ECOLOGY PROOF OF EVIDENCE:

PRINCES PARADE

S247 STOPPING-UP ORDER

PINS REF: NATTRAN/SE/S247/3254

LOCAL PLANNING AUTHORITY REF: Y17/1042/SH

FOR: FOLKESTONE AND HYTHE COUNCIL

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SUMMARY

S.1 I (Richard Andrews) am a Chartered Environmentalist (CEnv), and I am a Fellow of the Chartered Institute of Ecology and Environmental Management (FCIEEM). I hold an honours degree (BA Hons) in Natural Sciences from Cambridge University, where I specialised in ecology. I have worked in ecology, environmental science and wildlife conservation for 28 years in both the public and private sectors, including leading and mentoring teams of professional ecologists and reviewing their work.

S.2 The evidence relating to biodiversity presented here is based on my review of objectors' comments and is informed by the ecological information submitted and consented under planning application reference Y17/1042/SH ("the development"). I have had regard to relevant representations on the planning application from Kent County Council's ecologists, Natural England, Kent Wildlife Trust, and the Environment Agency).

S.3 Only impacts that are a direct consequence of the closure of Princes Parade and resulting diversion of its vehicle traffic are relevant to the S247 Application and Inquiry. Consequently, the primary focus of my Proof of Evidence relates only to matters concerning the ecological effects of that portion of traffic arising from diverting Princes Parade's traffic along the new road.

S.4 I do deal with other matters in this Proof of Evidence as they have been raised by objectors, to explain that they do not arise as a result of the stopping up and diversion order or that the point is misconceived or that it is answered by the material provided in relation to the planning application.

S.5 The concerns of the objectors are mostly non-specific and largely refer to effects on 'wildlife', 'flora and fauna', 'ecology' and 'biodiversity' in general. A limited number of the objections refer more specifically to the following sources of impact, which appear to relate largely to the Royal Military Canal and its constituent wildlife:

- Water pollution
- Traffic emissions
- Litter
- Noise
- Light
- Reduced ecological 'buffer'

S.6 Ecological Impact Assessment for planning and development purposes should focus on 'important' ecological features (i.e., legally protected and/or scarce features that are a recognised priority for biodiversity conservation), rather than all 'wildlife'. A significant effect is a discernible effect on:

a. the abundance and distribution at or above the decision-making scale (normally district scale) of important species populations and habitats; or

b. on the integrity of sites formally designated for biodiversity conservation.

S.7 No significant adverse ecological effects on the Royal Military Canal Local Wildlife Site and its aquatic wildlife (including fish, invertebrates and plants) due to contaminated surface water runoff will occur because the surface drainage is no longer going to be discharged to the canal. Instead, it will go to the sea. Even without this recent change, discharge to the Royal Military Canal under the formerly proposed drainage scheme would have been mitigated to prevent pollution of the canal.

S.8 The aquatic habitat is already nutrient-enriched and eutrophic, and therefore its biodiversity interest is highly unlikely to be significantly affected by the amount of airbourne nutrients likely to arise from the closer, diversion-related traffic emissions.

S.9 The Royal Military Canal is currently in frequent use by pedestrians, including dog-walkers, for recreation. It is a popular amenity site. It is my view that such activity, plus the site's historic landfilled waste, is the main source of any 'litter' (solid waste) that could affect wildlife, rather than any vehicle traffic using the new road.

S.10 The additional noise caused by the closure and diversion of Princes Parade on to the new, traffic-calmed road is highly unlikely to materially change the level of any disturbance effect on species' conservation status brought about by the other aspects of the development. No particularly noise-sensitive important bird species were identified by the ES (**CD/10**), and badgers are known to be relatively traffic noise tolerant. The current baseline levels of human activity in the vicinity of the canal, combined with the noise effects of the development in the construction and operational phases will create an overall noise environment within which the diverted traffic from Princes Parade will become a relatively insignificant part, at least in relation to its effect on animal populations and therefore biodiversity.

S.11 Mitigation measures will be implemented to reduce the effects of night-time lighting upon foraging bats - by reducing illumination of bat foraging habitat to an illuminance of below 1 lux: the equivalent of a full moon on a clear night. Significant impacts on bats have been recorded from as low as 3.6 lux (Stone et al 2012), but apparently not lower. Kent County Council's ecologists are reported to be satisfied with the proposed lighting measures for Phase 1 of the development, which includes the construction of the road (see **CD/93**).

S.12 Residual road-related mortality of important road-vulnerable species such as common toads will not be of a magnitude that will affect the population nor the conservation status within the local area. Mitigation measures will be employed within the design of the new road, and the retained and created terrestrial habitat that such species use will be on the canal side of the new road (see **CD/96**), thus reducing the need for them to cross the new road to and from their canal breeding habitat.

S.13 The entire on-site ecological buffer provided by retained and created habitat (Linear and Western Parks) will be sufficient to fulfil its purpose in protecting the biodiversity interest of the canal. The Environment Agency (**CD/53**) agreed this in their statement: "*The buffer zone shown in the mitigation strategy document is acceptable. Although the buffer zone tapers towards the eastern end of the site, the green space available at the western end of the site is wide enough to compensate for this narrowing*."

S.14 Furthermore, Kent Wildlife Trust refer (**CD/47**) to an '*adequate width*' of ecological buffer between the development and the canal being '*ideally*' at least 15m. Approximately 85% of the new road's length meets, and mostly exceeds this ideal minimum. Of the 15% new road length that does not, approximately half of this (located within the section approved as detailed design) is situated near where there is an existing car park, canoe centre and children's playground approximately 16m from the canal to which the canal's wildlife will already have had to become habituated.

S.15 In conclusion, the stopping up and diversion order does not cause or materially exacerbate the ecological points which are raised by objectors, which largely relate to the approved development.

1. INTRODUCTION

1.1 I (Richard Andrews) am a Chartered Environmentalist (CEnv) though the Society for the Environment, and I am a Fellow of the Chartered Institute of Ecology and Environmental Management (FCIEEM). I hold an honours degree (BA Hons) in Natural Sciences from Cambridge University, where I specialised in ecology. I have worked in ecology, environmental science and wildlife conservation for 28 years in both the public and private sectors, including leading and mentoring teams of professional ecologists and reviewing their work.

1.2 My professional experience includes the assessment of ecological (specifically biodiversity) impacts for a range of development projects including highways schemes, housing developments, utilities, flood defences, retail, leisure, education and industrial sites. In relation to the ecological impacts of highway changes, I was for many years (2006 to 2015) the Team Leader, Technical Director and Lead Ecologist of a team of consultant ecologists working for Kent County Council (KCC) Highways under KCC's framework contracts with my then employers: Jacobs UK and Amey Services. Over that period, I worked on and led many ecological surveys and impact assessments of highway schemes throughout Kent. Prior to this, I worked as the Environment Agency's Technical Specialist for Biodiversity in the Kent Area, a role which partly involved assessing ecological impacts of development on waterbodies throughout the county and south-east region. In other leading consultancy roles, I have conducted ecological impact assessments of residential and commercial development on areas of urban and rural land, including formerly-developed sites and waste grounds that have become colonised by vegetation to form semi-natural habitat.

1.3 I have been commissioned by Lloyd Bore (ecology, landscape and arboriculture consultants) to provide expert ecology evidence on behalf of Folkestone and Hythe District Council (FHDC) in relation to the Princes Parade Stopping Up and Diversion Order application under section 247 of the Town and Country Planning Act 1990 (application reference NATTRAN/SE/S247/3254) (“the S247 Application”). I was not directly involved in the planning application for the approved development, nor the environmental assessments that accompanied that application prior to its consent.

1.4 I have conducted several site visits to and throughout the approved development site and the adjacent section of the Royal Military Canal between 2019 and 2021 and therefore have first-hand familiarity with the site and its habitats.

1.5 My evidence relates to Response Theme G in Section 7 of Buckles Solicitors' Response to Statutory Consultation (**CD/66**), namely concerning the biodiversity and wildlife impacts of the S247 Application. This has been identified by the Inspector as "effect on biodiversity" in his Note of the Pre-Inquiry Meeting.

1.6 The evidence presented here is based on my review of objectors' comments on the S247 Application, including relevant objections by the Save Princes Parade Campaign in their response to the May 2021 Buckles report (**CD/67**), and is informed by the ecological information pertaining to the development submitted and consented under planning application reference Y17/1042/SH (“the development”). This ecological information is contained in reports prepared by Lloyd Bore to inform the now consented planning application for the development, as follows:

a. The 2017 Environmental Statement (ES) for Proposed Leisure Centre and Mixed-Use Development at Princes Parade Hythe ("the development") (**CD/10**), Chapter 7, which was informed by separate technical reports contained in the ES's *Technical Annex 3 - Ecology* (**CD/13**).

b. Additional submitted ecological information comprising:

- *Badger Report* (Lloyd Bore 2018) *(***CD/35***).*
- *Reptile Report* (Lloyd Bore 2018) (survey of candidate receptor site) *(***CD/34***).*
- *Ecological Mitigation Strategy* (Lloyd Bore 2018) (**CD/33**)
- ES Addendum: *Revised Surface Water Drainage Strategy* (2019) (**CD/36**)

c. Ecological documents produced subsequent to the main planning application decision, namely:

- *Ecological Mitigation and Enhancement Plan* (Lloyd Bore 2019) (**CD/95**) (produced after the main planning application for Drainage Option B)
- *Ecological Method Statement* (Lloyd Bore 2021) (**CD/94**), which was produced following planning permission and includes an updated /current ecological baseline based on update site walkover visits and desktop review work undertaken by Lloyd Bore across spring 2021.

1.7 I have had regard to relevant representations on the planning application (e.g. from KCC Ecology, Natural England, Kent Wildlife Trust, Environment Agency, etc) and to the planning committee Officer's Report on the application which relate to the development as a whole (**CD/3**). I have also considered the relevant parts of the Officer's Report to the FHDC Planning and Licensing Committee on 24 August 2021 (in relation to relevant planning conditions) (**CD/93**).

1.8 From my first-hand knowledge of the site and my discussions with other professional ecologists working on the site, I can confirm that these surveys and assessments remain relevant to the current state of the development site. This understanding is also confirmed by the letter and updated site habitat map from Philip Ames (Principal Ecologist at Lloyd Bore) to the Council's agent dated 6th September 2021 confirming no material change to on-site habitat since the 2016 botanical survey (see **Appendix A** of this Proof of Evidence).

1.9 My evidence responds to the main issue identified by the Inspector of "effect on biodiversity" and the contention of several objectors that the closure of the existing Princes Parade and diversion of its traffic on to the new road will cause an adverse environmental impact to the wildlife along the Royal Military Canal, a Local Wildlife Site (LWS), which is adjacent to the development site and mostly situated 15m or more from the new road that forms part of that development.

1.10 Where I use the term 'significant' or 'significance' in relation to biodiversity consequences, I rightly use it in the sense generally accepted by my profession for ecological impact assessment; that is: having a discernible effect on the conservation status (e.g. abundance and distribution - normally at the district scale or above) of 'important' (i.e., legally protected and/or rare/scarce/declining) species populations and habitats or on the integrity of sites formally designated for biodiversity conservation. This is in keeping with guidance provided by the Chartered Institute of Ecology and Environmental Management (CIEEM) (2018). This is an important understanding, as it underpins the conservation of biodiversity in the UK.

1.11 The information which I have prepared and provide in this Proof of Evidence is true and is given in accordance with the guidance of my professional institution, and I confirm that the opinions expressed are my true and professional opinions.

2. IDENTIFICATION OF RELEVANT IMPACTS AND OBJECTIONS

ECOLOGICAL IMPACTS RELEVANT TO THE S247 APPLICATION

2.1 Only impacts that are a direct consequence of the closure to vehicles of the existing Princes Parade and resulting diversion of its vehicle traffic are relevant to the S247 Application and Inquiry. This has been confirmed by the Inspector in his Note of the Pre-Inquiry Meeting, which I refer to below. Pedestrians and cyclists will be able to use the new wider promenade on roughly the same line as the existing Princes Parade and so will not in practice be diverted like the vehicular traffic will be, although they will be able to use the new road if they wish. Separate from the road closure, the development itself will involve the construction of the new road and its use, at least as a service road for the development. This has been authorised by the planning permission and the impacts of this are controlled by the conditions on the planning permission. In any case of the consented development being implemented, the new road will be designed and constructed to adoptable highway standards for traffic and lighting.

2.2 It is apparent that the design of the new road, if it were to serve as just an access road and not a replacement for Princes Parade, would be of the same design submitted as part of the approved planning permission with very similar if not the same residual ecological impacts. The only difference in terms of potential ecological impacts arising from the stopping up and diversion order is in relation to the amount of traffic which will use the new road. I have satisfied myself that it cannot be said in any respect, no matter how tenuous, that the stopping up and diversion order would lead to potential ecological impacts other than through the diversion of traffic from the existing Princes Parade on to the new road. The reasons are as follows and are based on Section 5 of the Proof of Evidence by FHDC's highways and transport expert witness: Mr. Mark Fitch.

2.3 I understand from Mark Fitch, that the existing soil conditions require a certain depth of construction which would not change regardless of the volume of traffic that would use the road.

2.4 Mr Fitch advises that the new road has been designed at a width whereby it is better and safer than the existing Princes Parade, allowing two vehicles to pass comfortably and the proposed parallel parking bays to the safely accessed. The new road will not be so wide as to encourage vehicle speeds greater than 30mph, which is the design speed (which is significantly slower than vehicle speeds I have witnessed on the very straight existing Princes Parade). The presence or amount of traffic on the new road would not affect the carriageway widths proposed.

2.5 My understanding is that a decision was taken at an early stage, prior to planning approval, that the new highway would be lit in the interests of pedestrian safety due to the nature of the development. Kent County Council, as highway authority, stated a requirement that the new highway would be lit (Letter 11.04.18, from Tony Jenson KCC, **CD/48**). This is true whether the new road replaces Princes Parade as a through-route due to the diversion order, or is merely a road serving the development, so lighting would be present in the same way regardless.

2.6 It is my understanding that any comments on the broader impact and merits of the consented development, including the new road's construction and traffic accessing the development via the new road, are not relevant to the S247 Application. Moreover, I understand that they cannot be considered by the Secretary of State for Transport in his decision as a result, and also that the merits on the planning permission cannot be reopened. This has been confirmed by the Inspector in his Note of the Pre-Inquiry Meeting held on 21 September 2021 as follows:

- "*It is the 'right' that is for discussion, not the construction. Therefore, surface water drainage, street lighting etc are not relevant considerations for the Inquiry*."

2.7 Accordingly, all comments by objectors raising adverse impacts not directly arising from the S247 Application (road closure and diverted traffic) are not formally responded to in this Proof of Evidence. The answers to objections to the development on ecological grounds are found in the planning application documents, and in my professional opinion those remain relevant today.

2.8 Consequently, the primary focus of my evidence relates only to matters concerning the ecological effects of that portion of traffic arising from diverting Princes Parade's traffic along the new road during the operation phase of the development (i.e. additional to that which would only serve the development). I do deal with other matters in this Proof of Evidence as they have bene raised by objectors, to explain that they do not arise as a result of the stopping up and diversion order, and hence are not relevant to consideration of the S247 Application, or that the point is misconceived or that it is answered by the material provided in relation to the planning application. Consideration of points of objection in this way does not mean that I accept that they are relevant to the S247 Application.

2.9 According to 2016 automatic traffic count results and projections to a 2023 future baseline, the portion of traffic flows on the new road within a typical 24-hour period that arises from the diversion of Princes Parade is approximately three-quarters of the total that will use the new road in 2023 (see Mr. Fitch's Proof of Evidence, Section 5). The other quarter is that which only serves the development itself. The diversion of Princes Parade will be the source of the majority of the traffic that was ecologically assessed as part of the development's planning application and which is being considered here. It is worth noting that the ecological assessment in relation to the planning application considered the effects of all traffic using the new road, which includes but is greater than the effects of the traffic using the new road due to the diversion of the existing Princes Parade. Where that ecological assessment concluded that impacts were not significant or were acceptable, those conclusions necessarily include the impacts of the stopping up and diversion order.

ALTERNATIVE DESIGNS

2.10 It is my understanding that the development design, including the construction of the new road, should be considered as proposed and decided by the grant of planning permission. Therefore, no design/layout alternatives or variations from that consented are considered in the following sections of my evidence. I have checked with the design team for the development and can confirm that the detailed design is proceeding in accordance with the planning application plans and drawings, including for the outline planning permission, and so there is no reason to think that a different design will be proposed.

2.11 However, many objectors argue that the ecological impacts would be less if the new road was not located as close as it is to the Royal Military Canal Local Wildlife Site. As it is raised by so many objectors, although irrelevant to the S247 Application, it might assist the Inspector if I briefly address it. So, for the sake of argument, and setting aside my understanding of the Inquiry's remit described above, if the development's road was to be located towards the south (rather than the north) of the site, as suggested by some objectors, the land under the proposed and consented road alignment would still need contamination remediation, thus requiring clearance of the existing habitat (i.e., whether or not the new road is going there). Then, to be able to deliver the other aspects of the development, there would be buildings constructed in place of the road on the north of the site (i.e. to allow space for a new road towards the south of the site, the new buildings would need to be moved further to the north), with their associated elevated lighting, noise and visual effects on the Royal Military Canal LWS corridor during the operational phase. So, the position of the road within the development site does not reduce the potential for disturbance of wildlife near the northern site boundary (e.g. Royal Military Canal).

2.12 I understand that during the design discussions and meetings prior to the submission of the planning application for the development, various alignments for the road were considered, and the northern route was considered the least ecologically detrimental location given the other spatial requirements of the development. This is because locating the road closer to the northern boundary of the site provided an opportunity to set buildings and formal recreational areas as far back from the canal as possible, thus minimising the risk of disturbance of species utilising the canal corridor via lighting (from buildings) and human activity (in formal recreational spaces). The project ecologist at that time (Samuel Durham, then a Senior Ecologist and now Head of Ecology at Lloyd Bore Ltd) was actively involved in these design discussions and has confirmed to me that minimisation of ecological effects was a prominent factor in identifying the best option for the location of the then-proposed (now approved) new road.

3. SUMMARY OF PUBLIC OBJECTORS' CONCERNS RELATING TO BIODIVERSITY

3.1 At the time of the statutory consultation for the S247 Application in 2018, the planning permission for the development had not been issued. As a result of the outstanding planning decision, a considerable number of the Public Objections at that time included comments on the planning related merits of the whole development as opposed to only comments directly relevant to the S247 Application.

3.2 Some of the 2018 objections and the more recent objections in 2021 appear more specifically related to the perceived effects of the S247 Application; but, as I try to show, these effects are still largely related to the consented development and are not effects of the stopping up and diversion order (and would occur regardless of the applied-for traffic diversion). The concerns of the objectors are mostly non-specific and largely refer to effects on 'wildlife', 'flora and fauna', 'ecology' and 'biodiversity' in general. A limited number of the objections refer more specifically to the following types of impact, which appear to relate largely to the Royal Military Canal and its constituent wildlife:

- Pollution from surface runoff
- Air quality impacts from traffic emissions
- Increased litter
- Noise disturbance
- Light disturbance
- Loss of opportunity for 'ecological buffer' to the development

I will address these issues in turn in Section 5, after I have summarised the ecological impact of the development itself in Section 4.

4. ECOLOGICAL IMPACT ASSESSMENT OF THE DEVELOPMENT INCLUDING THE NEW ROAD

4.1 It is my understanding, which has been confirmed by the authors of the ecological impact assessments for the development (Lloyd Bore), that the assessment of residual effects (**CD/10**, Chapter 7) that resulted in the granting of planning permission had assumed the stopping up and diversion of Princes Parade and the use of the new road by the diverted traffic. Therefore, the matters being raised by objectors in relation to the S247 Application have already been examined in detail through the planning process and found to be acceptable (by professional ecologists and planners) under such scrutiny.

4.2 A significant amount of ecological survey and assessment work has been undertaken in relation to the development, including the construction and operation of the integral new road along which traffic from Princes Parade would be diverted. The results of this Ecological Impact Assessment (EcIA) process are largely reported in the 2017 Environmental Statement (ES) (**CD/10**) but are also informed by additional information submitted prior to the decision and subsequent work used to address planning conditions and inform the development of ecological mitigation measures for the development (see Section 1 above). The volume of traffic on the new road was assumed by the 2017 EcIA (Chapter 7 of **CD/10**) and subsequent ecological assessment and mitigation design to include the traffic which would otherwise use the existing Princes Parade (which happens to be approximately three-quarters of the total based on a predicted 2023 scenario), in addition to traffic accessing the development itself (approximately one-quarter of the total in 2023).

4.3 The ES (**CD/10**) and subsequent ecological work are fully cognisant of the status of the Royal Military Canal as a Local Wildlife Site (LWS), a non-statutory designation generally regarded as being of county-level importance for biodiversity. The LWS is designated for its rare plant species, as well as twelve species of Odonata (dragonflies and damselflies), its bird assemblage, grass snake (*Natrix helvetica*), common toad (*Bufo bufo*), foraging pipistrelle (*Pipistrelle* sp.) and Daubenton's bat (*Myotis daubentonii*).

4.4 According to published guidance (e.g., CIEEM 2018), the EcIA process should focus on important ecological features (i.e., legally protected and/or rare/scarce features that are a recognised priority for biodiversity conservation), rather than all 'wildlife', and the likely significant effects of a proposed development upon these important features. Chapter 7 of the ES and subsequent additional information therefore assessed the likely significant effects of the proposed (now consented) development with regards to important ecological features. I do not consider that anything of significance was omitted.

4.5 When consulted on the application, Kent County Council's Ecological Advisory Service advised the Council, in their letter of 18 July 2018 that the ecological surveys submitted with the development's planning application provide a good understanding of the species present.

4.6 All of these matters and the evidence provided in the ES and submitted additional information were taken into consideration by the local planning authority when they gave consent (with conditions) to the application on 18 July 2019 (**CD/2**). This is confirmed by the Regulation 24 Statement made by the Council under the Environmental Impact Assessment Regulations 2011 (**CD/8**). Natural England made no objection to the application (**CD/58**).

4.7 The planning permission was subject to several planning conditions, six of which are of relevance here. In summary, these relate to the requirement for a detailed Ecological Method Statement (EMS) (Condition 16), an updated Preliminary Ecological Appraisal (PEA) to inform the EMS (Condition 15), a habitat creation plan to inform the EMS (Condition 17), a Lighting Design Plan for Biodiversity (Condition 18), a Construction Environmental Management Plan (Condition 26) and a

Landscape and Ecological Management Plan (Condition 47). All of these include consideration of the construction of the new road and its use, and the volume of traffic on the new road is assumed by these documents to include the diverted traffic which would otherwise use the existing Princes Parade.

4.8 Conditions 15, 16 and 17 were successfully discharged in August 2021 for Phase 1 of the development, which includes the new road. This was done through the submission and approval of the Ecological Method Statement (Lloyd Bore 2021) (**CD/94**). Condition 18 (Lighting Design Plan) has yet to be discharged.

4.9 It is my view that what really matters in ecological terms is the development of the current site which, as stated in Section 2 above, is no longer in question. That is authorised by the planning permission and controlled through the planning conditions. It is the consented development as a whole, including the construction of the new road, that brings the ecological impacts of significance (those important for biodiversity). These impacts are of the same type and essentially of similar magnitude regardless of the S247 stopping up and diversion order. These impacts are described in the ES and subsequent additional information and documents submitted to discharge planning conditions (see Section 1) and are not repeated here.

4.10 To evidence this specifically for the S247 Application, Section 5 below aims to respond in more detail to objectors' concerns. In this following section, I am seeking to respond to objections even though I anticipate the Inspector would conclude that many are not relevant.

5. RESPONSE TO PUBLIC OBJECTIONS RELATING TO BIODIVERSITY

WATER POLLUTION IMPACTS RELATED TO BIODIVERSITY

5.1 In response to concerns raised by objectors relating to potential pollution impacts from surface water runoff from the new road into the Royal Military Canal, I have the following comments to make.

5.2 For reasons already given, the potential effect of the S247 Application is in practice limited to the *additional* traffic diverted from Princes Parade on to the new road resulting from the road closure and diversion, rather than the construction and existence of the new road or its use by traffic solely accessing the new development (which is already consented through planning permission).

5.3 The hybrid planning application examined two potential drainage strategies, one draining into the canal and one draining to the sea. Both of these strategies were subject to EIA screening and judged to be acceptable in environmental terms. The Additional Information & Clarification March 2019 – ES Addendum – Revised Surface Water Drainage Strategy (**CD/36**) incorporates a Sustainable Drainage System (SuDS) which manages water run-off from impermeable areas before being discharged at a restricted rate and uses permeable paving to drain water run-off either into lined underground storage tanks or lined open graded sub-base to ensure that there is no interaction between any leachates and surface water.

5.4 The planning application, as approved, included a surface drainage strategy into the Royal Military Canal, to which the Environment Agency had removed their initial objection (see their letter to the Council on 17 January 2019 - **CD/56**). Subsequent to the planning application being approved, this strategy has now been re-visited and a strategy for draining to the sea is now proposed. I understand this is the Environment Agency's preferred approach, as stated in their letter to the Council on 17 January 2019 (**CD/56**).

5.5 Run-off from the new road will be discharged through oil separators, and a series of catch pits and attenuation to two main piped outfalls to the sea, which will mitigate the risk of pollutants entering the sea.

5.6 This design change has environmental benefits for the Royal Military Canal but is also driven by the fact that the existing Royal Military Canal sluice gates are often tidally locked.

5.7 Additional storage has been provided to ensure sufficient storage is available for stormwater on the rare occasions that the two new sea outfalls are prevented from discharging water to the sea (i.e. due to an extreme high sea level).

5.8 An updated drainage strategy to address Condition 21 of the planning consent is being submitted for approval in 2021.

5.9 Assuming the above measures are approved pursuant to the condition, as they ought to be, as they are better environmentally than was judged acceptable as part of the planning permission, no significant adverse ecological effects on the Royal Military Canal and its aquatic wildlife (including fish, invertebrates and aquatic plants) due to contaminated surface water runoff could occur because a majority of the drainage is no longer going to be discharged to the canal. Furthermore, whether the drainage is discharged to the Royal Military Canal under the former scheme, or discharged to the sea under the new scheme, there will be no significant adverse effects because of the mitigation mentioned above.

5.10 Finally, in relation to what is relevant for the S247 Application, the stopping up and diversion order makes no material difference to the potential ecological impacts in relation to water pollution. The

design and construction of the new road, including the mitigation measures, is authorised under the planning permission and the stopping up and diversion order makes no difference to this. The stopping up and diversion order will lead to significantly more traffic using the new road, but this does not increase the ecological risks, for the reasons explained above. However many vehicles use the new road, the design and construction of the new road, including mitigation measures, will ensure there is no risk from water pollution to the ecology of the canal.

AIR QUALITY IMPACTS RELATED TO BIODIVERSITY

5.11 At least one objector has raised a concern about the effect of traffic fumes on wildlife. The stopping up and diversion order would lead to significantly more traffic using the new road near the RMC LWS so I have considered whether this could potentially lead to ecological impacts in relation to air quality.

5.12 There is no evidence I have been able to find to suggest that the level of traffic emissions likely to arise from the higher traffic flows near the Royal Military Canal would cause direct behavioural changes or health issues for important fauna, which I assume was the nature of the concern raised. I have not been able to identify any research indicating that the important species found on or adjacent to the site are known to suffer population-level effects due to the prevalence of proximal traffic emissions of the scale predicted for the diversion.

5.13 The one ecological effect arising from traffic emissions that is often recognised as potentially adverse to ecological features is nitrogen deposition. Such nitrogen deposition can alter nitrogen-sensitive habitats (primarily those that rely on lower-fertility soils or waters to maintain their species interest) by favouring competitive species that respond favourably to increased nutrients in the form of nitrogen. These species then out-compete other species thus reducing diversity.

5.14 In the case of the Royal Military Canal, the aquatic habitat is already nutrient-enriched and eutrophic, and therefore its biodiversity interest is highly unlikely to be significantly sensitive to, nor affected by, the amount of additional traffic being diverted to a closer proximity. Likewise the terrestrial habitats along the RMC in this location are not considered to be significantly nutrient-sensitive.

5.15 I am satisfied that there would be no significant adverse effect from the stopping up and diversion order in relation to air quality impacts for the ecology of the Royal Military Canal.

INCREASED LITTER IMPACTS RELATED TO BIODIVERSITY

5.16 At least one objector refers to 'rubbish' build-up as a potential impact. It is assumed here that this means litter (solid waste items). The reason why the road closure and diversion would lead to such an impact is not given in the objection. The stopping up and diversion order would lead to significantly more traffic using the new road near the RMC LWS so I have considered whether this could potentially lead to ecological impacts in relation to litter. Pedestrians and cyclists who use the existing Princes Parade might choose to use the new road, but I expect most would use the new wider promenade.

5.17 The Royal Military Canal is currently in frequent use by pedestrians including dog-walkers for recreation. It is a popular amenity site. It is my view that such activity is the main source of any litter that could affect wildlife rather than any vehicle traffic using the new road.

5.18 Furthermore, there will be a significant buffer of scrub and tree vegetation between the new road and the Royal Military Canal which means that any (limited) litter that might arise from use of the new road is likely to be contained by trees, shrubs and tall ground vegetation near the road-side within the development site where it will be subject to normal roadside litter-picking operations.

5.19 In addition, it must be noted that the existing development site is an old landfill site, where significant amounts of solid waste materials are already exposed and accessible to wildlife. The development's capping of this historic landfill and landscaping will lead to a significant reduction in this exposed solid waste.

5.20 The current site also contains relatively secluded and hidden areas where the risk of fly-tipping and other forms of littering is high. The site will become much more visible to the public, and litter will be better managed through the provision of public bins and litter picking services.

5.21 Therefore, litter build-up along and within the Royal Military Canal is not a significant impact arising from the diversion of Princes Parade under the S247 Application.

NOISE IMPACTS RELATED TO BIODIVERSITY

5.22 Several objectors raise concerns regarding noise impacts on wildlife, especially breeding birds, which are perhaps the most studied ecological feature in regard to noise. The stopping up and diversion order would lead to significantly more traffic using the new road near the Royal Military Canal LWS (about three-quarters of the total). Therefore, it is reasonable to assume that this will generate about three-quarters of the total vehicle noise arising from the new road, mainly in terms of the frequency of cars passing closer to the canal. It is important to note that the current prohibition on vehicles over 6 feet and 6 inches wide, which precludes all heavy goods vehicle (HGV) through-traffic using Princes Parade, would be maintained along the new road, such that the diversion would not add any HGV traffic to the new road.

5.23 Studies have shown both behavioural and physiological effects of noise, including from road traffic, on wildlife. Birds in particular have been studied for such effects, and certain species have been shown to be more sensitive than others.

5.24 No particularly noise-sensitive important bird species were identified by the ES (**CD/10**) and no operational impacts relating to the new road's future traffic (including the diverted traffic) were identified for birds (ES paragraph 7.128 - **CD/10**). All subsequently gathered evidence on habitat for birds (see **Appendix A** and **CD/94**) shows that the site has not changed in this respect.

5.25 The contribution that diverted traffic, makes to any disturbance effect needs to be viewed in the context of the background (baseline) levels of noise and visual disturbance, and the context of the development as a whole.

5.26 The already consented construction phase of the development, including the construction of the new road, will create a significant new source of noise (and visual stimuli) near this part of the Royal Military Canal. Wildlife within audible distance of the development site will have had to adapt to, or evade, this construction noise over an extended construction period, regardless of the diversion of Princes Parade's traffic.

5.27 After construction, once the development is operational, the extant fauna in the area will need to further habituate to the presence of people and vehicles using the new development, including the use of the new road (at least as a service road to access the development), regardless of the S247 Application's effects in terms of diverting the Princes Parade highway over the new road.

5.28 Noise and visual disturbance are generally of greater effect on wildlife when accompanied by visible human and or dog presence. Most animals are far more alert to, and alarmed by, human and dogs when such perceived threats are outside of vehicles, than they are of occupied vehicles. Currently, the Royal Military Canal is subject to frequent use by people (pedestrians) and their dogs walking and vocalising along the banks in very close proximity to the canal's wildlife. Human recreation along the canal also includes boating on the water itself which brings human noise (combined with

visible presence) very close to the wetland wildlife of the canal. There are also numerous residential properties and a primary school on the north side of the canal with associated human and pet activity and noise. Therefore, there is already likely to be a high degree of local wildlife habituation and faunal community adaptation to sources of noise from human activity.

5.29 This baseline level of recreational use and therefore disturbance is likely to increase due to the development introducing new homes, leisure facilities and recreational open space close to the canal, but the diversion of Princes Parade would not add anything to this.

5.30 Animals such as birds and badgers can habituate to a source of noise that is regular and predictable such as the regular passing of vehicles along an urban road, particularly if they are already living in an urban or suburban setting where such background noise is familiar.

5.31 In the case of badgers, which are not a priority for biodiversity but nevertheless legally protected when in their setts, they are very capable of habituating to vehicle noise and will often build their setts very near to, or even underneath, roads. Natural England advises that badgers are relatively tolerant of moderate levels of noise and activity around their setts. Badgers appear to be able to withstand significant amounts of noise or activity near to their setts without apparently being disturbed (Natural England, 2009).

5.32 The badgers resident within the development site are already subject to human noises, including traffic along the current Princes Parade where they are known (from my own surveys) to forage at night along the grass verges. Their current main sett is within relatively close proximity to the existing public car park and children's play area at the east end of the development, both of which already generate human and vehicle noise, to which the on-site badgers have clearly habituated.

5.33 For many years, professional ecologists have recognised that noise and other forms of human disturbance is highly unlikely to be significant for badgers in their setts if that activity is beyond 30m from the sett (see for example: English Nature, 1995). The new replacement badger sett consented under a separate planning application in August 2021 (ref: 21/1209/FH) and licenced by Natural England in 2021 will be further than 30m from the new road.

5.34 This view is independently confirmed by the August 2021 FHDC planning committee report on the conditions (**CD/93**). Paragraph 7.11 states that KCC's ecologists are satisfied with the proposed badger mitigation[1].

5.35 For these reasons, it is my view that the addition of diverted traffic from Princes Parade along the consented new road is highly unlikely to lead to noise disturbance effects on the conservation status of important species that are materially greater than the consented development would cause without such a diversion.

LIGHTING IMPACTS RELATED TO BIODIVERSITY

5.36 At least one of the objectors raises a concern regarding lighting impacts on wildlife.

5.37 There is some evidence that bird behaviour can be affected by external lighting. This may therefore affect species such as song thrush (*Turdus philomelos*) a red-listed species (one singing male found during survey) and dunnock (*Prunella modularis*) which were found during surveys. However, any potential impact on bird populations by external lighting was judged likely to be negligible in the 2017 ES for the development (**CD/10**, paragraph 7.128) which included diversion of

[1] One objector has pointed out a minor and inconsequential 'cut and paste' error in the 2021 badger report that helped to inform the badger mitigation, which has now been corrected. The error was in my view not material to the report's findings or conclusions, and the related badger mitigation has been scrutinised, approved and licenced by Natural England.

Princes Parade traffic within the assessment. With the lighting mitigation proposed for bats (see below), I believe this to be true for the residual effects.

5.38 To minimise even the negligible potential risk of light-related impacts upon bird behaviour, on-site lighting will be minimised during the operational phase and targeted to avoid light spill onto the northern embankment, the new Western Open Space and Linear Park, and off-site areas including the Royal Military Canal. The light-related mitigation measures for bats (see below) will also address potential light-related impacts upon birds.

5.39 In the absence of mitigation, the development as a whole would create a significant risk that on-site lighting would result in a reduction in the suitability of high-quality habitats (the adjacent Royal Military Canal corridor and associated habitats on the northern embankment of the approved development site) for foraging bats. Foraging bats would be likely to be displaced to other habitats, including those within the wider Royal Military Canal corridor. This would, without mitigation, most likely result in a moderate adverse impact upon the local populations of bats foraging within the areas influenced by the proposed development.

5.40 To inform the ES, the Lighting Impact Assessment (LIA) for the development produced by Elementa (2017 - **CD/19** and **CD/25**) for the operational stage of the proposed development (without mitigation) was based on a 'worst case' scenario (which would result in negligible - minor adverse effect upon off-site habitats during the operational stage).

5.41 Therefore, the lighting mitigation measures set out below have been selected to mitigate the effects of a 'worst case' scenario.

5.42 Significant impacts on the activity of slower-flying bat species, lesser horseshoe bat *Rhinolophus hipposideros* and *Myotis* species (species well known for light-averse behaviour), have been recorded from as low as 3.6 lux (Stone et al 2012), but apparently not lower. Of these more light-sensitive species, only Daubenton's bat (*Myotis daubentonii*) was recorded using the site and adjacent canal during surveys.

5.43 In line with the recommendations of the LIA, mitigation measures will be implemented to reduce the effects of light spill upon foraging bats - by reducing illumination of bat foraging habitat (adjacent canal section and re-vegetated northern embankment) to an illuminance of below 1 lux, a maximum which is the equivalent of normal illuminance by a full moon on a clear night. Further road lighting reductions are currently being considered by the design team for the highways design pre-commencement condition.

5.44 Condition 18 of the planning permission for the development ensures that such mitigation will be implemented.

5.45 These mitigation measures include: -

a. Building façade lighting or signage will adhere to the CIE 150:2003 (*Guide on the Limitation of the Effects of Obtrusive Light from Outdoor Lighting Installations*) limits of 0-5 cd/m² and 50-400 cd/m² respectively for E1 environmental zone, and any building façade lighting will adhere to the E1 limitations from GN01:2011. Hence, the average surface luminance will not exceed 0 cd/m²;

b. The overall upward light ratio for the entire site lighting should be 0%;

c. Luminaires will be carefully positioned to minimise light spill onto boundary habitats;

d. External areas will be lit using narrow spectrum lighting with no UV content and/or white (preferably 'warm white' LED lighting);

e. All lighting will be directed to ground and light spill will be minimised through use of optics;

f. Use of tall lighting columns will be avoided wherever possible;

g. Timers and motion sensors will be used to minimise the duration of any post-curfew illumination; and

h. The 'tall planting on embankment' (as shown on the Land Use Parameter Plan) will be used to further reduce light spill into the adjacent canal section.

5.46 In general, operational stage lighting will follow the principles outlined in Sections 6.4 and 6.5 of *Bats and Lighting: Overview of Current Evidence and Mitigation* (Stone, 2013) and will only be used where necessary.

5.47 No lighting will be installed immediately adjacent to the RMC. There will be some level of light trespass from the internal road lighting scheme, but this will be at a level of 1 lux or less (Elementa, 2018).

5.48 The detailed lighting strategy for the operational stage of the proposed development is currently being developed by the design team to address Planning Condition 18. This separate document will include details of the design and external appearance and siting of all street and footpath lighting, the hours of operation and details of how, where and what external lighting will be installed. It will follow the principles outlined below as stated in the approved Ecological Method Statement (**CD/94**):

a. External lighting will be minimised across the entire site.

b. A dark corridor will be maintained adjacent to the northern boundary, retained habitats, the new Western Open Space and the RMC corridor. These areas support high quality bat foraging and commuting habitat.

c. To help achieve this dark corridor, an unlit landscape buffer zone, located outside of residential curtilages, will be provided adjacent to the northern boundary, Western Open Space and all retained habitats.

d. Only the minimum level of lighting required for road user health and safety will be installed. Use of narrow spectrum lighting with no UV content, or 'warm white' LED lighting (ideally <2700 Kelvin, with peak wavelengths higher than 550nm) will be prioritised.

e. All lighting will be directed to ground and light spill should be minimised through use of hoods, shields and/or cowls to maintain an upward light ratio of 0%.

f. Subject to health and safety and safe-by-design considerations, motion sensors and/or timers may be used to limit the duration of nocturnal lighting (ideally to short illuminance periods of 1 minute or less). Tall lighting columns will generally be avoided. Low-level external lighting (where lighting is required) will be used to help minimise site illumination.

g. In general, lighting will follow the principles outlined in Section 3 of the Bat Conservation Trust and Institution of Lighting Professionals Guidance Note 08/18: Bats and artificial lighting in the UK (BCT and ILP, 2018), and should only be used where necessary.

5.49 As these sensitive lighting principles were originally developed in partnership with the Institution of Lighting Professionals, it is obvious that such measures are practical and achievable. With these measures in place, the residual effects of lighting from the entire development, including the construction and full use of the new road, on bats using the Royal Military Canal corridor are insignificant, as they are for all biodiversity interests.

5.50 This view is independently confirmed by what is reported in the August 2021 FHDC planning committee report on the conditions (**CD/93**). Paragraph 7.8 states that Kent County Council's ecologists are satisfied with the proposed lighting measures for Phase 1 (which includes the construction of the road) as detailed within the submission.

5.51 Regardless of all of this, as stated in section 2 above, my understanding is that a decision was taken at an early stage, prior to planning approval, that the new highway would be lit in the interests of pedestrian safety due to the nature of the development. In his Proof of Evidence, Mr Fitch advises that this is true whether the new road replaces Princes Parade as a through-route due to the diversion order, or is merely a road serving the development, so lighting would be present in the same way regardless.

5.52 As also stated in Section 2, no alternative positions for a new road are being considered by the design team in the detailed design development work. Even if, theoretically, the road was to be located towards the south (rather than the north) of the site, there would then be buildings constructed in place of the road on the north of the site, with their associated lighting effects on the Royal Military Canal corridor's wildlife, so the position of the road as it is within the development site does not increase the potential for lighting disturbance of wildlife near the northern site boundary (e.g. Royal Military Canal).

5.53 To be clear, in relation to what is relevant for the S247 Application, the stopping up and diversion order makes no material difference to the potential ecological impacts in relation to lighting. The design and construction of the new road, including the lighting, is authorised under the planning permission, and controlled by a planning condition, and the stopping up and diversion order makes no difference to this. This was confirmed in the Inspector's Note of the Pre-Inquiry Meeting where he specifically said that the issue of street lighting was not a relevant consideration for this inquiry.

WILDLIFE MORTALITY AND BIODIVERSITY IMPACTS FROM TRAFFIC COLLISIONS

5.54 The portion of traffic arising from diversion of Princes Parade traffic along the new road (approximately three-quarter of the total) is likely to increase the chances of certain faunal species being physically impacted by vehicles, leading to injury and mortality. If frequent enough, this could lead to population-level effects that reduce local biodiversity. The important species identified in the ES as being significantly vulnerable to this is common toad, a listed species of principal importance under Section 41 of the Natural Environment and Rural Communities Act 2006.

5.55 The 2017 ES recognises and addresses this matter through mitigation. The mitigation was designed to deal with all the traffic using the new road, both that arising from the development and that diverted from the existing Princes Parade. Paragraph 4.51 of the Amphibian report contained in the Environmental Statement's Technical Annex 3 - Ecology (**CD/13**) ES states that the consented development will deliver an amphibian-friendly road scheme, through inclusion of features with an established use-history such as wildlife kerbs that provide safe routes around road gullies for amphibians (e.g. ACO kerbs) and other wildlife-sensitive drainage solutions. This will reduce the adverse effects on toads.

5.56 Furthermore, it is important to recognise that diverting Princes Parade away from its current location will mean there is effectively no potential for vehicle-related wildlife mortality on the existing road alignment in the future due to vehicles. This existing risk to wildlife posed by traffic that uses the current highway needs to be set off against any impact from the use of the new road for the same traffic, thus reducing the overall effect of the diversion.

5.57 As stated in Mr. Fitch's Proof of Evidence, Section 8, the existing road is straight with a 40mph speed limit. A 7-day automatic traffic count undertaken as part of the Transport Assessment in 2016

showed the westbound 85th percentile speed to be 48.3mph and the eastbound 85th percentile speed to be 45.6mph. The realigned road would be traffic calmed with the speed limit reduced to 30mph. Whilst traffic calming and a speed limit change could be implemented on the existing road, one of the most effective design features that encourages excessive speed is forward visibility (as cited in many design guides, including the DfT's Manual for Streets 1 and 2). The new road by nature contains four new corners and has been designed as a 30mph road with raised 'tables' installed at pedestrian crossing points which will also slow the traffic. This will help to reduce the risk of wildlife road mortality as it gives both driver and animal more time to identify and react evasively to any potential collision.

5.58 The ES also confirms that new and retained terrestrial habitats suitable for common toads and other mobile ground-based important species such as reptiles and badgers will be concentrated on the northern (canal) side of the new road. Drawing MHS SK16_12.05.2021 Proposed Landscape Finishes/Habitats for Western & Linear Parks Rev B (**CD/96**) shows that nearly all of the new and retained wildlife habitat will be situated on the northern (canal) side of the new road, and the southern side will largely comprise built development. Common toads and other wildlife are most likely to use the northern scrub and grassland habitats (which are located north of the road and close to the canal's toad breeding site). The retention of most vegetation on the northern embankment will retain the best quality toad terrestrial habitat in the locations most likely to be regularly used by common toad for foraging, shelter and hibernation. Therefore, there will not be a significant need for toads breeding in the canal and other wildlife to cross the new road to access supporting habitat. The developed land on the other side of the road from the Royal Military Canal will be unsuitable and therefore toads are unlikely in practice to want to cross the road.

5.59 Even with these mitigation measures, the ES notes that (with the assumed diversion in place) there will be a (now consented under the planning permission) residual risk of vehicles killing individual toads on the new road. However, the ES differentiates this from population-level effects, which it categorises as being of negligible significance (Table 7.4 of **CD/10**). In other words, residual road-related mortality will not be of a magnitude that will affect the population nor the conservation status of toads within the local area, which (as stated in Section 1) is the test of significance for biodiversity.

5.60 Furthermore, even without the diversion of traffic from the existing Princes Parade, the lower amount of traffic along the new road to access the development would still present a minor residual impact risk to *individual* toads, so the stopping up and diversion order would not have a materially different residual effect on toads in my professional opinion.

PROVISION OF EFFECTIVE ECOLOGICAL BUFFER

5.61 Related to some of the above forms of impact is a point made in the Save Princes Parade Campaign group representations in response to the May 2021 Buckles report, where it refers to a buffer zone back from the Royal Military Canal and alleges that "the proposed re-aligned road eliminates the possibility of an effective ecological buffer". This representation also highlights that the Environment Agency's early consultation on the development recommended a minimum 20m buffer (consultation response from Environment Agency dated 10/4/18 - **CD/52**), but 25m where achievable.

5.62 In relation to the Environment Agency's planning advice, the above-mentioned correspondence in April 2018 was superseded by correspondence from the Environment Agency to FHDC on 27/7/18 (**CD/53**) which stated that: "*The buffer zone shown in the mitigation strategy document is acceptable. Although the buffer zone tapers towards the eastern end of the site, the green space available at the western end of the site is wide enough to compensate for this narrowing*."

5.63 Kent Wildlife Trust have a specific remit for protecting and advocating for biodiversity conservation and are the administrators of the Local Wildlife Site system in Kent. In the consultation response provided by the Kent Wildlife Trust on 12/10/17 (**CD/47**), they refer to an 'adequate width' of ecological buffer between the development and the canal being '*ideally*' at least 15m, which the development design achieves for the great majority of its boundary with the canal corridor. The length of new road that will accommodate the diversion is approximately 892m. Based on measurement from scale drawings by FHDC's principal contractor for the development, out of this 892m of diverted road, only 137m (of road length or some 15%) is within 15m from the top of the canal bank (the 'tapering' that the Environment Agency refers to and finds acceptable in the quotation given above). At the closest point, it appears to measure approximately 12.4m from the kerb to the top of the southern canal bank (see Mr. McKay's Proof of Evidence Appendix: *'Cross Sections through New Road, the adjacent embankment and the RMC- to be submitted to discharge landscaping condition of Y17/1042/SH*').

5.64 The remaining length of road (755m) is at least 15m away from the canal. This means that approximately 85% of the new road's length meets, and mostly exceeds the ideal minimum stated by Kent Wildlife Trust.

5.65 Of the 15% new road length that does not meet Kent Wildlife Trust's ideal buffer width, it only misses that ideal minimum by a maximum of 2.6m. In addition, approximately half of this 15% less-than-ideal portion of the consented habitat buffer lies along a section where there is an existing (Sea Point) car park, canoe centre and children's playground, all of which are an existing source of noise and visual disturbance from people and vehicles located approximately 16m from the canal. At this far eastern end, the canal's wildlife will already have had to become habituated to such human activity at close proximity.

5.66 I therefore do not consider this limited length of slightly less-than-ideal buffer width (according to Kent Wildlife Trust) at the eastern end of the development to be significant for the biodiversity of the canal, particularly given the significantly greater-than-ideal width provided at the western end of the development. The depth of the buffer habitat provided by the development overall is, in my professional opinion, effective and proportionate to the biodiversity risks.

5.67 The alignment of the new road is not in doubt, so there is no prospect of the new road being closer to the Royal Military Canal than has been assessed. The stopping up and diversion order plan shows the alignment of the new road because the order would divert the existing Princes Parade highway rights on to the new road. The detailed planning permission drawings fix the alignment of the new road at the eastern end. The conditions on the planning permission require the reserved matters to comply with Section 5 of the Planning, Design and Access statement and the parameter plans including the Access and Circulation Plan. As Mr Fitch has stated in his Proof of Evidence, he has checked with the design team and the detailed design work underway includes the new road where it is shown on the plans referenced in the planning permission, as shown on the appended draft detailed lighting layout drawings. I am therefore satisfied that there is no prospect of the new road being constructed on some other alignment under the planning permission, even if that was permissible.

5.68 Regardless of this, as discussed in Section 2 of my Proof of Evidence (above), the construction of a road along the proposed alignment is an integral part of the development's design that received planning permission in 2019. Therefore, the presence and width of any ecological buffer has been formally accepted through that process, and the width and characteristics of retained and created habitat between the new road and the Royal Military Canal will be the same regardless of the applied-for highway diversion. The construction of the new road where it is proposed, and the

resultant gap between the new road and the RMC, is authorised under the planning permission and is not a result of the stopping up and diversion order.

5.69 Therefore, the diversion order being applied for will make no material difference to the effectiveness of the consented ecological buffer.

OTHER MATTERS RAISED

5.70 Other matters raised include concern over spread of non-native invasive plant species. Any such risk comes from the construction of the approved development including the new road and is therefore not an effect the stopping up and diversion of Princes Parade. Invasive species that are present, such as giant hogweed (*Heracleum mantegazzianum*), are being mitigated (treated) to remove the risk of spread.

5.71 A concern was also raised over shading of the Royal Military Canal. The new road, being largely a horizontal, ground-level structure, will not cause shading of the canal. Although no alternative to the approved development design is being proposed, for the sake of argument, and setting aside my understanding of the Inquiry's remit, if the development's road was to be located towards the south (rather than the north) of the site, the land under the proposed and consented road alignment would be used to deliver the other aspects of the development, so there would be buildings constructed in place of the road on the north of the site (i.e. to allow space for the new road towards the south of the site, the new buildings would need to be moved further to the north), with their associated shading of the Royal Military Canal LWS corridor during the operational phase.

5.72 I have reviewed all the original objections from 2018 and the 2021 objections that arrived before finalising my Proof of Evidence (on 5/10/21) and believe these are effectively responded to under the sub-headings above in this section. For any that are not directly addressed above, I am satisfied that none of those impacts are a consequence of the stopping up and diversion order, and in any event, they were all within scope of what would have been considered in relation to the planning application (including the proposal to realign Princes Parade), were rightly not considered real or significant impacts on biodiversity, and, where necessary, will be controlled under conditions on the planning permission.

6. CONCLUSION

6.1 Based on the analysis above and the sources it refers to, it is my considered professional opinion that the ecological concerns raised by objectors to the S247 Application have already been dealt with, and in sufficient detail, through the EIA process that informed the granting of planning permission for the development as a whole. The stopping up and diversion order does not cause or materially exacerbate the ecological points which are raised by objectors.

6.2 Furthermore, in the Inspector's Report on the Places and Policies Local Plan (26.06.2020) (**CD/109**), the inspector considered impacts on biodiversity and local wildlife from the development of this site (paragraph 22) and concluded that the allocation was justified and not in conflict with the Shepway Core Strategy Local Plan 2013 and national policy (paragraph 26).

6.3 The representations by the Save Princes Parade Campaign group in response to the May 2021 Buckles report allege that the diversion "creates" harm to important habitat and wildlife. This is incorrect in my professional opinion. The diversion does not create such harm, as I have explained in this Proof of Evidence. Rather, any potential harm comes from the consented development and will be mitigated to render it insignificant to biodiversity.

6.4 So, the Buckles report (**CD/66**) was, in my opinion, correct when it said at paragraph 7.34 that there would be no or no significant adverse impacts to ecological interests as a direct consequence of the road closure and diversion.

7. REFERENCES (ADDITIONAL TO REFERENCED CORE DOCUMENTS)

BCT & ILP (2018). *Bats and artificial lighting in the UK: Bats and the Built Environment series. Guidance Note 08/18*. Bat Conservation Trust, London and Institution of Lighting Professionals, Warwickshire.

CIEEM (2018). *Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine*. Version 1.1 (September 2019). Chartered Institute of Ecology and Environmental Management, Winchester.

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Stone, E.L., Jones, G., Harris, S. (2012). *Conserving energy at a cost to biodiversity? Impacts of LED lighting on bats*. Glob. Change Biol. 18, 2458–2465

Stone, E.L. (2013). *Bats and lighting: Overview of current evidence and mitigation*. University of Bristol.

8. APPENDIX A - LETTER (WITH UPDATED SITE HABITAT MAP) FROM PHILIP AMES (PRINCIPAL ECOLOGIST AT LLOYD BORE) TO THE COUNCIL'S AGENT (6/9/21)