be best placed to judge. I would expect those circumstances in which such a decision would fall within the legitimate purview of judicial review to be rare.

iii) The facts of this case fully justify the inclusion of the Lancashire highway within the parameters of the application for development consent. The works to the motorway junction and the relatively short length of dual carriageway leading towards Heysham are to a significant degree mutually dependent for the fulfilment of their respective and overlapping purposes. To attempt to separate them would be wholly artificial.

25. By way of a postscript to this issue, I will refer to two distinct arguments ventilated on behalf of the claimant neither of which I found to be attractive.

26. Firstly, it was contended that the effect of section 33(4) of the 2008 Act, which precludes the making of an order under section 10 of the Highways Act 1980 that the Highway should become a trunk road, would in this case have the effect of preventing the defendant in perpetuity from becoming the highway authority in respect of the Lancashire highway. This, it is argued would produce absurd results. In my judgment, however, the role of section 33 is limited in operation to the statutory regime which may be deployed to obtain orders to permit the project to proceed and does not create a bar to the subsequent re-allocation of responsibilities between highway authorities thereafter in accordance with the established statutory regime. The risk of an absurd result does not therefore arise.

27. Secondly, it was contended that section 22 of the 2008 Act should be given a narrow construction because to develop without such consent is a criminal offence under section 160. However, in this case, I find there to be no compelling argument for a narrow construction to be taken. The creation of the criminal offence is ancillary to the scheme of the 2008 Act and not vice versa. To find otherwise would be to allow the tail to wag the dog.

Alternative findings

28. If the claimant had persuaded me that it would be wrong to categorise the Lancashire highway as being constructed for a purpose connected with the defendant's highway I would not have gone on to find that the Lancashire highway was "associated with" the development of the motorway junction within the meaning of section 115 of the 2008 Act. The Department for Communities and Local Government Guidance provides at paragraph 10 that an associated development should be subordinate to the development itself. The examples given in the Guidance suggest that the associated development will usually be of a type distinctly secondary in significance to the main development. I would not, therefore, have found that the Lancashire highway fell within this category.

29. Nevertheless, even if I had found that the Lancashire highway had fallen outside the scope of the 2008 Act, I would have declined to exercise my discretion to grant relief in this case. The application of the normal planning regime would have afforded little or no material advantage to objectors to the project generally or more specifically to the organisation which the claimant represents. Still less is it clear how partial deployment of the regime outside the 2008 Act would have benefitted legitimately interested members of the public generally. The development consent process is thorough and comprehensive and it is overwhelmingly likely that consent would have been given regardless of the route by which it had been achieved. The time, cost and inconvenience of re-starting the process would render judicial intervention at this stage to be wholly disproportionate.

GROUND TWO

The law

30. This ground is based on the contention that the decision making process was undermined by flawed consultation.

31. Section 47 of the 2008 Act provides in so far as is material:

> "Duty to consult local community
>
> (1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.
>
> (6) Once the applicant has prepared the statement, the applicant must publish it—
>
> (a) in a newspaper circulating in the vicinity of the land, and
>
> (b) in such other manner as may be prescribed.
>
> (7) The applicant must carry out consultation in accordance with the proposals set out in the statement."

32. Section 37(3) (3)(c) provides:

> "Applications for orders granting development consent

> (3) An application for an order granting development consent must—
>
> (c) be accompanied by the consultation report…"

33. Section 49 of the 2008 Act imposes a duty to take into account responses to consultation.

34. Pursuant to section 50 of the 2008 Act, the Secretary of State for Communities and Local Government issued guidance on the pre-application consultation process which provides:

> "11. However, we recognise that NSIPs and the communities and environment in which they are located will vary considerably. The Government therefore believes that a 'one-size-fits-all' approach would not be appropriate and that promoters, who are best placed to understand the detail of their specific project proposals, and the relevant local authorities, who have a unique knowledge of their local communities, should as far as possible work together to develop plans for consultation…"
>
> "13. We also recognise that, whilst consultation should be thorough and effective, there will be a variety of possible approaches to discharging the requirements, and that consultation will need to be proportionate. We understand that promoters will have their own approaches to consultation, and already have a wealth of good practice on which to draw…"
>
> 19. It is important that, where possible, communities are able to participate early, when proposals and options are still being developed. People need to know that their participation can make a difference. This is challenging, and means that developers and consultees have to be ready to listen and adapt their own ideas.
>
> 20. Above all, it must be clear what is being consulted on. Promoters must be careful to make clear what is settled and why, and what remains to be decided, so that the expectations of consultees are properly managed."

35. In R v North and East Devon HA ex p Coughlan [2001] QB 213 the Court of Appeal summarised the general principles relating to consultation within the context of administrative law:

> "108 It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent

> consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken."

The complaint

36. The central criticism which the claimant makes of the consultation process is that it was launched on the assumption that the project would proceed along a particular geographical route and that contributions from the public would not be entertained to the extent that they related to the viability of alternatives.

37. In particular, the supporting information issued in conjunction with the statement of community consultation which had been provided in accordance with section 47 of the 2008 Act categorically stated:

> "**Fixed design parameters**
>
> The following element of the design will not be open for consultation or change for the reasons stated.
>
> Route & road type…"

38. This assumption is also reflected in the wording of the section 47 statement itself and in what was said by representatives of Lancashire to members of the public during the process of consultation.

39. On the face of it, it may seem very strange indeed that the consultation should be presented in such limited terms. However, it is necessary to look at the history of the matter to gain a complete picture.

History

40. As long ago as 1947 work began on a "Road Plan for Lancashire" then under the auspices of Lancashire County Council. In the following year, the Plan was published. It contemplated a link between the Morecambe-Heysham peninsula and what is now the M6 Motorway. The gestation period which followed must be one of the longest in the annals of road transport history a detailed account of which it is mercifully not necessary to relate in this judgment. Suffice it to say that it was not until 1992 that work began on phase 1 of the scheme the easternmost part of which is the point at which the link to the M6 is intended to be built. This work was completed and the road opened in 1994. It could not be claimed that matters thereafter proceeded with indecent haste.

41. By September 1995, the local authority was examining a recommendation that the most appropriate route by which phase 1 should be linked to the M6 was by way of what has become known as the northern route and which is at least broadly similar to that in respect of which the development consent was eventually obtained. The main rival route was the western route. At that stage there was a further option involving the construction of a new motorway junction which for the purposes of this judgment I need consider no further.

42. In October 1997 a consultation process was initiated which included the distribution of 11,000 copies of a brochure and questionnaire and open events at five different venues over a total period of twelve days. By a relatively small majority the western route proved to be the most popular. However, the Local Plan Inspector subsequently reported that he had a number of reservations about this route and recommended that it should not be included in the Local Plan.

43. There followed a further period of consultation in July 2001 which included events at six different venues over seven days. However, it was considered that difficulties with advertising the venues and distributing the consultation booklets necessitated a further consultation.

44. In consequence, further well-advertised events were held at seven venues over a period of seven days and a MORI survey was commissioned the results of which demonstrated that the northern route was, by a narrow margin, now the more popular. More consultations took place in May 2005 at five venues over five days leading to some amendments of the proposals in respect of one of the affected areas.

45. The planning application for the northern route scheme was submitted in December 2005. The Inquiry took place over a period of five weeks and provided opportunities for long and intensive cross examination. Subsequently, planning permission was granted but the decision faced an immediate challenge by way of judicial review from "Transport Solutions for Lancaster and Morecambe" the organisation it will be recalled whose interests are represented by the claimant in the instant case.

46. In R (on the Application of Davies) v Secretary of State for Communities and Local Government [2008] EWHC 2223 (Admin) Sullivan J. (as he then was) held in characteristically trenchant terms that this challenge was without merit. It is to be noted that the claimant in that case did not allege that there had been a lack of consultation leading up to the decision.

47. Had the scheme thereafter proceeded in accordance with the consent already obtained then that would have been an end of the matter and the road would probably have been built by now. However, in pursuit of the objective of "best value" (the achievement of which was found to require, by way of example, alterations to plans relating to a roundabout and a shortening of the proposed slip road) it became necessary to apply afresh for consent. The route of the highway which received development consent in this case, however, follows precisely the same route as that in respect of which the original consent of 2007 had been given. In the light of what has followed it is tempting to doubt whether, in the event, any money at all has been saved by the "best value" amendments.

The consultation

48. It is easy to understand, against this background, why Lancashire was not eager to reopen the issue concerning the route which the new road would follow. Doubtless, it considered that the issue had been effectively disposed of in the laborious processes leading to the 2007 consent and may well have been suffering from consultation fatigue. Nevertheless, I consider that it would have been more appropriate for the consultation exercise to have been presented in terms which were not quite so

unequivocally expressed. After all, this was a free standing application for consent in respect of which the outcome of the 2007 consent was not formally binding.

49. However, a decision following a consultation process is not unlawful simply because it is possible in hindsight to conceive of a process that would have been an improvement on that which was actually carried out. In the circumstances of this case, I decline to conclude that the matters complained of by the claimant are of sufficient practical substance to render the decision unlawful. I note, in particular:

i) Notwithstanding the wording of the section 47 statement and supporting information, the local community (or, at least, the interested part of it) was undeterred in its determination to exhume the issue of preferred route which Lancashire thought had been put to rest in 2007. The section 37(3)(c) Consultation Report records that the most frequently raised issues included location of the route.

ii) The Examining Authority, who was in a better position than this court to form a judgment on the issue, found at paragraphs 215 and 216 of his recommendation:

> "Some IPs raised concerns over the adequacy of the pre-application process. This was a matter considered at the acceptance stage. I am satisfied that even if some representatives of the consultants may have given unhelpful comments at public exhibitions and meetings, it was clear that the consultation process and the ability to make representations on the DCO did allow objections in principle and fundamental alternatives to be canvassed and not just minor alterations, notwithstanding the long history that had led to the DCO scheme…
>
> Moreover, I am satisfied that no persons have been precluded or hindered from making their cases against the proposal on whatever basis they consider relevant."

iii) The consultation process in respect of the proposed development was generally very thorough and robust including, as it did, five public exhibitions each lasting about six hours, meetings with affected parties and community groups, news letters and a website page.

iv) There was no evidence before the Examining Authority (or before me) to suggest that there had been any significant change in circumstances between 2007 and 2013 which would have been likely to justify a reversal of the arguments in favour of the western route.

v) There were clear arguments of proportionality which would justify the concentration of consultative minds on the proposed changes to the earlier project rather than radically different proposals which had very limited prospects indeed of displacing the favoured northern route .

50. In the circumstances, I am satisfied that, although in one limited respect the consultation process fell short of ideal, it is not the function of this court retrospectively to micromanage for perfection. Taken as a whole, the consultation process was a fair one and not susceptible to review.

GROUND THREE

The Complaint

51. The claimant contends that the defendant erred in basing its decision, at least in part, in reliance upon national policy statements which were not material to the type of development under consideration.

National policy statements

52. Section 5 of the 2008 Act provides:

> "National policy statements
>
> (1)The Secretary of State may designate a statement as a national policy statement for the purposes of this Act if the statement—
>
> (a) is issued by the Secretary of State, and
>
> (b) sets out national policy in relation to one or more specified descriptions of development.

53. Section 104 (2)(a) provides:

> "(2) In deciding the application the Panel or Council must have regard to—
>
> (a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"),"

54. In this case, however, there is no directly relevant national policy statement as none has been designated specifically for highway projects.

55. Section 105(2) provides:

> "(2) In deciding the application the Secretary of State must have regard to—
>
> …(c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision."

56. It must follow, and common sense would in any event dictate, that the decision maker is not precluded from taking into account matters incorporated within national policy statements which are not directly applicable to the development so long as he considers that they are both important and relevant to his decision.

57. The Examining Authority in this case specifically and accurately noted both the absence of a directly applicable national policy statement and the requirement to have regard to important and relevant matters under section 105. He went on to refer to the national policy statements in respect of ports and of nuclear power generation in this specific context. Heysham is a port and the site of two nuclear power stations. There is a possibility that a third may in time be constructed there.

58. Against this background, it is clear that the Examining Authority was fully aware of the fact that the national policy statements had no direct application to this project. No objection could reasonably have been taken if the defendant had simply articulated matters relevant to Heysham's status as a port and site of nuclear power generation without reference to national policy statements and the fact that the national policy statements were referred to does not vitiate the relevance of the matters which they contain. Once the matters are correctly categorised as relevant then it is a matter for the defendant to determine what weight to give them subject to the very limited constraints of judicial review. In any event, it is clear that the Examining Authority went no further than to conclude at paragraph 52 of his report that the Port and Nuclear Power Policies provided "some support" for the scheme.

59. Accordingly, this ground is without merit.

GROUND FOUR

60. This ground is based on the contention that the defendant wrongly rejected alternative routes on the basis that they would have adverse effects on European Protected Sites (EPSi) and Species (EPSp) and that the proposed development ran through green belt land.

61. The Examining Authority considered the issue of alternative sites in paragraphs 70 to 115 of his report. He observed that the decision to pursue the northern route was taken in the context of the previous application process upon the advice of leading counsel, Frances Patterson QC (as she then was), who had concluded that the western route could not lawfully be pursued. The comparative cost and performance projections were relevant but of particular importance were the findings of ADAS Ltd (formerly, prior to privatisation, the Agricultural Development and Advisory Service) on the likely ecological impact.

62. The claimant complains that the ADAS findings were not based on a full Habitats Regulations Assessment or Appropriate Assessment by a Competent Authority. The Examining Authority, however, recorded this fact but concluded, nevertheless, that the findings of ADAS were sufficiently robust to equip him to reach a professional judgment that the western route would indeed be likely to have a significant impact on the integrity of the EPSi. He noted that there had been no significant change in circumstances in the interim.

63. The following factors are material:

i) The proposed development did not threaten the integrity of an EPSi.

ii) Natural England (the statutory consultee on nature conservation matters) advised that the western route would be likely to cut off key feeding or nesting areas for characteristic listed bird species and thus have an adverse impact on the EPSi.

iii) The western route did not offer any overall advantages compared to the northern route and so the EPSi question was not, in any event, determinative of the issue of choice.

64. The Examining Authority was aware of and took into account the fact that the development would run through green belt land and that the western route would not. He made the important point, however, that "green belt" is not a designation reflecting quality of the landscape but a categorisation applied to prevent urban sprawl. It is evident from the detail of his description of the landscape through which the alternative routes would pass that he was far better placed than this court to make a judgment on matters such as aesthetics, tranquillity and amenity.

65. Ultimately, it is neither necessary nor desirable that the consideration of possible alternative routes in the context of the determination of an application for development consent should be entered into with the same level of expert scrutiny and assessment as the development itself. Such an approach would be likely to be disproportionate in time, effort and expense. The Examining Authority set out his reasons for rejecting alternatives in coherent and compelling detail. His conclusions were neither unlawful nor irrational.

GROUND FIVE

66. The final ground upon which the claimant criticises the defendant is based on the contention that the consent failed properly to deal with the potential impact of the development on the welfare of otters.

67. The proposed development involves building a new bridge across the River Lune. Otters live in the vicinity. Their population appears to be growing. There is some evidence that they may have resting sites in the vicinity of the site of the new bridge.

68. Under regulation 41 of the Conservation of Habitats and Species Regulations 2010 it is an offence deliberately to disturb a European protected species or to damage or destroy a breeding site or resting place of such an animal. The otter is a protected species. Under regulation 53, however, the relevant licensing body (Natural England) may grant a licence for certain activities which would otherwise constitute an offence for a number of purposes including those comprising imperative reasons of overriding public interest. Under regulation 9(3) a competent authority (which includes the defendant in this case) "in exercising any of their functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions."

69. The challenge facing the Examining Authority was that otters are a mobile species and that there was no telling where they would be (or what they would be doing there) by the time the bridge was about to be constructed. Natural England, as licensing

authority, indicated, reasonably enough, that they would not consider granting a pre-emptive shadow licence application. Lancashire, however, undertook to carry out further detailed surveys before construction was to be carried out and indicated that, if necessary, a licence would be applied for at that stage.

70. In R (Morge) v Hampshire CC [2011] 1 WLR 268 the Supreme Court considered the proper scope of the European Directive which was subsequently to be implemented domestically in the form of the 2010 Regulations. Lord Brown held:

> "29 … the planning committee['s] only obligation under regulation 3(4) is, I repeat, to "have regard to the requirements of the Habitats Directive so far as [those requirements] may be affected by" their decision whether or not to grant a planning permission. Obviously, in the days when the implementation of such a permission provided a defence to the regulation 39 offence of acting contrary to article 12(1), the planning committee, before granting a permission, would have needed to be satisfied either that the development in question would not offend article 12(1) or that a derogation from that article would be permitted and a licence granted. Now, however, I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) should not ordinarily be granted save only in cases where the planning committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers. After all, even if development permission is given, the criminal sanction against any offending (and unlicensed) activity remains available and it seems to me wrong in principle, when Natural England have the primary responsibility for ensuring compliance with the Directive, also to place a substantial burden on the planning authority in effect to police the fulfilment of Natural England's own duty.
>
> 30 Where, as here, Natural England express themselves satisfied that a proposed development will be compliant with article 12, the planning authority are to my mind entitled to presume that that is so. The planning committee here plainly had regard to the requirements of the Directive: they knew from the officers' decision report and addendum report (see para 8 above and the first paragraph of the addendum report as set out in para 72 of Lord Kerr of Tonaghmore JSC's judgment) not only that Natural England had withdrawn their objection to the scheme but also that necessary measures had been planned to compensate for the loss of foraging…"

71. In this case, Natural England indicated that if a survey were to find that there were resting places in the vicinity of the bridge at the time work is shortly to commence then a licence application would probably not be required (presumably on the basis that such resting places would not be damaged or destroyed). In this case, it was open to the defendant to conclude that it was not likely that the proposed development

would harm otters in those ways prohibited by the Regulations or that, even if it, did Natural England would be likely to issue a licence.

72. Thus the approach of the Examining Authority and the defendant on this issue was both pragmatic and in accordance with the Regulations. This ground, therefore, is rejected.

Conclusion

73. For the reasons given above, therefore, each of the five grounds relied upon by the claimant fails and the application for judicial review also fails.

APPENDIX 8

FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 10
XA11/25

Lord President
Lady Wise
Lord Ericht

OPINION OF THE COURT

delivered by LADY WISE

in the appeal under section 239 of the Town and Country Planning (Scotland) Act 1997

by

RAESHAW FARMS LIMITED

Appellant

against

SCOTTISH MINISTERS

Respondents

and

ENERGIEKONTOR UK LTD

Interested Party

Appellant: J de C Findlay KC, K Young; Murray Beith Murray LLP
Respondent: Crawford KC, McLean (sol adv); Scottish Government Legal Directorate
Interested Party: Burnet KC, McKenna; CMS Cameron McKenna Nabarro and Olswang LLP

17 February 2026

Introduction

[1] This statutory appeal raises the issue of whether an application for planning consent for a renewable energy project, a wind farm, was lawfully granted in circumstances where

the connection of the wind farm to the grid was not included as part of the application. The issue which arises is whether the construction of the wind farm and its grid connection constitute a single project for the purpose of assessing its environmental impact. Allied to that is the question whether the decision maker's evaluation of that issue was sufficiently reasoned and fact specific.

[2] On 15 December 2022, the interested party, a renewable energy development company, submitted a planning application to Scottish Borders Council for the erection of eight wind turbines and associated infrastructure, to be sited about 1.3 kilometres to the northeast of the village of Heriot and to be known as Wull Muir Wind Farm. The appellant operates a farm and estate close to the proposed wind farm development and objected to the application, which was initially refused. On an appeal by the interested party, the respondents, Scottish Ministers, appointed a reporter, who issued a decision on 14 January 2025 to grant planning permission subject to various conditions. That decision is challenged in this appeal.

The statutory context

[3] The source of the applicable law in this area is EU Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the 2011 Directive), as amended by Directive 2014/52/EU, which codified EU law on this issue following successive amendments of the predecessor Council Directive 85/337/EC. Both Directives have sought to ensure that the likely environmental impacts of any major project are considered and assessed before permission for development is granted. Recital (2) in the preamble to the 2011 Directive emphasises that "[e]ffects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-

making processes." "[P]roject" is defined in Article 1 as "the execution of construction works or of other installations or schemes" and "other interventions in the natural surroundings and landscapes…".

[4] Article 3(1) provides that every environmental impact assessment ("EIA") shall "identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project" on a range of environmental factors, including (a) population and human health; (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; (c) land, soil, water, air and climate; (d) material assets, cultural heritage and the landscape; (e) the interaction between the factors referred to in points (a) to (d).

[5] In Scotland, the 2011 Directive is implemented by the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/102). EIA development is defined by reference to Schedules I and II of the Regulations. Installations for the harnessing of wind power for energy production involving more than two turbines with a height of on or over 15 metres are specified as being Schedule 2 development (Schedule 2, Category 3 subparagraph (j)). Regulation 2 defines EIA development as including "Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location". It is accepted by all parties that the interested party's proposed scheme constitutes EIA development.

[6] Regulation 3 of the 2017 Regulations provides that "[t]he planning authority or the Scottish Ministers, as the case may be, must not grant planning permission for EIA development unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the planning authority or the Scottish Ministers, as the case may be, must take the environmental information into account."

[7] In terms of regulation 4, an environmental impact assessment is a process that involves the preparation by the developer of an EIA report, which is publicised and then examined by the decision maker, who must reach a reasoned conclusion on the significant effects of the development on the environment. The factors to be identified, described and assessed are effectively those listed in Directive 2011/92/EU. Specific reference is made to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and Directive 2009/147/EC of the European Parliament on the conservation of wild birds (the Birds Directive). In terms of regulation 4(5), the assessment must identify the likely significant effects of the proposed development on the environment before a decision to grant planning permission for that development is made. Exceptions to that are found in regulation 4(6) where the decision makers "(a) consider that the likely significant effects of the development on the environment are not fully identifiable at the time of their determination of the application for planning permission; and (b) are minded to grant planning permission for EIA development subject to a multi-stage condition."

[8] Regulation 5 prescribes the information that must be included in the EIA report and Part 5 of the Regulations details the requisite publicity and procedures on their submission. There is a specific regime involving applications for multi-stage consent under Part 8.

[9] In England and Wales the Directive is now implemented through the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/571), which replaced the previous Regulations passed in 2011 (SI 2011/1824). As one would expect, the Scottish Regulations commenced simultaneously with and are in near identical terms to those applicable in England and Wales. In both sets of Regulations, the term "development" is used throughout in place of the term "project" employed in the 2011 Directive.

[10] There are a number of legal routes governing the connection of works such as those proposed by the interested party to the grid. These include an application for deemed planning permission as part of an application for consent to the installation of overhead electric lines under section 37 of the Electricity Act 1989, or an application for planning permission under the Town and Country Planning (Scotland) Act 1997 or as a result of the exercise of permitted development rights under The Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

The interested party's application and associated EIA

[11] A previous application by the interested party had been refused on landscape and visual grounds and the subsequent application addressed that by proposing a site further southeast. The December 2022 application was for the construction of eight wind turbines with a maximum tip height of 149.9 metres, formation of access tracks, a borrow pit, temporary construction compound, erection of a control building, onsite substation and associated infrastructure with an energy storage compound. Accordingly, it related only to the construction of the turbines and associated infrastructure and not the future grid connection.

[12] As the proposed development fell within Schedule 2, Category 3 of the 2017 Regulations, the focus of the interested party's EIA was the assessments undertaken to identify the potentially significant environmental effects of the proposed development during the complete development lifecycle. The proposed development was considered capable of being able to provide up to 36MW of installed capacity, depending on the turbine model chosen. It was further estimated that this could generate approximately 150 GWh of renewable electricity each year. The renewable electricity generated by the proposed

development could power over 38,000 homes on average each year. The report described the principal elements of the development as including the proposed substation. That substation would house the switchgear and control equipment required for the grid connection and would also provide some secure storage space that might be required occasionally for the wind farm. An off-site grid connection would be necessary to take the power generated from the wind turbines into the local electricity distribution network. The final details of the grid connection, including the precise route and an assessment of any impacts on the environment, would be determined by the local Distribution Network Operator (DNO) at a later date and might be subject to a separate design and consent process.

[13] The capacity of the local grid network to accept the likely output from a proposed wind farm was assessed as critical to the technical feasibility of the development. It was acknowledged that connection voltage and distance from the turbines could have a significant effect on the commercial feasibility of the development proposal. The interested party had consulted with the local DNO to accommodate the electricity generated by the proposed development.

The reporter's decision

[14] In allowing the interested party's appeal and granting planning permission, the reporter recorded the requirement to determine the appeal in accordance with the development plan, unless material considerations indicated otherwise. The fourth National Planning Framework (NPF4) was highly supportive of onshore wind energy developments, and the Scottish Borders Local Development Plan (the LDP) indicated a similarly supportive approach. The main issues in the appeal were (i) the proposal's landscape and visual effects,

(ii) its renewable energy and climate change benefits and (iii) the socio-economic benefits. While (i) was addressed in detail in the decision, that aspect has no bearing on the appeal to this court.

[15] The reporter attached "positive weight" to the renewable energy and climate change benefits of the proposal. By the time of the decision, the interested party had a contracted grid energisation date of October 2028, so he concluded that the proposal "would make a worthwhile and relatively early contribution to Scottish Government targets for the supply of renewable electricity and the reduction in greenhouse gas emissions". The objectors' arguments that the development could result in there being over-capacity such that there was no need for the electricity it would provide were given "very little weight".

[16] On socio-economic effects, the reporter recorded the prediction in Chapter 14 of the EIA that "the construction phase of the proposal" would generate 60 jobs and £3.5 million GVA into the Scottish Borders economy, with a further 64 jobs and £3.7 million GVA in the wider Scottish economy. He decided that there was no evidence to support the fears of the local community council that there would be negative socio-economic consequences due to a reduction in the area's attraction to tourists. Under reference to part c) of NPF4 policy 11, he was satisfied that the proposal would achieve its objectives of maximising net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities.

[17] The decision addressed the grid connection issue that is key to the present appeal in the following terms (at paragraph 129):

> "An objector asserts that, as the appellant has not detailed the grid infrastructure that will be necessary to connect the proposal, it is impossible for the full environmental effects of this proposal to be assessed. I disagree. Whatever grid connection solution is ultimately proposed will (if it requires planning permission) be subject to its own evaluation. It is not part of the current proposal. The objectors (*sic*) reference to the

> term "salami slicing" is misdirected. That properly refers to an attempt to circumvent the objectives of the EIA Directive and regulations by dividing what is in reality a single project into separate parts. In this instance, there has been no attempt to avoid the need for an EIA. The development proposal has been subject to EIA in the normal way and if a subsequent proposal for a grid connection were EIA development, that too would require to be assessed in accordance with the EIA regulations".

Relevant case law involving the 2011 Directive and its predecessor

[18] The issue of project splitting in the context of assessing likely environmental effects has been the subject of litigation before the Court of Justice of the European Union, in the courts of some Member States of the EU and in the UK courts. Each of the parties selected passages from some of the judgments to support their argument. What follows is a summary of those that have a bearing on the core contention in this case.

(i) CJEU decisions

[19] In *Bund Naturschutz* v *Freistaat Bayern* (Case C-396/92) [1994] ECR I-3717, development consent for two sections of an express road had been given after the time limit for implementing Council Directive 85/337/EEC (assessment of the effects of certain public and private projects on the environment) and without an assessment of the projects' effects on the environment. The German court referred the issue of whether that State's transitional provisions accorded with the Directive. It posed an additional question about the concept of a "project" and whether an EIA should be carried out for the entire road link planned or only for the sections in respect of which consent was sought. Advocate General Gulmann provided a detailed opinion for the court, in which he analysed the obligation under the 1985 Directive to carry out environmental impact assessments before any consents were granted. On the issue of defining the project, he considered (at paragraph 71) whether:

> "in connection with the environmental impact assessment of the specific project, there is an obligation to take account of the fact that the project forms part of a larger project, which is to be carried out subsequently, and in the affirmative, the extent to which account is to be taken of that fact"

and concluded that

> "The subject-matter and content of the environmental impact assessment must be established in the light of the purpose of the directive, which is, at the earliest possible stage in all the technical planning and decision-making processes, to obtain an overview of the effects of the projects on the environment and to have projects designed in such a way that they have the least possible effect on the environment, That (*sic*) purpose entails that as far as practically possible account should also be taken in the environmental impact assessment of any current plans to extend the specific project in hand".

He added (at paragraph 72):

> "For instance, the environmental impact assessment of a project concerning the construction of the first part of a power station should, accordingly, involve the plans to extend the station's capacity fourfold, when the question of whether the power station's site is appropriate is being assessed. Similarly, when sections of a planned road link are being constructed, account must be taken, in connection with the environmental impact assessment of the specific projects of the significance of those sections in the linear route to be taken by the rest of the planned road link."

The opinion accordingly supported a general rule that the impact of anticipated future works should be included within the environmental impact assessment for a project. However, the ECJ's decision was ultimately restricted to the time limits issue.

[20] The ECJ subsequently considered the question of defining a project for the purposes of the 1985 Directive in the landmark case of *Commission* v *Spain* (Case C-227/01) [2005] Env LR 20; [2004] ECR I-8253, which involved the question of whether a new by-pass line which was part of a larger railway project could be regarded as "a mere modification to an existing project" for the purposes of the 1985 Directive. The court made clear that it was impermissible to split up or "salami slice" projects into a number of shorter sections as that would undermine the basic objective of the 1985 Directive. In assessing lawful implementation of the 1985 Directive, it was "the significant effect that a particular project is

'likely' to have on the environment" that had to be considered. A broad view should be taken of what constituted the scheme or project for which development consent was sought and of how environmental effects might arise.

[21] The specific issue of the relationship between defining the scope of the project and the necessary environmental impact assessment was considered in *Umweltanwalt von Kärnten* v *Kärntner* (Case C-205/08) [2010] Env LR 15; [2009] ECR I-11525. After summarising the relevant case law the court stated expressly that "...the failure to take account of the cumulative effect of several projects must not mean in practice that they all cease to be covered by the obligation to carry out an assessment, when, taken together, they are likely to have " significant effects on the environment" within the meaning of Article 2(1) of Directive 85/337".

(ii) Decisions from the UK jurisdictions

[22] Two Scottish decisions have considered the scope and extent of EIA reports in the context of the legitimacy of separating a project into more than a single element. The first, *Skye Windfarm Action Group* v *Highland Council* [2008] CSOH 19 concerned a windfarm application that raised complex environmental and nature conservation issues. In challenging the grant of planning permission to the wind farm and associated borrow pits, the local action group argued, amongst other matters, that the environmental statement (the precursor to an EIA report under previously applicable Regulations) was defective in its initial exclusion from consideration of the effect of the borrow pits. In rejecting that challenge the Lord Ordinary (Hodge) concluded (at paragraph [76]) that:

> "It is undisputed that the borrow pits formed an integral part of the wind farm development and *Swale Borough Council* [*R* v *Swale Borough Council, ex p Royal Society for the Protection of Birds* [1991] 1 PLR 6] and *BAA plc* [*BAA plc* v *Secretary of State for*

> *Transport, Local Government and the Regions* [2003] JPL 610] support the view that a part of a development in such circumstances should not normally be considered in isolation. But I am not satisfied that it was illegal to separate the borrow pits from the assessment of the wind farm. The initial assessment in 2002 and the August 2006 assessment did not identify any significant environmental effects of the borrow pits whether considered alone or cumulatively with the wind farm. It is consistent with Advocate General Gulmann's approach in *Bund Naturschutz* that the court should look at the particular circumstances of each case in deciding whether a cumulative assessment is needed to fulfil the purposes of the Directive. While, as Mr Campbell argued, the cumulative effects of the wind farm and the borrow pits are commutative, I see no practical reason for an environmental impact assessment of the borrow pits other than in the context of the wind farm application".

[23] More recently, the Lord Ordinary (Doherty) addressed the issue in *Wildland* v *Highland Council* [2021] CSOH 87; 2022 SLT 1082. That case involved a decision to grant planning permission for the construction of a vertical launch space port with launch operations control centre, site integration facility, launch pad complex, antenna park, access road, fencing, services and associated infrastructure. The proposed development would be known as Space Hub Sutherland (SHS), with the site boundary overlapping five designated sites, including a Special Area of Conservation, a Special Protection Area and two Sites of Special Scientific Interest.

[24] One of the challenges made in the judicial review of the planning decision was that the relevant EIA report had not considered the environmental impacts of the proposed visitor facilities on the site. In rejecting the contention that this was an error of law, the Lord Ordinary expressed the view that the case was not one of impermissible salami slicing of a project which ought to have been assessed as a single development. There had been a rational justification for not identifying the proposed location of the visitor facilities and not applying for permission to develop them initially. The size of the launch exclusion zone had not yet been clarified, so there was obvious uncertainty about the appropriate locations for a visitor viewing area or car parking. The Lord Ordinary also noted (at paragraph [20]) that

"Development of the visitor facilities will require a further application for planning permission. At that stage the cumulative environmental impact of SHS and the visitor facilities will require to be assessed".

[25] The issue of what constitutes the "project" for the purposes of the EIA Regulations for England and Wales (Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824) read with the 2011 Directive was given detailed consideration by Lang J in *R (Wingfield)* v *Canterbury City Council* [2020] JPL 154. That case involved planning permission for a mixed-use development of dwellings and a variety of civic spaces, including a community ecological park and associated infrastructure on a number of designated sites. The claimant alleged that the local authority had erred in failing to treat the development of two of the relevant sites as a single project for the purposes of the EIA Regulations. Lang J reviewed the relevant domestic authorities (*Bowen-West* v *Secretary of State for Communities and Local Government* [2012] EWCA Civ 321; [2012] JPL 1128, *R (Burridge)* v *Breckland DC* [2013] EWCA Civ 228; [2013] JPL 1308, *R (Larkfleet Ltd)* v *South Kesteven DC* [2015] EWCA Civ 887; [2016] Env LR 4) and the CJEU's repeated enjoinder that the purpose of the 2011 Directive cannot be circumvented by the splitting of projects (*Ecologistas en Acción* v *Ayuntamiento de Madrid* (C-142/07) [2009] PTSR 458; [2008] ECR I-6097 at paragraphs 44-45).

[26] Having concluded that the question as to what constitutes the "project" for the purposes of the EIA Regulations is a matter of judgement for the competent planning authority, subject to challenge on grounds of *Wednesbury* rationality or other public law error, Lang J compiled (at paragraph 64 the following non-exhaustive list of relevant factors for consideration of the issue:

> "• Common ownership: Where two sites are owned or promoted by the same person, this may indicate that they constitute a single project (*Larkfleet* at [60]).
>
> • Simultaneous determinations: Where two applications are considered and determined by the same committee on the same day and subject to reports which cross refer to one another, this may indicate that they constitute a single project (*Burridge* at [41] and [79]).
>
> • Functional interdependence: Where one part of a development could not function without another, this may indicate that they constitute a single project (*Burridge* at [32], [42] and [78]).
>
> • Stand-alone projects: Where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme (*Bowen-West* at [24]– [25])."

Applying those factors to the facts of *Wingfield*, the two sites in that case were found to constitute separate developments and were not part of a single project.

[27] The Court of Appeal of England and Wales has given recent consideration to the issue of what constitutes a stand-alone project in this context. In *R (Ashchurch Rural Parish Council)* v *Tewkesbury BC)* [2023] EWCA Civ 101; [2023] Env LR 25, a large-scale housing development required the construction of a road bridge over a main railway line and connecting roads to provide access to the land involved in phase 1 of the development proposal. The EIA report treated the bridge as a stand-alone project to be given consideration independently from any environmental assessment of the highway and residential development it would facilitate. In allowing an appeal against an unsuccessful judicial review of the decision to grant the planning application, the court emphasised (at paragraph 74) the need to understand the term "project" "broadly, and realistically".

[28] Citing *R (Finch)* v *Surrey County Council* [2022] EWCA Civ 187; [2022] Env LR 27, Andrews LJ confirmed that the "decision-making authority should consider 'the degree of connection… between the development and its putative effects' and whether a particular

consequence is 'truly an effect'". Following consideration of the relevant authorities Andrews LJ stated (at paragraph 78) that:

> "The identity of the 'project' for these purposes is not necessarily circumscribed by the ambit of the specific application for planning permission which is under consideration. The objectives of the Directive and the Regulations cannot be circumvented (deliberately or otherwise) by dividing what is in reality a single project into separate parts and treating each of them as a 'project' – a process referred to in shorthand as 'salami slicing'..."

At paragraph 81, the court supported the view of Lang J in *Wingfield* that the question as to what constitutes the "project" is a matter of judgement for the competent planning authority, subject to challenge on grounds of *Wednesbury* rationality or other public law error. The non exhaustive list of potentially relevant criteria was given specific approval.

[29] The issue of the relationship between connected projects was revisited in *R (Together against Sizewell C Ltd)* v *Secretary of State for Energy Security and Net Zero* [2023] EWCA Civ 1517; [2024] Env LR 22, albeit in a different context. That case involved a claim that the Secretary of State had erred in failing to carry out an "appropriate assessment" of the effects on European sites of the permanent supply of potable water to a proposed nuclear power station, either as part of the same project or cumulatively as a separate but connected project, under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (SI 2017/1012) ("the Habitats Regulations"). The challenge was to the Sizewell C (Nuclear Generating Station) Order 2022 (SI 2022/853) authorising the construction, maintenance and decommissioning of a third nuclear power station at Sizewell on the Suffolk coast. Two questions arose at the appellate stage – (i) had the Secretary of State erred in law in treating the permanent supply of potable water necessary for the operation of the power station as not part of the same project for the purposes of assessment under the Habitats Regulations? And (ii) if it was correct to regard it as a separate project, had the Secretary of State erred in

failing to carry out, under those Regulations, a cumulative assessment of its effects together with those of the power station itself?

[30] Lindblom LJ, in giving the court's judgment upholding the first instance decision of Holgate J that the Secretary of State had not erred on either matter, expressed the following view (at paragraphs 60-61):

> "A further principle, also well established, is that two connected projects may proceed separately, and their cumulative effects be assessed, whether under the EIA Regulations or under the Habitats Regulations, either in two stages or at the second, but as soon as those cumulative effects can be identified for meaningful assessment (see the judgment of Sales L.J., as he then was, in *Larkfleet* , at paragraphs 36 to 38, and also his judgment in *R. (on the application of Forest of Dean (Friends of the Earth)) v Forest of Dean District Council*, [2015] PTSR 1460 at paragraphs 13 to 19). A 'staged approach' to assessment is, in principle, legitimate and will prevent what has been described as 'sclerosis in the planning system' (see the judgment of Sales L.J. in *Forest of Dean District Council*, at paragraph 18).
>
> In some cases this will be the obvious and only realistic course to take. It can enable the first project to receive the permission or consent it requires, without preventing or prejudicing a proper assessment of likely cumulative effects".

[31] Under reference to *Ashchurch,* the court also emphasised (at paragraph 68) that determining the nature and scope of a particular project and whether two or more developments are properly to be regarded as a single project were not matters of law for the court but of fact and evaluative judgement for the decision maker itself. That evaluation is subject to review by the court on a conventional *Wednesbury* basis.

[32] Finally in this section we note that the UK Supreme Court, by a majority allowed an appeal against the decision of the Court of Appeal in *R (Finch* v *Surrey County Council)* - [2024] UKSC 20; [2024] 4 All ER 717. The local authority's decision to grant planning permission in that case to extract petroleum was unlawful because the EIA had failed to assess the effect on climate of the combustion of the oil to be produced and because the reasons for disregarding that effect were flawed. The *Kilkenny Cheese* case (discussed at

paragraph [40] below) is referred to in both the majority and dissenting judgments, albeit not on a point of direct relevance to the present case. Of more direct application is the part of the Supreme Court's judgment (paragraphs 61-64) that discuss interpretation of the 2011 Directive generally, such as the need to examine the language and in particular the purpose of the 2011 Directive. Further, it is essential to the validity of the decision under challenge that, before it is made, there has been a systematic and comprehensive assessment of the project's likely significant effects on the environment. Public participation is integral to the process of assessment.

(iii) Decisions from the Republic of Ireland

[33] The issue of the separation of the construction of wind farms from their connection to the grid for the purposes of EIA assessment has been specifically considered on several occasions in the Irish courts. *Ó Grianna* v *An Bord Pleanála* [2014] IEHC 632 involved an application for judicial review of a local authority's decision to grant planning permission for the erection of six wind turbines and associated infrastructure. The permission did not relate to grid connection works. Peart J decided that the failure to have regard to the cumulative effect of the entire development, including the grid connection works when carrying out the EIA was an error, having regard to the requirements of the 2011 Directive. The turbine development and grid connection was "one project, neither being independent of the other" as "[t]he wind turbine development on its own serves no function if it cannot be connected to the national grid. In that way, the connection to the national grid is fundamental to the entire project, and in principle at least the cumulative effect of both must be assessed in order to comply with the Directive."

[34] Lord Hodge's decision in the *Skye Windfarm* case was analysed in some detail by Peart J (at paragraphs 24-26). The Scottish case was found to be distinguishable from the situation in *Ó Grianna*, partly on the basis that in *Skye Windfarm* there had been an assessment made at an earlier screening stage that there were no significant environmental impacts deriving from the borrow pits such that a cumulative assessment was required. Further, the authority requested the developer to provide a cumulative assessment, and that was provided and considered. The case was not considered to be authority for any general proposition that even though one development is integral to a second there is nothing illegal about separating one from the other and thereby avoiding a cumulative assessment of significant environmental effects of both. Each case would have to be considered in the light of its own specific facts.

[35] The factual matrix in the subsequent case of *Daly* v *Kilronan Windfarm Limited* [2017] IEHC 308 was different from that in *Ó Grianna.* There, planning permission had been granted for the primary windfarm development, with a specific condition that it was not to be construed as including any consent or agreement to connection of the windfarm to the national grid. The developer had initially anticipated that the grid connection would be overhead but subsequently decided to accept an offer of an underground cable connection which was to pass through three separate counties. A local farmer sought an order prohibiting the relevant works for a trench and the laying of the cables on the basis that it was unauthorised development in term of domestic legislation. The developer contended that the works to be carried out were exempt from the requirement to secure planning permission and that no EIA was required for them. Baker J, then sitting in the High Court, considered the effect of the decision in *Ó Grianna*, but also analysed the European jurisprudence. She was not convinced that it could be said in absolute terms that the only

permissible way in which a planning application for a windfarm could be made was by application for the whole project to include the grid works as there were a number of ways in which an assessment of the entire project could be carried out (paragraphs 44-45). The key, however, was that an EIA was required for the whole project and so no individual part could be separated and treated as a stand-alone planning exempt element (paragraph 46).

[36] Under reference to Advocate General Gulmann's opinion in *Bund Naturschutz* and the decisions in *Commission* v *Spain* and *Umweltanwalt von Kärnten* referred to at paragraphs [20]-[21] above, Baker J concluded (at paragraph 54) that:

> "As a matter of European law the assessment of whether the grid connection works can be treated as exempted development is one that must be considered in the context of a reading that best achieves the aims and objectives of the EIA Directive. I consider that on account of the fact that the grid works cannot be lawfully separated from the project as a whole, that to treat the grid works as exempt fails to give effect to this principle."

Accordingly, an EIA assessment in the context of the project as a whole was required. Even where part of a project, taken alone, could easily come within an exemption from the need for planning permission, the court should not reach a conclusion that had the effect that a project could be impermissibly split (paragraph 59). Ultimately the question of whether an EIA was required was for the planning authority.

[37] The matter of how such projects should be approached for the purpose of EIAs and compliance with the 2011 Directive was addressed more recently by the High Court in the case of *Sweetman* v *An Bord Pleanála* [2023] IEHC 89, a judgment of Quinn J. There it was claimed that an order declaring that the construction of a grid connection between a wind farm development and an electricity substation was exempted development was in breach of the 2011 Directive and contrary to both domestic and CJEU jurisprudence. A screening exercise had determined that the grid connection works did not require an EIA because of

the specific characteristics and location involved and the absence of any likely significant environmental impacts, whether viewed alone or cumulatively with the windfarm. Again the relevant domestic authorities were examined and Quinn J noted (at paragraph 174 under reference to *Daly)* that there could be successful consent applications each requiring an EIA, but the EIA itself must assess the entire project and its cumulative effects.

[38] The absence of any European authorities concerning the particular question of windfarms and their grid connections was noted. Quinn J considered that the decisions of Peart J in *Ó Grianna* and Baker J in *Daly* "could not be clearer" and derived the following conclusions from them:

> "(a) Construction of a wind farm and its grid connection works is one project, neither being feasible or serving any purpose without the other.
>
> (b) Where environmental impact assessment of a wind farm project is required, as is the case for a windfarm having more than five turbines, that EIA must comprise an assessment of the entire project (windfarm and grid connection) and not part thereof.
>
> (c) Separate phases of a project may be subject to separate consent applications or s. 5 referrals, but an EIA which does not assess the entire project does not comply with the Directive. Screening for EIA of any part of the project does not meet his (*sic*) requirement.
>
> (d) Since the gridworks cannot be lawfully separated from the project as a whole, when the windfarm comprises more than five turbines and therefore requires a mandatory EIA, to treat the grid works as exempt is contrary to the aims and objectives of the Directive.
>
> (e) No matter what level of detail is contained in screening and environmental reports …. relating to grid connection works, in such a case the screening … is still only screening and not a compliant EIA."

Quinn J reiterated that, although every case must be examined on its on facts, the conclusions drawn from *Ó Grianna* and *Daly* were on point and so were directly applicable.

[39] The rationale that an EIA which does not assess construction of a windfarm and connection to the grid as one scheme offends the rule against project splitting as it applies to

wind farm projects in Ireland has been consistently followed in subsequent and related cases, including *North Westmeath Turbine Action Group* v *An Bord Pleanála* 2025 IEHC 608.

[40] In a decision of the Supreme Court of Ireland, *An Taisce – The National Trust for Ireland* v *An Bord Pleanála (Kilkenny Cheese Ltd, Notice Party)* [2022] IESC 8; [2022] 2 IR 173, Peart J's decision in *Ó Grianna* was cited (at paragraphs 82- 85), albeit *obiter*, as an example of where a "clear and unbreakable inter-relationship between the project itself and certain off-site activities" for the purpose of assessing environmental consequences had been clearly established. It was accepted by both parties in *Kilkenny Cheese,* which concerned the climate change impact of the increase in milk production for a cheese factory, that the off-site milk production was "not part of the project itself", so the ratio of the case is not directly in point. For completeness we note that the decision in *Ó Grianna* is mentioned in paragraph 309 of the dissenting judgment of Lord Sales in *Finch* (cited above at paragraph [32]), albeit in a different context.

(iv) A decision of the High Court of Galicia, Spain

[41] At the request of the court, parties searched for decisions from any other EU states that may have considered project splitting in this context. A recent decision of the High Court of Galicia was discovered and translated – *Asociación Ambiental e Cultural Petón do Lobo* v *Dirección Xeral de Planificación Enerxética e Recursos Naturais* (*Do Lobo Environmental and Cultural Association* v *Directorate General of Energy Planning and Natural Resources*), Judgment 00368/2025. It involves an appeal related to a wind farm known as "A Ruña III". One of the challenges was to the separation of the construction project and the relative power line in the consideration of the environmental impacts leading to authorisation of the scheme. The court concluded that the wind farm project consisted of both the wind turbines and the

production of electrical storage that is fed into the grid. Accordingly, in that particular application, the different components should not have been considered separately but together, in a single environmental impact statement.

The challenges to the reporter's decision: Analysis and Decision

[42] The appellant advances four grounds of challenge relating to the reporter's treatment of the grid connection in this case. The first is a distinct irrationality challenge about taking the benefits of the project that could only be realised were a grid connection to be installed without taking the disbenefits into account. The remaining grounds address the central issue of whether the windfarm and associated grid connection properly constituted a single project requiring an Environmental Impact Assessment of the whole development and not just the construction phase. The reporter's reasons for rejecting the contention that the construction and grid connection phases were parts of the same EIA development are also attacked as inadequate. We will address the central issue first.

Did the reporter err in his approach to the project splitting objection?

[43] The appellant's objection on the proposed division of the scheme was raised directly with the reporter in a written response to the interested party's appeal. That submission contended that it would be wrong to assess the proposal without having regard to the environmental impact of the necessary grid connection, and "the absence of a full assessment would lead to a legally inadequate EIA assessment" (Appendix page 127, paragraph 13). This substantial challenge is addressed in a single brief paragraph of the decision, paragraph 129 (reproduced above at [17]). In disagreeing with the contention that the full environmental effects of the interested party's proposal could not be assessed

without considering the detail of the necessary grid infrastructure, the reporter acknowledged that it was unknown whether the future grid connection solution would require planning permission. The statement that the grid connection solution would, regardless of whether planning permission is required "be subject to its own evaluation" is opaque. It does not address the critical issue of whether the windfarm and associated grid connection are a single project for the purpose of EIA assessment. The reference to the grid connection being "not part of the current proposal", while accurate, is a bald statement of fact and not an evaluation of whether such an approach is acceptable as a matter of environmental law.

[44] More fundamentally, in addressing the objector's reference to "salami slicing" and regarding it as "misdirected", the reporter asserted that the term "properly refers to *an attempt to circumvent* the objectives of the EIA Directive and regulations" (my emphasis) by dividing a single project into separate parts. The authorities are clear that intention is not the relevant benchmark; what matters is the effect that a project is likely to have on the environment (*Commission* v *Spain* (Case C-227/01) [2005] Env LR 20; *R (Ashchurch Rural Parish Council* v *Tewkesbury BC* [2023] EWCA Civ 101). The reasoning ended with an assertion that the development proposal has been subject to EIA "in the normal way" and that any subsequent proposal for a grid connection, if EIA development, would also require to be so assessed.

[45] We consider that the reporter erred in failing to conduct the necessary fact specific evaluation of the proposal. It was incumbent upon him to do so before reaching a conclusion on whether the windfarm and grid connection constituted a single project for which an EIA report that analysed the potentially significant cumulative effects of both aspects was required. We reject the submission made at the hearing before us by Senior

Counsel for the respondents that any error by the reporter on this point was not a material one. This was a material error. Further, and also materially, the reporter misdirected himself in relation to the definition of "salami slicing" in a way that resulted in a failure to focus on the fundamental question of the interrelationship between the two phases of development and whether they both required an EIA at this stage. By focusing too narrowly on the way in which the application was framed rather than considering what was the true nature and scope of the project, the reporter failed to show that he understood the central issue in contention. In contrast with the situation in *Wildland* v *Highland Council* [2021] CSOH 87; 2022 SLT 1082 (discussed at paragraphs [23]-[24] above) the reporter proceeded on the basis that it was unknown whether planning permission would be required for the future work not included for assessment in the EIA. That lack of knowledge was relevant to the correct approach that should have been taken to the project splitting issue.

[46] The need to conduct a properly focussed fact specific analysis is amply supported by the recent domestic authorities. In *Ashchurch* the Court of Appeal was clear that when considering a project in the context of the EIA Directive the decision-making authority should consider "the degree of connection" between the development and its putative effects (paragraph 74). In doing so, the decision maker is not constrained by the terms of the application before him (*Ashchurch* at paragraph 78). What was required in this case was careful consideration of whether the windfarm construction and grid connection were, on the basis of the available material, so closely connected as to form parts of a single project. There was, however, no attempt to consider the type of factors listed in *R (Wingfield)* v *Canterbury City Council* [2020] JPL 154 as relevant to such an exercise. The issue of functional interdependence was clearly relevant, as indisputably the windfarm could never become functional without a grid connection. It may be that other factors could have militated

against a conclusion that the scheme constituted a single project. Senior Counsel for the respondents highlighted that in both the Annexes to EU Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment and in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/102) wind farms and grid connections are the subject of separate project descriptions. However, that general observation does not assist the task of considering a particular scheme.

[47] As the Court of Appeal confirmed in *R (Together against Sizewell C Ltd)* v *Secretary of State for Energy Security and Net Zero* [2023] EWCA Civ 1517 (at paragraph 68) under reference to paragraphs 81, 83 and 100 of *Ashchurch,* it is not for the court to undertake the necessary evaluation. It is sufficient that we have concluded that the decision does not illustrate that such an evaluation was carried out at all, or at least not adequately. This court is not in a position to decide whether in fact the project under consideration constituted a single project for the purposes of assessing its environmental impact; that has yet to be properly determined. Such a determination properly falls to be made by the appropriate authority, the respondents.

[48] The conclusion we have reached is also consistent with the authorities from the Republic of Ireland, where the issue of the nature of windfarm projects requiring grid connections has been closely analysed in the context of the requirements of the 2011 Directive on several occasions. In that jurisdiction the approach has been to treat the separation of windfarm construction from the necessary grid connection as an issue of principle and the view is that such separation is unlawful having regard to the terms of the 2011 Directive. In the UK jurisdictions, the focus has tended to be on the decision maker's role in undertaking a proper evaluative assessment before determining whether the project

can be regarded as a single one for the purposes of assessing cumulative environmental impacts. However, the need for such a fact specific evaluation before any decision can be made is a common theme between the two approaches and is supported by the influential reasoning of Advocate General Gulmann in *Bund Naturschutz* v *Freistaat Bayern* (Case C-396/92) [1994] ECR 1 - 3717. The respondents' somewhat curious submission that the Irish cases should be treated with caution misses that point. In any event, while each member state will have transposed the 2011 Directive into its own national laws, that does not detract from the value of domestic courts considering the interpretative approach to the 2011 Directive taken by other states.

[49] We endorse the view expressed by Baker J (*Daly*, at paragraphs 44-45) that it cannot be said in absolute terms that the only permissible way in which a planning application for a windfarm can be made is to apply for the whole project to include the grid connection. The Regulations themselves cater for multistage consent processes. The requirement is to identify "the project" for the purpose of compliance with the 2011 Directive. Where, as in this case, whether there will be any future EIA is unknown, the approach that may best secure compliance may be to address the cumulative environmental impact of the whole project before the first decision on planning permission is made. That would be consistent with the 2011 Directive's enjoinder to take the environmental effects into account "at the earliest possible stage in all the technical planning and decision-making processes" (2011 Directive recital (2)). Notably, the Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora does not require that the assessment be carried out at the earliest possible stage (Lang J in *Wingfield* at para 73, referred to by the UKSC in *C G Fry and Son* v *Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 1622 (Admin); [2025] UKSC 35, at para 41).

[50] Senior Counsel for the respondents and the interested party both sought to commend the "staged approach" to assessment referred to in *Sizewell* as legitimate and preventative of delay and sclerosis in the system. The argument was that in cases where the end user and details of the off-site works were not yet known, it might be well-nigh impossible to include a description of the likely significant environmental effects of those works. At the hearing before us, affidavits were available on this point, from Michael David Briggs, employed as Head of Planning (South Scotland) for the interested party and Ian Kelly, an independent planning consultant.

[51] Mr Briggs confirmed that he had played a key role in planning applications or appeal processes for 28 separate onshore windfarm projects within the UK. In none of those had the potential impact of the off-site grid connection been assessed in detail as part of the EIA for the construction of the windfarm. His affidavit explained that there is a highly structured process through which individual energy generation projects must secure a grid connection agreement to connect their generating assets to the electricity transmission and/or distribution networks. Some grid connection agreements require significant and expensive reinforcements works to be undertaken. Accepting a grid connection offer can involve a significant financial commitment for the developer, with overall costs being incurred on a staged basis but frequently running into tens of millions of pounds. It was not uncommon for generating projects to have achieved permission without any access to the network being secured to avoid the risk of making potentially abortive payments under a connection agreement. As the network planning system worked on a "first come first served basis", a congested connection queue had now formed, with many speculative projects with connection dates years in advance blocking projects ready to proceed.

[52] Mr Kelly had been engaged by the appellant to assist in the presentation of their objections to the Wull Muir Wind Farm planning application. In his affidavit he accepted that in previous applications the potential environmental impact of the grid connection had not been assessed "in detail" as a matter of fact but not as a statement of what the position should be. In his view, grid connection planning should proceed alongside the preparation of a wind farm application rather than separately. This would avoid planning permission being granted for windfarms with little prospect of securing a grid connection date within the lifetime of the consent given the backlogs in the system. Identification of the offsite infrastructure requirements for all other land use development projects at an early stage was standard procedure. There was a known connection point for Wull Muir Wind Farm and the assessment work could have been progressed earlier, at least by the planning appeal stage.

[53] The practical and financial difficulties relied on by the interested party as militating against undertaking a cumulative assessment of the environmental impacts of the proposed scheme at an earlier stage are relevant insofar as, indisputably, the 2011 Directive must be interpreted realistically. There is, however, support in the affidavits, particularly that of Mr Kelly, for the view that it would not have been unrealistic in the circumstances of the current process to have done so. The practical and commercial difficulties that flow from the details of a grid connection being unavailable early in the planning stages of a windfarm development were also raised as an issue in the Irish cases of *Ó Grianna* v *An Bord Pleanála* [2014] IEHC 632 and *Sweetman* v *An Bord Pleanála* [2023] IEHC 89. Peart J in *Ó Grianna* considered (at paragraph 32) that the lack of formulated proposals for the design and route of the connection of a windfarm to the gird did not justify treating phase 1 of a scheme as a stand-alone project, rather it was suggestive of permission being sought prematurely. That

the expediencies of assessing the environmental impacts of the construction of a windfarm before the grid connection details were available are not of themselves a reason to justify project splitting was reiterated by Quinn J in *Sweetman* (at paragraph 151).

[54] Senior counsel for the respondents also sought to rely on the decision in *C G Fry* before both the Court of Appeal of England and Wales ([2024] EWCA Civ 730; at paragraph 91) and the UK Supreme Court (cited above at paragraph [49]) at paragraph 39 as support for the proposition that it was lawful for environmental assessment to be carried out at a later stage. She acknowledged, however, that the relevant passages had been addressing multi-stage consents and comments about the need to avoid sclerosis in the system were made in that context. The considerations in this case are different and the conclusions we have reached do not conflict with the decision in *C G Fry.*

Adequacy of Reasons

[55] We accept, as Senior Counsel for the respondents emphasised in her submissions, that a decision of this sort should not be scrutinised as if it were a conveyancing document. The brevity of the reporter's reasoning would not be a deficiency of itself if it was clear as to why the appellant's objections had been dismissed. However, in addition to the apparent error about "salami slicing" relating to an attempt to circumvent the 2011 Directive as opposed to that being the objective effect of project splitting, paragraph 129 of the decision contains largely assertion and conclusions and is bereft of reasoning directed at the point at issue. It fails the requirement of identifying (correctly) the live issues "and framing the determination in a manner that leaves the reader in no doubt about what the reason for the decision were and what considerations were taken into account" (*West Lothian Council* v *Scottish Ministers* [2023] CSIH 3; 2023 SLT 175, Lord President (Carloway) at paragraph [24]).

The irrationality challenge

[56] The distinct irrationality challenge advanced by the appellant touched on the aspects of the wider scheme that were taken into account by the reporter. Although the grid connection had not been included in the planning application, the reporter had placed considerable weight on the wider benefits that would result from the operation of the windfarm once connected to the grid. He also had regard to renewable energy and climate change benefits, which could arise only once the grid connection was in place. Specific reference was made to the predicted generating capacity of the development once operational. In *Ashchurch* the road bridge that was part of a wider residential development had been the subject of an EIA that did not include the wider development. The Court of Appeal considered that this was irrational, Andrews LJ stating (at paragraph 64) that whilst "it was open to the decision-maker to treat the prospective benefits of the wider development as material factors… it was irrational to do so without taking account of any adverse impact that the envisaged development might have, to the extent that it was possible to do so… The two go hand in hand; you cannot have one without the other."

[57] We consider that there is force in the submission that the approach in this case was similarly irrational. The respondents' answer to the point was that the reporter was entitled to assess the proposed development on its own merits and on the assumption that a grid connection would be provided at a later date. That does not, with respect, address the irrationality of addressing only the merits and not the demerits of the anticipated completed development. We have already addressed the need to evaluate the proposal in a way that is not necessarily limited to the specific terms of the planning application. In any event, the reporter's consideration of the proposed development as a whole, at least in relation to

socio-economic and climate change benefits, is illustrative of the potential difficulty in treating the two phases as entirely separate for the purpose of assessing the environmental impacts.

Disposal

[58] Clearly matters have moved on in this case since the original planning application was considered by Scottish Borders Council. Some progress has been made with identification of a grid connection solution. Having concluded that there were material errors in the reporter's approach, we consider that it would be appropriate for the issue of whether the whole project requires an EIA assessment to be considered of new. We shall quash the decision of 14 January 2025 and remit the interested party's appeal to a different reporter for a fresh decision.

APPENDIX 9

Neutral Citation Number: [2025] EWCA Civ 669

Case No: CA-2024-002002

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
Mrs Justice Lieven
[2024] EWHC 2128 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/05/2025

Before:

SIR KEITH LINDBLOM
(Senior President of Tribunals)
LORD JUSTICE STUART-SMITH
and
LORD JUSTICE HOLGATE

- -

Between:

THE KING (on the application of) ANDREW BOSWELL	**Appellant**
- and -	
THE SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO	**First Respondent**
-and-	
(1) NET ZERO TEESIDE POWER LIMITED (2) NET ZERO NORTH SEA STORAGE LIMITED	**Second Respondents**

- -
- -

Catherine Dobson, Isabella Buono and **Alex Shattock** (instructed by **Leigh Day**) for the **Appellant**
Rose Grogan (instructed by **Government Legal Department**) for the **First Respondent**
Hereward Phillpot KC and **Isabella Tafur** (instructed by **Freshfields LLP**) for the **Second Respondents**

Hearing dates: 4 and 5 March 2025

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Approved Judgment

This judgment was handed down remotely at 2pm on 22 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Keith Lindblom SPT, Lord Justice Stuart-Smith and Lord Justice Holgate:

Introduction

1. At the heart of this case, and this appeal, lies a basic question bearing on planning decision-making under the regime for "nationally significant infrastructure projects" in the Planning Act 2008. Did the Secretary of State for Energy Security and Net Zero commit any legal error when assessing the significance of the greenhouse gas ("GHG") emissions likely to be caused by the operation of a proposed gas-fired electricity generating station with post-combustion carbon capture and storage ("CCS")? This is not a question that gives rise to any point of law new to this court.

2. The appellant, Andrew Boswell, appeals against the order of Lieven J made on 20 August 2024, by which she dismissed a claim for judicial review brought by Dr Boswell challenging the decision of the first respondent, the Secretary of State, on 16 February 2024, to grant the application of Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited ("the second respondents") for a development consent order under section 114 of the Planning Act 2008 for a new gas-fired electricity generating station at Teesside with Carbon Capture Utilization and Storage ("CCUS").

3. Before the judge, there were four grounds of challenge, which she identified at [3] of her judgment. She rejected all four of them, for the reasons set out in her judgment given on 14 August 2024: [2024] EWHC 2128 (Admin).

The main issues in the appeal

4. In this court the appellant did not pursue the fourth ground, which challenged the Secretary of State's conclusion on the need for the project. Instead, he pursues three grounds of appeal, which effectively rehearse the remaining arguments pursued before the judge. Those grounds present us with three main issues:

    i) Whether the judge erred in deciding that the Secretary of State did not rely on the guidance issued by the Institute of Environmental Management and Assessment, entitled "Assessing Greenhouse Gas Emissions and Evaluating their Significance" ("the IEMA guidance"), in concluding that GHG emissions from the development would be a significant adverse impact, and so there was no inconsistency between this conclusion and the conclusion that the development supports the transition to net zero: see the judgment at [72]-[77] (ground 1);

    ii) Whether the judge erred in deciding at [81] of the judgment, that paragraph 5.2.2 of National Policy Statement EN-1 (2011) encapsulates the assessment of significance of GHG emissions for the purposes of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No. 572) ("the 2017 Regulations"), as well as the weight to be given to the assessment of significance as part of a planning balance exercise (ground 2); and

    iii) Whether the judge erred in finding at [72] of her judgment that the respondent was lawfully entitled to endorse the use of the IEMA guidance while at the same time assessing significance in a different way, and gave adequate reasons in relation thereto (ground 3).

Our approach to those issues

5. It is a truism to say, but worth repeating in a case such as this, that our task, like that of the court below, is only to establish whether the decision-making under challenge was lawful. Did the Secretary of State err in law as it is alleged she did, or not? That, and that alone, is what we must resolve.

6. As this court has recently emphasised, and not for the first time, in *Frack Free Balcombe Residents' Association v Secretary of State for Housing, Communities and Local Government* [2025] EWCA Civ 495 (see the judgment of Sir Keith Lindblom, Senior President of Tribunals at [8]), and in these proceedings too, we are not concerned in any way with the environmental, economic or social merits of the Government's energy policy, its ambition for a low carbon economy, or, in particular, its policy for attaining "net zero" within the timescale it has set for that endeavour. Nor are we concerned with the planning merits of the proposal for development with which this case is concerned. The "rule of law" as it bears on the legal protection of the environment – sometimes referred to nowadays as the "environmental rule of law" – relies on the independence and impartiality of the judiciary when deciding litigation in which it is at stake. The constitutional separation of functions requires that the courts are never drawn into the debate on the merits of policies adopted by the executive or legislation enacted by Parliament. That is not what we do. Personal opinions about the desirability of gas-fired electricity generation with CCS/CCUS as an element in the Government's strategy for combating climate change, including any views that we might conceivably have as citizens, those of counsel and, indeed, those of the parties themselves, are wholly irrelevant to our duty as judges and to the task before us here.

The legal framework

7. In *R (on the application of Friends of the Earth Ltd.) v Heathrow Airport Ltd.* [2020] UKSC 52; [2021] PTSR 190 at [19]-[38] the Supreme Court analysed the structure and main provisions of the Planning Act 2008. That need not be repeated here.

8. One of the objects of the Planning Act 2008 is that matters of national policy are to be settled through the designation of National Policy Statements ("NPSs"). Thereafter, representations which seek to challenge the merits of such policy may be disregarded by the Examining Authority and the Secretary of State when dealing with an application for a development consent order (sections 87(3), 94(8) and 106(1) of the Planning Act 2008).

9. NPSs are subject to an appraisal of sustainability (under section 5(3) of the Planning Act 2008) and strategic environmental assessment (under the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No.1633)). They are also subject to publicity and public consultation (under section 7) and to Parliamentary scrutiny (under sections 5(4) and 9). The Secretary of State may designate a NPS only if the House of Commons approves the document or that House has not resolved within 21 days of the NPS being laid before Parliament that it should not be proceeded with (section 5(4)).

10. Where a NPS has effect in relation to an application for a development consent order, the Secretary of State must decide the application having regard to that NPS (section 104(1) and (2)) and, save in so far as one or more of the exceptions in section 104(4) to

(8) applies, in accordance with that NPS (section 104(3)). Section 104(7) applies "… if the Secretary of State is satisfied that the adverse impact of the proposal would outweigh its benefits."

11. The relevant NPSs for the purposes of the Secretary of State's decision were EN-1 "Overarching National Policy Statement for Energy" and EN-2 "National Policy Statement for Fossil Fuel Electricity Generating Infrastructure". They were originally designated in 2011. The Secretary of State carried out a review of those NPSs under section 6 of the Planning Act 2008. She designated updated versions of those NPSs on 17 January 2024. The 2024 versions provide that the 2011 NPSs continue to apply to applications for a development consent order accepted for examination before that date.

12. Accordingly, both at the time when the Examining Authority submitted its report to the Secretary of State and when she made her decision to grant the order, the 2011 NPSs remained in force for the purposes of the Planning Act 2008, including section 104. Furthermore, the Examining Authority took into account as a material consideration the 2023 drafts of the updated versions of the NPSs, and the Secretary of State took into account as a material consideration the 2024 designated versions of those updates. The parties did not suggest that the issues in this appeal turn on any difference between the 2011 and the 2024 NPSs.

13. In this case, the Secretary of State considered that NPS EN-1 applied to the whole of the proposal and therefore section 104 of the Planning Act 2008 applied. She decided that the proposed development accorded with the relevant NPSs and that none of the exceptions in section 104(4) to (8) applied. In particular, she decided under section 104(7) that the benefits of the proposed development outweighed the harm that it would cause. In the alternative, the Secretary of State applied section 105 of the Planning Act 2008 on the assumption that section 104 was not applicable. She decided that on either basis the development consent order should be granted.

14. The principles on the interpretation of policy in a NPS are well-established and were summarised in *R (on the application of Scarisbrick) v Secretary of State for Communities and Local Government* [2017] EWCA Civ 787 at [19] and *R (on the application of ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWCA Civ 43; [2021] PTSR 1400 at [56]. The grounds upon which a claim for judicial review may be brought under section 118 of the Planning Act 2008 to challenge a decision to grant a development consent order are also well-established.

15. In her submissions for the appellant on ground 1, Ms Catherine Dobson alleged that there was an inconsistency between, on the one hand, the Secretary of State's conclusion that the GHG emissions from the development would amount to a "significant adverse effect" on the environment and, on the other, her conclusion that the development would support or help deliver "the Government's net zero commitment". This was based upon the second type of irrationality identified by the Divisional Court in *R (on the application of the Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin); [2019] 1 WLR 1649 at [98], which includes flawed logic. However, Ms Dobson accepted on behalf of the appellant that this depends on a proper understanding of the reasons given in the decision letter. She went on to say that this was essentially a "reasons challenge". As it was argued before us, this was certainly so. We also note that ground 3 of the appeal is closely related to ground 1.

16. Section 116(1) of the Planning Act 2008 required the Secretary of State to give reasons for her decision to make an order granting the development consent. The principles governing the legal adequacy of such reasons were set out by the House of Lords in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33; [2004] 1 WLR 1953 (see, in particular, the speech of Lord Brown of Eaton-under-Heywood at [36]).

17. By regulation 4 of the 2017 Regulations the Secretary of State must not make an order granting development consent unless an environmental impact assessment ("EIA") has been carried out. Regulation 5(1) defines EIA as a "process" consisting of a number of components, which include the steps the Secretary of State is required to take in accordance with regulation 21 when she makes a decision on whether to grant development consent. Regulation 5(2) provides that EIA must identify, describe and assess "the direct and indirect significant effects" of the proposed development on a number of factors, which include climate.

18. The breach of the 2017 Regulations alleged by the appellant relates to regulation 21(1), which provides:

> "(1) When deciding whether to make an order granting development consent for EIA development the Secretary of State must –
>
> (a) examine the environmental information;
>
> (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary;
>
> (c) integrate that conclusion into the decision as to whether an order is to be granted; and
>
> (d) if an order is to be made, consider whether it is appropriate to impose monitoring measures."

19. The appellant contends that the Secretary of State failed under regulation 21(1)(b) to reach a "reasoned conclusion" on the effect of the GHG emissions from the development on the environment, taking into account her examination under regulation 21(1)(a) of the "environmental information". That "information" included the developer's "environmental statement" (see regulation 3(1)). That statement was required to include a description of the "likely significant effects" of the proposed development on the environment and the information specified in Schedule 4, which includes "the impact of the project on climate" (paragraph 5). Regulation 30 required the Secretary of State's decision notice granting a development consent order to include *inter alia* her "reasoned conclusion" under regulation 21 on the significant effects of the development on the environment.

20. However, during the hearing Ms Dobson accepted on behalf of the appellant that, at least for the purposes of this appeal, those obligations on the Secretary of State in regulations 21 and 30 of the 2017 Regulations do not add anything to the obligation in

section 116 of the Planning Act 2008 to give reasons for the decision in accordance with the principles set out by the House of Lords in the *South Bucks* case. As Ms Dobson accepted, the appellant's case essentially revolves around a reasons challenge.

The National Policy Statements

21. Paragraph 5.2.2. of EN-1 (2011) states:

> "5.2.2 CO_2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). However, given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies aimed at decarbonising electricity generation such as EU ETS (see Section 2.2 above), Government has determined that CO_2 emissions are not reasons to prohibit the consenting of projects which use these technologies or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR and, for coal, CCS requirements). Any ES on air emissions will include an assessment of CO_2 emissions, but the policies set out in Section 2, including the EU ETS, apply to these emissions. The IPC does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does not address CO_2 emissions or any Emissions Performance Standard that may apply to plant."

22. The corresponding text in EN-1 (2024) is in paragraphs 5.3.11 and 5.3.12, and is in similar terms.

23. Paragraph 2.5.2 of EN-2 (2011) states:

> "2.5.2 CO2 emissions are a significant adverse impact of fossil fuel generating stations. Although an ES on air emissions will include an assessment of CO2 emissions, the policies set out in Section 2.2 of EN-1 will apply, including the EU ETS. The IPC does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does not address CO2 emissions or any Emissions Performance Standard that may apply to plant."

24. In 2019 the target set by section 1 of the Climate Change Act 2008 was amended so that the UK is to become net zero by 2050. The updates of the NPSs which were designated in 2024 were based on that net zero target and strategy.

25. The Government's strategy continues to rely upon electrification in order to reduce GHG emissions in several sectors and a consequent need to increase electricity generation (EN-1 (2024) paragraph 2.3.7). There is therefore an urgent need for significant amounts of new large-scale energy infrastructure, which cannot be developed without significant residual adverse impacts (paragraphs 3.1.1 to 3.1.2). Paragraph 3.3.60 lists the types of development falling within the scope of EN-1, and

which are said to be required for energy security *and achieving net zero* (paragraph 3.3.61). They include electricity generation using natural gas, with or without CCS. Paragraphs 3.3.44 to 3.3.48 explain in more detail the need for additional gas-fired electricity generation. There is also an urgent need for new carbon capture and storage infrastructure to support the transition to a net zero economy in connection with energy generation from natural gas (paragraphs 3.5.1 and 3.5.2).

26. Section 4 of EN-1 (2024) sets out "assessment principles" for dealing with applications relating to energy infrastructure. There is a critical national priority for nationally significant low carbon infrastructure, which includes natural gas fired generation that is "carbon capture ready" (paragraphs 4.2.4 to 4.2.5). Paragraph 4.9.5 reiterates the Government's commitment to supporting at least one gas CCS power station in the mid-2020s. Its Net Zero Strategy reaffirmed the importance of deploying CCUS for achieving net zero by 2050.

27. Section 5.3 of EN-1 (2024) deals with GHG emissions. In particular, paragraphs 5.3.11 to 5.3.12 state:

> "5.3.11 Operational GHG emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). Given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies that can be used to decarbonise electricity generation, such as the UK ETS (see Section 2.4), government has determined that operational GHG emissions are not reasons to prohibit the consenting of energy projects or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR requirements). Any carbon assessment will include an assessment of operational GHG emissions, but the policies set out in Part 2, including the UK ETS, can be applied to these emissions.
>
> 5.3.12 Operational emissions will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments. The Secretary of State does not, therefore need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments."

28. Thus, the NPSs recognise that GHG emissions having a significant adverse impact cannot be avoided for certain necessary energy infrastructure, even if they provide CCS. For such projects operational emissions will be addressed in a managed, economy-wide manner to ensure consistency with carbon budgets, net zero and international commitments. In that context the NPS relies upon *inter alia* the UK's Emissions Trading Scheme. The NPS states that for these reasons there is no need to assess emissions against benchmarks such as carbon budgets or net zero in decisions on planning consent.

Factual background

29. The proposed development was concisely described by the judge at [16]-[17] of her judgment as follows:

> "16. The Scheme in question comprises a full chain Carbon Capture Utilization and Storage ("CCUS") project comprising a number of elements including:
>
> (1) A new gas-fired electricity generating station (with an electrical output of up to 860 megawatts) with post combustion carbon capture plant; gas, electricity and water connections (for the electricity generating station);
>
> (2) A carbon dioxide (CO_2) pipeline network (a 'gathering network') for gathering CO_2 from a cluster of local industries on Teesside; and
>
> (3) A high-pressure CO_2 compressor station and an offshore CO_2 export pipeline.
>
> 17. The power plant is described in the Examining Authorities' Report ("ExAR") as being "mid-merit", which means that it is capable of providing flexible generating capacity which can ramp up and down rapidly to meet demand. This allows the electricity grid to be stabilised and thus makes an important contribution to system operability and security of supply."

30. The need for mid-merit plant derives from the fact that demand for electricity must be simultaneously and continuously balanced by supply, whereas most renewable generation is intermittent. Mid-merit plant enables the active management of output to match supply with demand instantaneously. It is therefore an essential and integral component of the United Kingdom's strategy for achieving its net zero target despite the fact that the operation of mid-merit plant such as the development proposed in this case produces GHG emissions. CCS technology enables a high proportion of post-combustion carbon to be captured.

31. The evidence before the judge was overwhelmingly to this effect and is illustrated by the references she cited at [18]-[26] of her judgment, which showed consistent support in Government policy for CCS/CCUS in general and the proposed development in particular, including these:

> "19. The Relevant Energy NPS EN-1 and EN-2 were published in July 2011. There are numerous references in EN-1 (2011) to the potential importance of CCS, the benefits in terms of GHG emissions and the approach to be taken to such applications. Paragraph 5.2.2 is but one example: … [see [21] above]
>
> 20. In respect of the need for large scale energy infrastructure projects, EN-1 (2011) at paragraph 3.2.3 states:

> "This Part of the NPS explains why the Government considers that, without significant amounts of new large-scale energy infrastructure, the objectives of its energy and climate change policy cannot be fulfilled. However, as noted in Section 1.7, it will not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts. This Part also shows why the Government considers that the need for such infrastructure will often be urgent. The IPC should therefore give substantial weight to considerations of need. The weight which is attributed to considerations of need in any given case should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure."

21. The support for CCS schemes is then repeated and strengthened 11 years later in EN-1 (2024), which was in draft at the date of the ExAR but designated by the time of the DL. Paragraph 3.5.2 states: "the Climate Change Committee states that CCS is a necessity not an option".

22. EN-1 (2024) provides specific support for the Scheme, see paragraph 4.9.5:

> "4.9.5. The government has made its ambitions for CCS clear – committing to providing funding to support the establishment of CCS in at least four industrial clusters by 2030 and supporting, using consumer subsidies, at least one privately financed gas CCS power station in the mid-2020s. In October 2021, the government published its Net Zero Strategy which reaffirmed the importance of deploying CCUS to reaching our 2050 net zero target and also outlines our ambition to capture 20-30Mt of CO_2 per year by 2030."

23. There are also a raft of non-planning policies which give support to CCS. These are summarised in the ExAR at Section 3.6. It should be noted that beyond the general support for CCS, there is specific reference to Teesside being identified as a key location for CCUS in the Clean Growth - the UK Carbon capture Usage and Storage Deployment Pathway – Action Plan (2018), see ExAR 3.614.

24. …

25. The Net Zero Strategy: Build Back Greener (October 2021), which set out the Government's proposals and policies for meeting Carbon Budgets is summarised in ExAR 3.6.33 as follows:

> "3.6.33. The Strategy states that it will deliver four CCUS clusters, capturing 20-30Mt CO_2 across the economy, including 6Mt CO_2 of industrial emissions, per year by 2030. This will be done by supporting industry to switch to cleaner fuels, such as low carbon hydrogen alongside renewable energy and CCUS. These clusters, including the East Coast Cluster, which includes Teesside, could have the opportunity to access support under the Government's CCUS programme. The Government has also set up the Industrial Decarbonisation and Hydrogen Revenue Support Scheme, to fund new hydrogen and industrial carbon capture business models."

32. The second respondents submitted their application for development consent for the proposed development on 19 July 2021. The Examining Authority opened the Examination of the application on 10 May 2022. On 10 February 2023, the Examining Authority submitted their report to the Secretary of State recommending that consent be granted. There then followed a series of further requests from the Secretary of State for information and further submissions. The appellant was closely involved in the process throughout, acting through his consultancy Climate Emergency Policy and Planning ("CEPP"). CEPP made submissions on errors in the Environmental Statement both during the Examination and subsequently in writing to the Secretary of State. One of the appellant's main concerns was the level of GHGs resulting from the development and how they should be estimated and assessed. His involvement led directly to the substantial upward revision of the estimates of GHG emissions, with the result that the Secretary of State ultimately accepted the appellant's figure of +20,450,719 tCO_2e for the development and offshore elements of the development. The Secretary of State also accepted that the cumulative whole-life GHG emissions would be a significant adverse effect, carrying significant negative weight in the planning balance.

33. Central to the issues before the judge and before this court was Dr Boswell's contention that the Secretary of State assessed the significance of the environmental impacts of the GHG emissions from the development in accordance with the IEMA guidance. It was common ground that the second respondents used the first edition of the IEMA guidance (published in 2017) in preparing the Environmental Statement and the parties used the second edition (published in February 2022) during the Examination and subsequent process.

The IEMA guidance

34. The second edition of the IEMA guidance was published in February 2022. It is intended to assist "GHG practitioners" with the assessment, mitigation and reporting of GHG emissions in EIA (section 1.1). It has not been adopted by the Secretary of State as policy guidance for decision-making. It "sets out areas for consideration at all stages of the assessment and offers methodological options that can be explored". It highlights some of the "challenges to the assessment", such as "establishing study boundaries and what constitutes significance". However, it is "not a prescriptive 'how to' guide …".

35. Chapter 5 of the guidance sets out principles for quantifying GHG emissions for the purposes of EIA and then a "framework" of six steps for carrying out that quantification.

36. For cases in which the GHG emissions that would be caused by a development have been estimated, chapter 6 of the guidance goes on to address how the significance of those emissions may be assessed.

37. In section 6.2 the "crux of significance" is said to be whether it contributes to reducing GHG emissions relative to a trajectory towards net zero by 2050, not simply whether a project will cause GHG emissions, or even the magnitude of those emissions. The guidance also recognises that the necessary rate and the level of GHG emission reductions will be unevenly distributed across different economic sectors, activities and types of project. It says that "Net zero for the UK in 2050 (and in the interim) will include some activities with net negative emissions and some with residual emissions greater than zero" (p.24).

38. Section 6.3 of the IEMA guidance is entitled "significance principles and criteria". It provides advice on how different levels of significance may be determined with reference to the whole life GHG emissions of a project and a UK trajectory compatible with the net zero target. The submissions for Dr Boswell relied upon IEMA's approach to identifying a "significant adverse effect" in this sentence:

> "A project that follows a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets, results in a significant adverse effect."

39. But the IEMA guidance continues:

> "It is down to the practitioner to differentiate between the 'level' of significant adverse effects e.g. 'moderate' or 'major' adverse effects"

Pages 25 – 26 of the guidance state that Box 3 provides "an example" of such differentiation. It is important to note that Box 3 distinguishes levels of effect according to the degree of compliance with policy requirements for climate change. Footnote 36 states that levels of "significance" against a "UK net zero compatible trajectory" may "need to be evaluated qualitatively based on policy goals …" where a quantitative trajectory is not available.

40. Section 6.4 of the guidance provides advice on how a project's GHG emissions may be contextualised in order to see whether it supports or undermines a trajectory towards net zero.

41. On page 27 the guidance advises that "the assessment process for GHG emissions will … require a review of the current and the emerging policy/regulatory position …". Table 1 provides sources of contextual information against which GHG emissions can be evaluated, including national policy as well as carbon budgets and sectoral budgets. Where a decision-maker chooses to apply the approach in section 6.3, the guidance

makes it plain that policies and their objectives are relevant to the relationship between GHG emissions from a development and trajectories for achieving the net zero target.

The Examining Authority's report

42. The Secretary of State's decision letter relied heavily on the Examining Authority's report, both by direct quotation and by reference. As we shall explain in more detail below, the decision letter also referred to the IEMA guidance, the dispute between the parties being about whether those references demonstrate that the Secretary of State used a form of shorthand to incorporate a specific meaning of the phrase "significant adverse impact" derived from section 6.3 of the guidance.

43. In dealing with the assessment of GHG emissions at paragraph 5.3.13 of their report, the Examining Authority relied upon draft policy which became paragraphs 5.3.11 to 5.3.12 of EN-1 (2024). They returned to that policy at paragraph 5.3.46 and concluded that the quantum of GHG emissions would represent a "significant adverse effect."

44. The Examining Authority concluded in paragraph 5.3.43 of their report that the proposed development would be resilient to the effects of climate change, such as rising sea levels and flood risk, referring to guidance from IEMA on that subject. That was a different issue from the effect of GHG emissions from the development on the environment.

45. In paragraph 5.3.44 the Examining Authority referred to the IEMA guidance on assessing the significance of GHG emissions, but this was simply in the context of estimating the scale of those emissions and the requirements for the Environmental Statement.

46. The Examining Authority considered that the scale of the GHG emissions would represent a significant adverse effect, despite accepting that they would form only a "very small part" of the UK's carbon budget (paragraph 5.3.46). They went on to consider "benchmarking", or "contextualisation" (in paragraphs 5.3.50 to 5.3.52), and concluded that the second respondents had followed section 6.4 of the IEMA guidance. They explained why a comparison of GHG emissions from the development with a local or regional context would be inappropriate, but accepted that on a sectoral basis those emissions would have a "significant adverse effect". The substance of these conclusions was repeated in paragraph 5.3.57 of their report.

47. It is clear that this analysis by the Examining Authority did not involve applying the significance criteria in section 6.3 of the IEMA guidance (pp.24 to 27) upon which the argument in ground 1 of the appeal depends. Moreover, the Examining Authority did not apply those criteria in any other part of its report. Instead, the Examining Authority returned, in paragraph 5.3.53 of their report, to what became paragraphs 5.3.11. to 5.3.12 of EN-1 (2024) (see [27] above). They accepted that because the emissions would be managed in an economy-wide manner to ensure consistency with carbon budgets and net zero, there was no need to assess the proposal against those measures.

48. In their conclusions on climate change the Examining Authority accepted, having regard to EN-1, that the GHG emissions should be treated as having a significant adverse effect, but gave that factor moderate weight. They judged that "the emissions would not measurably harm the Government's ability to meet its national targets or

have a significant effect on the UK's Carbon Budgets" (paragraph 5.3.57). These conclusions were also reflected in section 7.3 of the Examining Authority's report dealing with the "planning balance".

The Secretary of State's decision letter

49. In paragraph 3.3 of the decision letter the Secretary of State said that she should be treated as agreeing with the Examining Authority's findings and conclusions unless otherwise stated.

50. The decision letter addressed the issues of need and climate change sequentially.

51. Her conclusions on the need for the development were set out at paragraphs 4.11 and 4.30 of the decision letter:

> "4.11. The ExA considered that the Proposed Development would address the urgent need for new electricity capacity as set out in EN-1, the use of natural gas for energy generation (EN-1 and EN-4) and the urgent need for gas-fired electricity generation with CCS (Carbon Capture Storage) infrastructure as set out in the draft 2021 EN-1 [ER 5.2.125]. The Secretary of State notes that this urgent need is also set out in the draft 2023 and 2024 EN-1 and that the Proposed Development would help deliver the Government's net zero commitment by 2050. The ExA consider that by providing CCS the Proposed Development would be in line with Government's wider policy statements on energy and climate change, including those listed in section 3.6 of the ExA report, which constitute important and relevant matters. The UK Marine Policy Statement and the North East Marine Plan are supportive of the deployment of CCS/CCS in the UK Marine Area and local RCBC and STDC policies support the move to a low carbon economy and a CCUS network in the area [ER 5.2.125]. The Secretary of State notes that designated 2024 EN-1 further strengthens the support for the Proposed Development by making nationally significant low carbon infrastructure, including natural gas fired electricity generation which is CCR, a critical national priority. The Secretary of State also acknowledges that the full chain CCUS nature of the Proposed Development elevates it considerably above other CCR projects as it will be required to capture a minimum of 90% of carbon when operating at full load throughout its operation, and will seek to achieve a capture rate of at least 95% (see 4.22 et seq. below). This further contributes to the strong positive weight accorded to the need for the Proposed Development.
>
> …
>
> 4.30. The Secretary of State agrees with the ExA's assessment of need for this type of energy infrastructure and has taken into account that the Proposed Development, as CCGT with CCS, attracts strong policy support and would support the UK's

> transition towards the net zero target. The Secretary of State agrees with the ExA that weight should be given to the benefit of the creation of a CO_2 gathering network and ascribes this moderate positive weight. The Secretary of State agrees that the Proposed Development is CCR, that an appropriate approach has been taken in respect of the Offshore Elements and that the issue of alternatives has been appropriately addressed. She agrees with the ExA's position that appropriate controls would be in place through Requirement 31 and the necessary Environment Permits for the CCGT and carbon capture plant. In accordance with paragraph 3.2.3 of EN-1 and paragraphs 3.1.1-3.1.2 of the draft 2021, draft 2023 and designated 2024 NPSs the Secretary of State attributes substantial positive weight to the contribution that the Proposed Development would make towards meeting the national need."

52. The Secretary of State took essentially the same approach on climate change as the Examining Authority. She dealt with this subject primarily in paragraphs 4.31 to 4.58. She relied upon the parts of the Examining Authority's report to which we have referred above, including their conclusions based upon EN-1 (2024) (see paragraphs 4.32 to 4.41).

53. In paragraph 4.36 the Secretary of State referred to IEMA's view (in section 6.1 of the IEMA guidance) that all GHG emissions have the potential to be significant as all such emissions contribute to climate change. At no point, however, did she make any reference, direct or indirect, to section 6.3 of the IEMA guidance in which the Institute discussed their "significance principles and criteria". She agreed with the Examining Authority that the scale of the GHG emissions from the development would involve significant adverse effects.

54. In paragraphs 4.38 and following, the Secretary of State relied on the Examining Authority's conclusions and post-Examination representations on "contextualisation". In paragraph 4.39 she relied on the policy in EN-1 for the management of the GHG emissions in an economy-wide manner to ensure consistency with carbon budgets and net zero, so that it was unnecessary to assess the proposal against those measures. At this point the Secretary of State referred to paragraph 5.3.12 of the recently designated update of EN-1 (see also paragraph 8.8 of the decision letter).

55. In paragraph 4.40 the Secretary of State relied on the Examining Authority's finding that GHG emissions had been assessed from all stages of the proposed development, including upstream and downstream emissions, and that the assessment of likely significant effects satisfied the 2017 Regulations. Those emissions would not measurably harm the Government's ability to meet its national targets or have a significant effect on UK Carbon Budgets (paragraph 4.41).

56. After setting out in paragraphs 4.44 to 4.57 her views on the post-Examination written representations, which were largely to do with the quantification of GHG emissions from the development, the Secretary of State stated her overall conclusion on climate change in paragraph 4.58:

> "4.58. The Secretary of State has considered the ExA's report and consultation responses received. She considers that the Proposed Development would support the UK's transition towards a low carbon economy. The Secretary of State has considered the potential benefits which the Wider NZT Project would bring in reducing emissions but accepts the ExA's conclusions that over the lifetime of the Proposed Development, emissions would have a significant adverse effect. She does not, however, agree that this matter carries only moderate negative weight in the planning balance as GHG emissions are stated as having a significant adverse impact in both the 2011 and 2024 designated NPSs and draft 2021 and 2023 NPSs. Taking into account the post-examination inclusion of T&S unavailability emissions and the consequent increase in GHG emissions, the Secretary of State concludes that the cumulative whole life GHG emissions will be in the region of +20,808,127 tCO_2e. Also, the Secretary of State notes the resultant increase in the contribution of the Proposed Development to the power sector carbon budgets. She agrees with the ExA in giving more weight to the 2024 NPSs than a comparison with the UK carbon budgets for the assessment of significance but has taken this increase into account. Overall, she considers that cumulative whole-life GHG emissions are a significant adverse effect, carrying significant negative weight in the planning balance."

Although the Secretary of State agreed with the Examining Authority that GHG emissions from the development would have a "significant adverse effect" on the environment, she considered that that should carry significant negative weight in the planning balance, rather than the moderate weight which the Authority had applied.

57. It will immediately be noted that paragraph 4.58 does not mention the IEMA guidance. The appellant's case is that it is to be inferred and implied that the reference to "significant adverse effect" in the last sentence of the paragraph is invested with the specific meaning derived from the IEMA guidance and therefore means that the proposed development "locks in emissions and does not make a meaningful contribution to the UK's trajectory towards net zero".

58. In the section of the decision letter dealing with the planning balance, the Secretary of State said this at paragraphs 7.6 to 7.7:

> "7.6 Despite the future benefits the wider NZT Project could bring in terms of reducing CO_2 emissions, the ExA identified significant adverse effects in relation to the significant volume of GHG over its lifetime both when considered individually and cumulatively with the sector and ascribed this moderate weight in the planning balance. The Secretary of State, however, considers that the volume of GHG emissions carries significant adverse effects, in accordance with both the designated 2011 and 2024 and draft 2021 and 2023 NPSs (see para 4.56 above) and, therefore, ascribes this significant negative weight in the planning balance. Additionally, the development of the PCC Site

> would result in significant visual effects to recreational and PRoW users in a number of locations including Seaton Carew seafront, the England Coastal Path at Warrenby and Redcar seafront both during construction and when operational. The ExA, however, considers agreement of a high-quality final design and use of materials in accordance with the SPD and the principles of the Masterplan and Design Guide may assist in mitigation of such effects [ER 7.3.10].
>
> 7.7 Overall, the ExA considers that the Proposed Development would be in accordance with relevant NPSs and the benefits significantly outweigh the limited harms such that there is no conflict with s104(7) of the PA2008 [ER 7.3.12]. The ExA also notes that recent energy and climate change policy, including draft policy, constitute important and relevant matters which would justify the approval of the Specified Elements under section 105. The ExA concluded that the case for Development Consent is made [ER 7.3.13]. The Secretary of State agrees with the ExA that the benefits of the Proposed Development attract significant positive weight. She differs from the ExA in her conclusion that the adverse impact of GHG emissions attracts significant, rather than moderate, negative weight. She has considered and weighed the benefits and harms that have been identified and concludes overall that the benefits of the Proposed Development outweigh the harms. She notes that the Proposed Development would be in accordance with policy, including the NPSs. She agrees with the ExA that the case for Development Consent has been made."

59. In the section dealing with the Climate Change Act 2008 and the Net Zero Target, the Secretary of State said this at paragraph 8.8:

> "8.8 The Secretary of State has considered that the UK's sixth Carbon Budget requires a 78% reduction of emissions by 2035 compared to 1990 levels. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 22 June 2021, following advice from the Climate Change Committee, the UK Government announced a new carbon reduction target for 2035 which resulted in a requirement for the UK to reduce net carbon emissions by 2035 from 78% below the 1990 baseline. The Secretary of State notes the Energy White Paper states that National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has lessened the need for development of the sort represented by the Proposed Development which is, therefore, still in accordance with the designated 2011 and 2024 NPSs. Operational emissions will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international

> climate commitments. The Secretary of State does not, therefore need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments."

Grounds 1 and 3 of the appeal

60. It was agreed at the hearing that these grounds may conveniently be considered together.

61. Ms Dobson submitted that in concluding that the GHG emissions from the development would have a "significant" adverse effect, both the Examining Authority and the Secretary of State applied the IEMA's usage of the term "significant adverse effect" as quoted in [38] above.

62. Ms Dobson said it follows that the Secretary of State's conclusion in paragraph 4.58 of the decision letter assumed that the project was not compatible with the UK's net zero trajectory. Solely on that basis she then submitted that there is an internal inconsistency or flawed logic in the decision letter, in that when the Secretary of State addressed the subject of need, she concluded that the development would "help" or "support" the UK's transition towards the net zero target for 2050 (paragraphs 4.11, 4.30 and 4.58 of the decision letter).

63. The judge disagreed. In her view the Secretary of State made it clear in paragraph 4.58 of the decision letter that she was assessing significance in accordance with the NPSs, in particular EN-1 and EN-2. The Secretary of State would have referred specifically to the IEMA guidance if that had been the basis for her evaluation [73]. She did not. Paragraph 4.58 of the decision letter makes perfectly good sense as referring to EN-1 and EN-2 and the self-evidently substantial amount of GHG emissions which would be caused by the proposed development [74]. There was no justification for reading the decision letter as flawed by the internal inconsistency alleged. On the contrary, the Secretary of State weighed the absolute amount of GHG emissions from the development and then set that in the broader policy context [75]. Her reasoning accorded with national policy on the net zero trajectory and the need for CCS/CCUS [76].

64. Ms Dobson argued that the judge's conclusions involved a misreading of the decision letter. She made six points in support of the assertion that the Secretary of State applied section 6.3 of the IEMA guidance when addressing the significance of GHG emissions in her decision letter. First, the Environmental Statement produced by the second respondents relied on the IEMA guidance, albeit the earlier first edition, in order to assess significance. Secondly, during the Examination both the second respondents and Dr Boswell assessed the significance of GHG emissions relying on the IEMA guidance (second edition). Thirdly, the Examining Authority relied on that same guidance in the Examination. Fourthly, the parties continued to rely on the guidance in their written submissions to the Secretary of State after the conclusion of the Examination. Fifthly, the decision letter itself refers to IEMA guidance. Finally, the decision letter does not refer to any other source or method for assessing significance.

65. The Secretary of State and the second respondents supported the judge's conclusions. They submitted that it was plain that the Examining Authority and the Secretary of State had relied upon the NPSs in order to assess the significance of GHG emissions from the proposed development and had only referred to the IEMA guidance for other purposes.

66. On ground 3 Ms Dobson submitted that the Secretary of State failed to reach a "reasoned conclusion" in accordance with regulation 21 of the 2017 Regulations in that she did not assess the amount of GHG emissions against a benchmark, such as the projected contributions of either the fuel supply sector or the energy supply sector for the 6th Carbon Budget or the UK's Nationally Determined Contribution under the Paris Agreement (see Dr Boswell's submissions to the Secretary of State dated 6 September 2023 at paragraphs 144 to 148).

67. Our conclusion overall is that there is no merit either in ground 1 or in ground 3. Ground 1 involves an obvious misreading of the Examining Authority's report and the Secretary of State's decision letter, and ground 3 improperly intrudes upon the Secretary of State's decision-making powers.

68. We begin by considering the nature of Dr Boswell's contention. Even assuming for the sake of argument that the Secretary of State had treated the GHG emissions as a significant adverse effect by applying the definition in section 6.3 of the IEMA guidance, and that finding was inconsistent with her view that the development would support delivery of net zero, there would be two ways of looking at that inconsistency. The first one, which Dr Boswell has selected for the purposes of ground 1, is that the application of section 6.3 undermines the conclusion based on EN-1 that the proposal supports the delivery of "net zero". But there is a second possibility which Dr Boswell ignores: the Secretary of State was entitled to find that the proposal accords with NPS Policy EN-1 and is compatible with the trajectory to "net zero" and, in relation to section 6.3 of the IEMA guidance, the Secretary of State should have assessed the GHG emissions as having a less than significant adverse effect.

69. The first explanation is untenable. It assumes that the Secretary of State has made a finding that the GHG emissions from the development would not be compatible with a "net zero" trajectory, so that they could be categorised as having a "significant adverse effect", according to the definition used in section 6.3 of the IEMA guidance. But no such finding was made, whether by the Examining Authority or the Secretary of State. Furthermore, Dr Boswell's explanation involves disregarding the IEMA's advice that the assessment of the compatibility of a development's GHG emissions with a "net zero" trajectory should take into account the degree of compliance with policies designed to achieve that target. His argument ignores the approach adopted in EN-1 of treating development of the kind proposed as compatible with the UK's "net zero" trajectory. As a matter of law the Secretary of State was entitled to rely upon that policy approach.

70. The second explanation is straightforward. On the basis that the Secretary of State was legally entitled to find that the proposal was compatible with the "net zero" trajectory, taking into account EN-1, a finding that the GHG emissions would amount to a "significant adverse effect" in the sense used in section 6.3 of the IEMA guidance would plainly have been in error. It would have involved a clear misapplication of that guidance.

71. This analysis indicates that Dr Boswell's selection of the first explanation on which to found his ground of challenge is bound up with his disagreement with the policies in EN-1 to support new gas-fired electricity generation with CCUS as part of the strategy for delivering the net zero target. The judge made essentially the same point in her judgment at [76].

72. There is, of course, another possibility, namely that the Secretary of State's finding that GHG emissions would have a significant adverse effect did not involve the application of section 6.3 of the IEMA guidance at all. In that event, ground 1 would simply evaporate and, of course, none of the problems we have identified in [68]-[71] above would arise.

73. Ms Dobson accepted that the Secretary of State was not obliged to apply the IEMA guidance and could adopt another approach. The status of the IEMA document is that it provides guidance to practitioners. It has not been adopted as part of any policy for the determination of applications under the Planning Act 2008, nor has it been adopted as part of any other government policy.

74. From the analysis we have set out above, it is plain that neither the Examining Authority nor the Secretary of State applied section 6.3 of the IEMA guidance when deciding that the GHG emissions from the development would have a "significant adverse effect". It is nothing to the point that the Examining Authority's report and the decision letter referred to the IEMA guidance when it is obvious that those references were to other sections of that document which are irrelevant to ground 1. The analysis of the Examining Authority's Report and the decision letter by Ms Rose Grogan for the Secretary of State demonstrated ground 1 to be fallacious. It is noteworthy that the reply by Ms Dobson made no real attempt to resuscitate that ground.

75. As Mr Hereward Phillpot KC correctly submitted on behalf of the second respondents, the parties took part in the highly structured decision-making process laid down by the Planning Act 2008, which recognises the statutory importance attached to the NPSs (section 104). The parties would have been well aware of the relevant provisions of those policies, including paragraph 5.2.2 of EN-1 (2011) and paragraphs 5.3.11 to 5.3.12 of EN-1 (2024). It is also a well-established principle that the court will read decision letters on the basis that they are addressed to parties who are familiar with the issues, the evidence and relevant policies.

76. On any fair reading of the Examining Authority's report and the decision letter, it is plain that both the Examining Authority and the Secretary of State evaluated the significance of the GHG emissions in absolute terms, by "contextualisation" and also by reference to the relevant policies in EN-1. The Secretary of State accepted that the emissions would not measurably harm the UK's ability to meet national targets or the UK's Carbon Budgets. The emissions will be managed in an economy-wide manner so as to ensure consistency with those measures. Furthermore, in paragraphs 4.11 and 4.30 of the decision letter the Secretary of State accepted that, in view of the policy approach in EN-1, the proposed development is necessary in order to support the UK's transition to the "net zero" target. None of these conclusions are open to legal challenge. There is no inconsistency within the decision letter.

77. Having set out that reasoning, there was no legal obligation on the Secretary of State to go on to resolve the issue that arose between the appellant and the second respondents

during the Examination on how the significance criteria in section 6.3 of the IEMA guidance would apply to the proposed development. The Secretary of State discharged her obligation to give reasons for her decision by adequately explaining the approach she took to the evaluation of GHG emissions. Accordingly, ground 1 of the appeal must be rejected.

78. Ground 1 depends upon the appellant interpreting the decision letter as if the Secretary of State did in fact apply section 6.3 of the IEMA guidance. That reading is wholly artificial, serving only to create a basis for that ground. Dr Boswell's approach is, we think, a classic example of the misuse of judicial review in order to continue a campaign against a development (and the policy in a NPS) once a party has lost the argument on the planning merits. Such an approach is inimical to the scheme enacted by Parliament for the taking of decisions in the public interest.

79. On ground 3 the appellant argues that if the Secretary of State did not rely upon section 6.3 of the IEMA guidance to assess the significance of the GHG emissions, she failed to comply with her obligation under regulation 21 of the 2017 Regulations to give a reasoned conclusion on the effect of those emissions on the environment, in this instance the climate. Ms Dobson said it was insufficient for the Secretary of State simply to describe the GHG emissions as having a "significant adverse effect". Instead, she was obliged to evaluate the significance of that effect, if not by reference to the IEMA guidance, then by comparison with a "benchmark" or by "contextualisation" (see [66] above).

80. In our view the evaluation of the significance of an estimated amount of GHG emissions and its acceptability is a matter of fact and judgment for the decision-maker. He or she may decide to choose benchmarks to help in arriving at that judgment. But that choice too is a matter of judgment for them. Any conclusion drawn on the acceptability of the GHG emissions in comparison with a benchmark is also a matter of judgment for the decision-maker. The 2017 Regulations do not determine how these matters should or may be approached (*R (on the application of Goesa Limited) v Eastleigh Borough Counci*l [2022] EWHC 1221 (Admin); [2022] PTSR 1473 at [122]-[123]; *R (Boswell) v Secretary of State for Transport* [2024] EWCA Civ 145; [2024] Env. L.R. 28 at [44], [53]).

81. Nor is there any legal principle which requires a public authority deciding whether to grant a development consent to "contextualise" the GHG emissions or to compare them with a benchmark. It is not unlawful for the decision-maker, for example, to conclude, as in this case, that the GHG emissions will be managed across the economy to ensure consistency with carbon budgets and the 2050 net zero target. In any event, in the present case the Secretary of State did "contextualise" the GHG emissions from the development by making a sectoral comparison, whilst also relying upon the policy in EN-1 that made this exercise unnecessary (see e.g. [46], [54], and [58]-[59] above).

82. These were all lawful and properly reasoned conclusions, evaluating the significance of the GHG emissions in this case. Dr Boswell does not put forward an irrationality challenge. It cannot possibly be said that the Secretary of State failed to give legally adequate reasons or otherwise acted unlawfully. Accordingly, ground 3 must therefore be rejected.

Ground 2

83. Ground 2 of the appeal contends that Lieven J erred in concluding that paragraph 5.2.2 of EN-1 "encapsulates the assessment of significance of GHG emissions for the purposes of the EIA Regulations as well as the weight to be given to the assessment of significance as part of a planning balance exercise".

84. In her judgment at [66], [74], [80] and [81] the judge said:

> "66. [It] is not clear to me how [*R (on the application of Finch) v Surrey County Council* [2024] UKSC 20; [2024] P.T.S.R 988] is said to be relevant to [this ground]. This is not a case where an environmental impact, GHG emissions, were not fully assessed for the purposes of EIA. Nor is it suggested that those impacts were not considered and weighed in the ultimate planning balance. Both stages of the process were undertaken, and the SoS weighed up the significant adverse impact of GHG emissions, in the ultimate planning balance. Therefore the case is analytically quite different from *Finch* and the dicta of Lord Leggatt does not impact on the alleged error of law here.
>
> …
>
> 74. Second and most importantly in my view, [DL [4.58]] makes perfectly good sense if the [Secretary of State] is assessing significance on the simple basis of EN-1 and EN-2, and through the clear, if perhaps a little simplistic, approach that 20,450,719 tCO2e is a very large quantum of GHG emissions. That related back to what had been said at DL 4.41 and in that context is itself clear.
>
> …
>
> 80. The Claimant has in my view erected a bright line distinction between matters that go to EIA and those that go to determination, which is both unjustified but also thoroughly unhelpful. As was said by Sullivan LJ in [*R (on the application of Blewett) v Derbyshire County Council* [2004] EWHC 2775 (Admin); [2004] Env. L.R. 29], EIA is not supposed to be an obstacle course for decision makers to trip over. The purpose of EIA is inter alia to improve environmental decision making, so the idea that the significance of an impact for assessment purposes is legally distinct from that for determination purposes creates precisely such an obstacle course and is therefore very unlikely to be correct.
>
> 81. In my view the language and guidance of EN-1 para 5.2.2 comfortably encapsulates both assessment of impacts for the purposes of EIA and for the consideration of weight to be attached in the determination stage."

85. In this court Ms Dobson largely repeated the submissions she made in the court below. Properly construed, paragraph 5.2.2 of EN-1 did not address the assessment of significance of GHG emissions for the purposes of the EIA Regulations. If, as the judge accepted at [74] of her judgment, the decision letter was to be read as showing that the Secretary of State relied on the policy in paragraph 5.2.2 of EN-1 that "CO_2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology)", or on the statement in the first sentence of paragraph 2.5.2 of EN-2 that "CO_2 emissions are a significant adverse impact of fossil fuel generating stations", to conclude that the GHG emissions would have a significant adverse effect, the policy in question did not amount to an assessment of significance for the purposes of the 2017 Regulations. A policy document could not deem or prescribe the level of significance of an effect on the environment. It can provide guidance. It can set out relevant factors. But it cannot predetermine, or stand in place of, the outcome of the assessment for an individual development. This would run counter to the purpose of the EIA process. The judge's conclusion at [81] was therefore wrong. The policy in question here, Ms Dobson submitted, went only to the weight to be given to the relevant adverse effects in the planning balance when the "reasoned conclusion" is incorporated into the decision under regulation 21(1)(c), not to the "reasoned conclusion" itself required under regulation 21(1)(b).

86. We cannot accept Ms Dobson's argument on ground 2. With great respect to her, it seems to us to be misconceived. It was, we think, entirely legitimate in principle and in the circumstances of this case, for the Secretary of State to draw upon national planning policy in the NPSs in forming her conclusions on the "significance" of GHG emissions, and to do so both for the purposes of EIA and for the purposes of what the judge referred to as the "ultimate planning balance". We see nothing amiss in the conclusions stated by Lieven J at [66], [74], [80] and [81] of her judgment.

87. In *ClientEarth*, Sir Keith Lindblom, Senior President of Tribunals, said at [85] that there was "no suggestion [in the policy in paragraph 5.2.2 of EN-I (2011)] that it removes or qualifies the general 'presumption in favour of granting consent to applications for energy NSIPs' in paragraph 4.1.2, which is founded on the 'level and urgency of need for infrastructure of the types covered by the energy NSIPs set out in Part 3' – including fossil fuel generating capacity". The Senior President went on to say at [87]:

> "87. The force of the policy, therefore, is not that CO2 emissions are irrelevant to a development consent decision, or cannot be given due weight in such a decision. It is simply that CO2 emissions are not, of themselves, an automatic and insuperable obstacle to consent being given for any of the infrastructure for which EN-1 identifies a need and establishes a presumption in favour of approval. If they were, the policy need and the policy presumption would effectively be negated for certain forms of infrastructure supported by EN-1, and those essential provisions contradicted. Paragraph 5.2.2 does not diminish the need for relevant energy infrastructure established in national policy or undo the positive presumption. But nor does it prevent greenhouse gas emissions from being taken into account as a consideration attracting weight in a particular case. How much weight is for the decision-maker to resolve. It follows that, in a

> particular case, such weight could be significant, or even decisive, whether with or without another "adverse impact". …".

88. The policy wording in both paragraph 5.2.2 of EN-1 (2011) and paragraph 2.5.2 of EN-2 (2011) is simple and pellucidly clear. It speaks for itself. Both policies state unequivocally that "CO_2 emissions are a significant adverse impact". But whilst they acknowledge that the effects of such emissions from some types of energy infrastructure are "significant", it is also clear from the language of the policies, read in their context, that this is not regarded by the Government as an automatic basis for the refusal of development consent. There is nothing in the policies to qualify their acknowledgment of the "significance" of CO_2 or GHG emissions by confining its relevance either to the EIA process alone or to the decision-maker's consideration of the proposed development on its planning merits when striking the planning balance and deciding whether or not development consent should be granted. And there is no need or justification for reading such a qualification into the policies. As the judge held, the policies are in sufficiently broad terms to encompass both the question of significance for the purposes of EIA and the part that any finding of significance will play in the question of whether to grant development consent.

89. We should say at this stage, lest there be any doubt on the point, that it is not open to Dr Boswell to use the present proceedings for the purpose of attacking policies in the NPSs themselves. The challenge in this claim is, and can only be, directed solely at the Secretary of State's decision on the application for a development consent order for the proposed electricity generating station. It cannot be widened to bring within its ambit the content of the national planning policy applicable to that project.

90. There is no legal or practical reason why national planning policy should not provide guidance on the question of the "significance" of environmental effects of one kind or another. And there is no reason in law why national planning policy in a NPS should not include guidance on the question of whether particular effects will be, or are likely to be, "significant" in the sphere of EIA. The Secretary of State was fully entitled to take into account as a relevant factor, and apply, the policies set out in paragraph 5.2.2 of EN-1 and paragraph 2.5.2 of EN-2. The judge's conclusions to this effect at [80] and [81] seem to us to be plainly right.

91. We unhesitatingly accept the submission made by Ms Grogan and Mr Phillpot, both in this court and in the court below, that the Secretary of State made no error in her interpretation, or understanding, of the relevant policies. No cogent or coherent allegation of misinterpretation has been put forward. Whether CO_2 or GHG emissions are "significant" in a particular case, and the degree of that significance, will depend on the application of the policies. That is not a matter of interpretation. It is a question of their application on the facts and in the circumstances of the particular case. In our view this was done impeccably. Like the judge, we can discern no irrationality or other species of public law error in the Secretary of State's conclusions. The policy does not predetermine the outcome, nor was the decision-making in this case tainted by predetermination.

92. Ms Dobson sought to rely on observations made by Lord Leggatt in *Finch* at [151]-[152]:

> "151. … It is also necessary to recall that the aim of the EIA is to establish general principles for assessing environmental effects. UK national policy is clearly relevant to the substantive decision whether to grant development consent. But it is irrelevant to the scope of EIA. For reasons discussed earlier, the fact (if and in so far as it is a fact) that a decision to grant development consent for a particular project is dictated by national policy does not dispense with the obligation to conduct an EIA; nor does it justify limiting the scope of the EIA.
>
> 152. The second, related flaw is also fundamental. The argument made is a version of the claim that, if information about environmental impacts would make no difference to the decision whether to grant development consent (or on what conditions), it is not legally necessary to obtain and assess such information in the EIA process. Such a contention was resoundingly rejected by the House of Lords in *Berkeley*. It misunderstands the procedural nature of the EIA. The fact (if it be the fact) that information will have no influence on whether the project is permitted to proceed does not make it pointless to obtain and assess the information. It remains essential to ensure that a project which is likely to have significant adverse effects on the environment is authorised with full knowledge of these consequences."

93. In our view it betrays a serious misunderstanding of the decision of the Supreme Court in *Finch* to suggest that it provides any support for Ms Dobson's argument. As Lieven J pointed out (at [66] of her judgment), this was not a case in which there had been a failure to assess fully a particular environmental impact, here GHG emissions, "for the purposes of EIA". Nor was it suggested that those impacts had not been considered in the "ultimate planning balance". Both stages of the process had been undertaken, and the Secretary of State had weighed up the significant adverse impact of GHG emissions in that "ultimate planning balance". In this case there is, rightly, no contention that the scope of the EIA undertaken for the proposed development was deficient. It is not Dr Boswell's case, nor could it be, that any impacts that ought to have been assessed were omitted from that assessment, or that they were left out of the "ultimate planning balance".

94. As the judge recognised, the appropriate scope of an EIA is one thing; the judgment reached on the significance of particular environmental effects, such as GHG emissions, is another. The judge said that the present case was "analytically quite different" from *Finch* and "the dicta of Lord Leggatt [do] not impact on the alleged error of law here." We agree entirely with that conclusion. The decision in *Finch* has no resonance for the issues in this case.

95. As we understand the law in its present state, it can still safely be said that the question of whether emissions are "significant" for the purposes of the EIA legislation is a matter of judgment for the decision-maker (see the judgment of Lord Leggatt in *Finch* at [58]).

96. Similarly, the result of *Finch* and its reasoning do not disturb the basic and long-established principle, recently reaffirmed by the Supreme Court itself, that where a

public authority has the function of deciding whether to grant planning permission for a project calling for EIA under the relevant legislation, it is for that authority to decide whether the "environmental information" available is sufficient to meet the requirements of the legislation, and its decision is subject to review on normal *Wednesbury* principles (see the judgment of Lord Hodge and Lord Sales in *Friends of the Earth* [2020] at [141]-[147]).

97. The Secretary of State was evidently well aware, in accordance with the legislative regime, that it was necessary in this case for the environmental statement to include an assessment of the likely significant effects of the proposed development. Such an assessment was produced, and it was considered during the Examination, in the period after the Examination, and in the decision letter itself. This extended to the effects of GHG emissions from the proposed development. There is, it seems to us, no force in the suggestion that the scope of that assessment was curtailed, or its outcome prescribed by national planning policy. In accordance with the relevant legislation, the decision letter contains, as regulation 21(1)(b) of the 2017 Regulations required, a "reasoned conclusion on the significant effects of the proposed development on the environment", including the effects of GHG emissions. This conclusion was reached by the Secretary of State considering, as regulation 21(1)(a) required, the "environmental information" before her, which included a quantified cumulative estimate of those emissions over the whole life of the project, and by exercising her own judgment on their significance. In accordance with regulation 21(1)(c), the Secretary of State integrated that "reasoned conclusion" into the decision itself (paragraphs 4.58, 7.6 and 7.7 of the decision letter). The substance of that conclusion was that GHG emissions from the development would have a "significant adverse effect" (paragraph 4.58 of the decision letter).

98. The evidential basis for those conclusions is not in dispute in these proceedings. The Secretary of State's finding that the proposed development would produce "whole-life" GHG emissions of over 20m tCO_2e is not impugned. Nor is it suggested that it was wrong, let alone irrational or otherwise unlawful, for her to conclude, as a matter of planning judgment, that this would represent a "significant adverse effect". Ms Dobson did not submit that a different conclusion should have been reached on this matter. Neither the integrity of that conclusion, nor the further conclusion that this carried "significant negative weight in the planning balance" are vulnerable to any criticism in a legal challenge. There was no error of law.

99. We are strengthened in that conclusion by the submissions of Ms Grogan and Mr Phillpot. As they submitted, the Secretary of State did not "conflate" the impact of GHG emissions from the proposed development with the weight to be attributed to that impact. The judge was right to conclude, in effect, that it is artificial to distinguish rigidly between matters relevant to EIA and those pertaining to the determination of an application for development consent, or for planning permission. EIA is not an end in itself. It is a means to achieving better-informed decisions on individual proposals for development. It is meant to facilitate decision-making, not to hamper or impede it by setting up unnecessary obstacles (see *Blewett* at [41] and *R (Jones) v Manfield District Council* [2003] EWCA Civ 1408; [2004] Env. L.R. 21 at [58]). The relationship between the two processes, EIA and decision-making, is implicit in regulation 21(1)(b) and 21(1)(c) of the 2017 Regulations.

100. It is clear, we think, from what the judge said at [66] and [81] that she had well in mind the conceptual difference between the effects of the proposed development and the

weight to be given to those effects. She made no error in concluding that the Secretary of State had first assessed the impact of the GHG emissions from the development and found them to be significant within the sphere of EIA, and then given them significant weight in the planning balance, thus discharging both parts of the exercise. Ms Grogan and Mr Phillpot were right to submit that the policy in paragraph 5.2.2 of EN-1 (2011) provides guidance for the decision-maker, which, in part, goes to both significance and weight. To treat the policy as if it were statute, or had equal force to the provisions of statute, would be incorrect. It is simply a statement of policy, whose obvious purpose, in part, is to promote clarity and consistency in the consideration of "CO_2 emissions" in both the preparation of environmental statements under the legislation for EIA and decision-making on "individual applications" for relevant types of energy infrastructure.

101. Nowhere did the judge say that the assessment of significance for the purposes of EIA is legally indistinct from the assessment of weight to be given to such impacts in the making of a planning decision. What the judge did, rather, was to deprecate the drawing of a "bright line distinction" between things that may properly be taken into account in ascertaining the significance of an environmental effect and things that may properly be taken into account in establishing the weight to be given to those effects ([80]).

102. So far as it bears on the assessment of the significance and weight to be attributed to the "CO_2 emissions" likely to be produced by a particular development, the policy in paragraph 5.2.2 of EN-1 (2011) is not framed in mandatory or prescriptive terms. That is not how it was understood by the Secretary of State, nor how it was applied by her. To suggest that she fell into such an error is to misread the decision letter. The reality here is that, quite properly, she had regard to the policy in paragraph 5.2.2, understood it correctly, and applied it reasonably and lawfully. She was entitled to form her conclusions on significance and weight, in the light of the policy, and explicitly basing it, in part, on the estimated amount of GHG emissions likely to be produced by the proposed development – an estimate to the making of which Dr Boswell had contributed himself. She stated the reasons for her conclusions adequately and clearly. There is no hint at all of the Secretary of State having thought that her own conclusions on these matters were in any way prescribed, deemed or dictated by national planning policy. Her approach and the conclusions to which she came were, in our view, legally unimpeachable.

103. Ground 2 of the appeal must therefore be rejected.

Conclusion

104. For the reasons we have given, this appeal is dismissed.

APPENDIX 10

Neutral Citation Number: [2019] EWHC 1975 (Admin)

Case No: CO/63/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 July 2019

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN

on the application of

ELIZABETH WINGFIELD	**Claimant**
- and -	
CANTERBURY CITY COUNCIL	**Defendant**
HNC DEVELOPMENTS LLP	**Interested Party**

- -
- -

Richard Buxton (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Isabella Tafur (instructed by **Legal Services**) for the **Defendant**
Jenny Wigley (instructed by **Howes Percival Solicitors**) for the **Interested Party**

Hearing dates: 12 & 13 June 2019

- -

Approved Judgment

Mrs Justice Lang:

1. In a claim for judicial review filed on 3 January 2019, the Claimant challenged the grant of outline planning permission by the Defendant (hereinafter "the Council"), on 22 November 2018, for a proposed development on the site of the former Chislet Colliery, Hersden, Westbere, Kent ("the Chislet Site").

2. The Claimant is a local resident, and the Defendant is the local planning authority. The Claimant has brought this claim despite not having objected to the application for planning permission. The Interested Party ("IP") is the owner of the Chislet Site and the applicant for outline planning permission.

3. The grant of outline planning permission, which was subject to conditions, was for a mixed use development of up to 370 dwellings, local centre, open space, community ecological park, hard and soft landscaping and associated infrastructure with access from a new roundabout, on a brownfield site some 19.24 ha in size. Part of the Chislet Site is a Local Wildlife Site.

4. The Claimant relied, in particular, upon the adverse environmental effects of the proposed development. The southern boundary of the Chislet Site is about 30 metres from the Stodmarsh National Nature Reserve ("Stodmarsh"), separated by the Canterbury to Ramsgate railway line. Stodmarsh is a European designated site and includes the Stodmarsh Special Protection Area ("SPA"), the Stodmarsh Special Area of Conservation ("SAC"), the Stodmarsh Site of Special Scientific Interest ("SSSI") and the Stodmarsh Ramsar wetland site. The Chislet Site also falls within the 7.2 km zone of influence for the Thanet Coast and Sandwich Bay SPA and Ramsar wetland site.

5. The Claimant also relied upon a separate judicial review claim, which she filed on 26 March 2019, concerning a proposed development at Hoplands Farm, Island Road, Hersden, Westbere, Kent (the "Hoplands Site"). The Hoplands Site comprises grassland and woodland, and is about 29 ha in size. It is adjacent to the Chislet Site.

6. The Council granted outline planning permission on 5 July 2017, for a development at the Hoplands Site for up to 250 houses, a neighbourhood centre including medical services, retail outlets and a nursery, a commercial estate, a community building, amenity space and parking, together with 15 ha of ecological parkland.

7. In the Hoplands claim, the Claimant challenged the Council's decision, dated 12 February 2019, to grant approval for reserved matters relating to access, appearance, landscaping, layout and scale in respect of part of the Hoplands Site, namely, the erection of 176 dwellings (Phases 1A and 1B) and for parkland (Phase 3).

Grounds for judicial review

8. In her Statement of Facts and Grounds, the Claimant pleaded three grounds of challenge:

    i) **Ground 1**. The Council erred in failing to treat the development at the Chislet Site and the adjacent development at the Hoplands Site as a single project for

the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the EIA Regulations 2011"), read with Directive 2011/92/EU ("the EIA Directive"). The Council also erred in failing to consider whether or not the two developments should be treated as a single project.

ii) **Ground 2**. The Habitats Regulations Assessment ("HRA") undertaken by the Council pursuant to regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations 2017") was unlawful because:

a) It was apparent from the draft that it contained errors and omissions and was not a rigorous scientific appraisal;

b) Its approach and conclusions were contrary to the reservations expressed by Natural England in respect of the HRA for the proposed development at the Hoplands Site, and no reasons were given for departing from Natural England's advice.

iii) **Ground 3**. The Council failed to give adequate reasons for its decision to grant outline planning permission and/or the reasons given were irrational.

9. On 13 March 2019, Thornton J. granted permission to apply for judicial review on Ground 1, but refused permission on Grounds 2 and 3.

10. The Claimant applied to renew her application for permission on Grounds 2 and 3, and the application was listed to be heard on the same occasion as the substantive hearing on Ground 1. Prior to the hearing, the Claimant decided not to pursue Ground 3.

Ground 1: Single project

Planning history

11. In June 2013, the previous owner of the Chislet Site (MHP Partnership) and the previous owner of the Hoplands Site (George Wilson Developments) jointly issued a document called a "community brochure" setting out their aim to regenerate the village of Hersden through sustainable mixed-use development on the two Sites. In August 2013, a Highways and Transportation Review was published.

12. Natural England reviewed the Sites and advised that "subject to the following concerns being resolved this development proposal would avoid impacts upon the interest features of Stodmarsh (SSSI, SPA, SAC, Ramsar)". The concerns were cat predation, surface water run-off, recreational pressure, lighting and potential impacts of construction.

13. According to the witness statement of Ms Steele, planning consultant for HNC Developments Ltd, the former owners of the Chislet Site informed her that "the intention was not to have a joint project but simply to identify the possibility of both sites coming forward for development purposes".

14. The two Sites were not promoted as a single allocation in the Development Plan process. In 2014 separate representations were made in respect of the two Sites on the publication draft of the Canterbury District Local Plan. The Council's 2014 Strategic Housing Land Availability Assessment considered the two Sites separately. Chislet Colliery was promoted for allocation in the 2017 Local Plan; Hoplands Farm was not.

    The 2013 proposal was not pursued by the owners of the Chislet Site, and they subsequently sold the Chislet Site to the IP in September 2015.

The Hoplands Site

15. The Hoplands Site was sold to Quinn Estates and Invicta Properties.

16. On 7 October 2015, the Council issued a screening opinion which concluded that the proposed development fell within section 10(b) of schedule 2 to the EIA 2011 Regulations, as an infrastructure project exceeding 150 dwellings and 5 hectares in size. It would be likely to have a significant effect on the environment, because of the characteristics of the site and its location close to designated sites, and cumulation with other development. The Council therefore found that the proposed development was EIA development in respect of which an Environmental Statement was required.

17. On 14 January 2016, Natural England provided written advice on the scope of the Environmental Statement, including cumulative and in-combination effects with other developments.

18. On 20 January 2016, the Council provided a detailed scoping opinion, incorporating the consultation responses received. It advised *inter alia* on the assessment required in respect of the Stodmarsh designated sites, and the financial contribution required in respect of the Thanet Coast Strategic Access Management and Monitoring (SAMM) Plan.

19. On 17 February 2016, Quinn Estates and Invicta Properties submitted an application for outline planning permission for a development at the Hoplands Site. The application was accompanied by a detailed Environmental Statement. As well as assessing the environmental effects of the proposed development, it also assessed cumulative and in-combination effects with other nearby development, including the Chislet Site.

20. Outline planning permission was granted on 5 July 2017.

21. The Hoplands Site was acquired by Redrow Homes, with the benefit of outline planning permission, in October 2017.

The Chislet Site

22. Turning to the Chislet Site, on 3 June 2015, the IP requested a screening opinion from the Council, to determine whether its proposed development at the Chislet Site was EIA development.

23. On 10 September 2015, the Council issued a screening opinion which concluded that the proposed development fell within section 10(b) of schedule 2 to the EIA Regulations 2011, being an Infrastructure Project exceeding 150 dwellings and 0.5 hectares in size.

24. In a thorough report, the Council applied the selection criteria for screening in schedule 3 to the EIA Regulations 2011. Under the heading "Characteristics of the Development", it identified the proposed development as a mixed use development on the former colliery site, extending to approximately 19.2 ha. It did not find that the proposed development was part of any other wider development, whether at the Hoplands Site, or elsewhere. It did, however, identify other planned developments in the area (land to the north of Hersden allocated for up to 800 dwellings and land allocated for 1,000 dwellings at Sturry/Broad Oak). The Council found that there was "potential for the cumulation with other development in the vicinity with likely significant environmental effects". It also identified a likely increase in traffic noise and pollution arising from the Chislet Site, and stated "the in-combination effect of development with other planned housing development in the locality will need to be considered".

25. Under the heading "Location of Development", the Council considered the environmental impact on the Stodmarsh designated sites, including "significant cumulative impacts". It also found that "future housing in-combination" was likely to have a significant impact on coastal SPAs. It advised that an appropriate assessment under the Habitats Regulations could be required.

26. In light of the above, the Council was of the opinion that an environmental impact assessment ("EIA") was required as it considered that the development would constitute EIA development.

27. The IP made an application for outline planning permission on 18 March 2016. The application was accompanied by an Environmental Statement which assessed the likely significant effects of the project alone and in combination with twelve other projects, not including Hoplands Farm. At the time of the Council's Scoping Opinion, there had been no planning application for the Hoplands Site and the Council did not identify that development as a project to be taken into account in the cumulative impact assessment. However, during pre-application discussions, additional prospective developments were identified, including the Hoplands Farm site, and the Council requested the IP to provide an updated cumulative impact assessment which took account of those projects. Chapter 16 of the Environmental Statement assessed cumulative impacts in respect of:

    i) Socio-economic impacts (housing, education, health, community facilities, recreation and open space, job creation and the effect on the local economy);

    ii) Transportation, roads and traffic;

    iii) Air quality;

    iv) Landscape;

    v) Ecology;

vi) Archaeology and cultural heritage;

vii) Hydrology, flood risk and drainage;

viii) Ground conditions;

ix) Noise;

x) Lighting.

28. The Environmental Statement concluded that the cumulative impact with other planned development in the area was negligible and that the project would have no significant environmental effects, either alone or in combination.

29. The IP also provided a report to inform the HRA. The report considered the Stodmarsh designated sites, and assessed the implications of the proposed development on them, both alone, and in combination with other projects including Hoplands Farm. It concluded that the development would not adversely affect the integrity of any designated site.

30. On 19 May 2016, Natural England commented on the application, advising as follows:

i) as the proposed development fell within the 7.2 km zone of influence of the Thanet Coast and Sandwich Bay SPA, where any net increase in residential development will be required to provide mitigation for disturbance of notified bird species, an appropriate financial contribution would be required towards the Strategic Access Management and Monitoring ("SAMM") Plan;

ii) the measures identified in Chapter 10 of the Environmental Statement 'Hydrology, Flood Risk and Drainage' would be required to protect the condition of the Stodmarsh designated sites. Surface water run off was a potential impact and a Sustainable Urban Drainage Strategy ("SUDS"), to manage the run off and filter pollutants, should be implemented. Natural England supported the proposed use of swales (depressions) in the ecology park to control run off.

iii) Natural England was fully supportive of the proposed ecology park, which could offer an important habitat buffer to the Stodmarsh designated sites.

iv) The application could provide opportunities to incorporate features into the design which would be beneficial to wildlife.

31. The officer's report to the planning committee recommended refusal because it was contrary to the Local Plan, and there were not sufficient benefits in favour of granting permission. The Chislet Site was not allocated for development in the Local Plan, and a development of 800 dwellings to the north of Hersden had already been allocated in the Local Plan. Among other matters, the IP had not completed a legal agreement to contribute to the SAMM Plan.

32. The application was considered by the planning committee at its meeting on 5 December 2017. The committee resolved to grant planning permission, subject to

completion of an agreement under section 106 of the Town and Country Planning Act 1990 ("TCPA 1990") in respect of, *inter alia*, a SAMM Plan contribution and also the submission of further evidence on measures to mitigate the impact of the proposed development on air quality. The committee's reasons were that the proposed development was on a brown-field site which was well located in relation to the village and it would deliver additional housing, including 30% affordable housing. These benefits, along with contributions proposed, would outweigh the identified harms of the proposed development in the countryside with the associated visual impacts having regard to the existing industrial estate to the east and the approved development at the Hoplands Site to the west.

33. In April 2018, the CJEU had handed down judgment in *People over Wind v Coillte Teoranta* [2018] PTSR 1668, which held that mitigation measures should not be taken into account so as to "screen out" the need for an appropriate assessment under the Habitats Directive. In light of that judgment, the Council determined to carry out an HRA of the impacts of the proposed development on the designated European sites before the application was determined.

34. In its HRA, adopted on 25 September 2018, the Council assessed the environmental impacts on the designated sites, in particular, recreation impact, water levels/extraction, and water quality. It assessed the development on the Chislet Site alone, and in-combination with proposed developments nearby, including Hoplands Farm. It concluded that the proposal would lead to a likely significant effect on the integrity of the designated sites without mitigation measures, and therefore carried out an appropriate assessment under regulation 63(1) of the Habitats Regulations 2017.

35. In respect of the Thanet Coast and Sandwich Bay SPA and Ramsar Site, the mitigating measures funded by a financial contribution to the SAMM Plan would avoid and mitigate adverse environmental effects. The potential risk to the Stodmarsh designated sites from contaminated ground water and surface water run off would be mitigated by the measures set out in the HRA, cross referenced to the Environmental Statement. The Council therefore concluded that, with the benefit of the proposed mitigation measures, the project would have no adverse effect on the integrity of the designated sites.

36. Prior to adoption of the HRA, the Council consulted Kent County Council and Natural England, on its draft HRA. Natural England concurred with the Council's conclusion that the proposed development would not have an adverse effect on the integrity of the designated sites, in particular:

    i) with an appropriate financial contribution to the SAMM Plan, the proposed developments would not have an adverse effect on the integrity of the Thanet Coast and Sandwich Bay SPA and Ramsar Site;

    ii) the impacts of contaminated surface water run off could be suitably mitigated.

37. The application for outline planning permission was referred back to the planning committee. The officer's report to the planning committee informed members of the outcome of the HRA and the further air quality assessments submitted by the IP, which were considered to accord with the requirements of the Local Plan and

National Planning Policy Framework. The report recommended that the previous resolution to grant outline planning permission be endorsed, subject to conditions.

38. At its meeting on 16 October 2018, the planning committee granted outline planning permission, subject to completion of the section 106 TCPA 1990 agreement and detailed conditions. The section 106 agreement was duly made on 21 November 2018, satisfying the requirement for a contribution to the SAMM Plan. Condition 12 made detailed provision for surface water disposal, based on the Flood Risk Assessment by Hydrock which had been submitted by the IP. Condition 21 required the submission of a Construction Environmental Management Plan ("CEMP") prior to commencement of development, which was to include, amongst other matters, a scheme for protection of areas of ecological interest, including the Stodmarsh designated sites, based upon the mitigation measures set out in the Environmental Statement, chapter 15. Condition 23 required an Ecology Mitigation Strategy to be approved and condition 24 required a Landscape and Ecological Mitigation Plan ("LEMP") to be submitted and approved.

The EIA Directive and the EIA Regulations 2011

39. Article 2(1) of the EIA Directive requires member states to adopt all measures necessary to ensure that projects likely to have a significant effect on the environment are made subject to an assessment of their effects, before consent is given. The term "project" is defined in article 1 as "the execution of construction works or of other installations or schemes" and "other interventions in the natural surroundings and landscape…".

40. The EIA Regulations 2011 (which apply in this case) implemented the EIA Directive into UK domestic law. The EIA Regulations use the term "development" in place of the term "projects" which is used throughout the Directive.

41. Under reg. 3(4) of the EIA Regulations 2011, a local planning authority is prohibited from granting planning permission for "EIA development", as defined, unless before doing so it has "taken the environmental information into account and have stated that they have done so."

42. "EIA development" is defined in reg. 2(1) as "Schedule 1 development; or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location."

43. Part 2 of the EIA Regulations 2011 provides for a proposed development to be screened by local planning authorities and/or the Secretary of State, to determine whether or not it is EIA development. By reg. 5, a person who is minded to carry out development may request the relevant planning authority to adopt a screening opinion, defined in reg. 2 as "a written statement of the opinion of the relevant planning authority as to whether development is EIA development".

44. Schedule 3 to the EIA Regulations 2011 sets out the selection criteria to be applied when screening Schedule 2 development. These include, in paragraph 1, the characteristics of the development, having regard to "the cumulation with other development" (paragraph 1(b)).

45. Reg. 7 of the EIA Regulations 2011 makes provision for planning authorities to consider whether an application may require a screening opinion, even though it has not been requested.

46. Where a screening opinion determines that the proposed development would constitute EIA development, and so an EIA assessment will be required, reg. 13 of the EIA Regulations 2011 provides for planning authorities to provide a scoping opinion, setting out in writing their opinion as to the information to be provided in an environmental statement.

47. The environmental information which a local planning authority must take into account before determining an application for planning permission is defined in reg. 2(1) as:

> "… the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development."

48. Reg. 2(1) further defines an "environmental statement" as a statement:

> "(a) that includes such information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
>
> (b) that includes at least the information referred to in Part 2 of Schedule 4."

Thus, the information required under Part 1 is such as is "*reasonably required*" whereas the information required under Part 2 is a mandatory minimum requirement.

49. Schedule 4 provides as follows:

> "**Information for inclusion in environmental statements**
>
> **Part 1**
>
> 1. Description of the development, including in particular:
>
> > (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;
> >
> > (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;

(c) an estimate, by time and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.

2. An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for the choice made, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description of the likely significant effects of the development on the environment which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from:

(a) the existence of the development;

(b) the use of natural resources;

(c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

Part 2

1. A description of the development comprising information on the site, design and size of the development.

2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.

> 3. The data required to identify and assess the main effects which the development is likely to have on the environment.
>
> 4. An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects.
>
> 5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part."

Case law

50. The assessment of a project's likely significant effects on the environment is made by reference to the project which is the subject of the application to the competent authority, unless in reality that development is an integral part of a more substantial scheme. In *R v Swale BC ex parte RSPB* [1991] 1 PLR 6, Brown J. said, at [16]:

> "… the question whether the development is of a category described in either Schedule must be answered strictly in relation to the development applied for, not any development contemplated beyond that. But the further question arising in respect of a schedule 2 development, the question of whether it 'would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location' should, in my judgment, be answered rather differently. The proposals should not then be considered in isolation if in reality it is properly to be regarded as an integral part of an inevitably more substantial development. This approach appears to me appropriate on the language of the Regulations, the existence of the smaller development of itself promoting the larger development and thereby likely to carry in its wake the environmental effects of the latter. In common sense, moreover, developers could otherwise defeat the object of the Regulations by piecemeal development proposals."

51. The courts have been astute to detect what is colloquially known as 'salami slicing' – the device of splitting a project into smaller components that fall below the EIA thresholds - thereby avoiding the requirement to carry out an environmental assessment.

52. In *Ecologistas en Accion v Ayuntamiento de Madrid* [2009] PTSR 458, in which five segments of an urban road enlargement project in Madrid had been split into separate projects, the CJEU held:

> "44. Last, as the Court of Justice has already noted with regard to Directive 85/337, the purpose of the amended Directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the

> obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of article 2(1) of the amended Directive: see *Commission v Ireland* (Case C-392/96), para 76 and *Abraham v Region Wallonne* (Case C-2/07), para 27.
>
> 45. As regards the projects at issue in the main proceedings, it is clear from the order for reference that they are all part of the larger project "Madrid calle 30". It is for the referring court to verify whether they must be dealt with together, by virtue, in particular, of their geographical proximity and their interactions."

53. AG Kokott went further in her Opinion, stating:

> "52. In the present case, the geographical proximity of the five projects, their similarity, their combined effects in terms of urban traffic management and the fact that they were dealt with together at the hearing and in the development consent procedure would suggest that they should be considered together. Because all the sub-projects affect a limited sector of the urban road network, their environmental effects will in all likelihood overlap and accentuate each other, both in the construction phase and when the improved and widened roads are used."

54. In *Burridge v Breckland DC* [2013] EWCA Civ 228, the Court of Appeal held that planning applications for a biomass renewable energy plant and a combined heat and power plant, situated about 1 km apart, but connected by an underground gas pipe to carry gas between the two sites, should have been treated as a single project. Pill LJ said, at [41]:

> "…The two proposed developments were functionally interdependent and can only be regarded as an "integral part" of the same development. They cannot be treated otherwise than as a single project or development and were actually considered by the committee on the same day and on the basis of cross-referenced reports. The geographical separation of something over 1km does not, in my judgment, defeat that, particularly given the link provided by the pipeline."

55. In *R (Larkfleet Ltd) v South Kesteven DC* [2015] EWCA Civ 887, the Court of Appeal rejected a challenge to the local planning authority's separate consideration of a Link Road and a proposed Urban Extension development. Although the planning and purposes of the two projects were linked and the sites were in the same ownership (albeit with different developers), the Court rejected the submission that they should have been treated as a single project. Sales LJ said, at [36] to [38]:

> "36. Mr Kingston QC, for the Appellant, sought to rely on these passages in support of his submission that SKDC was obliged to assess the proposal for the link road and the proposal

for the residential site as a single project. However, in my view the argument is unsustainable. It is clear from the terms of the EIA Directive that just because two sets of proposed works may have a cumulative effect on the environment, this does not make them a single "project" for the purposes of the Directive: the Directive contemplates that they might constitute two potential "projects" but with cumulative effects which need to be assessed. The passages from Ecologistas to which I have referred also contemplate that two sets of proposed works may constitute different projects for the purposes of the Directive. What these passages are directed towards is avoiding a situation in which no EIA scrutiny is undertaken at all. However, if the two proposed sets of words are properly to be assessed as two distinct "projects" which meet the threshold criteria in the Directive, there will be EIA scrutiny of the cumulative effects of the two projects.

37. It is true that the scrutiny of cumulative effects between two projects may involve less information than if the two sets of works are treated together as one project, and a planning authority should be astute to ensure that a developer has not sliced up what is in reality one project in order to try to make it easier to obtain planning permission for the first part of the project and thereby gain a foot in the door in relation to the remainder. But the EIA Directive and the jurisprudence of the Court of Justice recognise that it is legitimate for different development proposals to be brought forward at different times, even though they may have a degree of interaction, if they are different "projects", and in my view that is what has happened here as regards the application for permission to build the link road and the later application to develop the residential site.

38. The EIA Directive is intended to operate in a way which ensures that there is appropriate EIA scrutiny to protect the environment whilst avoiding undue delay in the operation of the planning control system which would be likely to follow if one were to say that all the environmental effects of every related set of works should be definitively examined before any of those sets of works could be allowed to proceed (and the disproportionate interference with the rights of landowners and developers and the public interest in allowing development to take place in appropriate cases which that would involve). Where two or more proposed linked sets of works are in contemplation, which are properly to be regarded as distinct "projects", the objective of environmental protection is sufficiently secured under the scheme of the Directive by consideration of their cumulative effects, so far as that is reasonably possible, in the EIA scrutiny applicable when permission for the first project (here, the link road) is sought, combined with the requirement for subsequent EIA scrutiny

> under the Directive for the second and each subsequent project. The adequacy and appropriateness of environmental protection by these means under the EIA Directive are further underwritten by the fact that alternatives will have been assessed at the strategic level through scrutiny of relevant development plans (here, the Core Strategy and Masterplan) from an environmental perspective under the SEA Directive."

56. Mr Buxton placed particular reliance upon the Court's acceptance of the proposition that an assessment of cumulative effects would only consider those effects which were liable to be increased as a result of both developments. However, the Court of Appeal did not consider that was a reason why a more comprehensive single project assessment had to be undertaken, particularly when both projects were subject to full individual assessments.

57. Mr Buxton also relied upon paragraph 54 of my judgment at first instance (*R (Larkfleet Ltd) v South Kesteven DC* [2014] EWHC 3760 (Admin)) where I said:

> "It is for the planning authority to decide the following issues:
>
> > i) Is the proposed development within Schedule 1 to the EIA Regulations?
> >
> > ii) If not, is the proposed development within a description and relevant threshold in Schedule 2 and is it likely to have significant effects on the environment by virtue of factors such as its nature, size or location?
> >
> > iii) In considering the questions at (ii) above, the starting point will always be the proposed development. However, the planning authority ought also to go on to consider whether there are other proposed developments in the vicinity and if so, whether they should be assessed jointly with the proposed development, as if they comprised a single Schedule 2 development. The test is whether they ought to be regarded "as part of the same substantial development" (per Davis LJ in *Burridge*) or whether the proposed development is "an integral part of an inevitably more substantial development" (per Simon Brown J. in Swale).
> >
> > iv) If the planning authority concludes that any other developments ought not to be assessed jointly with the proposed development, as if they comprised a single Schedule 2 development, it should go on to consider whether any other developments should be included in the assessment of cumulative effects under paragraph 4 of Schedule 4."

58. Mr Buxton submitted that paragraph 54 was authority for the proposition that the Council should have decided whether or not the Chislet and Hoplands Sites should

have been jointly assessed as a single project, and there was no evidence that the Council made any such decision. In my view, Mr Buxton was reading too much into paragraph 54. Paragraph 54 is no more than a summary of the screening requirements of the EIA Regulations 2011, as explained in the case law. Reg. 4(6) provides:

> "Where a local planning authority or the Secretary of State has to decide under these Regulations whether Schedule 2 development is EIA development the authority or Secretary of State shall take into account in making that decision such of the selection criteria set out in Schedule 3 as are relevant to the development." (*emphasis added)*

Thus, the decision maker must first identify the development (or project under the EIA Directive), and then apply the Schedule 3 selection criteria for screening Schedule 2 development, which include, at paragraph 1(b), the cumulation with other development. As Ms Wigley correctly submitted, consideration of other development will only be required in cases where it is relevant to do so, as reg. 4(6) provides.

59. Moreover, paragraph 54 describes the steps in a decision-making process, ultimately leading to the decision which the local planning authority is required to make under reg. 4(6) of the EIA Regulations 2011, namely, whether the development is EIA development. There is no other formal decision to be made at this stage. Of course, a local planning authority may have to consider at a later stage whether the proposed development is part of a wider development, but only if there is some basis to suggest that it might be.

60. In *Bowen-West v Secretary of State for Communities and Local Government* [2012] EWCA Civ 321, the Court of Appeal dismissed a challenge to an Inspector's decision to grant planning permission for the disposal of low level radioactive waste at a landfill site, without including as part of the 'project' other proposed applications for the further development of the landfill site. The Court found that the Inspector was clearly right to conclude that the application for planning permission was a stand-alone proposal, not part of a wider integrated development. Laws LJ analysed the case law, distinguishing between challenges to screening decisions and scoping decisions, which is of particular relevance to this case. He said, at [32]:

> "I should next point up the fact that some of the principal authorities relied on by the appellant as demonstrating the breadth of the EIA provisions are not about the scope of the EIA to be undertaken in a case where, as here, an Environmental Statement admittedly falls to be made. Rather, they address the question whether an EIA is required at all. They are "screening" rather than "scoping" positions. This is so of *Kraaijeveld*, *Commission v Spain*, *Ecologistas* and also *Swale Borough Council ex parte RSPB* [1991] 1 PLR 6, to which reference was made in the written argument. It is in this type of case, screening cases, that the courts have been concerned, energetically concerned, to put a stop to the device of using piecemeal applications as a means of excluding larger developments from the discipline of EIA. That approach cannot

> simply be read across to a case which is not about screening at all, but rather about the appropriate scope of an EIA."

61. The principles established in the *Bowen-West* case were applied by the High Court in *Buckinghamshire CC v Secretary of State for Transport* [2013] EWHC 481 (Admin), in which Ouseley J. rejected the submission that the decision to promote the two phases of the high speed rail link known as HS2 in two separate hybrid bills breached the EIA Directive. He concluded that, as in *Bowen-West*, it was the project for which consent was sought – Phase 1 – which was to be assessed, and there was nothing to suggest that this approach was irrational or otherwise unlawful.

62. In *Preston New Road Action Group v Secretary of State for Communities and Local Government & Ors* [2018] EWCA Civ 9, Lindblom LJ also distinguished the "salami slicing cases" in which the purpose of the EIA Directive is circumvented, where he said, at [69]:

> "I do not see how Mr Willers' argument can gain any strength from European or domestic authority on EIA flawed by the splitting of projects into their constituent phases or parts – sometimes referred to as "salami slicing". The two decisions of the Court of Justice of the European Union most familiar in this context are *Abraham* and *Ecologistas*. The defect of the EIA in *Abraham* was that only the works of improvement to the infrastructure of the airport had been assessed, and the increased numbers of flights that would be enabled by those improvements had not (see paragraphs 26 and 42 to 46 of the court's judgment). The defect in *Ecologistas* was that the works for improving the Madrid urban ring road had been assessed separately, as a number of individual projects, rather than overall, as a composite whole (see paragraphs 34 to 39 and 44 to 46 of the court's judgment). This case is quite different from those. In this case there is no question of the purpose of the EIA Directive being circumvented by splitting into separate parts or phases what is truly a single project. The assessment here was of the whole project, not merely parts of it."

Conclusions

63. The question as to what constitutes the 'project' for the purposes of the EIA Regulations is a matter of judgment for the competent authority, subject to a challenge on grounds of *Wednesbury* rationality or other public law error (*Bowen-West* at [39 - 41]; *Buckinghamshire CC* at [287]; *Evans v Secretary of State for Communities and Local Government* [2013] EWCA Civ 114 at [32 – 43]).

64. Relevant factors may include:

i) Common ownership – where two sites are owned or promoted by the same person, this may indicate that they constitute a single project (*Larkfleet* at [60]);

ii) Simultaneous determinations – where two applications are considered and determined by the same committee on the same day and subject to reports which cross refer to one another, this may indicate that they constitute a single project (*Burridge* at [41] and [79]);

iii) Functional interdependence – where one part of a development could not function without another, this may indicate that they constitute a single project (*Burridge* at [32], [42] and [78]);

iv) Stand-alone projects – where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme (*Bowen-West* at [24 – 25]).

65. Applying these factors to the facts of this claim, I am entirely satisfied that the Chislet Site and the Hoplands Site are separate developments, and are not part of a single project.

66. The IP has no interest in the Hoplands Site and has no connection to the owners of the Hoplands Site or the promoters of the Hoplands development.

67. Whilst more than five years ago, in 2013, there was some collaboration between the then owners of the Chislet Site and the then owners of the Hoplands Site, this was very limited and ceased altogether by 2014. Since then, the two development schemes have been pursued entirely separately from each other, both in Local Plan allocation procedures and the applications for planning permission. Although the applications for outline planning permission were made within a month of each other, in early 2016, that appears to be a coincidence. As Ms Steele stated in her witness statement:

> "…apart from that point in time in 2013 … there has been no joint collaboration or working in relation to the two sites. They have both been promoted separately through the Development Plan process and have both been the subject of separate planning applications … [which] clearly envisage both sites being developed as stand alone proposals without any joint masterplanning for the two sites. The sites have separate accesses and have no combined drainage strategy arrangements. The Site can and will be developed separately from Hoplands Farm and vice versa."

68. There is no functional inter-dependence between the two schemes or Sites. The Sites are substantial in size and have their own access and drainage arrangements. Although residents on the Chislet Site may choose to access some of the community and retail facilities on the Hoplands Site, Chislet residents may equally well choose to use existing facilities, e.g. in Hersham and nearby.

69. Perhaps the most important factor is that both the Chislet Site scheme and the Hoplands Site scheme are clearly stand-alone projects. Each development has been justified on its own merits and each development would be pursued whether or not the other scheme went ahead.

70. Mr Buxton identified overlapping environmental effects as a factor pointing to a single project, relying upon the opinion of AG Kokott in the *Ecologistas* case. It is accepted that there are overlapping environmental effects between the two Sites, because they are adjacent sites. In my judgment, this is a relevant factor, but not a determinative one. Although overlapping environmental effects will often exist where there is a single project, they may also exist where there are independent projects nearby to one another, in which case an assessment of cumulative effects will be required, as has occurred here. As Sales LJ said in *Larkfleet* at [36], "just because two sets of proposed works may have a cumulative effect on the environment, this does not make them a single "project" for the purposes of the Directive: the Directive contemplates that they might constitute two potential "projects" but with cumulative effects which need to be assessed".

71. As the judgments in *Bowen-West* and *Larkfleet* make clear, it is important to distinguish a challenge such as this one from a challenge to a screening decision, where an applicant avoids the EIA thresholds in the EIA Directive by salami slicing a larger project into several smaller ones. In this case, both proposals have been subject to full assessment under the EIA Regulations 2011 (with both projects assessing the cumulative effects of each with the other) and there can therefore be no suggestion of artificial project splitting in order to avoid EIA scrutiny.

72. Mr Buxton submitted that the Environmental Statement was inadequate in its assessment of the cumulative effects. His primary submission was that this was a consequence of the failure to identify the two developments as a single project, as an assessment of cumulative effects is a narrower exercise than an assessment of both Sites as a single project. In my judgment, this submission was misconceived. As I explained at paragraph 55 above, the Court of Appeal in *Larkfleet* did not treat this as a reason why a more comprehensive 'single project' assessment had to be undertaken. Under both the EIA Directive and the EIA Regulations 2011, once the scope of the project or development has been identified, an assessment of cumulative effects is all that the law requires.

73. Although the first draft of the Environmental Statement prepared by the IP's consultants in 2016 did not refer to the Hoplands application, once the Council informed the IP about it, the Environmental Statement was revised to take account of the Hoplands proposed development, when assessing the cumulative impacts of the development. The initial Environmental Statement was also supplemented by other reports, and assessments, with the benefit of advice from Natural England. On a fair reading, without descending into nit picking, the assessment met the standard required by schedule 4 to the EIA Regulations 2011, read together with the definition of "environmental statement" in reg. 2(1). By the time the Council came to consider and determine the application for outline planning permission, the Council was entitled rationally to conclude that the assessment of environmental effects, including cumulative effects, was sufficient to enable it to determine the application for outline planning permission, in accordance with reg. 3(4) of the EIA Regulations 2011.

74. The Claimant further submitted that the Council erred in failing to make a decision whether or not the Chislet and Hoplands developments should be treated as a single project, relying upon my judgment in *Larkfleet*. As I explained at paragraphs 57 to 59 above, Mr Buxton read too much into paragraph 54 of *Larkfleet*, which was merely a

summary of the screening requirements of the EIA Regulations 2011, as explained in the case law.

75. In this case, the Council, in its screening opinion, applied reg. 4(6) of the EIA Regulations 2011, by reference to the selection criteria in schedule 3, and concluded that the development was EIA development. As part of its decision-making process, it had to identify the characteristics of the development. It is clear from the screening opinion that it considered that the development or project was the Chislet development, as set out in the application. As far as I am aware, the Council adopted the same approach in its scoping opinion. Neither the Claimant nor anyone else suggested that the Chislet development was part of a single project with the Hoplands development, at screening or scoping stage. Furthermore, in my view, there was no information before the Council at that stage which ought reasonably to have triggered an assessment into the question whether the two Sites were part of a single project.

76. During the planning application process, the single project point was raised by Mr Buxton. The planning officer in the Hoplands application advised the planning committee in his report as follows:

> "Concerns have been raised by a solicitor acting on behalf of a number of residents that the Hoplands Farm development should be considered as part of the same project as the approved development on the adjacent Chislet Colliery site. The Council does not consider that the developments form part of the same project. The sites are owned and promoted by different bodies. The applications were considered by the Council's planning committee at different times (with the Hoplands Farm outline planning permission having been granted over a year before the Former Chislet Colliery planning permission). While the two sites lie in close proximity to one another, they are functionally independent of each other and both were justified on their own individual merits and pursued independently of the other. The Hoplands Farm outline planning application was subject to EIA, which considered the cumulative environmental impacts of the proposed development together with other developments included on the Former Chislet Colliery Site (see, for example, Table 3.1 of the Environmental Statement, which identified a proposed development of up to 400 dwellings on the Chislet Colliery site as a project to be considered in the cumulative impact assessment). The Council is therefore satisfied that the environmental information submitted with the outline planning application is adequate to assess the effects of the development on the environment and has taken that information into account in considering this subsequent reserved matters application."

77. In the light of this account, I am satisfied that when the question of a single project was raised, the Council considered it, and reached the conclusion that the Chislet application and the Hoplands application were not a single project. Their conclusion does not disclose any error of law.

Additional matters raised by the Claimant under Ground 1

78. In the Claimant's Statement of Facts and Grounds, Ground 1 was confined to challenging the Council's failure to treat the Chislet Site and the Hoplands Site as a single project. The Claimant expressly excluded any challenge to the "quality" of the assessment which the Council undertook of the cumulative environmental effects of the two Sites. The Council and the IP pleaded their responses to this challenge in their Summary Grounds of Defence.

79. On 12 February 2019, the Claimant then filed a document entitled "C Reply to D and IP SGR's" which was not a reply, but instead raised new points and extensively challenged the adequacy of the Council's assessment of the cumulative environmental effects of the two Sites.

80. In my judgment, it was impermissible for the Claimant to seek to add to her grounds in this manner. Under CPR Part 54, there is no provision for the Claimant to file a Reply, or any other response, to the Summary Grounds of Defence filed in a judicial review claim. If the Claimant wished to add to her grounds, she should have applied to amend her Statement of Facts and Grounds, and the Council and IP would have been given a chance to respond. However, even if she had done so, she would have had to seek an extension of time, as the 6 week time limit for challenging the decision on 22 November 2018 had expired by 12 February 2019.

81. Since the Claimant was not entitled to file a Reply or any other response to the Summary Grounds of Defence, it was a matter for the discretion of the permission Judge whether to have any regard to the Claimant's document. It is apparent from the reasons given by Thornton J. that she only gave permission on the original Ground 1, as pleaded in the Statement of Facts and Grounds.

82. In their Detailed Grounds of Defence, filed in April 2019, the Council and the IP both objected to the Claimant's conduct in seeking to add additional grounds in a Reply, and pointed out that permission had not been granted in respect of these grounds, and they were raised outside the 6 week time limit. Therefore the Claimant's legal representatives were put on notice that this irregular procedure ought to be rectified by making an application to amend the Statement of Facts and Grounds out of time.

83. The Administrative Court Judicial Review Guide 2018 advises that Claimants must apply for the Court's permission to amend their grounds and should follow the interim applications procedure by filing an application notice and a draft of the amendments sought (see para 6.10.1 (pre-permission); para 9.2.1 (post-permission) and para 12.7). Whilst CPR 54.15 and PD 11.1 require notice to be served, but do not refer to a draft of the amendments sought, I consider that a party applying to amend a judicial review claim should file a draft amended pleading so that there is no doubt about the nature of the amendments which are sought and, where appropriate, granted.

84. Mr Buxton submitted that he had made an application to amend the Statement of Facts and Grounds because in his skeleton argument, he included the following paragraph:

> "57. The D and IP have complained that the ground go beyond those set out in the SFG. However, they have dealt with any

> such straying in their DGR. Insofar as may be necessary, the C seeks formally to amend grounds to cover points as set out following…"

85. In my judgment, this paragraph was insufficient to meet the requirements of the Administrative Court Judicial Review Guide or CPR 54.15. A separate notice should have been served so that it could be readily identified by the Court and other parties, not a paragraph buried in a lengthy skeleton argument. The draft amended grounds should have been precisely set out. It was difficult to ascertain from the Reply and the subsequent skeleton argument what the additional grounds were. Also, there should have been an application for an extension of time, explaining the reason for the delay and whether there was good reason for an extension of time.

86. Furthermore, I accepted the submissions made by counsel for the Council and the IP that the additional grounds were unarguable. The assessment of cumulative effects is a matter of fact and judgment for decision-makers, reviewable only on public law grounds.

87. In my judgment, it was unarguable that the minimum requirements of an Environmental Statement were not met in this case, or that there was any other public law error in the Council's approach to the assessment. The Claimant's submission that the Council erred in taking into account mitigating factors, based upon the judgment of the CJEU in *People over Wind* in the context of screening decisions under the Habitats Directive, was misconceived. Mitigating factors can properly be taken into account in substantive assessments under the Habitats Directive, and so there is no basis for excluding them from a substantive EIA assessment. In any event, EIA assessment operates under a separate legal framework, and both the EIA Directive (Article 5.3(b)) and the EIA Regulations 2011 (paragraph 5 of Schedule 4) expressly require consideration of mitigation measures.

88. For these reasons, I refused the Claimant permission to amend her claim to add a free-standing challenge to the lawfulness of the Council's assessment of the cumulative environmental effects of the two Sites.

89. However, I permitted Mr Buxton to refer to the alleged failings of the Council's assessment of the cumulative environmental effects of the two Sites in support of his submission under Ground 1 that assessment of the two Sites as a single project would have resulted in a more comprehensive assessment.

Ground 2: Habitats Regulations Assessment

90. The Claimant's Ground 2, as pleaded in the Statement of Facts and Grounds, was that the HRA undertaken by the Council was unlawful because:

    i) It was apparent from the draft that it contained errors and omissions and was not a rigorous scientific appraisal;

    ii) Its approach and conclusions were contrary to the reservations expressed by Natural England in respect of the HRA for the proposed development at the

Hoplands Site, and no reasons were given for departing from Natural England's advice.

Legal framework

91. Regulation 63 of the Habitats Regulations materially provides, so far as is material:

> "(1) A competent authority, 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,
> must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.
>
> (2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.
>
> (3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.
>
> (4) It must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.
>
> (5) 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).
>
> (6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.
>
> ….."

92. Guidance on the interpretation of article 6(3) of the Habitats Directive has been given by the CJEU in Case C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee v Staatsscretaris van Lanbouw (Coöperatieve Producentenorganisatie van de Nedelandse Kokkelvisserji UA intervening)* [2005] All ER (EC) 353. The court described the threshold for likely significant effects at [41]:

> "the triggering of the environmental protection mechanism provided for in Article 6(3) of the Habitats Directive does not presume—as is, moreover, clear from the guidelines for interpreting that article drawn up by the Commission of the European Communities, entitled 'Managing Natura 2000 Sites: The provisions of article 6 of the "Habitats" Directive (92/43/EEC)'—that the plan or project considered definitely has significant effects on the site concerned but follows from the mere probability that such an effect attaches to that plan or project."

93. The court considered the content of an appropriate assessment in the following passages of its judgment:

> "52. As regards the concept of 'appropriate assessment' within the meaning of Article 6(3) of the Habitats Directive, it must be pointed out that the provision does not define any particular method for carrying out such an assessment.
>
> 53. None the less, according to the wording of that provision, an appropriate assessment of the implications for the site concerned of the plan or project must precede its approval and take into account the cumulative effects which result from the combination of that plan or project with other plans or projects in view of the site's conservation objectives.
>
> 54. Such an assessment therefore implies that all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect those objectives must be identified in the light of the best scientific knowledge in the field. Those objectives may, as is clear from Articles 3 and 4 of the Habitats Directive, in particular article 4(4), be established on the basis, inter alia, of the importance of the sites for the maintenance or restoration at a favourable conservation status of a natural habitat type in annex I to that Directive or a species in annex II thereto and for the coherence of Natura 2000, and of the threats of degradation or destruction to which they are exposed …..
>
> 56. It is therefore apparent that the plan or project in question may be granted authorisation only on the condition that the competent national authorities are convinced that it will not adversely affect the integrity of the site concerned."

94. In Case C-258/11 *Sweetman v An Bord Pleanála (Galway County Council intervening)* [2014] PTSR 1092 the CJEU described the two stages envisaged by article 6(3), at [29] and [31]:

> "29. That provision thus prescribes two stages. The first, envisaged in the provision's first sentence, requires the member states to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or project will have a significant effect on that site ….."
>
> "31. The second stage, which is envisaged in the second sentence of Article 6(3) of the Habitats Directive and occurs following the aforesaid appropriate assessment, allows such a plan or project to be authorised on condition that it will not adversely affect the integrity of the site concerned, subject to the provisions of Article 6(4)."

95. In Case C-461/17 *Holohan v An Board Pleanala*, the CJEU set out the requirements of a lawful appropriate assessment under article 6(3) of the Directive in the following terms:

> "33. Under Article 6(3) of the Habitats Directive, an appropriate assessment of the implications of a plan or project for the site concerned implies that, before the plan or project is approved, all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is so when there is no reasonable scientific doubt as to the absence of such effects (judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C- 243/15, EU:C:2016:838, paragraph 42 and the case-law cited).
>
> 34. The assessment carried out under that provision may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned (judgment of 25 July 2018, *Grace and Sweetman*, C- 164/17, EU:C:2018:593, paragraph 39 and the case-law cited).
>
> …..
>
> 43. In accordance with the case-law cited in paragraphs 33 and 34 of the present judgment, an appropriate assessment of the implications of a plan or project for a protected site entails, first, that, before that plan or project is approved, all aspects of

> that plan or project that might affect the conservation objectives of that site are identified. Second, such an assessment cannot be considered to be appropriate if it contains lacunae and does not contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the plan or project on that site. Third, all aspects of the plan or project in question which may, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field.
>
> 44. Those obligations, in accordance with the wording of Article 6(3) of the Habitats Directive, are borne not by the developer, even if the developer is, as in this case, a public authority, but by the competent authority, namely the authority that the Member States designate as responsible for performing the duties arising from that directive.
>
> 45 It follows that that provision requires the competent authority to catalogue and assess all aspects of a plan or project that might affect the conservation objectives of the protected site before granting the development consent at issue."

96. In *R (Champion) v North Norfolk DC* [2015] 1 WLR 3710 at [41]), Lord Carnwath held that, while a high standard of investigation was required, the assessment had to be appropriate to the task in hand, and it ultimately rested on the judgment of the local planning authority:

> "41. The process envisaged by article 6(3) should not be over-complicated. As Richards LJ points out, in cases where it is not obvious, the competent authority will consider whether the "trigger" for appropriate assessment is met (and see paras 41-43 of *Waddenzee*). But this informal threshold decision is not to be confused with a formal "screening opinion" in the EIA sense. The operative words are those of the Habitats Directive itself. All that is required is that, in a case where the authority has found there to be a risk of significant adverse effects to a protected site, there should be an "appropriate assessment". "Appropriate" is not a technical term. It indicates no more than that the assessment should be appropriate to the task in hand: that task being to satisfy the responsible authority that the project "will not adversely affect the integrity of the site concerned" taking account of the matters set in the article. As the court itself indicated in Waddenzee the context implies a high standard of investigation. However, as Advocate General Kokott said in *Waddenzee* [2005] All ER (EC) 353, para 107:
>
> > "the necessary certainty cannot be construed as meaning absolute certainty since that is almost impossible to attain. Instead, it is clear from the second sentence of article 6(3) of the Habitats

> Directive that the competent authorities must take a decision having assessed all the relevant information which is set out in particular in the appropriate assessment. The conclusion of this assessment is, of necessity, subjective in nature. Therefore, the competent authorities can, from their point of view, be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty."

> In short, no special procedure is prescribed, and, while a high standard of investigation is demanded, the issue ultimately rests on the judgment of the authority."

97. The relevant standard of review by the Court is *Wednesbury* rationality, and not a more intensive standard of review: see *Smyth v Secretary of State for Communities and Local Government* [2015] EWCA Civ 174 at [80] per Sales LJ, and *Mynnyd y Gwynt Ltd v Secretary of State for Business Energy and Industrial Strategy* [2018] 2 CMLR 34 at [8(9)], per Peter Jackson LJ.

Conclusions

98. Thornton J. refused permission on Ground 2 for the following reasons:

> "I am not satisfied that there is any error of law in a decision maker making changes to drafts of an HRA before production of the final version. I accept the IP submissions which demonstrate, by reference to the documents in question, that the HRAs for Chislet and Hoplands Farm differed in relevant respects in relation to mitigation proposals, thereby accounting for NE's different approach to both (e.g. to the Emergency Plan and Construction Management Plan)".

99. The Claimant criticised the first draft of the HRA produced by the Council's planning officer on the grounds that it contained errors and omissions and did not amount to the rigorous scientific appraisal which was required.

100. I accept that there were a number of weaknesses and errors in the first draft. However, it was only an initial draft. It was sent to Kent County Council for comments, which were inserted by tracked changes. Aside from a mistake in the distance from the Site to one of the Stodmarsh car parks, based on information provided by Kent County Council, the errors were corrected by the time the second draft was sent to Natural England and by the time the final version of the HRA was adopted on 25 September 2018.

101. A corrected second draft was sent to Natural England for comment. Having seen the second draft, it was clear that, contrary to Mr Buxton's submission, the only comments added by Natural England were in the final box, under the heading "Summary of Natural England's Comments". There was no impropriety in the way in

which the planning officer prepared the draft prior to sending it to Natural England for comment.

102. Natural England's comments on the draft HRA were provided by Mr Nathan Burns, Area 14 Kent and Sussex, on 24 September 2018, as follows:

i) On the basis that appropriate contributions to the SAMM Plan were secured, it concurred with the Council's conclusion that the proposed developments would not have an adverse effect on the integrity of the Swale SPA and Ramsar Site or the Thanet Coast and Sandwich Bay SPA and Ramsar Site.

ii) It concurred with the Council's conclusion that the impacts of contaminated surface water runoff, in both the construction and operational phase, could be suitably mitigated using the mitigation measures proposed.

iii) It concurred with the conclusion that the proposed developments would not have an adverse effect on the integrity of the European protected sites.

103. These comments followed on from the detailed comments provided on 19 May 2016, in respect of the SAMM Plan, hydrology and drainage, the ecology park, and biodiversity enhancements.

104. Soon afterwards, on 26 September 2018, Mr Burns also provided comments on the HRA undertaken by the Council at reserved matters stage in the Hoplands Site application. Natural England considered there was insufficient information available to determine whether there would be an adverse effect on the integrity of the Stodmarsh designated sites because the mitigation measures proposed were still conceptual and had not been fully realised.

105. On examining the evidence, the obvious explanation for the different responses by Natural England was that more detailed information in respect of mitigation measures, such as drainage and pollution was required, at the Chislet Site than at the Hoplands Site. In the Hoplands HRA and Environmental Statement, reference was made to mitigation schemes and plans which had not yet been produced, or were at a conceptual stage, which led Natural England to conclude that the mitigation measures were still conceptual and had not been fully realised. In my judgment, the Council was entitled to rely upon the advice provided by Natural England in respect of the Chislet Site, and it was not required to justify its conclusions by reference to the advice provided by Natural England in respect of the Hoplands Site, which was a separate application, based on different evidence.

106. For these reasons, I agree with Thornton J. that permission should be refused on Ground 2, as the grounds were unarguable.

Additional matters raised by the Claimant under Ground 2

107. After the Defendant and the IP had filed their Summary Grounds of Defence, the Claimant raised an additional matter under Ground 2 in a reply. I repeat here the points made in paragraphs 75 to 80 in respect of the additional matters raised by the

Claimant under Ground 1. The Claimant then raised further matters in his skeleton argument. No proper application for permission to amend Ground 2 was made.

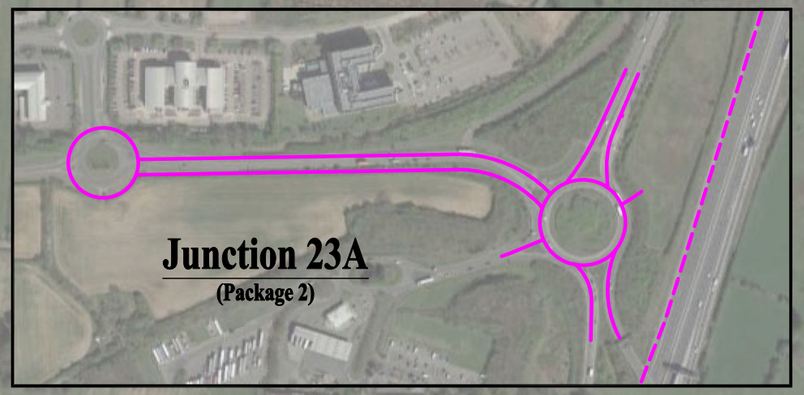
108. Furthermore, I accept the submissions made by counsel for the Council and the IP that the additional matters raised were unarguable. First, the HRA template required separate assessment of "Existing conditions and potential effect" and "Assessment of likely significant effect". The Council identified a potential increase in recreational pressure on the Stodmarsh designated sites because of the increase in the number of residents. However, when the Council assessed the likely significant effect, it concluded that no likely significant effects were anticipated. In my view, Mr Buxton's submission that these conclusions were inconsistent was unarguable. The Council clearly explained the basis of its assessment. Few residents at the Chislet Site were likely to make frequent visits to Stodmarsh because of the proposed parkland on the Chislet Site, the barrier created by the railway, the lack of direct access from the Site to Stodmarsh. It was likely that any visits would be made to those access points with ample parking provision within the nature reserve, which were actively managed to control public use. Furthermore, Stodmarsh was not currently identified as having detrimental effects due to recreational pressure.

109. Second, Mr Buxton submitted that the Council erred in its assessment that there was no direct access from the Chislet Site to Stodmarsh because it failed to take into account that there is a footpath starting in the village of Westbere which crosses the railway line into the Stodmarsh site. The Council's response was that it was familiar with the public footpath network. As the footpath was circa 2 km distance from the Chislet Site, and could only be accessed via the residential streets of Westbere, the route was hardly direct or nearby for residents of the Chislet Site. Moreover, there was very limited parking near the footpath. In my view, this was a matter of fact and judgment for the Council to determine. The Claimant failed to identify any error of law which could conceivably form the basis of a claim for judicial review.

Conclusion

110. For the reasons set out above, permission to apply for judicial review is refused on Ground 2. Permission to apply for judicial review is also refused in respect of the additional matters raised, but not properly pleaded, under Grounds 1 and 2. The claim on Ground 1 is dismissed.

APPENDIX 11



Junction 23A
(Package 2)

Package 2 - Finger Farm Roundabout & N/B M1 Management
(See Junction 23A Inset Above for Details)
At-Grade Signalisation & Enlargement of Roundabout
Dualling of A453 to Pegasus Business Park Roundabout
Installation of M1 N/B "Smart" Weaving Monitoring System

0m 250m

Package 3 - M1/A50 North to A453 East Widening
Construction of A453 Underbridge
Diversion of Quarry Signalised Site Exit Road
Provision of Additional M1/A50 to A453 Lane
Connection to Derby Road Roundabout or Housing Access

Junction 24
(Packages 1, 3 & 4)

Weaving Alterations to Exit Slip
Quarry Traffic Diverted
Future Development Access
Extended Merge
M1/A50 to A453 East Additional Lane
A453 Underbridge & Derby Link Road Quarry Access
A453 to M1 South Dedicated Left-Turn Free-Flow Lane
Development Access
Derby Link Road Quarry Access
Derby Road Roundabout
Development Access
Housing Access (Consented) Signalised Cross-Roads
Kegworth Link Road
Existing A453 to A50 West Dedicated Left-Turn Lane at Junction 24 Roundabout Signalised in All Packages
Existing A453 to A50 West Signalised Left-Turn Lane Retained in Package 4
M1 to A50 West Slip Road
M1 Overbridge
A453 Signalised T-Junction

Package 1 - M1 South to A50 West Slip Road
Construction of New A50 Slip Road & Overbridge
Signalisation of Existing A50 DLT at Junction 24 Roundabout
Widening to Junction 24 Rotary & A453 (W) Approach
Weaving Alterations to M1 S/B Exit Slip

Package 4 - A453 East to M1 South DLT
Construction of Kegwworth Link Road & Overbridge
Closure of Derby Road & S/B Entry Slip at M1 Junction 24
Provision of A453 (E) Dedicated Left-Turn onto M1
Retention of A453 (W) Signalised Entry to Junction 24

Lawrence Walker Ltd
Church Farm
Leamington Hastings
Warks CV23 8DZ

Key
- Proposed Package 1 Improvement Scheme
- Proposed Package 2 Improvement Scheme
- Proposed Package 3 Improvement Scheme
- Proposed Package 4 Improvement Scheme
- Site Access Works (Consented Housing Development)
- Rationalisation Works to M1 Junction 24 Roundabout
- Existing Road Closed within Each Respective Phase

Project
East Midlands Growth Area
Caesarea / SEGRO / Harworth / Uniper

Drn.	Chkd.	App.	Date
SPJ			04/11/25

Scales As Noted

Title
M1 Junction 23A & 24 Improvements
Improvement Packages 1 to 4

Drg. No.	CAD Ref	Plot	Rev
Figure 1			**P19**

APPENDIX 12

National Highways Planning Response (NHPR 25-01)
Formal Recommendation to an Application for Planning Permission

From: Andy Jinks (Divisional Director)
Operations Directorate
Midlands Region
National Highways
PlanningM@nationalhighways.co.uk

To: North-West Leicestershire District Council - FAO Adam Mellor

Adam.Mellor@nwleicestershire.gov.uk
development.control@nwleicestershire.gov.uk

CC: transportplanning@dft.gov.uk
spatialplanning@nationalhighways.co.uk

Council's Reference: 24/00727/OUTM

Location: Land South of A453 Ashby Road North of Hyam's Lane Castle Donington Leicestershire

Proposal: Outline planning permission (means of access from A453 fixed; all other matters reserved for future determination) for the construction of employment floorspace (use classes B2/B8) with ancillary (integral) offices (use class E(g)(i)); and associated infrastructure including earthworks, internal estate road, parking and landscaping (all)

National Highways Ref: NH/24/06762

Referring to the planning application referenced above, in the vicinity of the **A453 trunk road and M1 motorway** that form part of the Strategic Road Network, notice is hereby given that National Highways' formal recommendation is that we:

~~a) offer no objection (see reasons at Annex A);~~

~~b) recommend that conditions should be attached to any planning permission that may be granted (see Annex A – National Highways~~ recommended Planning Conditions & reasons);

c) recommend that planning permission not be granted for a specified period (see reasons at Annex A);

~~d) recommend that the application be refused (see reasons at Annex A)~~

Highways Act 1980 Section 175B is not relevant to this application.[1]

This represents National Highways' formal recommendation and is copied to the Department for Transport as per the terms of our Licence.

Should the Local Planning Authority propose not to determine the application in accordance with this recommendation they are required to consult the Secretary of State for Transport, as set out in the Town and Country Planning (Development Affecting Trunk Roads) Direction 2018, via transportplanning@dft.gov.uk and may not determine the application until the consultation process is complete.

The Local Planning Authority must also copy any consultation under the 2018 Direction to PlanningM@nationalhighways.co.uk.

This response and all comments outlined herein are made in respect of planning matters only in National Highways' position as a statutory planning consultee, and does not confer any proprietary rights nor amount to the giving or refusal of consent, assent, approval, or awareness of or by National Highways in or of any other aspects or matters (including, but not limited to, the use of property belonging to National Highways). If anyone wishes for National Highways to consider any aspects which do not relate to planning submissions, they should call our contact centre on 0300 123 5000.

Date: 10 June 2026

Signature: [redacted]

Name: Catherine Townend **Position:** Spatial Planner

National Highways
Three Snowhill | Snowhill Queensway | Birmingham | B4 6GA
Catherine.townend@nationalhighways.co.uk

[1] Where relevant, further information will be provided within Annex A.

Annex A National Highways' assessment of the proposed development

National Highways has been appointed by the Secretary of State for Transport as a strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such we work to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

Reasons

National Highways considers planning applications for new developments under the requirements of the National Planning Policy Framework (NPPF) and DfT Circular 01/2022: Strategic Road Network and The Delivery of Sustainable Development ("the Circular"). The latter document sets out our policy on sustainable development and our approach to proposals which may have an impact on our network.

The SRN in the vicinity of the proposed development consists of the M1 and M42 motorways and the A453 and A50 trunk roads.

Development Proposal

The proposed development, which is being promoted by Manchester Airport Group (MAG) and Prologis, comprises the preparation of the Application Site for development (clearance of non-retained vegetation and extensive land re-profiling) and the erection of storage and distribution units (Use Class B8) (80%) and general industrial units (Use Class B2) (20%) together with associated highway infrastructure works.

The Site is identified in the adopted North West Leicestershire Local Plan (2021) as lying outside Limits to Development, within the countryside, and is not identified for employment purposes (or any other specific use). Within the new draft Local Plan (Regulation 18), the Site is identified as a potential location for strategic distribution together with additional land to the south of Hyam's Lane.

Together with the adjacent parcel of land south of Hyam's Lane, the Site is designated as part of the wider East Midlands Freeport (EMF) which was formally announced by the Government in March 2023.

National Highways Considerations

Since our response of 31 July 2024, which set out a number of comments in relation to the Transport Assessment (TA), we have been liaising directly and collaboratively with the Applicant and its transport consultants, and progress has been made with respect of scoping for modelling the traffic impacts of the development using Leicestershire County Council's strategic transport model (PRTM) and other modelling

packages, as well as on the Applicant's sustainable transport strategy. However, as traffic modelling has yet to be completed and agreed by National Highways, the traffic impacts of the development are still not fully understood. Until such time as the impacts on the SRN are properly understood and evidenced, National Highways has not formally reviewed the proposed mitigation scheme for the SRN or the Environmental Statement.

Transport Assessment

PRTM Saturn Modelling

The Applicant has utilised PRTM 23 for the strategic modelling assessment. Section 1.1.3 of the TA, describes the two sets of planning assumptions which underpin the strategic modelling assessment; Scenarios A and B:-

Scenario A:-

The PRTM 2023 model was re-run to incorporate coding updates to address comments identified by National Highways and Leicestershire County Council. The revisions were primarily focused on the M1 Junction 24 / Lockington area, including measures to reduce rat-running and re-routing, together with updates to signal timings at M1 Junction 24. No changes were made to development trip generation, distribution, or the proposed scheme design within PRTM 2023.

In addition, this model run incorporated minor updates to the Uncertainty Log, consisting of the removal of a number of local plan allocation sites and capping the Uniper development at Ratcliffe-on-Soar at the pre-mitigation levels defined within the Local Development Order. The rationale for these updates was to ensure that the Uncertainty Log appropriately reflects likely developments and any associated infrastructure, thereby representing a more realistic scenario.

Local junction models have been developed to assess Scenario A and are presented within this Transport Assessment, alongside the strategic assessment undertaken using VISSIM.

Scenario B

A secondary PRTM 2023 model run was undertaken without the Scenario A updates to the Uncertainty Log but with the coding changes applied in Scenario A. This was undertaken at the request of the Local Highway Authority and National Highways. Local junction models have been developed to assess Scenario B, also at the request of the Local Highway Authority and National Highways, and the results are presented within this Transport Assessment.

Scenario A is referred in the updated PRTM 23 Forecasting Report as the “Supplementary” test. However as indicated at section 1.1.3 of the TA, the Applicant considers this represents a more realistic assessment. It goes on to advise that Scenario B has been undertaken at the request of Leicestershire County Council and National Highways.

Recognising the complex planning situation, we support the use of both sets of assumptions which should both be used to ensure the residual cumulative impacts of development on the SRN are fully established.

The updated TA now provides some details on the updated strategic modelling assessment following the most recent modelling exercise. However, supporting figures, 7.1 – 7.32 of the TA, whilst helpful, do not fully quantify the specific development impacts.

An earlier version of these Forecasting Reports has been supplied to us and we have provided comments to the Applicant requesting the necessary information to quantify the specific impacts of the development on the SRN.

On 28 May 2026, we received further updated Forecasting Reports. These supplement the analysis presented in the TA but have not been submitted formally to the Planning Authority and are not included within the TA at the time of writing. These are currently being reviewed by National Highways.

It is noted that paragraph 2.1.2 of the TA states:-

> The forecast flow change comparing the Without Development and With Development and Mitigation scenarios generally show increases in flow in the vicinity of the proposed development and on the additional dedicated left-turn lane travelling northbound from Finger Farm Roundabout. An assessment of the change in delays between the ‘Without Development’ and ‘With Development and Mitigation’ scenarios shows that the most significant reductions in delay occur at Finger Farm Roundabout.

However, there are no details of the forecast flow changes presented in the TA although we appreciate this is set out in the updated Forecasting Reports. This will need to be presented and updated in line with the updated Forecasting Reports when they are submitted formally as part of the planning application.

Detailed Junction Modelling Methodology and Assessment

Section 7.3 presents VISSIM modelling results. It is noted in paragraph 7.3.1:-

> Baseline information is available in the LMVR in Appendix D. The VISSIM LMVR concluded that the 2023 base year VISSIM model has been calibrated and validated and shows a good level of correlation with observed traffic data and network operational phenomena. The model operational statistics align well with observed data, satisfying the requirements set out in DfT WebTAG guidelines.

Following recent meetings with the Applicant's transport consultant held on 16 May 2026, it has been confirmed that changes have been made to the VISSIM Base Model superseding the one reported in the updated TA.

We are now in receipt of an updated VISSIM Base Model and associated outputs, which will supersede those provided in Appendix D (LMVR) of the TA. This has been reviewed by National Highways and the base model is considered acceptable. The TA will need updating accordingly and the LMVR submitting to the Local Planning Authority.

The TA notes at section 7.3.1: -

> An assessment using VISSIM has been undertaken using the Scenario A PRTM 2023 outputs, as this is considered to be the most likely scenario.

However, it is noted that Scenario B, which has been developed as part of the PRTM 2023 modelling, has not been assessed within the VISSIM modelling. While the Applicant considers Scenario A to be the most likely scenario, it is important that a range of scenarios is assessed, particularly given the complex planning dynamics within the local area. For the purposes of assessment, we consider that Scenario B is necessary through the VISSIM assessment as previously requested.

Section 6.3.5.2 of the TA States;-

> For the 'Without Development' scenario, a furnessing methodology has been applied to the PRTM 2023 data. The VISSIM base matrix was used as the prior matrix with PRTM differences (forecast year minus base year) row and column totals applied to generate targets for furnessing. The resultant matrices were converted to differences and applied to the VISSIM base model inputs and routes to generate each forecast scenario.

The Applicant's transport consultant has recently engaged with us regarding the development of the forecast matrices. Currently, static routes derived from the base model are retained, with demand changes applied directly for each origin–destination (O–D) pair. This is broadly acceptable in principle. However, it has been confirmed by the Applicant's transport consultant that no changes to routing have been implemented within the model. This is of particular concern given the importance of route choice between strategic links such as the M1/ A453. Further work is required in this area, including a review of routing proportions informed by the PRTM outputs.

Capturing route choice behaviour accurately is critical for ensuring the robustness of the VISSIM model. The static routing assessment adopted in the Applicant's methodology requires additional steps to adequately represent this. The Applicant's transport consultant is currently engaging with us on this matter. This updated modelling will supersede the results currently presented in the TA. At present, no VISSIM Forecasting Report has been provided, which is understandable as work is still progressing; this will be required as the modelling work progresses.

As the demand inputs are currently under review by the Applicant's transport consultant, we have only reviewed the network of the Forecast VISSIM models at this stage. Comments have been provided to the Applicant on 27 May 2026 to work through as the assessment work is ongoing to address our technical comments.

Local junction modelling has also been provided in the TA. This has been undertaken for both the A and B variant; this is welcomed and we can confirm that no further assessment is required at this time for the standalone junction models.

However, it is requested that the microsimulation VISSIM modelling is progressed consistently across both scenarios, A and B, in line with this approach and National Highways' requirements.

We are currently awaiting from the Applicant: -

- VISSIM Base Model LMVR which supersedes that provided in the updated TA to be submitted to the Local Planning Authority and the TA updated.
- The revised PRTM Forecast Reports to be submitted to the Local Planning Authority and the TA updated accordingly. We are currently reviewing these (received on 28 May)
- Confirmation of the methodology used to derive future year matrices for the VISSIM model, accounting for route choice
- Reassessed VISSIM modelling following route choice updates for both the A and B data assumptions, including a VISSIM Forecasting Report

As the traffic impact assessment work is still ongoing, the impact of development on the SRN, and therefore the mitigation required, cannot yet be fully determined.

However, we understand that work is continuing to address our comments and remain engaged with the Applicant and their transport consultant.

Physical changes to the SRN (Mitigation scheme)

It should be noted that where physical changes to our network are proposed, these must adhere to National Highways approval processes. The Applicant should be aware that, prior to planning consent, any proposed scheme on our network must be:

• Designed to a preliminary design standard in accordance with the Design Manual for Roads and Bridges (DMRB);
• Have completed a Walking, Cycling, Horse-Riding Assessment and Review (WCHAR) in accordance with GG142 of DMRB;
• Have undergone National Highways design checks;
• Have obtained Agreement in Principle (AiPs) for any Departures from Standard;
• Have completed a Stage 1 Road Safety Audit (RSA) in accordance with GG119 of DMRB;
• Have any identified safety risks managed through the completion of a Safety Risk Assessment in accordance with GG104 (applicable in certain circumstances only).

We recommend the Applicant refers to paragraphs 89 to 95 of Planning for the future: A guide to working with National Highways on planning matters (October 2023) for further information.

Construction Traffic

It is estimated that the maximum number of weekly construction vehicle movements will be 4,308 two-way movements. Further details of how these movements have been calculated is required. The daily traffic profile that has currently been provided is for an average day. National Highways requires a worst-case assessment in terms of the peak of the construction programme, alongside an assessment of the peak hours as opposed to the total daily traffic will be required. National Highways also seeks to understand how the construction traffic arrivals and departures will be monitored and enforced. Until these details have been provided National Highways is unable to confirm that there will not be any material impact of construction traffic on the SRN.

Sustainable Transport Strategy (STS) and Framework Travel Plan

Positive progress has been made on the STS and Framework Travel Plan, following engagement with National Highways, but further details are required to complete them. National Highways' primary concern is how the STS and Framework Travel Plan will be monitored and enforced to ensure its effectiveness. The STS indicates that there will be a Sustainable Transport Working Group (STWG) comprising strategic stakeholders. National Highways requests to understand the details of this group, how it will operate, which stakeholders the group will comprise and who the decision

makers will be. National Highways will need to understand what happens if there is repeated failure to meet targets, with no car parking restraint on the site. National Highways will also need to understand the mitigation/funding that will be available to ensure that the travel plan targets are achieved.

Further details should be provided on the following;

The commitment to the number of EV charging bays and how car parking will be restrained should be provided at this stage rather than at the reserved matters stage. If details are not provided at this stage, it is hard to understand how any mode share targets will be committed to and achieved. Whilst Leicestershire County Council has standards for the levels of parking, consideration should be given to what is appropriate to encourage modal shift to sustainable modes at this stage of the planning application.

Baseline mode shares have been derived from three datasets. Further details of the TRICs sites used, including their locations, should be provided to determine whether the sites are comparable with the proposed development. Furthermore, EMG1 Employee Travel Surveys from 2024 have been used. This should be updated with 2025 data. The data from the three surveys should be provided to understand the results fully and assess how each set of result differ, as this might affect the mode share targets.

Details of the cycle parking should be provided at this stage, to underpin the mode share targets and provide confidence that they are achievable.

Further details of the suitability to divert existing less frequent commercial My15 bus services to serve the Transport Hub at the application site are required. Noting that a low frequency bus service is unlikely to provide a realistic opportunity for regular commuting. Consideration of links to the local railway stations should also be included. The details of this should be provided now to support the mode share targets and provide confidence that they are achievable.

Confirmation and evidence that there is sufficient capacity on existing bus services for staff should be provided with evidence that they serve the routes where staff are likely to originate from.

Consideration needs to be given to what happens when the public transport incentives expire and if the mode share targets are not being achieved.

Routing/destinations and service frequencies for the shuttle bus service should be provided. The proposals to link this with existing bus services and the railway station/s, and details of how this will be made an attractive option for staff, including the furthest walking distance to the shuttle hub on site, should be provided.

Further details of the funding for remedial measures are required and how this will be applied if the targets are not achieved.

Lighting

Our previous response noted that the parking area will be illuminated and that external lighting schemes have the potential to cast a glare on National Highways assets. We would wish to be consulted on the details of an external lighting scheme but are content that this matter can be dealt with via suitably worded planning conditions.

Air Quality and Noise Assessment

As the operator of the SRN, with specific environmental obligations, National Highways previously raised concerns with the Applicant about the potential impact of the highway enhancement on noise and air quality. The Applicant has confirmed that the impacts on the nearest receptors are negligible, although this is based on earlier modelling outputs. This should be reviewed against any increases to forecast traffic flows arising from the agreed modelling or if the mitigation scheme changes following conclusion of the assessment.

Recommended Non-Approval

In light of the above, to allow the required assessments to be completed, and enable the impact of the development on the SRN to be understood fully and whether the extent of mitigation proposed is adequate, National Highways recommends that this application not be determined for a period of three months from the date of this letter.

Standing advice to the local planning authority

The Climate Change Committee's 2022 Report to Parliament notes that for the UK to achieve net zero carbon status by 2050, action is needed to support a modal shift away from car travel. The NPPF supports this position, with paragraphs 77 and 110 prescribing that significant development should offer a genuine choice of transport modes, while paragraphs 109 and 115 advise that appropriate opportunities to promote walking, cycling and public transport should be taken up as part of a vision-led approach.

Moreover, the carbon reduction hierarchy (avoid-switch-improve) as set out in clause 4.3 of PAS2080:2023 promotes approaches and measures to minimise resource consumption and thereby reduce carbon emissions.

These considerations should be weighed alongside any relevant Local Plan policies to ensure that planning decisions are in line with the necessary transition to net zero carbon.

APPENDIX 13

REF	Visualisation Type		Survey Method
Daytime visualisations			
A	Type 4	Photomontage	Topographical survey of camera location and reference points
B	Type 4	Photomontage	Topographical survey of camera location and reference points
C	Type 4	Photomontage	Topographical survey of camera location and reference points
H	Type 4	Photomontage	Topographical survey of camera location and reference points
I	Type 4	Photomontage	Topographical survey of camera location and reference points
J	Type 4	Photomontage	Topographical survey of camera location and reference points
M	Type 4	Photomontage	Topographical survey of camera location and reference points
N	Type 4	Photomontage	Topographical survey of camera location and reference points
Q	Type 4	Photomontage	Topographical survey of camera location and reference points
EMG1 b	Type 4	Photomontage	Topographical survey of camera location and reference points
Additional daytime visualisations			
EMG1 e	Type 3	Photomontage	Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site
EMG d	Type 3	Photowire	Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site
EMG f	Type 3	Photowire	Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site
EMG g	Type 3	Photowire	Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site
Nighttime visualisations			
A	Type 3	Photomontage	Taken as close as possible to daytime location. Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site

REF	Visualisation Type		Survey Method
B	Type 3	Photomontage	Taken as close as possible to daytime location. Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site
C	Type 3	Photomontage	Taken as close as possible to daytime location. Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site
I	Type 3	Photomontage	Taken as close as possible to daytime location. Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site
N	Type 3	Photomontage	Taken as close as possible to daytime location. Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site
Q	Type 3	Photomontage	Taken as close as possible to daytime location. Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site
EMGe	Type 3	Photomontage	Taken as close as possible to daytime location. Mobile phone GPS + verification using OS Maps, georeferenced aerial photography, LIDAR and topographical survey of reference points on site