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Examination Principle Issues	<ul style="list-style-type: none"> <li>• Climate Change</li> <li>• Scope of Development and Environmental Impact Assessment</li> <li>• Others as indicated in text</li> </ul>

## DfT Consultation 4: 22<sup>nd</sup> January 2023

I am an independent scientist and environmental consultant, working at the intersection of science, policy, and law, particularly relating to ecology and climate change. I work as a consultancy called Climate Emergency Policy and Planning (CEPP).

**In so far as the facts in this statement are within my knowledge, they are true. In so far as the facts in this statement are not within my direct knowledge, they are true to the best of my knowledge and belief.**

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## 1 INTRODUCTION

### 1.1 *Response to consultation letter, 17<sup>th</sup> January 2023*

- 1 This response addresses Item 1 “Protected Species” and Item 5 “Request for comments from all Interested Parties” (on carbon emissions).

## 2 PROTECTED SPECIES

### 2.1 *Great Creased Newts*

- 2 I note that the Applicant has submitted 2022 Great Creased Newt survey data (TR10039/EXAM/9.44).
- 3 I note that paragraph 2.1.6 of the survey document states that “A *European protected species mitigation (EPSM) licence (which could be in the form of a District Level Licence (DLL)) is likely to be required from Natural England to allow the scheme to proceed lawfully*”. It is not clear whether a licence application has yet been made.

## 2.2 *Bats*

- 4 I note that the SoST letter of January 17<sup>th</sup> requests Natural England to confirm the outcome of its assessment of the draft bat European Protected Species Licence application by no later than 2 February 2023.
- 5 I note that Natural England's letter of January 16<sup>th</sup> states confirms that NE are in receipt of the draft bat European Protected Species Licence application, received by Natural England on 24th October 2022.

## 2.3 *Duties under Regulation 9 of the Habitats Regulations*

- 6 I wish to respectfully draw the SoST' attention to duties under Regulation 9 of the Habitats Regulations which is entitled 'Duties relating to compliance with the Directive'. It provides, in material part:

*“(1) The appropriate authority [...] must exercise [its] functions which are relevant to nature conservation [...], so as to secure compliance with the requirements of the Directives.*

*(2) Paragraph (1) applies, in particular, to functions under these Regulations and functions under the following enactments— [...]*

*(1) the Planning Act 2008;*

*(3) Without prejudice to the preceding provisions, a competent authority, in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.”*

- 7 Under Regulation 9(1), the “appropriate authority” is the Secretary of State and ‘the Directives’ include the Habitats Directive. Thus there is a narrow and strict duty under reg. 9(1) to ‘secure compliance with’ the requirements of the Directive, imposed on a limited number of bodies in respect of specific functions (including functions under the Planning Act 2008 that are relevant to nature conservation).
- 8 Compliance, and security of compliance, with the requirements of the Directive may only be discharged by the SoST once European protected species mitigation (EPSM) licences for the relevant species, including Great Crested Newts and Bats, have been provided to the SoST.
- 9 My legitimate expectation is that the SoST will make his decision having exercised his duty to secure compliance with the requirements of the Directive.

### 3 CARBON EMISSIONS

- 10 I note that National Highways has responded to Point 7 of the previous January 10<sup>th</sup> consultation letter on "Carbon emissions during construction" and has provided an updated version of Table 14-10 from the Environmental Statement. This updates the construction emissions by an increase of around 12% on what was previously reported.
- 11 I note further that paragraph 18.8.9 of the Environmental Statement was incorrect both before and after the change in stating "*The increase in carbon emissions resulting from the Proposed Scheme represents less than 0.001% (0.0078%) of the UK's Fourth, Fifth and Sixth carbon budgets over their respective periods*". In each case, the percentage of emissions for the fourth carbon budget exceeds 0.001%: original ES 0.00124%, modified ES 0.00136%.
- 12 It is not clear how the figure "0.0078%" has been derived or to what it relates.
- 13 It is deplorable that such numerical reporting errors exist at this late stage in an Environmental Statement for a nationally significant infrastructure project.

#### 3.1 EIA Regulations 2017 breach

- 14 I noted in my response to the January 10<sup>th</sup> consultation letter that the A47WAN scheme had no cumulative carbon assessment in breach of the EIA regulations 2017 (as I had previously reported during the examination), and that this was clear from Table 14-10 which used only DS-DM data in the assessment. The situation has not been rectified with the updated version of Table 14-10. I now explain, again, why the Environmental Statement remains unlawful, even after the updated Table 14-10, as it breaches the EIA Regulations 2017.
- 15 At a high-level breakdown, the **DS** scenario ("Operation") in Table 14-10 derives from the operational transport model for the scheme and contains these elements:
- (1) **The baseline traffic model**, comprising the adjoining Strategic Road Network and local road network, calibrated against actual traffic counts and other data.
  - (2) **Other schemes promoted by National Highways** in the near vicinity of the proposed scheme with high certainty that they are to be progressed.
  - (3) **Local land based and road developments** in the study area, or 'other locally committed development' in the study area.
  - (4) **Future year travel demand** based on national government regional growth rates which include a representation of likely growth rates excluding known planning developments already included in the traffic model;
  - (5) **The scheme** itself.

- 16 The **DM** scenario in Table 14-10 referred to “Baseline (DM)” includes elements (1), (2), (3) and (4) above. Only (5), the Scheme itself, in isolation, is omitted between the two scenarios.
- 17 As the only difference between the DS and DM scenarios is the Scheme itself, the estimated figure for the emissions from the scheme for each carbon budget used for assessment (ES section 14.8.9) and the evaluation of significance (ES section 14.10.2) is Scheme-only, or ‘solus’, and not cumulative.
- 18 This comparison of the ‘difference’ DS-DM estimates against national carbon budgets cannot, in itself, discharge the requirement of the EIA 2017 Regulations for an assessment of the cumulative impacts of the scheme.

### 3.2 **There is no cumulative impacts assessment of the carbon emissions from the scheme**

- 19 It is a statutory requirement that the ES assess the cumulative effects of the scheme with other developments: paragraphs 5 of Schedule 4 to the EIA Regulations 2017, relevantly, requires the ES to include:

*“A description of the likely significant effects of the development on the environment resulting from, inter alia:*

*...*

*(e) the cumulation of effects with other existing and/or approved projects, ...;”*

- 20 The problem with the ES is that by including “*existing and/or approved projects*” in the **DM** scenario (and then presuming that it is the traffic model baseline), it inaccurately treats all of the committed local land based and road developments in the study area (ie elements (2) and (3) of the scenarios above), other than the Scheme, as though they give rise to existing emissions and not additional emissions alongside the Scheme. This means that the Applicant has not actually conducted any assessment of the significance of the cumulative carbon emissions from the Scheme with other existing and/or proposed developments. The Applicant has only conducted an assessment of the impact of the Scheme in isolation, against a baseline that assumes that the other existing and/or proposed developments in the area already exist.
- 21 Local land based and road developments (ie elements (2) and (3) above) will generate new emissions, alongside the scheme emissions. The emissions from these local land based and road developments are treated as if they are existing emissions (when in fact the developments haven’t yet been built) because, as shown above, the DM scenario is (incorrectly) treated as the baseline for the carbon emissions assessment.
- 22 This then infects the assessment at ES section 14.8.9, and the evaluation of significance at 14.10.2 concerning whether there could then be a material impact on the ability of the Government to meet the national carbon budgets. As above, the ES considers only the figure for the difference between the two scenarios (i.e. Scheme only figures). It sets these

out as percentages of the various 5-year national carbon budgets (which as noted above have been incorrectly reported both before and after the new Table 14-10). It, therefore, looks at the Scheme's impact on climate change in isolation and not cumulatively with any other existing or proposed developments. In particular, it does not assess (such as against the carbon budgets) the cumulative impact of the Scheme with any other projects, in this case the local land based and road developments, or make any judgement about what projects should be considered cumulatively with this one. This makes it impossible to assess lawfully whether the scheme's emissions cumulated with other projects' emissions would materially impact the ability to meet the Government's carbon reduction targets.

23 My position is simply that it is a legal requirement in assessing the significance of the scheme to include the cumulative impact of the Scheme with existing and/or approved projects and that the Applicant has, instead, considered only the impact of the Scheme in isolation in Table 14-10 (and the DS-DM figures are the only figures taken forward to the only assessment ever made in the ES at 14.10.2).

24 In summary:

- CATEGORICALLY, there is no assessment of the impact of cumulative carbon emissions in the ES. Categorically, no such cumulative assessment has been attempted. Importantly, it is **not** that a cumulative assessment of carbon emissions has been attempted, and I disagree with the way it has been done. It is that a cumulative assessment of carbon emissions has not been done at all in the ES and the Application.

The traffic and emissions from the local land based and road developments are added into the traffic model DS scenario, and then subtracted out when the DS is compared to the DM scenario. Table 14-10 is presents the DS-DM data on which the only assessment made in the ES is based.

- The omission is unlawful with respect to the EIA Regulations 2017 ("the 2017 Regulations"). Until this omission is corrected, the ES remains unlawful. By failing to conduct the cumulative assessment, the ES is defective because it fails to meet the requirements in paragraphs 5 of Schedule 4 to the EIA Regulations 2017 read with Schedule 4, para. 5(f) and reg.5(2).

- 25 With respect to the absence of an assessment of cumulative carbon impacts of the A47WAN scheme, the SoST cannot make a reasoned conclusion, under the EIA Regulation 21(1)(b), on the significant effects of the proposed development on the environment as a significant, and mandatory, part of the required information is missing from the ES.



Dr Andrew Boswell,  
Climate Emergency Policy and Planning, January 22<sup>nd</sup> 2023

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