

A38 Derby Junctions Development Consent Order

Scheme Number TR010022

8.55 Actions Arising out of Issue Specific Hearing 2 on 11 December 2019 for Deadline 3

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Rule 8 (1)(k)

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A38 Derby Junctions
Development Consent Order 202[]

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This document has been prepared in respect of the proposed A38 Derby Junctions Development Consent Order Examination. (“the Application”) made by Highways England Company Limited (“Highways England”) to the Secretary of State for Transport (“Secretary of State”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“PA 2008”).
- 1.1.2 The purpose of this document is to provide responses to action points assigned to the Applicant by the Examining Authority (ExA) during the Issue Specific Hearing 2 (ISH2) that took place on the 10 December 2019. This ISH2 was to examine the applicant’s case on key topics of the proposed development to A38 Derby Junctions.
- 1.1.3 This document sets out each individual action point with the Applicant’s response in tabular format.

2 The Applicant's Responses to Actions Arising from ISH

No	Reference	Issue or Question	Applicant's Response
Transport networks and traffic			
1.	<p>Modelling of changes in travel patterns during construction</p> <p>ExA First Written Questions (FWQ) [PD-005] Q4.17</p> <p>Applicant response [REP1-005]</p> <p>Derbyshire County Council (DCC) response [REP1-033]</p> <p>Derby City Council (DCiC) Response [REP1-034]</p> <p>Applicant comments [REP2-020]</p>	<p>a) What further modelling of changes in travel patterns on local roads during construction, if any, do the Local Highways Authorities (LHAs) consider are required for the purpose of identifying likely significant impacts?</p> <p>b) Is there an acceptable process for LHA engagement in the modelling to be carried out during detailed design?</p>	<p>a) The Scheme's traffic model was used for modelling the construction phases. The traffic model was developed from DCiC's traffic model of the city and was enhanced locally within the A38 corridor. Strategically, the model was extended outwards to represent long-distance strategic movements; for example, trips between Leeds and Birmingham.</p> <p>The Scheme's traffic model represents two average peak hours in the AM and two average peak hours in the PM. These average one-hour time periods were chosen in response to DCiC's specification.</p> <p>The traffic model's specification was the appropriate level of detail to traffic model the Scheme's environmental impacts - supporting the ES assessments – and for sizing the junctions. The Scheme's traffic model may be used to extract journey times between trip end pairs during the construction period. This level of information was provided to the LHA's in 2017.</p> <p>Highways England notes DCiC's submission that an average hour traffic model might not be an appropriate tool where queue storage is perceived to be a problem and where there could be intense traffic demands within the average hours (i.e. micro-time period modelling). However, to examine queuing responses at the level of micro-time periods would require an enhanced level of traffic modelling and a new traffic model specification. This level</p>

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			<p>of traffic modelling is not necessary for appraising the Scheme.</p> <p>In practice a micro-time period model would take a long time to build and would have limited use; i.e. a micro-time period model would require detailed observations of the traffic demand profile on each radial and orbital route and because of the complexity of such a micro-time period traffic model, there would likely be a poor level of confidence in such a model's outputs. As such, given that this detail is not available at this stage, Highways England does not propose to provide it and considers that there is sufficient detail available as part of the application, and means to secure this information in the future under the dDCO, to determine the construction effects on the local highways network.</p> <p>b) Local Highway Authorities to respond</p> <p>The Local Highway Authorities are referred to [APP-254] Traffic Management Plan. Specific references are:</p> <p>Para 3.1.9: Highways England to update TM junction.</p> <p>Para 5.1.2: Review TM capacity.</p> <p>Section 5.6: coordination with the other roadworks.</p> <p>Para 5.11.1: Consult on TM Proposals.</p> <p>Para 5.18.1: Diversion routes and Royal Derby Hospital et al.</p> <p>Para 5.22.2: pedestrian routes consult. Para 6.3.4: Ongoing dialogue with LHAs.</p> <p>Para 7.2.7: Local Operating Agreement.</p>

No	Reference	Issue or Question	Applicant's Response
2.	<p>Impacts on local roads during construction</p> <p>Relevant Representation (RR) by DCiC [RR-003]</p> <p>Applicant response [REP1-003]</p> <p>ExA FWQ [PD-005] Q4.23, Q4.27, Q4.28</p> <p>Applicant response [REP1-005]</p> <p>DCiC response [REP1-034]</p> <p>DCiC Local Impact Report (LIR) [REP1-035]</p> <p>Breadsall Parish Council Written Representation (WR) [REP1-027]</p> <p>Intu WR [REP1-044]</p> <p>Applicant comments [REP2-020]</p>	<p>a) Further to the Applicant's responses and comments, are there any outstanding concerns about impacts on local roads during construction?</p> <p>b) Are these all capable of being addressed by the Traffic Management Plan (TMP)?</p> <p>c) Are any other any measures likely to be required to ensure that impacts would be in line with those identified in the Environmental Statement (ES)?</p>	<p>a) and b) Local Highway Authorities to respond.</p> <p>c) As per the Highways England comment to DCiC response to ExA question 5.27 in [REP2-020]) it is proposed to amend the OEMP to indicate that <i>"During the Scheme detailed design stage, Highways England the traffic management proposals and undertake an assessment of the potential air quality (and noise) effects to determine whether they comply with the requirements of the ES and the OEMP. It is likely that this will indicate that the effects are similar to those reported in the ES. In the unlikely event that the assessment indicates that the traffic management proposals give rise to materially new or materially worse environmental effects, this would indicate the need for the contractor to amend the traffic management proposals or propose additional mitigation."</i></p> <p>The next version of the OEMP will be submitted at Deadline 3. This addition will ensure that the environmental effects of Scheme construction as related to construction phase traffic will align with those identified in the Environmental Statement.</p>
3.	<p>The Traffic Management Plan (TMP)</p> <p>RR by DCiC [RR-003]</p> <p>Applicant response [REP1-003]</p>	<p>a) DCiC consider it important that the TMP is <i>"agreed"</i> with them. Do draft Development Consent Order (dDCO) Requirements 4 and 11 secure an acceptable process for consultation on the development of the TMP to be used during construction? How would</p>	<p>a) and b) - The TMP will be based on the outline TMP, which has been submitted as part of the application. As such, DCiC has the ability to comment on this document as part of the examination process. In terms of requirements 4 and 11, as Highways England has provided, DCiC will be consulted as part of the approval process of the TMP. Again, the Secretary of State will be approving the TMP and will take into consideration</p>

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	<p>ExA FWQ [PD-005] Q4.12, Q4.23, Q4.25, Q4.26</p> <p>Applicant response [REP1-005]</p> <p>DCC response [REP1-033]</p> <p>DCiC response [REP1-034]</p> <p>DCiC LIR [REP1-035]</p> <p>Breadsall Parish Council WR [REP1-027]</p> <p>Intu WR [REP1-044]</p> <p>Applicant comments [REP2-020]</p>	<p>any matters not agreed with consultees be handled?</p> <p>b) Should the TMP be subject to approval by the LHA rather than, or as well as, by the Secretary of State?</p> <p>c) Are the measures set out in the TMP for engagement with key stakeholders and communication during design development and construction clear and adequate?</p> <p>d) How would any unforeseen matters be dealt with during construction, how would those be consulted on? What flexibility should be provided in the TMP, and how?</p> <p>e) Are the LHA satisfied that the provisions in the TMP are clear and adequate with respect to dealing with access to Derby Royal Hospital; access to Markeaton Park during events; and potential impacts on retail trading?</p> <p>f) Do the LHA have any other comments on the TMP [APP-254] provided by the Applicant with their application?</p> <p>g) Is further detail required in the TMP at this stage to provide assurance that the version to be used during construction would mitigate impacts in line with those identified in the ES?</p> <p>h) Will the Applicant provide an updated TMP to the Examination?</p>	<p>comments made by DCiC as part of that process. Given that the Secretary of State will sign off on the TMP, agreeing the TMP in advance with DCiC could limit the SoS's scope to amend the TMP and cause tension and/or delay in getting it approved. As such, Highways England considers that the current wording in the requirements is sufficient to ensure that the SoS retains control of signing off the TMP as part of this Nationally Significant Infrastructure Project.</p> <p>c) This is a question for DCiC and others to answer. Either way, as soon as Highways England appoints a contractor, they will start active engagement with all stakeholders to understand their key drivers and to make them part of the decision-making process. Open communication will be the key to making the project a success.</p> <p>d) The aim at the outset is to undertake detailed planning prior to start of works so that unforeseen matters or change does not occur during the construction phase of the project. The performance of the traffic management would be monitored during the works and if concerns were raised due to traffic flows not matching expectations there will be forums to explore possible options to action. Once appointed, the Highways England's appointed contractor will establish regular Traffic Management meeting to review all areas of the live project. The responsibilities of the Traffic Control Officer (appointed by Highways England) are defined in the OEMP in Table 2.1.</p> <p>e) Local Highway Authorities to respond.</p> <p>Refer to [APP-254] Traffic Management Plan... para 5.18.1: Diversion routes and Derby Royal Hospital</p>

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			<p>f) Local Highway Authorities to respond.</p> <p>g) The traffic management plan is a live document and will evolve during the detailed design phase and this should be recognised so there is little point in committing to a version now. The intention is to start regular meetings from January to allow DCiC and others visibility in how the plan is developing as more detail is added to the construction phase programme.</p> <p>If DCiC continue to host the "A38 Behavioural Change" workshops, then Highways England will welcome the opportunity to participate in this working group.</p> <p>h) Yes. Highways England will consider the LHAs' Deadline 3 suggested text for inclusion in the outline TMP. A revised outline TMP will be submitted at a subsequent Deadline.</p>
4.	<p>Significant impacts during construction RR by DCiC [RR-003] Applicant response [REP1-003] ExA FWQ [PD-005] Q4.27 Applicant response [REP1-005] DCiC response [REP1-034] Applicant comments [REP2-020]</p>	<p>With the mitigation measures in place, would there be likely to be any residual significant impacts on users of the A38 or local roads during construction?</p>	<p>No; there would be no significant environmental impacts.</p> <p>In order to maximise A38 capacity during construction and to retain road-users on the existing A38, some right-turns at the temporary junctions would be banned. [Refer: APP-254; para 3.2.10; bullet 2; which describes Markeaton Phase 2].</p> <p>Thus, the journey lengths for some local users would increase. These measures were included in the traffic models of the worst-case construction phases and the environmental impacts have been reported in the ES.</p>

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5.	<p>Impacts on local roads during operation RR by DCiC [RR-003] Applicant response [REP1-003] ExA FWQ [PD-005] Q4.14, Q4.42, Q5.3 Applicant response [REP1-005] DCiC response [REP1-034] DCiC LIR [REP1-035] Applicant comments [REP2-020]</p>	<p>a) Further to the Applicant's responses and comments, do the LHA have any outstanding concerns about adverse impacts on local roads during operation, e.g. those identified in DCiC's LIR? b) Has the Applicant assumed that the LHA will make improvements to local roads (e.g. at Kedleston Road and Five Lamps)? If so, is it reasonable to assume that they will be delivered? c) Is any more information required for an assessment to be made of adverse impacts on local roads during operation? d) How should any adverse impacts be mitigated?</p>	<p>a) Local Highway Authorities to respond. The Applicant notes that the Scheme will change some of the traffic patterns in Derby. The overall impact of the Scheme on DCiC's network would be a net benefit. Where the traffic flows would increase on DCiC's network, then there could be an enhanced business case for making improvements to the local highway. It is not within Highways England's remit or budget to be responsible for local junction improvements. The DCO allows for improvements to two local junctions: at A6 Duffield Rd/Ford Lane and at Brackensdale Ave/Kingsway Park Close. These improvements are part of the Scheme because they are part of the mitigation package for the physical closure of four local road connections to the A38. Note: The A6 Duffield Road/Ford Lane improvement might not be implemented – see question 6 below. b) No. The traffic forecasting model only represents future year road improvements where these are committed. This forecasting approach is prescribed by the DfT's Transport Appraisal Guidance (TAG). Where the operational efficiency of local junctions might deteriorate as a result of the Scheme, then the approach taken reflects this in the Scheme's business case and also in the traffic-dependent environmental impact appraisals. Note: The DCiC's preferred clean air zone (CAZ) strategy was considered to be a committed highway improvement at the time that the traffic forecasts of the during construction period were produced.</p>

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			<p>c) No. The traffic forecasting model simulated the existing network and its capacity. The Scheme's traffic impacts are contained within the traffic forecasts and the Scheme's appraisal.</p> <p>d) Highways England has been set objectives to grade separate three junctions on the A38 strategic road network. The policy contains no remit to amend local junctions.</p>
6.	<p>Junction layouts ExA FWQ [PD-005] Q4.34, Q4.39 Applicant response [REP1-005] DCC response [REP1-033] DCiC response [REP1-034] DCiC LIR [REP1-035]</p>	<p>a) Do the LHA have any outstanding concerns about junction layouts? b) Should the Ford Lane junction with the A6 be signalised, or not? c) Is there an acceptable process for engagement of the LHA and other relevant stakeholders with the development of the detailed design of junction layouts?</p>	<p>a) Local Highways Authorities to respond. Reference: DCiC LIR [REP1-035] b) There are arguments for and against traffic signals at the A6 Duffield Road/Ford Lane junction. The arguments for are:</p> <ul style="list-style-type: none"> ▪ Local residents' supported traffic signals at consultations; ▪ traffic signals would assist local residents, turning right, towards A6 North, to cross the A6 Duffield Road in the peak periods. ▪ signals would be 200m within the 30mph urban area; ▪ potential to add a pedestrian crossing to link to the A6 bus stops. <p>The arguments against are:</p> <ul style="list-style-type: none"> ▪ Detrimental transport economic efficiency impacts (i.e. traffic lights would delay road-users) in the non-peak periods. ▪ It is not uncommon to find delays on the exit from a housing estate in AM peak. ▪ The magnitude of trip-end growth forecast for this housing area could be below the national forecasts; the Scheme's traffic forecasts applied.

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			<ul style="list-style-type: none"> ▪ The improvement would be an additional cost to Highways England. <p>The balance of arguments is against adding traffic signals to the A6/Duffield Road.</p> <p>c) Technical Notes have been supplied to DCiC. Engagement would continue in the detailed design stage. This will be secured in the TMP.</p>
7.	<p>A38 speed limit at Little Eaton Junction ExA FWQ [PD-005] Q4.37 Applicant response [REP1-005] DCC response [REP1-033] Breadsall Parish Council WR [REP1-027] Applicant comments [REP2-020]</p>	<p>Further to the Applicant's responses and comments, are there any outstanding concerns about a 70mph speed limit to the A38 at Little Eaton junction?</p>	<p>Local Highway Authorities to respond.</p> <p>Note: technically, this question should refer to "National Speed Limit"; not all vehicle types are permitted to travel at 70mph on an all-purpose dual carriageway road.</p>
8.	<p>Permanent Stopping Up of Highways and Traffic Regulation Orders RR by DCiC [RR-003] Applicant response [REP1-003] ExA FWQ [PD-005] Q4.38</p>	<p>Further to the Applicant's responses and comments, does DCiC have any outstanding concerns about the 'stopping up' process where existing roads are severed, including in relation to residual landownership and responsibility, and proposed Traffic Regulation Order alterations?</p>	<p>Local Highway Authorities to respond.</p> <p>The stopping up and remaking of rights of way will be controlled by the DCO, see article 16 and Schedule 4 (N.B. there is no Schedule 13 in the dDCO).</p> <p>Following the stopping up of the links to the existing A38 the land ownership remains largely unchanged as these specific areas are owned by either Highways England or DCiC.</p>

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	<p>Applicant response [REP1-005]</p> <p>DCiC response [REP1-034]</p> <p>DCiC LIR [REP1-035]</p> <p>Applicant comments [REP2-020]</p>		<p>Where statutory undertakers have plant and equipment within the sections of stopped-up highways, Highways England will ensure appropriate provisions are made for the services within areas.</p> <p>Where 'Stub Ends' are generated as a result of stopping up, the intention is for DCiC to continue maintenance of these following the completion of the works. The reason for the stub ends remaining is to maintain the right of access from the highway to certain adjoining residential properties. The detailing and finishing of these areas will be agreed during detailed design with DCiC.</p>
9.	<p>Ford Lane closure and bridge weight restrictions RR by DCC [RR-004]</p> <p>Applicant response [REP1-003]</p> <p>ExA FWQ [PD-005] Q4.40</p> <p>Applicant response [REP1-005]</p> <p>DCC response [REP1-033]</p> <p>DCiC response [REP1-034]</p> <p>Applicant comments [REP2-020]</p>	<p>a) Further to the Applicant's responses and comments, do the LHA have any outstanding concerns about the proposed closure of Ford Lane or the bridge weight restrictions?</p> <p>b) How can it be assured that a 40T vehicle weight restriction on the Ford Lane bridge would be suitable for the purposes of those requiring access, including Talbot Turf, Severn Trent Water and Network Rail?</p>	<p>a) Local Highway Authorities to respond.</p> <p>b) AECOM has carried out a further assessment of the bridge and determined it is capable of carrying a 40T vehicle.</p> <p>DCC suggested it may need to be assessed for abnormal vehicle loading. However, the 3 mentioned businesses (Talbot Turf, Severn Trent Water and Network Rail) have been approached and none of them has indicated that this is their requirement.</p> <p>A meeting is currently being arranged with DCC to discuss further.</p>

No	Reference	Issue or Question	Applicant's Response
10.	<p>Car parking at Cherry Lodge children's residential care home</p> <p>RR by Carter Jonas LLP on behalf of Haven Care Group Ltd [RR-015]</p> <p>Applicant response [REP1-003]</p> <p>ExA FWQ [PD-005] Q4.43, Q13.36, Q13.37</p> <p>Applicant response [REP1-005]</p>	<p>Temporary and permanent impacts on car parking at Cherry Lodge children's residential care home and their mitigation.</p>	<p>There are 2 land plots relating to no 255 Ashbourne Road. Plot 3/15b is required permanently for the realignment of Ashbourne Road and adjoining footway. Plot 3/15a has been identified as being permanently required to allow for the provision of a turning head for the proposed new access road that serves Sutton Close and 253 and 255 Ashbourne Road (this would allow vehicles to turn around so avoiding the need to reverse out onto a main road). If, during detailed design, the adopting authority does not require the turning head, it would become likely that plot 3/15a would only be required temporarily and could be returned to the land owner on completion of the Scheme. Hence a large part of the land currently used as car parking could be retained (leaving space to park 3 to 5 cars).</p> <p>Discussions are ongoing with the representatives of Haven Care Group and the owner of the property.</p>
11.	<p>Public transport</p> <p>ExA FWQ [PD-005] Q4.45, Q4.46</p> <p>Applicant response [REP1-005]</p> <p>DCC response [REP1-033]</p> <p>DCiC response [REP1-034]</p> <p>Applicant comments [REP2-020]</p>	<p>a) Further to the Applicant's responses and comments, do the LHA have any outstanding concerns about the mitigation measures proposed for any adverse impacts to bus services, particularly during construction?</p> <p>b) How would effective stakeholder engagement be ensured with the development of the TMP; with the development of detailed design; and during construction?</p> <p>Has enough consideration been given to the support of public transport and</p>	<p>a) Local Highway Authorities to respond</p> <p>b) The OEMP includes measures for consultation during preparation of the TMP.</p> <p>Highways England will employ Community Relations Manager who will work alongside its Project Director to engage with stakeholders throughout the future development of the Traffic Management Plan.</p> <p>c) DCiC has established an "A38 Behavioural Change Group". This group meets regularly and includes Bus Operators and Local Employers (e.g. Intu, Royal Derby Hospital). See response to question 3(g) above. Highways England will continue to liaise with this group. Highways</p>

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		encouraging change in mode of transport, in accordance with sustainable transport policy?	<p>England has engaged a Travel Design Management specialist to enable development of initiatives within the construction stage.</p> <p>Ref: TMP [APP-254] states, at Table 3.1 the second row of the table (top of page 12), the Scheme's traffic management will aim to improve Customer Satisfaction by: considering a personal travel planning campaign to encourage mode transfer and provide priority to bus and cycle movements.</p>
Land use, social and economic impact			
12.	<p>The effect of the proposal on the viability and convenient and safe operation of the McDonald's and Euro Garages facilities at Markeaton junction</p> <p>ExA issue / question [PD-003] Q10.20, Q10.21, Q10.22</p> <p>Applicant response [REP1-005]</p> <p>Euro Garages WR [REP1-040]</p> <p>Euro Garages draft Statement of Common Ground (SoCG) [REP1-041]</p>	<p>a) Update the SoCGs between the Applicant and McDonald's and between the Applicant and Euro Garages.</p> <p>b) Would the traffic signals and routeing at the exit from the facilities onto the A52 result in queuing within the site?</p> <p>c) Would the traffic signals and routeing at the exit from the facilities onto the A52 result in queuing on the A52?</p> <p>d) Would the proposed layout allow all vehicles, including refuse collection, to manoeuvre safely and conveniently into, out of and within the site?</p> <p>e) Update on the need to reinforce the car park to allow for the proposed servicing arrangements.</p> <p>f) How would the rights of access of McDonald's and Euro Garages be affected by the proposals?</p>	<p>a) The SoCGs have been updated to incorporate the comments made by McDonald's and Euro garages – expect to submit to ExA for deadline 3.</p> <p>b) The signals design has been carried out to keep the queues at the stop line to acceptable levels.</p> <p>c) The signals design has been carried out to keep the queues at the stop line to acceptable levels.</p> <p>d) Swept path analysis confirms that all vehicles, including refuse collection, will be able to manoeuvre safely and conveniently into, out of and within the site</p> <p>e) Highways England would welcome details of the existing car park construction (strengthened area and non-strengthened area) if available to be able to assess the load bearing capability. Otherwise, during detailed design stage, pavement surveys could be carried out to determine the strength of all parts of the car park – strengthening could be carried out as accommodation works if required.</p>

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	<p>McDonald's WR [REP1-045] McDonald's draft SoCG [REP1-046] Applicant comments [REP2-020]</p>	<p>g) How would entry to the site from the proposed A38 slip road impact on highway safety. How would the absence of such an access impact on the viability of the businesses? h) Update on the provision of 'roadside facilities' signage.</p>	<p>f) A check with the Land Registry confirms that there are appropriate rights, by way of a conveyance dated 1982, to allow those who need to access the filling station to cross the land owned by McDonalds which abuts the highway at any time, day or night. Highways England believes the proposed Scheme will not change these existing arrangements; however, following EG's comments further investigations will be carried out to confirm the position.</p> <p>McDonald's states it does not have rights to cross over the adjoining Euro Garages site. The Works rely on McDonald's taking deliveries by crossing over land which it neither owns nor has rights over; this is problematic and allows an adjoining landowner to control the viability of the restaurant.</p> <p>Highways England notes it was advised by McDonald's that this arrangement is how the delivery vehicles currently operate. The scheme proposals would not change the arrangements that currently exist.</p> <p>g) Highways Design Standard CD 122 states "Direct accesses and priority junctions shall not be provided on connector roads" ('connector roads' includes slip roads). This is a safety consideration as traffic slowing down to use the access is not compatible with higher speed traffic leaving the trunk road on the slip road as this could result in shunt type collisions.</p> <p>Providing the egress onto the slip road is proposed by the Scheme (as has been agreed in principle with Highways England's safety specialist after extensive discussions); both the filling station and McDonald's will be able to exit the site by this means (as well as onto the A52) – this arrangement is essential to allow fuel tankers to be able to</p>

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			<p>exit the site (they would enter from the A52 and there is insufficient space within the site to be able to turn around to exit back on to the A52)</p> <p>h) The site does not currently qualify for designation as a Trunk Road Service Area (TRSA) and is not likely to qualify after construction of the scheme due to insufficient toilet facilities, Lorry and Coach parking. In order to enable the provision of roadside signage, the site would need to be a designated TRSA. Highways England are currently investigating the possibility for a departure to the TRSA standard to allow advance signage for this site.</p>
13.	<p>The effect of the proposal on the trading patterns of retail businesses in the area during the construction phase</p> <p>Intu Derby WR [REP1-044]</p> <p>Applicant comments [REP2-020]</p>	<p>a) Update on the TMP with particular regard to balancing the flow of traffic on the A38 with access to the city centre.</p> <p>b) How would the construction programme be co-ordinated with other road schemes in the region and the local area in order to minimise disruption?</p> <p>c) Is there any evidence to suggest that travel disruption during the construction of highways schemes would have a lasting effect on retail trading patterns?</p> <p>d) Would the anticipated improvement to travel patterns arising from the completed scheme benefit retailers in the area in the long term?</p>	<p>a) The TMP is currently an outline document and the construction TMP will be developed once the Highways England appoints its contractor has been appointed.</p> <p>The philosophy of the construction phase traffic management is that journey times along the A38 should be maintained so that traffic remains on the A38 during construction and so as to minimise the volume of diverting traffic and avoid creating congestion on the local road network.</p> <p>b) Highways England will liaise with other road schemes in the area and it will form part of preparation for the scheme to identify what works will run in parallel. Given this is a contractual obligation it is not necessary for this to be included within the TMP. Interested parties would be invited to the monthly TM meetings. Road closures will be carefully planned taking into account full recognition of surrounding schemes and projects. Discussions have already commenced with the Maintainer (EMAD) and a</p>

No	Reference	Issue or Question	Applicant's Response
			<p>DLOA will be in place prior to start of the works to manage routine maintenance works</p> <p>c) Local Highway Authorities to respond.</p> <p>d) Local Highway Authorities to respond.</p>
14.	<p>Whether the proposals for footpath diversions at the Little Eaton junction are safe and convenient</p> <p>ExA issue / question [PD-003] Q10.13, Q10.18</p> <p>Applicant response [REP1-005]</p> <p>Breadsall Parish Council WR [REP1-027]</p> <p>Simon Morris WR [REP1-049]</p> <p>DCC response [REP1-030]</p> <p>DCC LIR [REP1-031]</p> <p>Erewash Borough Council (EBC) response [REP1-051]</p> <p>EBC LIR [REP1-050]</p> <p>Applicant comment [REP2-020]</p>	<p>a) Update on discussions regarding the proposed public right of way diversions at Little Eaton.</p> <p>b) Does the route of the proposed diversion of Breadsall FP3 appropriately balance considerations of safety and convenience? Does the existing route from Breadsall to Little Eaton via Breadsall FP18 provide a convenient alternative? Would the alternative route proposed by Breadsall Parish Council be safe and viable?</p> <p>c) Does the proposal make satisfactory provision for the Derwent Valley Cycleway?</p> <p>d) Update on discussions regarding the provision of a Toucan crossing on the A61 at the Croft Lane footpath and the reduction of the speed limit at this location. Are these measures necessary to ensure that the proposed scheme would provide safe and convenient access for pedestrians?</p>	<p>a) and b) Please refer to the Deadline 3 submission – Little Eaton Junction Existing & Proposed Rights of Way Plan [TR010022/APP/8.45].</p> <p>It should be noted that the footpaths between Little Eaton junction and Breadsall Village (Breadsall FP3 and Breadsall FP1) have very little observed flow; surveys carried out in 2014 and 2018 identified the following usage:</p> <ul style="list-style-type: none"> • 2014, summer Sunday, 2 pedestrians used FP3 and crossed the A38 to head towards Little Eaton. No observed usage of FP1. • 2014, summer weekday, no observed usage of FP3 and FP1. • 2018, summer Sunday, 1 pedestrian used FP3 and crossed the A38 (at the location not in use since the footpath was diverted). No observed usage of FP1. • 2018, summer weekday, no observed usage of FP3 and FP1. <p>The diversion of FP3 is necessary as the existing route lies beneath the proposed scheme embankment.</p> <p>Breadsall FP3 does not cross the A38 on the north side of the roundabout as suggested by Breadsall Parish Council. That route would have to cross the segregated left turn lane via an uncontrolled crossing – this is not allowed by design standards as it is considered to be an unsafe</p>

No	Reference	Issue or Question	Applicant's Response
			<p>arrangement. The existing alignment of FP3 is shown on the 'Little Eaton Junction Existing & Proposed Rights of Way Plan'</p> <p>DCC's understanding of the route of FP3 aligns with what is shown on the 'Little Eaton Junction Existing & Proposed Rights of Way Plan' [TR010022/APP/8.45]. As recorded in DCC's S42 response '<i>...it runs from the village towards the A38 and then follows the current alignment of the A61 around and comes out at the side of the A61 just after the end of the ARMCO barrier.</i>' At this location there is a (substandard) existing crossing of the A61 with dropped kerbs and a hardened section of the very narrow central reserve.</p> <p>Under the Scheme, this crossing point would become closer to the exit from the modified roundabout, so the decision was taken to divert FP3 around the scheme land take and join with FP1. From here, users can join FP1 to walk back towards Breadsall village to complete a circular recreational route.</p> <p>Users wishing to take a more direct route to the southern part of Little Eaton would leave the village on Croft Lane and cross the A61, they would then use the improved pedestrian facilities on the west side of the A61 and cross the scheme slip roads utilising the proposed toucan crossings.</p> <p>To walk to the centre of Little Eaton, users would use FP18 (at the north end of Rectory Lane) and cross beneath the A38 using an underpass - this offers the safest route.</p>

No	Reference	Issue or Question	Applicant's Response
			<p>The 2018 NMU surveys recorded that there were 17 users of the FP18 route (on both weekend and week days) and similar numbers were observed to use the Croft Lane route.</p> <p>DCC's Rights of Way team has been consulted on the footpath provisions at Little Eaton junction. They had no adverse comment to make with regard to any permanent or temporary diversions of footpaths. The circular provision proposed for FP3 was initially suggested by DCC's team during earlier discussions and consultation.</p> <p>c) The Scheme itself makes no direct provision for the Derwent Valley Cycleway. The alterations to the Flood Arch and FP7 as part of Talbot Turf's access are on the proposed cycleway route and do not preclude its future provision. Highways England is currently working closely with the Derwent Valley Trust, DCiC and DCC to deliver a section of the Derwent Valley Cycleway separately to the NSIP.</p> <p>d) Highways England has made funds available for a design to be produced for a Toucan Crossing over the A61. The designer for this scheme is currently planning speed surveys to allow a design to be developed. As with the Derwent Valley Cycleway this is being developed separately to the NSIP and therefore benefits of the Designated Funds scheme have not been included in the NSIP application.</p>
15.	Whether the proposal makes adequate provision for non-motorised users	a) Update on discussions regarding provision for non-motorised users during the construction phase.	a) As Highways England has not appointed a contractor to date and the Scheme is still in the preliminary design phase, no discussions have taken place to date. Upon the appointment of the contractor, Highways England will

No	Reference	Issue or Question	Applicant's Response
	<p>during the construction and operational phases</p> <p>Derby Cycling Group WRs [REP1-036 and REP1-037]</p> <p>DCC LIR [REP1-031]</p> <p>DCiC LIR [REP1-035]</p> <p>Applicant comments [REP2-020]</p>	<p>b) Does the submitted Travel Plan (TMP) provide sufficient assurance that safe and convenient routes for non-motorised users would be maintained throughout the construction phase?</p> <p>c) Does the proposal take the opportunities available to encourage non car travel with regard to the scheme itself and linkages to other initiatives in the surrounding area?</p>	<p>undertake all necessary consultation to develop the provisions for NMUs.</p> <p>b) As part of the development of the TMP the movement of NMUs will be considered at all times. The routing of NMUs will be an important part of the planning process to ensure that movement is maintained and segregated from the construction activities for safety reasons. Any diversions routes would be fully compliant with the existing provision and NMU movements incorporated into any temporary traffic signals installed in order to deliver the Scheme. Such provisions will be secured by inclusion in the Traffic Management Plan (reference should also be made to the Outline Environmental Management Plan (OEMP) [APP-249] which includes provisions for footpath and cycleway diversion during the Scheme construction phase).</p> <p>c) Highways England will continue to liaise with the A38 Behavioural Change group if this is possible. Highways England has engaged a Travel Design Management specialist to enable development of initiatives within the construction stage.</p> <p>See responses to Q3 and Q11 above.</p>
16.	<p>Whether the proposed route at the Little Eaton junction adequately balances environmental and socio-economic impacts</p>	<p>a) Would the proposed route have unacceptable impacts on the living conditions of the residents of Breadsall by reason of outlook, noise disturbance or air quality?</p> <p>b) Would the proposed route have unacceptable impacts on the</p>	<p>a) The Scheme design at Little Eaton junction (refer to Environmental Masterplan Figures 2.12F and G [APP-068] illustrates that a wide range of mitigation measures have been incorporated into the Scheme design. This includes: low noise road surfacing, 2.5m high noise and screening barriers along the mainline and A61 slip road, landscape woodland and shrub screen planting, and avoidance of lighting columns on the A38 mainline. Such measures</p>

No	Reference	Issue or Question	Applicant's Response
	<p>ExA issue / question [PD-003] Q2.6</p> <p>Applicant response [REP1-005]</p> <p>Breadsall Parish Council WR [REP1-027]</p> <p>Simon Morris WR [REP1-049]</p> <p>Applicant comments [REP2-020]</p>	<p>environment at Breadsall with regard to visual intrusion or biodiversity?</p>	<p>have been agreed with Breadsall Parish Council as indicated in the draft SoCG. As illustrated in the Environmental Statement, the Scheme would have:</p> <ul style="list-style-type: none"> • Negligible traffic noise level increases at the worst affected façade of the closest properties within Breadsall. With the defined mitigation measures in place, at some facades facing the A38 a negligible or minor reduction in traffic noise is anticipated (ES Chapter 9: Noise and Vibration [APP-047]). • Negligible air quality effects (ES Chapter 5: Air Quality [APP-043]). • Moderate adverse visual effects on areas between Breadsall village and Little Eaton junction during Scheme construction, reducing to slight adverse during Scheme operation (year) and neutral effects by year 15 of Scheme operation (ES Chapter 7: Landscape and Visual [APP-045]). <p>Given the above, Highways England does not consider that the Scheme effects upon the residents of Breadsall are unacceptable.</p> <p>b) As above, a wide range of mitigation features have been included in the Scheme design as detailed in the Environmental Masterplan Figures 2.12F and G [APP-068] – this includes measures to mitigate effects upon local ecology and the landscape in the vicinity of Breadsall – this includes: woodland and shrub planting, new hedges, plus planting of species rich grassland, the realignment of Dam Brook with the realigned brook having features that will enhance its ecological potential, two new ecology ponds and new wetland habitats, badger fencing, and features for amphibians. With the inclusion of these</p>

No	Reference	Issue or Question	Applicant's Response
			<p>features significant ecological effects would be avoided, whilst there is potential for long term ecology benefits (ES Chapter 8: Biodiversity [APP-046]). In terms of effects on the landscape, with the mitigation planting provided the Scheme would have a significant moderate adverse effect on the local landscape character following Scheme opening, reducing to a slight adverse effects following maturation of the landscape planting (ES Chapter 7: Landscape and Visual [APP-045]).</p> <p>With regard to visual receptors, visual receptors around Breadsall are represented by the viewpoints 18, 20, 21, 22,23 and 24 (refer to ES Figure 7.1B [APP-086]) – effects would be as follows:</p> <ul style="list-style-type: none"> • Viewpoints 20, and 21 experience a neutral effect through construction to year 15 given their distance from the Scheme and intervening built form; • Viewpoint 18 and 22 experience a slight adverse effect during construction reducing through mitigation to neutral in winter year 1 and summer year 15; • Viewpoint 23 and 24 experience a moderate adverse effect during construction reducing through mitigation to slight adverse effect during winter year 1 and then neutral by summer year 15. <p>Given the above, Highways England does not consider that the Scheme effects upon the environment at Breadsall (with regard to visual intrusion or biodiversity) are unacceptable.</p>

No	Reference	Issue or Question	Applicant's Response
Air quality			
17.	<p>Receptor sensitivity, magnitude of change, significant effect assessment criteria, background concentrations, carbon dioxide assessment methodology, cumulative impact assessment</p> <p>ExA FWQ [PD-005] Q5.7, Q5.8, Q5.9, Q5.11, Q5.12, Q5.13, Q5.18, Q5.20</p> <p>Applicant response [REP1-005]</p> <p>DCiC response [REP1-034]</p> <p>EBC response [REP1-051]</p> <p>EBC SoCG [REP1-008]</p> <p>Applicant comments [REP2-020]</p>	<p>a) Further to the Applicant's responses and comments, are DCiC and EBC (still) satisfied with the Applicant's consideration of baseline conditions and with the Applicant's assessment methodology?</p> <p>b) The Applicant considers that changes in pollution concentration should only be considered significant when they exceed health-based quality objectives and limit values. Is this approach agreed by the local authorities? Should large magnitude changes in pollution concentration be considered significant? Is the consideration of the impact of large magnitude changes in emissions on health in the Design Manual for Roads and Bridges standard LA105 relevant and helpful?</p>	<p>a) and b) Local Highway Authorities to respond.</p> <p>As stated in Highway England's response to ExA question 5.7 in the first round of written questions [REP1-005], "Changes in pollutant concentrations that do not exceed the objectives and limit values are not considered to be significant as the air quality objectives and limit values were set with regard to scientific and medical evidence on the effects of the particular pollutant on health at minimum or zero risk levels . Perceptible changes in pollutant concentrations at levels that exceed an objective or limit value could be significant as set out in ES Chapter 5: Air Quality para 5.3.9 to 5.3.11." Therefore, large magnitude changes when concentrations are within the objectives and limit values are considered to be not significant.</p> <p>EBC has confirmed that they are happy with the air quality assessment approach in their response to Q17 (published on the PINS website – 6.12.19). DCiC is content with the assessment approach as noted with the draft Statement of Common Ground [REP2-013] (noting that aspects related to modelling against the EU Directive are now agreed with DCiC).</p> <p>With regard to LA105: DMRB (LA 105) Air Quality was published in November 2019. The assessment of the effects of the A38 Scheme on air quality (ES Chapter 5: Air Quality [APP-043] were undertaken in accordance with the DMRB guidance in place at the time (HA207/07). HE</p>

No	Reference	Issue or Question	Applicant's Response
			explained at the hearing why it is not necessary for the assessment to consider the updated methodology.
18.	Dust deposition and monitoring during the preliminary works and main works ExA FWQ [PD-005] Q5.16, Q5.21, Q5.31 Applicant response [REP1-005] DCiC response [REP1-034] EBC response [REP1-051] DCiC LIR [REP1-035] EBC SoCG [REP1-008] Applicant comments [REP2-020]	a) What certainty is there that dust deposition at the closest receptors to construction (preliminary works and main works) would not be significant? b) EBC considers that dust monitoring during the preliminary works should be a firm requirement. Should the provisions for dust monitoring in the OEMP during the preliminary works be like those identified for construction in MW-AIR3? c) How would complaints or any significant dust deposition identified during the preliminary works be communicated, consulted on and dealt with? d) Should any of the other provisions for air quality during the main works in OEMP MW-AIR1, MW-AIR2 or MW-AIR3 be required during the preliminary works?	a) Highway England's response [REP1-005] to the ExA first written question Q5.16b) states as follows: ES Chapter 5: Air Quality [APP-043] para. 5.3.17 explains that the effective application of appropriate dust mitigation measures during the Scheme construction phase has the potential to reduce dust effects to non-significant levels (slight adverse at worst), as based on UK experience of good site practice (Institute of Air Quality Management, Guidance on the Assessment from Dust from Demolition and Construction, 2016). Dust mitigation measures are outlined in the Outline Environmental Management Plan (OEMP) [APP-249] Table 3.2, PW-AIR1, MW-AIR1, MW-AIR2 and MW-AIR3. The adoption of these mitigation measures by Highways England will ensure that the dust effects at the receptors closest to the construction works are not significant. Prior to Scheme construction activities commencing on site, Highways England will prepare a method statement and a comprehensive site-specific dust management proposal as part their Construction Environmental Management Plan (CEMP), as based upon the OEMP. The CEMP will be consulted upon with the local planning authorities. The CEMP will also include provision for dust monitoring techniques to check the effectiveness of the dust mitigation measures. Preparation of the CEMP in accordance with the OEMP is secured via Requirement 3 in the dDCO [APP-016]. This is recognised in DCiC's response [REP1-034] to the ExA's first written question Q5.21 which states that: " <i>In</i>

No	Reference	Issue or Question	Applicant's Response
			<p><i>practice, construction dust impacts will be controlled through robust management/mitigation measures, which must be implemented rigorously throughout the duration of all high risk works. This has to be laid out in detail in the CEMP, along with measures for monitoring and associated urgent action/responses where the monitoring reveals an issue."</i></p> <p>b) It is noted that PW-AIR1 within the OEMP [APP-249] (refer to Table 3.2a) already refers to MW-AIR3 (refer to Table 3.2b) which deals with dust monitoring. Thus the need for dust monitoring during the preliminary works will be investigated in consultation with the local authorities, and undertaken as applicable.</p> <p>c) As detailed in the OEMP [APP-249], Highways England will have a Community Relations Manager who would have specific responsibility for communications with the public, stakeholders and other interested parties – specific responsibilities are detailed in OEMP Table 2.1. This role includes responding to any concerns or complaints raised by the public in relation to the works, including during the defined preliminary works. This will be clarified in the next version of the OEMP. Members of the public will also be able to call the Highways England Customer Contact Centre (HECCC) which is a 24/7 service. Any responses to queries as associated with the Scheme works will either be given directly by the HECCC adviser or sent on to the Community Relations Manager for an answer. In addition, the contactor would have an Environment Manager whose responsibility would be to undertake site inspections to monitor compliance with the environmental licences and</p>

No	Reference	Issue or Question	Applicant's Response
			<p>consents for the works and the measures within the Construction Environmental Management Plan (CEMP) (see Table 2.1 of the OEMP).</p> <p>For any complaints related to dust, this will be investigated by the Community Relations Manager, in liaison with the Environment Manager (appointed by Highways England), such that remedial measures can be implemented. Similarly, if significant dust deposition effects are identified during site inspections by the Environment Manager, they will be responsible for ensuring the implementation of applicable remedial measures. This will be clarified in the next version of the OEMP to be submitted at Deadline 3.</p> <p>d) As detailed in the OEMP [APP-249] PW-AIR1 <i>"The preliminary works contractor (all) shall manage dust, air pollution and exhaust emission during the preliminary works in accordance with Best Practicable Means (BPM). Specific measures shall be based upon industry best practice, including the measures listed in the Institute of Air Quality Management's (IAQM) Guidance on the Assessment of Dust from Demolition and Construction. These measures shall be set out in more detail in the preliminary works CEMP and examples of these measures are listed in the main works table (MW-AIR1). MW-AIR2 details measures to be implemented for high-risk sites, whilst MW-AIR3 details air quality monitoring requirements."</i> As such, measures cited in MW-AIR1, MW-AIR2 or MW-AIR3 may need to be applied during the preliminary works if these are required in accordance with BPM. The air quality mitigation measures that are required for the preliminary works will be included in the preliminary works CEMP and consulted upon with the local authorities.</p>

No	Reference	Issue or Question	Applicant's Response
			It will also detail the works that are to be carried out during the preliminary works and the methods of working.
19.	<p>Nitrogen Dioxide (NO₂) analysis and assessment methodology and EU compliance</p> <p>ExA FWQ [PD-005] Q5.17, 5.25, 5.29</p> <p>Applicant response [REP1-005]</p> <p>DCiC response [REP1-034]</p> <p>DCiC LIR [REP1-035]</p> <p>Applicant comments [REP2-020]</p>	<p>Do DCiC have any comments on the Applicant's responses regarding:</p> <p>a) The use of both the "<i>Highways Agency gap analysis method</i>" and the "<i>DEFRA method</i>" for predictions of NO₂ concentrations in Stafford Street during construction?</p> <p>b) Consideration of the methods prescribed for European Union Air Quality Directive (EU AQD) compliance monitoring and that there would not be any new exceedances of NO₂ concentrations during construction or operation?</p>	<p>a) and b) Local Highway Authorities to respond.</p> <p>The Applicant notes that DCiC and Highways England have agreed the assessment methods. New evidence is being submitted to the ExA by Highways England for Deadline 3 on EU compliance which DCiC has already seen and accepted.</p>
20.	<p>NO₂ compliance during construction, mitigation and monitoring</p> <p>ExA FWQ [PD-005] Q5.26, Q5.27, Q5.28, Q5.32</p> <p>Applicant response [REP1-005]</p> <p>DCiC response [REP1-034]</p> <p>EBC response [REP1-051]</p> <p>DCiC LIR [REP1-035]</p>	<p>Further to the Applicant's responses and comments, do the local authorities have any outstanding concerns about:</p> <p>a) The risks of non-compliance with the EU AQD in Stafford Street, or elsewhere during construction (preliminary works and main works); the need for more investigation; and the need for traffic management during the preliminary works?</p> <p>b) Risks and implications of delays to the implementation of DCiC's traffic</p>	<p>Local Highway Authorities to respond.</p> <p>The Applicant notes that for each of the questions:</p> <p>a) Response expected from DCiC. DCiC and Highways England have agreed that the Scheme will be compliant. New evidence will be submitted to the ExA by Highways England which DCiC has already seen and accepted.</p> <p>b) DCiC confirmed that their traffic management scheme is due to be implemented by the end of 2020, and thus prior to the start of the Scheme main works.</p> <p>c) DCiC already has a network of NO₂ diffusion tubes across the city. DCiC in their response to the first set of ExA questions stated that "<i>DCiC does not see</i></p>

No	Reference	Issue or Question	Applicant's Response
	<p>Applicant comments [REP2-020]</p>	<p>measures for Stafford Street and related mitigation?</p> <p>c) Should NO₂ monitoring be required of the Applicant during construction and, if so, where?</p> <p>d) Whether the OEMP provisions for communication and liaison with DCiC in respect to NO₂ in Stafford Street are clear and adequate?</p> <p>e) Whether DCiC or the Secretary of State should have the power to require action for changes to be made to the construction arrangements where monitoring suggests that the existing situation could be putting compliance with the EU AQD at risk; and whether DCiC would have other suitable options available to it?</p> <p>f) Whether mitigation measures are clear, adequate and secured appropriately by Requirement 3 and the OEMP?</p>	<p><i>additional NO₂ monitoring as an essential requirement in relation to the Scheme</i>“[REP1-033]. Highway England agrees with this.</p> <p>d) It has been agreed that the OEMP will be amended to include communication and liaison with DCiC regarding air quality (refer to Highways England comment to DCiC response to ExA question 5.28 in [REP2-020]) – proposed wording to be included in the OEMP is as follows “<i>During the Scheme construction phase, the main works contractor shall maintain close communications with DCiC regarding the Scheme air quality effects as associated with the construction traffic management proposals. The main works contractor shall work with DCiC to define appropriate solutions should any unexpected air quality effects associated construction traffic management be encountered.</i>” The updated OEMP is being submitted at Deadline 3.</p> <p>e) The Secretary of State approved the traffic management measures to improve air quality in Stafford Street on 13th May 2019 and a ministerial direction was issued for DCiC to comply with the legal limit value for nitrogen dioxide within the shortest possible time and by 2020 at the latest. These measures are the most suitable mechanism to reduce flows in Stafford Street. It would therefore not be reasonable for Highways England to change its construction arrangements for a Scheme that is expected to have a minimal effect on traffic flows in Stafford Street. In addition, DCiC would be able to reduce traffic flows on Stafford Street further, if</p>

No	Reference	Issue or Question	Applicant's Response
			<p>necessary, using its own traffic management measures.</p> <p>f) The OEMP is being updated to include actions to communicate and liaise with DCiC regarding air quality during the Scheme construction phase (refer to the response to point d) above). In addition, as per the Highways England comment to DCiC response to ExA question 5.27 in [REP2-020]) it is also proposed to amend the OEMP to indicate that <i>“During the Scheme detailed design stage, Highways England will review the contractor’s traffic management proposals and undertake an assessment of the potential air quality effects to determine whether they comply with the requirements of the ES and the OEMP. It is anticipated that this will indicate that the effects are similar to those are reported in the ES. In the unlikely event that the assessment indicates that the traffic management proposals give rise to materially new or materially worse environmental effects, this would indicate the need for the contractor to amend the traffic management proposals or propose additional mitigation”</i>. The revised OEMP is being submitted at Deadline 3. With these additions it is considered that mitigation measures are clear, adequate and secured appropriately by Requirement 3 and the OEMP.</p>
21.	NO ₂ compliance during operation, monitoring and mitigation ExA FWQ [PD-005] Q5.2	a) The sense checking suggested by DCiC, and the associated risks of non-compliance during operation, including to receptors located close to the A38 or other roads experiencing notable increases in traffic volume, or where	a) Further work has been carried out by Highways England to assess compliance. A briefing note containing the information issued to DCiC will be submitted to ExA at Deadline 3. DCiC has seen this assessment and is in agreement that the Scheme

No	Reference	Issue or Question	Applicant's Response
	<p>Applicant response [REP1-005] DCiC response [REP1-034] DCiC LIR [REP1-035] Applicant comments [REP2-020]</p>	<p>there are already high NO₂ concentrations.</p> <p>b) Whether partial removal or a delay in the complete removal of DCiC's Stafford Street Traffic Management Scheme could result in any significant air quality impacts in Stafford Street, or elsewhere? The need for modelling of this scenario?</p> <p>c) Should NO₂ monitoring be required of the Applicant during operation and, if so, where.</p> <p>The mitigation, if any, required to ensure no exceedances due to the proposed development and compliance with the EU AQD during operation.</p>	<p>would be compliant during both Scheme construction and operation.</p> <p>b) The DCiC traffic management measures would be beneficial for air quality in Stafford Street so a delay in their removal, or their partial removal, would be beneficial for air quality in Stafford Street. Effects elsewhere are not expected to be significant as air quality is compliant. It is thus not necessary to undertake additional modelling of this scenario.</p> <p>c) DCiC already has a network of NO₂ diffusion tubes across the city. DCiC in their response to the first set of ExA questions stated that "DCiC does not see additional NO₂ monitoring as an essential requirement in relation to the Scheme" [REP1-033]. Highway England agrees with this.</p> <p>During Scheme operation, all roads affected by the Scheme are expected to be compliant with NO₂ concentrations below 36ug/m³. NO₂ concentrations in the Scheme opening year of 2024 will be lower than those in 2021 due to a cleaner vehicle fleet in later years. As such, no further mitigation is required.</p>
Noise and vibration			
22.	<p>Significance of effect for construction noise ExA FWQ [PD-005] Q6.13, Q6.14 Applicant response [REP1-005]</p>	<p>a) Whether ES Chapter 9 [APP-047] should be updated to clarify the Applicant's advice that all exceedances of Significant Observed Adverse Effect Level (SOAEL) during construction have been identified as being significant, whatever the duration?</p>	<p>a) No update is required, as this is already stated in ES Chapter 9: Noise and Vibration [APP-047] para 9.3.23 (2nd bullet point) in the 'Assessment Methodology' section, para 9.10.5 in the 'Assessment of Likely Significant Effects' section and para 9.10.66 in the 'Compliance with NPSNN noise policy' section.</p> <p>b) There will be no difference in the methodology for identifying likely significant construction noise effects.</p>

No	Reference	Issue or Question	Applicant's Response
	<p>DCiC response (also to Q5.26) [REP1-034] EBC response [REP1-051] Applicant comments [REP2-020]</p>	<p>b) Whether the Applicant intends to adopt a different approach to identifying significant noise effects to that considered in the ES once the details of construction works are known? If so, how that is justified?</p> <p>c) Examples of the use of professional judgement and any "other factors" that would be considered to identify significant noise effects during construction in addition to those identified in paragraph 9.3.23 of ES Chapter 9, once the details of the construction works are known. Could this include exceedance of SOAEL for up to 10 days in 15 not being considered significant?</p> <p>d) The duration of significant effects currently anticipated during construction.</p> <p>e) Whether DCiC has any outstanding concerns about the Applicant's use of professional judgement to identify likely locations of significant effect during construction, either now or once the details of construction work are known?</p>	<p>Once more details on the duration of construction activities effects are available at the stage when a contractor is appointed by Highways England, the duration of the impact will be taken into consideration, as detailed in the methodology outlined in the ES para 9.3.23 [APP-047].</p> <p>c) No other factors, in addition to the duration of the impact and the location of the impact at the receptor, as detailed in the ES para 9.3.23 [APP-047], are proposed to be considered in the identification of significant construction noise effects. Therefore, an exceedance of SOAEL for less than 10 days in 15 would be unlikely to be considered significant, an exceedance of 10 days or more in 15 would be likely to be considered significant. An example of applying professional judgement would be if the exceedance of the SOAEL was very large and the duration was only just under the duration criteria, then a significant effect could, if appropriate in the circumstances given that this is an example, be identified (refer to the post hearing note provided below).</p> <p>d) The duration of the significant construction noise effects is illustrated in Appendix 9.2 of the ES [APP-219] in the form of graphs detailing the predicted monthly construction noise levels and the SOAEL for each receptor. A table summarising the duration of the exceedance of the SOAEL at each receptor was provided in response to FWQ 6.15 in Appendix E of the Appendices to Support Responses to Examining Authority's First Written Questions [REP1-006]. As discussed in the response to FWQ 6.15 [REP1-005] the durations provided are the number of months in</p>

No	Reference	Issue or Question	Applicant's Response
			<p>which an exceedance of the SOAEL is predicted. It should be noted that the duration of some activities, and therefore the significant effect, will be less than the whole month and therefore the impacts less than assessed using this conservative approach to the duration of effects.</p> <p>e) The SoCG with DCiC [REP2-013] states “DCiC confirm that they are content with the construction noise impact assessment methodology adopted in the ES”, and “DCiC has reviewed the noise and vibration impact assessment as presented in the ES and is content that it provides an appropriate assessment of the predicted noise and vibration impacts upon local residents and other potentially sensitive receptors”.</p> <p>Post Hearing Note – discussions between DCiC and the Applicant following ISH2 confirms the following:</p> <ul style="list-style-type: none"> • DCiC has agreed to the construction assessment methodology, as stated in the Statement of Common Ground (SoCG) [REP2-013]. The methodology has also been agreed by EBC in their SoCG [REP1-008]. • DCiC is in agreement that the duration of impact is a factor in identifying significant construction effects. • DCiC do not have a concern specifically with the duration criteria as started in the Environmental Statement (ES), instead their concern relates more to the potential risk of any such criteria being seen as a noise design criterion for the construction work i.e. giving Highways England a ‘licence’ to generate noise in an uncontrolled manner for e.g. for 9 consecutive days.

No	Reference	Issue or Question	Applicant's Response
			<p>To confirm, in the assessment reported in the ES, all exceedances of the SOAEL were reported as potentially significant. The duration criteria as set out in the methodology were not used to subsequently conclude that any exceedances of the SOAEL were not a significant effect. This approach was adopted as:</p> <ul style="list-style-type: none"> • the level of detail on the duration of activities needed to reliably determine the number of days of impact was not available (given that the construction programme has not, and cannot, be defined to this level of detail at this stage); and • combined with the robust assumptions on plant/working methods etc. this approach ensures the DCO decision is based on the worst-case construction significant effects. <p>During the detailed design process, following the DCO decision, more detailed information on durations/working methods/plant etc. will be available. The construction assessment will then be revisited to finalise locations of potentially significant construction effects. At that stage information on the actual duration of activities will be considered, in accordance with the method set out in the ES.</p> <p>As discussed in the ISH2 hearing, the criteria will not be applied rigidly as professional judgement will be used which will allow some flexibility in identifying impacts which do not meet the duration criteria to be identified as significant effects, or alternatively impacts which do not</p>

No	Reference	Issue or Question	Applicant's Response
			<p>exceed the SOAEL but occur for a long duration to be identified as significant.</p> <p>Whilst the identification of potentially significant construction effects will feed into the mitigation and monitoring proposed by Highways England as set out in the Construction Environmental Management Plan (CEMP)/Noise and Vibration Management Plan (NVMP), such locations will not be treated differently in terms of the requirement to adopt Best Practicable Means (BPM). This requirement, as secured by the Outline Environmental Management Plan (OEMP) (PW-NOI1 and MW-NOI1) [APP-249], applies to all works regardless of whether they are a source of significant effects or not. The OEMP (PW-NOI1 and MW-NOI1) requires that Highways England "shall detail the application of BMP within the CEMP or NVMP". The NVMP (PW-NOI3 and MW-NOI3) shall also detail the "integration of noise control measures in the preparation of all method statements for the works".</p> <p>The OEMP does not specify a different approach to minimising noise and vibration based on the duration of the works or if a significant effect is identified.</p> <p>DCiC and EBC will be closely consulted during the development of the CEMP and NVMP and will have ample opportunity to query the proposed mitigation and monitoring at specific locations as they see fit. As detailed during ISH2 in response to question 23, whilst the Secretary of State (SoS) rather than the Local Authorities will approve the CEMP and NVMP the draft DCO contains detailed provisions on how any areas of disagreement will</p>

No	Reference	Issue or Question	Applicant's Response
			<p>be dealt with and ultimately reported to the SoS if required (see Requirement 4 of the dDCO).</p> <p>On this basis the Applicant considers that the OEMP provides sufficient controls to prevent the duration criteria as set out in the ES being used as a threshold for designing the construction works to (i.e. not allowing Highways England to generate noise in an uncontrolled manner for e.g. 9 consecutive days).</p> <p>With regard to the action from ISH2 to revisit the choice of duration criteria for construction significant effects, the Applicant maintains that the durations chosen are reasonable and appropriate, as set out in response to FWQ 6.14.</p>
23.	<p>Construction uncertainties ExA FWQ [PD-005] Q6.17, Q6.19, Q6.20, Q6.25, Q6.37</p> <p>Applicant response [REP1-005] DCiC response [REP1-034] EBC response [REP1-051] DCiC LIR [REP1-035]</p> <p>Applicant comments [REP2-020]</p>	<p>a) Whether measures are required to ensure that the noise and vibration created by construction plant and equipment (including vibrating rollers and piling methods) would be no greater than considered in the Applicant's assessment.</p> <p>b) How uncertainties in relation to construction methods and the locations and durations of noise and vibration generating activities during construction would be dealt with. For example, how would contractors establish whether mitigation such as the use of hoarding, would be "<i>practical and effective</i>"?</p>	<p>a) With regard to piling, the ES is based on information provided by the buildability contractor appointed by Highways England that rotary bored piling would be adopted at the new bridges and retaining walls. A commitment has been added to the revised OEMP [APP-249] (MW-G9) submitted at Deadline 3 to exclude the use of impact or vibratory piling, which can be a potentially significant source of vibration. If during the detailed design Highways England identifies that an alternative piling method would be preferred, then under the requirements of the OEMP before adopting such an approach Highways England must demonstrate that it complies with the requirement to adopt Best Practicable Means (BPM) to minimise noise and vibration.</p>

No	Reference	Issue or Question	Applicant's Response
		<p>c) Local authority requirements for work to be carried out outside core construction working hours to be subject to their prior "agreement" or "approval". Whether those requirements are achieved by the "consultation" provisions in the dDCO and Outline Environmental Management Plan (OEMP).</p> <p>d) Whether Control of Pollution Act 1974 Section 61 consent for work to be carried out outside core construction working hours should be a firm requirement in the OEMP.</p> <p>e) DCiC consider that agreement with them in the development of the Construction Environmental Management Plan is vital. Do dDCO Requirements 3 and 4 secure an acceptable process for consultation on the development of the Construction Environmental Management Plan to be used during construction and how would any matters not agreed with consultees be handled?</p>	<p>Highways England does not consider that the specific size of the rollers needs to be secured in the dDCO or the OEMP. The assessment is based on robust assumptions regarding the likely size of the rollers, but some flexibility is needed by Highways England (through its construction contractor) in both the construction method and plant, including to allow for innovations developed during the detailed design. In addition, the OEMP requires that Highways England adopts Best Practicable Means (BPM) in terms of the choice of plant adopted. Therefore, minimising vibration will be a key factor in the choice of vibratory rollers.</p> <p>The EBC response to question 23 a) states 'This may be advisable e.g. monitoring and mitigation if needed to reduce levels to that of the assessment.'</p> <p>Further discussion with EBC following ISH2 has established that EBC is comfortable that the current provisions in the OEMP on monitoring and mitigation are sufficient, in particular the requirement for BPM to be adopted for all works. EBC is not proposing that noise limits corresponding to the predicted construction noise levels reported in the ES are imposed. On this basis no additions to the OEMP are proposed by EBC.</p> <p>b) This point was not discussed explicitly at the hearing therefore the Applicant provides the following written response. With regard to uncertainties relating to the construction works, DCiC state in their Local Impact Report [REP1-035] that they believe that this can be</p>

No	Reference	Issue or Question	Applicant's Response
			<p>dealt with appropriately, provided that the Council is involved in the development of the CEMP which is a commitment within the OEMP [APP-249] and draft DCO.</p> <p>It is not possible to define the exact types of plant that will be required during the construction phase given that the construction contractor has yet to be appointed. The current uncertainties with regard to construction methods, locations and durations will be resolved by the contractor following their appointment. With regard to establishing if hoarding would be practical and effective, this will be determined by Highways England in conjunction with DCiC and EBC, and the finalised locations set out in the Noise and Vibration Management Plan (NVMP) as required by the OEMP (secured by PW-NOI3 and MW-NOI3). In determining if hoarding would be effective, the key aspect is how much it would block the line of sight between the noise source and the receptor.</p> <p>Further clarification has been added to the OEMP submitted at Deadline 3 (PW-NOI3 and MW-NOI3) to confirm the NVMP will be based on information regarding actual plant requirements, and the location of hoardings will be established by Highways England in conjunction with DCiC and EBC.</p> <p>c) For works anticipated to be carried out outside of the core hours are stipulated in the dDCO (Requirement 3(2)(d)), it is confirmed that this includes the exclusion of Sundays and Bank Holidays.</p>

No	Reference	Issue or Question	Applicant's Response
			<p>Further discussions with both EBC and DCiC following ISH2 have been held to clarify that currently anticipated works outside of core hours are listed in the OEMP (PW-G4 and MW-G12). The OEMP does not require approval from the Local Authorities for these works, although as with all works DCiC and EBC will be consulted on the CEMP (and details of that consultation provided to the SoS as part of the Requirement 4). Approval of the CEMP lies with the Secretary of State, though the DCO requirements contains detailed provisions on how any areas of disagreement will be dealt with and ultimately reported to the SoS if required (as discussed at ISH2 with regard to e) below).</p> <p>The OEMP does require prior approval from the Local Authorities for any other works outside of core hours i.e. anything new that comes to light that is not listed in the OEMP or the dDCO (Requirement 3). It also requires Highways England demonstrates that any such activities do not result in materially new or materially worse environmental effects than reported in the ES.</p> <p>EBC has confirmed they are comfortable with this approach as currently set out in the OEMP – thus they do not require approval of the works outside of core hours as listed in the OEMP and Requirement 3 of the draft DCO.</p> <p>DCiC has queried if the list of works in the OEMP is reasonable and if some could not be done during the</p>

No	Reference	Issue or Question	Applicant's Response
			<p>day with individual lane closures. The Applicant's response to FWQ 6.19 outlines the reasons why each of the works listed in the OEMP are required outside of core hours. In summary these relate to safety and minimising disruption. Some works are, by definition, required at night, such as overnight traffic management measures. The remainder require the closure of the A38 to ensure the safety of both the workers on site and the travelling public. For example, gantries and bridge beams would be lifted into place over the 4 or 6 lanes of traffic. Completing such works over live lanes would not be permissible and would not accord with the Construction Design and Management (CDM) and the Health and Safety Executive (HSE) principles of risk elimination. Undertaking these works during the day would cause significant congestion and prolong the duration of the construction period. With regard to the installation of road markings, the safe zones required around the work areas would result in the closure of the lane on each side if lane lines are being applied so, for a 2-lane carriageway, would require a carriageway closure. During peak hours and daytime periods Highways England has committed to running two lanes in each direction. Therefore, to restrict the carriageway to a single lane to undertake some of the work activities would mean they would need to be carried out outside the core hours to fulfil the Applicant's commitments.</p> <p>d) The OEMP [APP-249] does not currently require Section 61 prior consent (PW-NOI2 and MW-NOI2) for works outside of core working hours to accord with the</p>

No	Reference	Issue or Question	Applicant's Response
			<p>preferences of the Local Authorities, in particular DCiC, as stated in their response to FWQ 6.20 [REP1-034]. EBC's response to the ISH2 questions states they would like to see a requirement for Section 61 prior consent in the OEMP. EBC has not previously stated this.</p> <p>Following further discussions with EBC, the OEMP (PW-NOI2 and MW-NOI2) has been revised to require a Section 61 application for works outside of core hours within EBC's administrative area. The existing text stating Highways England shall consider submission of a Section 61 application is retained for works within DCiC.</p> <p>e) Highways England considers that Requirements 3 and 4 provide an appropriate process for consultation on the development of the CEMP being used during Scheme construction. This is on the basis that the relevant planning authority and local highway authority will be consulted on the version submitted to the SoS for approval. Where matters are not agreed, these will be outlined in the consultation report that Highways England has to provide to the SoS (under requirement 4) and the SoS will have this information available to them when taking a decision on whether or not to approve the CEMP. At the ISH2 the councils confirmed that they are content with this approach.</p>
24.	Noise and vibration monitoring during construction	a) Whether the OEMP is sufficiently clear and adequate in requiring noise and/or	a) Details of noise and vibration monitoring to be undertaken during both the preliminary works and the main works will be set out in the Noise and Vibration Management Plan as required by the OEMP [APP-

No	Reference	Issue or Question	Applicant's Response
	<p>ExA FWQ [PD-005] Q6.34</p> <p>Applicant response [REP1-005]</p> <p>DCiC response [REP1-034]</p> <p>EBC response [REP1-051]</p> <p>Applicant comments [REP2-020]</p>	<p>vibration monitoring during the preliminary works "<i>as is necessary</i>".</p> <p>b) Should there be a firm requirement for monitoring at locations of potential significant impact where noise and vibration limits might be exceeded, as EBC suggest?</p> <p>c) Are OEMP provisions for dealing with noise or vibration complaints and for dealing with significant noise and/or vibration identified during construction clear and adequate?</p>	<p>249]. The Noise and Vibration Management Plan will be developed in consultation with DCiC and EBC, as required by the OEMP. It is noted that EBC are content as stated in their response to the ISH2 questions.</p> <p>b) It is likely that the monitoring locations adopted by Highways England will focus on those receptors in close proximity to the works, which are therefore identified as subject to potentially significant noise effects. However, at this stage before such locations are finalised and permission to access such locations is obtained, it is not considered appropriate to specify specific monitoring locations. The OEMP [APP-249] (PW-NOI5 and MW-NOI6) has been amended to include an explicit requirement to consult EBC and DCiC on the noise and vibration monitoring locations.</p> <p>Further discussions with EBC following ISH2 have clarified that the current OEMP does not explicitly require monitoring at locations of potentially significant effect, and that the main reasons for this are that at this stage these are not confirmed, and Highways England cannot guarantee it will have permission to access such locations. EBC and DCiC will be consulted on the overall CEMP, and the OEMP has been amended to include an explicit requirement to consult on the noise and vibration monitoring locations, therefore EBC and DCiC will have ample opportunity to influence the choice of monitoring locations. On this basis EBC has confirmed they are comfortable with the OEMP, including the amendment detailed above, and would not require any further changes.</p>

No	Reference	Issue or Question	Applicant's Response
			<p>c) The OEMP requires the Noise and Vibration Management Plan to include details of the process for implementing corrective actions that may be required to avoid or address any potential non-compliance (PW-NOI3 and MW-NOI3). As detailed in the OEMP [APP-249], the appointed construction contractor would have a Community Relations Manager who would have specific responsibility for communications with the public, stakeholders and other interested parties – specific responsibilities are detailed in OEMP Table 2.1. This role includes responding to any concerns or complaints raised by the public in relation to the works (including during the preliminary works and main works). This has been clarified in the version of the OEMP submitted at Deadline 3. Members of the public will also be able to call the Highways England Customer Contact Centre (HECCC) which is a 24/7 service should any issues arise in this regard. Any responses to queries associated with the Scheme works will either be given directly by the HECCC adviser or sent on to the Community Relations Manager for an answer. In addition, the contractor would have an Environment Manager whose responsibility would be to undertake site inspections to monitor compliance with the environmental licences and consents for the works and the measures within the Construction Environmental Management Plan (CEMP) (see Table 2.1 of the OEMP).</p> <p>Any complaints related to noise or vibration during the Scheme construction phase will be investigated by the Community Relations Manager, in liaison with the</p>

No	Reference	Issue or Question	Applicant's Response
			<p>Environment Manager, such that remedial measures can be implemented in accordance with the Noise and Vibration Management Plan. Similarly, if significant noise or vibration effects are identified during site inspections or monitoring, the Environment Manager will be responsible for ensuring that appropriate remedial measures are implemented, again in accordance with the Noise and Vibration Management Plan. It is noted that EBC is content with the proposed approach. Further detail on this issue has been added to the OEMP submitted at Deadline 3 in PW-NOI6 and MW-NOI9.</p>
25.	<p>Significance of effect for operational noise ExA FWQ [PD-005] Q6.4, Q6.13 DCiC response [REP1-034] EBC response [REP1-051] Applicant comments [REP2-020]</p>	<p>a) Comparison of SOAEL for operational traffic noise with those normally accepted for other types of development. b) Justification of SOAEL for operational traffic noise being higher than for other types of development. c) Has the use of professional judgement and consideration of “<i>other factors</i>” resulted in operational noise at any receptors experiencing noise above SOAEL being assessed as not significant?</p>	<p>a) and b) The operational traffic noise SOAELs are the same as that successfully adopted by the Applicant for numerous road schemes in recent years. Schemes where a DCO has been granted include A19/A184 Testos Junction Improvements, M20 J10A, M4 J3 to J12 Smart Motorway, A14 Cambridge to Huntingdon and A19/A1058 Coast Road Junction Improvement. The same approach to setting the SOAEL has also been adopted on other major infrastructure schemes such as the High Speed 2 rail project. Therefore, the SOAELs are not considered to be higher than that for other types of comparable development.</p> <p>In setting the LOAELs and SOAELs for road traffic noise used in the Environmental Statement (ES), a range of legislation, British Standards, research and guidance was considered. This includes the Noise Insulation Regulations, BS 8233 guidelines on acceptable internal noise levels in residential properties, Defra research into SOAELs and LOAELs</p>

No	Reference	Issue or Question	Applicant's Response
			<p>for various transport sources, WHO Guidelines and the Professional Practice Guidance: Planning and Noise (ProPG) on the potential effect on proposed residential sites from transport noise. The LOAELs and SOAELs adopted in the assessment correspond to those stated in the recent revision to the Noise chapter of the Design Manual for Roads and Bridges (DMRB) issued in late November 2019.</p> <p>EBC has stated in their response to ISH2 questions that they have no experience of similar size developments therefore no data to compare SOAELs to. EBC confirm for Breadsall and Mobile Home Park changes are unlikely to alter resident's response to road noise from the A38.</p> <p>Further discussions with DCiC following ISH2 have established that their main concern is that the SOAEL adopted in the ES could be seen as a 'right' to create noise up to that level. The National Policy Statement for National Networks (NPSNN) requires the Applicant to demonstrate how they have complied with the three aims within the NPSNN to avoid significant adverse effects (i.e. reduce levels below SOAEL), minimise adverse effects (i.e. reduce levels at locations between LOAEL and SOAEL), and improve where possible, in the context of sustainable development. A comprehensive discussion on how the Scheme achieves these aims is provided in the Compliance with Policy section of ES Chapter 9: Noise and Vibration [APP-047]. This section of the ES clearly demonstrates that the Applicant does not regard the</p>

No	Reference	Issue or Question	Applicant's Response
			<p>SOAEL as a level below which no action to reduce traffic noise levels needs to be considered. DCiC also highlighted their agreement that the operational traffic noise assessment methodology is appropriate as stated in the DCiC Statement of Common Ground [REP2-13], and the conclusion to their response to FWQ 6.4 which states '<i>Consequently, DCiC accepts the approach for determination of noise impacts outlined in the ES and the associated process for mitigation appraisal.</i></p> <p>c) No, all receptors anticipated to experience road traffic noise levels above the SOAEL are considered to experience a significant adverse effect in policy terms.</p>
26.	<p>Road surfacing and noise barrier mitigation ExA FWQ [PD-005] Q6.26, Q6.29 Applicant response [REP1-005] Breadsall Parish Council response [REP1-027] Applicant comments [REP2-020]</p>	<p>a) The Applicant has stated that very low surfacing would be effective at speeds greater than 75km/h. It is noted that A38 speed limits would be greater than 75km/h. What would be the difference in noise levels from the use of very low surfacing on the main carriageway of the A38 at receptors in the vicinity of the three junctions, other sections of the A38 included in the Proposed Development, or other parts of the A38 where the speed limit would be increased?</p> <p>b) The difference in sound levels on the opposite side of the road to reflective barriers and whether the difference compared with absorptive noise barriers could approach 3dB, i.e. a</p>	<p>a) Speed limits on the A38 mainline are above 75km/hr within the Scheme extents, however, for the section of 50mph (80km/hr) speed limit between Kingsway junction and Kedleston Road junction the 18hr Annual Average Weekday Speed (AAWT) predicted by the traffic modelling is below 75km/hr (modelled/pivoted speeds generated by the traffic model are around 65-70km/hr). Therefore, for the Kingsway and Markeaton junctions section updating the operational traffic noise assessment to assume very low noise surfacing would not affect the noise assessment results in this area. At Little Eaton junction assuming very low noise surfacing, instead of low noise surfacing, is likely to result in some reduction in traffic noise levels at some facades of nearby receptors. As very low noise surfacing is currently not a standard surface type utilised by Highways England, a standard assumption for the additional benefit it would provide is not</p>

No	Reference	Issue or Question	Applicant's Response
		<p>doubling of noise levels. The decrease in noise levels in Markeaton Park that would result from the use of absorptive noise barriers.</p>	<p>available. Due to higher initial costs and increased maintenance requirements, very low noise surfacing has only been adopted to date for specific sections on a small number of schemes. Based on data available for such schemes, the additional reduction in traffic noise levels at source is likely to be in the region of - 1.75dB. At the position of receptors in the vicinity of the Little Eaton junction a smaller benefit is likely to be achieved due to the noise contribution from other roads such as the junction itself, the A61, the B6179 Alfreton Road, local roads through Breadsall, and sections of the A38 to the north and south outside of the Scheme extents. Very low noise surfacing is not proposed as part of the Scheme design for Little Eaton junction as it is not considered to be necessary or sustainable mitigation, given that no significant increases in traffic noise are predicted in the vicinity of Little Eaton junction. With the proposed low noise surfacing and noise barriers incorporated into the Scheme design, the magnitude of the increase in traffic noise levels is negligible at the worst affected facades of properties in Breadsall. At some facades facing the A38, a negligible or minor reduction in traffic noise is anticipated, the worst-case negligible increases at properties on the edge of Breadsall closest to the A38 are primarily on facades facing local roads. The Ford Farm Mobile Home Park would generally experience a negligible decrease in noise levels, with some facades experiencing a minor reduction given that the junction moves slightly further away with the Scheme, again any negligible increases are primarily due to the B6179 Alfreton Road rather than the A38.</p>

No	Reference	Issue or Question	Applicant's Response
			<p>No change in speed limit is proposed on other sections of the A38 outside of the Scheme extents.</p> <p>b) The predicted reduction in traffic noise levels at a receptor on the opposite side of a road to an absorptive barrier, compared to a reflective barrier, are generally small. For example, between Kingsway and Markeaton junctions where noise barriers are proposed on both sides of the A38, the reduction is generally in the range 0.5 to 1.5 dB. In addition, the guidance in the 2011 Design Manual for Roads and Bridges (DMRB) identifies that the predicted benefit of an absorptive barrier can overestimate what is actually achieved. On this basis, a conservative approach was adopted in the noise assessment and the additional benefit of the proposed absorptive barriers has not been included in the results reported in ES Chapter 9: Noise and Vibration [APP-047].</p> <p>It should be noted that a 3dB increase relates to the doubling of the sound energy, not the perceived noise level. For example, if the noise level as measured at the receptor in the vicinity of a noise source, such as a single dump truck, is 60dB(A) then doubling the noise source (i.e. increasing the number of dump trucks from 1 to 2) would increase the measured noise level to 63dB(A). In non-laboratory conditions a change of 3dB is normally considered to be when a change becomes perceptible to most people. A 10dB increase is normally considered to result in a doubling of the perceived noise level. This would correspond to a tenfold increase in the source i.e. changing from 1 to 10 dump trucks.</p>

No	Reference	Issue or Question	Applicant's Response
			<p>Regarding Markeaton Park, it is assumed the question relates to the proposed 4m high noise barrier at the Royal School for the Deaf. The operational traffic noise assessment completed for the ES did not consider an absorptive barrier in this location as the barrier is set back from the A38 and the impact of the Scheme on the closest approach of the park on the opposite side of the A38 indicates a major reduction in traffic noise, due to the relocation of the A38 further away. Therefore, the potential additional cost of an absorptive barrier is not considered to be sustainable mitigation. However, it is noted that some of the barrier options to be considered during the detailed design (i.e. ones incorporating vegetation), would inherently be absorptive.</p>
27.	<p>Royal School for the Deaf Derby RR by Hinson Parry & Company on behalf of Royal School for the Deaf Derby [RR-019] Applicant response [REP1-003] ExA FWQ [PD-005] Q6.18, Q6.21, Q6.26, Q6.35, Q6.39 Applicant response [REP1-005] DCiC response [REP1-034]</p>	<p>a) Further to the Applicant's responses and comments, do the Royal School for the Deaf Derby or DCiC have any further comments on the Applicant's assessment or proposed mitigation measures with respect to noise and vibration impacts on the Royal School for the Deaf Derby during the construction and operation of the proposed development? b) Should the installation of the 4m high noise barrier, or a temporary equivalent, adjacent to the Royal School for the Deaf Derby before the demolition of the houses on Queensway should be a requirement?</p>	<p>a) RSDD / DCiC to respond. b) The provision of the noise barrier adjacent to the Royal School for the Deaf will be secured as part of requirement 15 (see requirement 15(2)) and is also specified within the OEMP [APP-249]. This requires that the noise barriers provided as part of the Scheme must be provided as shown on the environmental mitigation plans, or where the mitigation proposed materially differs from what is shown on these plans, Highways England has to provide evidence demonstrating that the revised mitigation would not give rise to any materially new or materially worse adverse environmental effects compared to those assessed in the ES. When the barrier is erected, however, is a matter for detailed design. A number of unknowns remain at present with regard to access to the land where the noise barrier is</p>

No	Reference	Issue or Question	Applicant's Response
	Applicant comments [REP2-020]	Should best endeavours to do so be a requirement?	to be erected, as all the properties on Queensway will need to be secured by Highways England prior to the commencement of any works. The ambition is for this work to be completed ahead of the demolition of the houses as this provides the best solution for all parties. The aspiration to install the noise barrier prior to the demolition of the Queensway buildings has been included in the revised OEMP to be submitted at Deadline 3 (MW-NOI7). This is an all reasonable endeavours rather than best endeavours requirement as the cost of taking such steps is a relevant consideration for Highways England as a publicly funded body. If early installation of the noise barrier is not possible, alternative methods of noise mitigation shall be provided (e.g. temporary barriers etc), this is secured in the revised OEMP(MW-NOI7).
Landscape and visual impact			
28.	Whether the methodology used in the landscape and visual assessment properly reflects the impacts of the proposals ExA issue / question [PD-003] Q9.1, Q9.7 Applicant response [REP1-005] DCC response [REP1-030]	a) Update on the additional photomontages based on the North Avenue Inquiry. Issues, outcome and relevance of that Inquiry. b) Do the revised representative viewpoints and new photomontages allow the landscape and visual impacts of the proposal to adequately assessed?	a) A number of photomontages were issued at Deadline 2 as requested by the ExA [REP2-021]. In addition, DCiC requested that Highways England prepare a number of additional photomontages that were of relevance to the North Avenue inquiry in order to assist their review of Scheme effects upon the Derwent Valley Mills World Heritage Site (DVMWHS). These photomontages have been completed and issued to DCiC and DCC, with copies also being made available to the DVMWHS Partnership. A meeting was held with the DVMWHS Partnership on 5 th December 2019, which included a review of these photomontages. These new photomontages and a location figure are included within Highways England's submission for Deadline 3.

No	Reference	Issue or Question	Applicant's Response
	<p>DCiC response [REP1-034]</p> <p>ES Figure 7.5a [REP2-011]</p> <p>Additional Photomontages [REP2-021]</p>		<p>The North Avenue Inquiry (Planning Ref 09/15/01172) related to a planning application to construct 49 residential properties within the DVMWHS Buffer Zone. The site was located to the south of the A38 Palm Court junction. The planning application would have involved the removal of open agricultural land and replacement with new built form and would involve the re-landscaping of the existing landform. This would have been in conflict with the OUV of the WHS, particularly Value 3 regarding the 'relict' landscape. Both DCiC and Historic England judged the development to be harmful to the OUV of the WHS. The appeal was dismissed as it was considered that the harm was not outweighed by the public benefits of a private housing estate.</p> <p>The North Avenue Inquiry is of interest given the comments as related Value 3 of the OUV of the WHS. However, effects associated with a permanent residential housing estate are very obviously different to the effects associated with the Scheme. Nevertheless, as requested by DCiC, a number of additional photomontages from viewpoints of relevance to the North Avenue Inquiry have been generated.</p> <p>b) Highways England believes that the existing viewpoints used to support ES Chapter 7: Landscape and Visual [APP-045] allow the Scheme landscape and visual effects to be adequately assessed. The new photomontages (those requested by the ExA and those generated for North Avenue Inquiry viewpoints) have thus not been used to assess the landscape and visual effects of the Scheme. In particular, the photomontages generated for North</p>

No	Reference	Issue or Question	Applicant's Response
			<p>Avenue Inquiry viewpoints have been generated to assist DCiC, DCC and the DVMWHS Partnership in their review of Scheme effects upon the DVMWHS.</p>
29.	<p>The effect of the Little Eaton junction on the character and appearance of the landscape</p> <p>ExA issue / question [PD-003] Q9.1, Q9.7</p> <p>Applicant response [REP1-005]</p> <p>DCC response [REP1-030]</p> <p>DCC LIR [REP1-031]</p>	<p>a) What is the essential character of the landscape at and around the Little Eaton junction; is its sensitivity to change set out in the ES appropriate and agreed?</p> <p>b) What is the contribution of the existing junction to that character and sensitivity?</p> <p>c) What would be the effect of the proposal on that character?</p> <p>d) Would the replacement of the proposed embankments and planting with a viaduct significantly reduce the impact of the proposal on landscape character?</p>	<p>a) Little Eaton junction is located within two Local Character Areas (LCAs), namely: LCA 8 Darley Abbey & Derwent Valley Flood Plain and LCA 10 Little Eaton & Breadsall Greenbelt, as illustrated in ES Figure_7.4 [APP-090].</p> <p>LCA 8 is an area which is largely open floodplain and affords open long distant views. It contains the Derwent Valley Mills WHS, Darley & Nutwood Local Nature Reserve (LNR), Darley Abbey conservation area and it falls part within the green belt. The Derwent Valley Heritage Way runs through this area and is of recreational value. The LCA has a good landscape quality and condition. This LCA sits on the River Derwent floodplain and has already been affected by the A38 in the north. The A38 thus forms part of the existing baseline.</p> <p>The LCA's value is high and susceptibility is medium/low to the Scheme. This was questioned by DCC in their Written Representation [REP1-030] and Local Impact Report [REP1-031] who stated that susceptibility should be at least medium. Highway England's response to this in [REP2-020] disagreed with this susceptibility rating due to the presence of the existing A38. It is noted that even if the if the susceptibility was upgraded to medium, the LCA's sensitivity would not change from moderate.</p> <p>LCA 10 consists of rural green belt area, and the open rural land allows for attractive distant views. Breadsall village and rural land are representative of the area and</p>

No	Reference	Issue or Question	Applicant's Response
			<p>historic associations are representative in the use of local stone as a building material. Little Eaton and Breadsall villages have been designated conservation areas and Derwent Valley Heritage Way is of recreational interest. This area has a good landscape quality and condition. The A38 forms part of the existing baseline.</p> <p>LCA 10 value is high and medium susceptibility to the Scheme. The LCA has a moderate sensitivity. DCC in their Written Representation [REP1-030] and Local Impact Report [REP1-031] did not comment on the defined sensitivity for LCA 10.</p> <p>b) The existing A38 and Little Eaton junction form part of the existing landscape baseline within both LCA 8 and LCA 10. The Scheme will be focused along the route of the existing A38 highway infrastructure and will not be dissimilar in nature to the existing baseline. The Scheme will not introduce anything that is significantly different in character or make a significant increase to the scale of what is currently already located within these LCAs. Therefore, it is considered that susceptibility to the Scheme will not be any higher than medium/low and medium (LCA 8 and LCA 10 respectively) due to the presence of the existing A38 - this in turn creates a sensitivity of moderate for both LCA 8 and LCA 10, as sensitivity is the combination of value and susceptibility.</p> <p>c) Scheme improvements to the A38 at Little Eaton junction will see the already part-elevated A38 increased in height, with the mainline passing approximately 9m above the existing roundabout. As the A38 is currently elevated above the floodplain and within the World Heritage Site, it</p>

No	Reference	Issue or Question	Applicant's Response
			<p>is not considered that the improvements will be completely incongruous within the landscape. The highway infrastructure will be higher in the landscape; however, the photomontages illustrate that fewer vehicles travelling on the A38 will be seen due to planting on the embankments as well as noise/ screening barriers. It is acknowledged that additional highways elements such as noise/ screening barriers and highway runoff attenuation measures may be "perceived as alien features in the landscape", but they are not considered to be out of context with highway infrastructure and will be integrated and screened from the wider landscape by appropriate planting. It is also acknowledged that whilst planting on the A38 mainline embankments will reduce the intervisibility of the floodplain and adjacent landscape, it will provide opportunities for screening views of tall vehicles and the highway infrastructure. This will help reduce the overall impact of the Scheme within the landscape as a whole.</p> <p>Within LCA 8, mitigation measures included within the landscape design includes woodland and shrub planting on the new mainline A38 embankment and associated slip roads. However, the planting would not have established and taken full effect in year 1 after Scheme opening – thus the A38 would have a greater influence on this LCA than at baseline (noting that lighting columns would not be placed along the new A38 mainline). It is assessed that there would be moderate adverse effect on this moderate sensitivity LCA during year 1. By year 15 the impact would reduce due to maturing landscape planting, resulting in a slight adverse effect.</p>

No	Reference	Issue or Question	Applicant's Response
			<p>Within LCA 10, mitigation measures included within the landscape design including the creation of ecology ponds alongside the realigned Dam Brook; woodland and tree planting on A38 mainline embankment and associated slip roads and amenity grassland planting. Such planting would not have established and taken full effect at year 1 Scheme opening and thus the elevated A38 mainline section would have a greater influence on this LCA and the southern extents of the green belt than at baseline (noting that lighting columns would not be placed along the new A38 mainline). It is assessed that there would be moderate adverse effect on this moderate sensitivity LCA during year 1. By year 15 the impact would reduce due to maturing landscape planting, resulting in a slight adverse effect.</p> <p>d) In their Written Representation [RR1-030] and Local Impact Report [REP1-031] DCC state that placing the A38 on a simple elegant viaduct would potentially reduce the Scheme impacts upon the landscape (and the WHS). Following the Highways England meeting with the DVMWHS Partnership on the 5th December 2019 and the Partnership's review of the Scheme design and the recently generated photomontages (including those in [REP2-021] and those generated at the request of DCiC referred to in question 28a above), it is apparent that concerns regarding the Scheme design effects upon the prevailing landscape at Little Eaton junction and the WHS have largely been allayed. As a result, DCC has confirmed that they are no longer recommending an alternate design approach that includes a viaduct.</p>

No	Reference	Issue or Question	Applicant's Response
			<p>Highways England do not consider that a viaduct solution would reduce Scheme impacts on landscape character or upon the WHS. Highways England also consider that the current Scheme design does not need to be changed – the associated landscape planting on the new A38 embankment would not be out of character with areas of woodland currently within the area, on the existing A38 embankment, along the railway line, within the Darley Abbey Nature reserve and between the A38 and Breadsall. Such landscape planting means that by year 15 of operation, landscape effects would be slight and thus not significant. The current Scheme design is also assessed as not having a significant adverse effect upon the WHS (slight adverse effect i.e. negligible impact upon an asset of very high value), whilst the Scheme design includes a range of measures that mitigate noise and visual impacts upon residents in the vicinity of the junction.</p>
30.	<p>The effect of the Little Eaton junction on the openness of the Green Belt</p> <p>ExA issue / question [PD-003] Q10.5, Q10.6</p> <p>Applicant response [REP1-005]</p> <p>DCC response [REP1-030]</p> <p>DCC LIR [REP1-031]</p>	<p>The Applicant, DCC and EBC agree that the proposal would have 'an impact' on openness, although the Applicant considers that it would not result in 'material harm'. Having regard to the spatial and visual aspects of Green Belt openness, and to the purpose of the proposed development, would its impact amount to harm such that it would not preserve the openness of the Green Belt?</p>	<p>Highways England would refer back to its response submitted to Deadline one to Q10.6(a) which sets out its opinion on the spatial and visual aspects of Green Belt openness within the context of the Scheme:</p> <p><i>Openness is commonly referred to as the absence of built development, however it should be noted that the existing A38 corridor travels through the green belt designation, severing it in a north south direction and includes; junctions, signage and large planted embankments in its current form. Where the Scheme is situated, on the southern edge of this green belt designation, openness is less due to the proximity of further built form. This includes Breadsall Village itself and whilst the village is inset from the Green Belt and the areas of Oakwood to the</i></p>

No	Reference	Issue or Question	Applicant's Response
	<p>EBC Response [REP1-051] EBC LIR [REP1-050]</p>		<p><i>east and Allestree to the west lie outside of the Green Belt (the latter two areas falling within the administrative boundaries of Derby City Council) they set a context of denser built development, that extends in parallel at either side of the Little Eaton junction. The spatial context of this part of the Green Belt is therefore different in the extent of existing built form, in comparison to the more open and rural parts of the Green Belt that extend beyond the Scheme area to the north east, such as the area that lies between Little Eaton and Morley and beyond.</i></p> <p><i>The Scheme, although more elevated, has the same characteristics as the current A38 and it is considered that it does not significantly increase the extents of the A38 into the surrounding area. In addition, the Scheme design has also been carefully considered so as to minimise the extent of intrusion into the Green Belt, so far as has been reasonably possibly, whilst also delivering a Scheme design that meets with highway safety standards. To further protect against intrusion into the openness of the Green Belt, the Scheme includes the implementation of various mitigation measures within the landscape design and includes woodland and tree planting on the A38 mainline embankment and associated slip roads; amenity grassland planting on closed sections of the A38; and planting associated with the 2.5m high noise and screening barriers. Whilst this planting will need to mature and establish to its full effect, over time, this would assist in the further integration of the Scheme within the landscape. At full maturity of this planting, the changes to the landscape character would reduce to negligible, thereby further reducing the impacts on openness. This has also been considered through the assessment of</i></p>

No	Reference	Issue or Question	Applicant's Response
			<p><i>visual effects at representative viewpoints 18, 20, 21, 23, 24 - residential and recreational locations as detailed in the Environmental Statement Figure 7.5 [APP-091]. In this respect, it is considered that the Scheme would not give rise to significant visual effects in the Green Belt, taking into account the maturing landscape, intervening landscape and distance from the Scheme. Taking all of these factors into account, it is the judgement of Highways England that no demonstrable and unacceptable harm would result to the openness of the Green Belt and as such there would be no material conflict with Green Belt policy objectives as set out within the NPSNN and the NPPF.</i></p> <p>Highways England also note the position of DCC as presented orally at ISH 2; that they consider there is no discernible impact on the Green Belt. Equally, EBC presented the same opinion, but also noted that Very Special Circumstances would apply in any event.</p>
The historic environment			
31.	<p>The effect of the Little Eaton junction proposals, including the flood compensation works, on the Outstanding Universal Value (OUV) of the Derwent Valley Mills World Heritage Site (WHS)</p> <p>ExA issue / question [PD-003] Q11.2, Q11.5, Q11.6</p>	<p>a) How, and to what extent, does the character of the landscape at the Little Eaton junction, existing built features and the heritage assets within it, contribute to the OUV (having regard to its attributes, authenticity and integrity) of the WHS?</p> <p>b) How, and to what extent, would the junction proposal and the flood compensation works impact on the OUV of the WHS?</p>	<p>a) The character of the historic landscape at Little Eaton junction and how this contributes to the Outstanding Universal Value (OUV) of the WHS is outlined in the Heritage Impact Assessment [APP-173 Section 4.9]. This discusses the individual attributes of the OUV, as well as their contribution to authenticity and integrity as it is set out in the Statement of Outstanding Universal Value (SoOUV). The area forms part of the River Derwent floodplain, an open area of semi-rural landscape which reflects the harnessing of the waterways and forms a backdrop to the development of the mills and factories. As such, the area</p>

No	Reference	Issue or Question	Applicant's Response
	<p>Applicant response [REP1-005] Heritage Impact Assessment [APP-0173] DCC response [REP1-030] DCC LIR [REP1-031] DCiC response [REP-034] EBC response [REP1-051] EBC LIR [REP1-050]</p>	<p>c) How, and to what extent, would the proposals impact on other heritage assets which contribute to the significance of the WHS? d) What would be the effect of the proposed mitigation measures? e) Are there other measures, or amendments to the scheme, which could reduce its impact? f) What would be the residual impact of the junction proposal and the flood compensation works on the OUV of the WHS? g) Has the Department for Culture, Media and Sport been consulted regarding the effect of the proposal on the WHS?</p>	<p>contributes to values 1,2 and 3 as set out in the SoOUV and the WHS Management Plan 2014. In particular, the area contributes to the understanding of the relict industrial landscape as conveyed in value 3.</p> <p>In relation to authenticity, the relevant factors expressed by the Landscape at the Little Eaton junction is Landscape and setting: the relationship between the attributes of the rural landscape.</p> <p>In relation to integrity, the relevant factors expressed by the landscape at the Little Eaton junction is the <i>'relationship of the industrial buildings and their dependent urban settlements to the river and its tributaries and to the topography of the surrounding rural landscape...'</i></p> <p>The existing A38 embankment forms part of this landscape. It does not contribute to the OUV of the WHS; however, it does not remove the ability to understand the OUV. The existing A38 embankment was present at the time of WHS inscription. The removal of the A38 road embankment is not an objective or aim of the current WHS Management Plan 2014.</p> <p>The main junction works at Little Eaton junction (east of the railway) are located outside the WHS boundary and buffer zone.</p> <p>b) The impact of the Scheme works and floodplain compensation works on the Attributes, Integrity and Authenticity which together form the OUV of the WHS is assessed at Section 7.2 of the Heritage Impact Assessment (HIA) [APP-173]. This acknowledges changes to the existing road network, including the construction of Little Eaton junction. There would be a temporary impact</p>

No	Reference	Issue or Question	Applicant's Response
			<p>as a result of the construction of the floodplain compensation area to the west of the River Derwent, but this would be reinstated to an agricultural landscape which would blend it into the existing natural landscape. The Scheme would therefore have little discernible change on the landscape and the way the area is experienced or understood.</p> <p>In accordance with the inscribed integrity of the WHS, the Scheme would maintain the interdependence between the built elements and the natural landscape. With regard to authenticity, the Scheme allows the landscape to continue to reflect the attributes of the WHS and the rural landscape.</p> <p>It is considered that the Scheme would not damage the OUV of the WHS. As detailed in the HIA Section 8 [APP-173] <i>“Overall the Scheme has been assessed to have a slight adverse effect on the OUV of the WHS as a whole (i.e. a negligible impact upon an asset of very high value). It has also been assessed as leading to less than substantial harm to the significance of the WHS under the NPPF.”</i> It is also noted that Historic England has reviewed the HIA and has confirmed that they are content with the HIA findings and assessment methodology (as included in the SoCG with Historic England [REP1-012]).</p> <p>c) The HIA assesses the impact of the Scheme on assets within Darley Abbey, and Allestree Hall and Park [APP-173 Section 7.1]. The Scheme would not be appreciated from either group.</p> <p>d) As set out in the ES Chapter 6: Cultural Heritage Section 6.14 [APP-044], the Scheme has been designed to minimise impacts on the OUV of the WHS, including the</p>

No	Reference	Issue or Question	Applicant's Response
			<p>minimising of works within the WHS. The landform design of the floodplain compensation area has been developed with input from landscape, ecological and cultural heritage specialists with the aim that it creates a naturalistic profile that blends in with the surrounding valley profile, as well as enabling the land to be returned to agricultural use.</p> <p>Mitigation measures have been embedded within the Scheme design, including landscape planting to reduce the visual intrusion caused by the Scheme. Such mitigation measures are considered to be appropriate and have been taken into account when assessing the Scheme effects upon the WHS.</p> <p>e) As detailed in the HIA [APP-173] <i>“Overall the Scheme has been assessed to have a slight adverse effect on the OUV of the WHS as a whole (i.e. a negligible impact upon an asset of very high value). This assessment takes into account the mitigation measures incorporated into the Scheme design at Little Eaton junction which have been defined with input from landscape, ecological and cultural heritage specialists. No further measures are considered to be necessary to mitigation Scheme effects on the WHS. There is however agreement that during the detailed design stage Highways England will consult with the DVMWHS Partnership, DCC and DCiC regarding the detailed design of the floodplain compensation area layout, the junction lighting proposals, and the junction landscape planting.</i></p> <p>f) Refer to the response to point b) above as this covers residual effects.</p> <p>g) Historic England has confirmed that <i>“With regard to the A38 Junctions Scheme’s impact upon the Outstanding</i></p>

No	Reference	Issue or Question	Applicant's Response
			<p>Universal Value (OUV) of the Derwent Valley World Heritage Site our advice to the Department for Digital Culture Media and Sport is that significant impact upon OUV is unlikely." "Hence, the A38 Junctions scheme did not in our view require notification to the World Heritage Centre (Paris) in accordance with paragraph 172 of the Operational Guidelines for the Implementation of the World Heritage Convention." This is also covered in the SoCG with Historic England [REP1-012].</p>
32.	<p>Whether the impact on heritage assets has been adequately quantified and whether the public benefits of the scheme outweigh that harm</p> <p>ExA issue / question [PD-003] Q11.2</p> <p>Applicant response [REP1-005]</p> <p>Heritage Impact Assessment [APP-0173]</p> <p>Statement of Reasons [APP-020]</p> <p>DCC response [REP1-030]</p> <p>DCC LIR [REP1-031]</p> <p>DCiC Response [REP-034]</p>	<p>a) Is there anything to suggest that the harm to heritage assets would not be less than substantial?</p> <p>b) Would the public benefits of the proposal outweigh that harm?</p>	<p>a) and b) Reference should be made to the Heritage Impact Assessment para. 8.4.1 [APP-173] which identifies less than substantial harm to the WHS as a result of the Scheme. Table 6.11 in ES Chapter 6: Cultural Heritage [APP-044] summarises several "slight adverse" effects to a number of other heritage assets. These are considered to constitute less than substantial harm in accordance with the NPSNN paragraph 5.131 and the NPPF paragraph 193.</p> <p>In respect of the public benefits of the Scheme, these are outlined in the Statement of Reasons [APP-020] and are considered to clearly outweigh the level of harm (in this case which is judged to be less than substantial) that will result to the identified heritage assets. In coming to this conclusion, it noted that paragraphs 5.133 and 5.134 of the NPSNN emphasise that it is for the decision maker, in this case the Secretary of State, to make this judgement rather than an Applicant.</p>

No	Reference	Issue or Question	Applicant's Response
	EBC Response [REP1-051] EBC LIR [REP1-050]		
Other policy and factual issues			
33.	Significance of increases in greenhouse gas emissions ES Chapter 14 [APP-052] paragraphs 14.3.1 – 14.3.17. ExA FWQ [PD-005] Q12.1 Applicant response [REP1-005] DCiC LIR [REP1-035] EBC LIR [REP1-050] Applicant comments [REP2-020]	The Applicant's assessment compares estimated greenhouse gas emissions arising from the proposed development with the relevant UK carbon budgets, and the associated reduction targets. a) What is the logic for magnitude of increase being considered for CO ₂ when exceedance of limit values is considered for other emissions? b) Has any assessment been made of the proportion of the UK carbon budget that can be allocated to the proposed development? c) What level or increase in greenhouse gas emissions due to the proposed development would be considered significant?	a) Exceedance of limit values looks at the impact of emissions on local atmospheric concentrations and as such is associated with air quality issues. The Applicant does not consider that it would be appropriate to assess CO ₂ emissions in this way as the impact of CO ₂ is at a global level not at a local level. The receptor for CO ₂ emissions is the global climate. In addition, unlike other air emissions, there is no published guidance or requirements on exceedance limits for CO ₂ emissions at a local level. The impact of CO ₂ emissions on climate change has a global effect, the Applicant therefore considers it appropriate to consider the wider global context, using the UK carbon budgets, which set CO ₂ e limits at a national level, as a proxy for global climate. The assessment of carbon emissions impacts as presented in ES Chapter 14: Climate [APP-052] has followed the requirements outlined in the Interim Advice Note (IAN) 114/08 including the use of the Highways England Carbon Calculation tool. IAN 114/08 sets out Highways England's requirements for carbon calculation and reporting for the design, construction and operation of Major Project Schemes. The methodology outlined in IAN 114/08 follows accepted industry practice for carbon accounting in that it aligns with the approach and method

No	Reference	Issue or Question	Applicant's Response
			<p>advocated by the World Business Council for Sustainable Development (WBCSD/World Resources Institute (WRI) Greenhouse Gas Protocol and the Institute of Environmental Management and Assessment (IEMA) Guidance on Assessing Greenhouse Gas Emissions and Evaluating their Significance.</p> <p>The assessment is further supported by a range of other up to date and directly relevant sources of guidance and climate science. This includes guidance and information published by the Institute of Environmental Management and Assessment (IEMA) on both assessing Greenhouse Gas Emissions and Evaluating their Significance, and the Committee on Climate Change carbon budgets (Cited in ES Chapter 14 [APP-052]). Therefore, the approach taken reflects widely recognised and accepted industry practice and modern climate science.</p> <p>b & c) No assessment has been made of the proportion of the UK carbon budget that can be directly allocated to the Scheme. UK carbon budgets set maximum allowable CO₂e emissions at a national level. They allow for cumulative emissions across a range of sectors for example domestic transportation. There is currently no specific guidance regarding significance levels for GHG emission impacts, although the guidance does suggest consideration should be given as to whether GHG emissions will have a material impact on the UK meeting its national carbon targets. The UK carbon budgets and the percentage impact the Scheme contributes towards the carbon budget, has therefore been used to determine the level of significance. In GHG accounting it is common practice to consider exclusion of emission sources that are</p>

No	Reference	Issue or Question	Applicant's Response
			<p><1% of a given emissions inventory on the basis of a 'de minimis' contribution. Both the Department of Energy and Climate Change (DECC)¹ and the PAS 2050 (2011) Specification² allow emissions sources of <1% contribution to be excluded from emission inventories, and for these inventories to still be considered complete for verification purposes.</p> <p>Recognising the focus in climate related issues Highways England has used this 1% to identify that anything over this amount of a carbon budget could be considered significant i.e. anything that is greater than "de minimus" in carbon accounting rules should be/ could be "significant".</p> <p>The results of the carbon assessment in ES Chapter 14: Climate [APP-052] presents the impact of the Scheme as measured against the UK meeting its existing carbon budgets, which at the time of the assessment were set through to 2032. Each carbon budget provides a forecast for a permissible level of carbon emissions within a five-year period. The carbon budgets allow for an increasing reduction in emissions over time to allow for the implementation of necessary policy change and improved technologies to allow for the 2050 target to be met.</p> <p>The Governmental Committee on Climate Change has announced that they intend to publish revised carbon budgets in light of the new 2050 target. However, these revised budgets are not expected until at least September</p>

¹ Department of Energy and Climate Change, (2013); Guidance on Annual Verification for emissions from Stationary Installations.

² British Standards Institution, (2011); PAS 2050: 2011 Specification for the assessment of the life cycle greenhouse gas emissions of goods and services.

No	Reference	Issue or Question	Applicant's Response
			<p>2020. As such, it has not been possible for the Applicant to assess the Scheme against any revised carbon budgets.</p> <p>The assessment has been undertaken using a conservative 'worst-case emissions' approach, considering emissions from the Scheme in two separate phases, namely emissions during Scheme construction and emissions during Scheme operation. Construction of the Scheme is a short-term activity that will be completed in 2024. Emissions from construction therefore fall within the nearer term 3rd and 4th carbon budgets. Emissions from the operation of the Scheme will fall into the 4th, 5th and subsequent future budgets, once set, through to 2050. Whilst a reduction in the carbon budgets may occur in the 2020 review, the Committee on Climate Change has indicated that the trajectory will be steeper, therefore, it is later carbon budgets rather than near term ones which will see a greater impact. The Applicant also reiterates its assessment (ES Chapter 14: Climate [APP-052]) against the existing carbon budgets, the results of which indicate that the carbon impact of the Scheme is within the carbon budget threshold and therefore will not have a material impact. The Scheme's Greenhouse Gas (GHG) impact as a proportion of total UK carbon emissions equates to less than 0.01% of the 3rd and 4th carbon budgets (0.0022% 3rd carbon budget, 0.0045% of the fourth carbon budget).</p> <p>Despite this scale and the precautionary nature of the assessment, Highways England recognises the need to mitigate GHG emissions hence several GHG mitigation proposals are outlined in ES Chapter 14: Climate [APP-052].</p>

No	Reference	Issue or Question	Applicant's Response
34.	<p>Carbon footprint and embodied carbon</p> <p>National Policy Statement for National Networks (NPSNN) paragraphs 5.18 and 5.19</p> <p>ExA FWQ [PD-005] Q12.5, Q12.6</p> <p>Applicant response [REP1-005]</p> <p>DCiC response [REP1-034]</p> <p>Environment Agency (EA) Response [REP1-022]</p> <p>Applicant comments [REP2-020]</p>	<p>a) NPSNN suggests that consent could be refused if carbon emissions resulting from the proposed development would be so significant that they would have a material impact on the ability of Government to meet its carbon reduction targets. Does the Applicant's assessment of this consider cumulative increases in carbon emissions of the proposed development with that of other highways developments and with other changes to carbon emissions in the UK?</p> <p>b) Are there clear and adequate mitigation measures to ensure that, in relation to design and construction, the carbon footprint of the proposed development would not be unnecessarily high? How would the effectiveness of the mitigation measures be demonstrated?</p> <p>c) Should the effectiveness of the mitigation measures be demonstrated through the quantification of the carbon footprint of the proposed development, benchmarking and the setting of carbon footprint targets and/or limits?</p>	<p>a) Paragraph 5.17 of the National Policy Statement for National Networks (NPSNN) states that it is "<i>very unlikely that a road project will in isolation affect the ability of Government to meet its carbon reduction plans</i>".</p> <p>It is not considered practical or possible to calculate these cumulative impacts in any meaningful way due to constraints on data availability and scale of emissions that would need to be calculated. With specific regard to the Scheme, the assessment included in the Environmental Statement [APP-052] would not be significant.</p> <p>The Applicant considers the issue of cumulative emissions from this Scheme combined with other road schemes and proposed developments is a national policy issue, rather than a Scheme-specific issue.</p> <p>b) Table 14.12 in ES Chapter 14 [APP-052] presents mitigation measures to reduce the carbon footprint of the Scheme. In summary, these measures include the following through design and during the Scheme construction phase:</p> <ul style="list-style-type: none"> i. Consideration of renewable and/ or low or zero carbon energy sources; ii. Using materials with lower embedded GHG emissions and water use; iii. Using sustainably sourced materials; iv. Using recycled or secondary materials; v. Recording and reporting energy consumption and materials use on an ongoing basis during the Scheme construction phase using the Highways England Carbon Reporting Tool; and

No	Reference	Issue or Question	Applicant's Response
			<p>vi. Planting of trees, shrubs and hedgerows to reduce the impact associated with land use change and loss of carbon sink.</p> <p>As a requirement of the Outline Environmental Management Plan (OEMP) [APP-249], Highways England will be required to develop and implement an Energy and Carbon Plan to reduce and monitor energy consumption and carbon emissions, which will include implementation of the relevant mitigation measures listed above. The OEMP will also require ongoing recording and reporting of energy consumption and materials use by the contractor appointed by Highways England during the Scheme construction phase using the Highways England Carbon Reporting Tool.</p> <p>c) As outlined in Section 14.11 of ES Chapter 14: Climate [APP-052], no significant effects have been identified for the climate assessment. As no likely significant effects on climate change are expected as a result of the Scheme, it is not considered necessary for carbon footprint targets to be set. Nevertheless, as part of the Energy and Carbon Plan Highways England will aim to reduce CO₂e emissions for example using where feasible specifying materials with low embodied carbon, minimising waste to landfill, and targets for the use of energy efficient plant and vehicles.</p> <p>Effectiveness of the carbon mitigation measures will be demonstrated by Highways England who will be responsible for monitoring and reporting energy and carbon to the Highways England on an ongoing basis during the Scheme construction phase. This will be done using the Highways England Carbon Reporting Tool. This is secured through the OEMP [APP-249].</p>

No	Reference	Issue or Question	Applicant's Response
			<p>With regard to Scheme operation, Highways England consider that it is not practical to measure GHG emissions from road users, although energy use will be monitored and accounted for in Highway England's annual carbon reporting.</p>
35.	<p>Use of recycled materials and waste materials RR by the EA [RR-005] Applicant response [REP1-003] ExA FWQ [PD-005] Q12.9 Applicant response [REP1-005]</p>	<p>a) Given the scale of the project and that it is nationally significant, should the target for recycled aggregate be the East Midlands target of 14%, the national target of 25%, or another figure?</p> <p>b) Should the OEMP require the Site Waste Management Plan to consider:</p> <ul style="list-style-type: none"> • waste minimisation; and • who waste would be passed to and whether they have appropriate authorisation? 	<p>a) The OEMP [APP-249] specifies a target that 14% of aggregates should be secondary and recycled aggregates for those applications where it is technically and economically feasible to substitute alternative materials for primary aggregates. This 14% target is in line with the Government guidelines for provision of alternative aggregate materials for the East Midlands. These Government guidelines are presented at a regional scale, since aggregates planning is typically carried out at a regional and sub-regional level. Although the project is nationally significant, it is geographically entirely within the East Midlands regions, and therefore specification of a 14% target is considered to be appropriate. However, this does not preclude Highways England from setting a more demanding target during the detailed design and construction phase. As such, Highways England will liaise with the construction contractor (when appointed) to determine whether they are able to work towards the national target of 25%.</p> <p>b) As detailed in the OEMP [APP-249], Highways England will prepare and implement a Site Waste Management Plan (SWMP) (forms part of the Construction Environmental Management Plan). Table 3.2b MW-MAT1 states that the SWMP would "<i>Define measures in the SWMP to minimise waste arisings from the Scheme and to recover waste materials in accordance with the principles</i></p>

No	Reference	Issue or Question	Applicant's Response
			<p><i>of the waste hierarchy</i>". It is thus considered that the OEMP already requires the SWMP to consider waste minimisation.</p> <p>The SWMP will include requirements that waste is passed to licensed waste carriers and managed at suitably permitted sites, and that the necessary chain of custody documentation (transfer and consignment notes) will be prepared – noting however that these are mandatory by legislation and would need to be followed regardless of their inclusion in the SWMP. This will be clarified in the next version of the OEMP to be submitted at Deadline 3.</p>
36.	<p>Cyclist and pedestrian safety from construction vehicles</p> <p>ExA FWQ [PD-005] Q12.12</p> <p>Derby Cycling Group [REP1-036]</p>	<p>Measures to be taken to mitigate safety risks to pedestrians and cyclists from construction vehicles and how they are secured.</p>	<p>Highways England will look to segregate pedestrians and cyclists from construction activities to ensure safety. However, at controlled points where NMUs interface with traffic or site traffic, appropriate measures will be implemented to mitigate any residual safety issues. This is clarified in the revised OEMP submitted at Deadline 3.</p>
Biodiversity and ecological conservation			
37.	<p>Whether the proposal accords with national policy with regard to the enhancement of biodiversity</p> <p>ExA issue / question [PD-003] Q8.6</p> <p>Applicant response [REP1-005]</p>	<p>a) What weight should be placed on National Planning Policy Framework (NPPF) policies to enhance the natural environment and provide net gains for bio-diversity?</p> <p>b) Do the Applicant's submissions provide sufficient information to properly assess whether the proposal would lead to a net gain in biodiversity? Should the Biodiversity</p>	<p>a) Highways England note that the primary basis for decisions on NSIP projects is the NPS, but that the NPS itself acknowledges (paragraph 1.18) that <i>'the NPPF is also likely to be an important and relevant consideration in decisions on nationally significant infrastructure projects, but only to the extent relevant to that project.'</i> The extent of the relevance in this case is reflected in the level of consideration that has been</p>

No	Reference	Issue or Question	Applicant's Response
	<p>DCiC response [REP1-034] EBC response [REP1-051] Applicant comments [REP2-020]</p>	<p>Metric Assessment undertaken by the Applicant be incorporated into the Examination process? Has the methodology for the Biodiversity Metric Assessment been agreed?</p> <p>c) Are additional mitigation, compensation or enhancement measures necessary to ensure that the proposal accords with NPSNN on biodiversity – in particular paragraphs 5.20, 5.23 and 5.30 and NPPF paragraph 170 to the extent that it is relevant?</p> <p>d) Update on discussions regarding the potential conflict between depositing silt from Markeaton Park at Kingsway and the proposed translocation of soil from the Kingsway Local Wildlife Site.</p>	<p>afforded to compliance with the NPPF within ES Chapter 8: Biodiversity [APP-046].</p> <p>In the case of the A38 Derby Junctions Scheme, Highways England consider that limited weight should be afforded to the NPPF in respect of the aspiration for net gain as summarised within para 170d and 175d of the NPPF.</p> <p>In respect of the proposed legal requirement for biodiversity net gain to be included in the Environment Bill, NSIPs will be excluded from the requirement for development to deliver net gain. Therefore, Highways England considers that moderate weight should be attributed to enhancing the natural environment, to the extent that it can be reasonably achieved in delivering an NSIP project.</p> <p>b) The main policy driver for assessing NSIPs is the NPS. As required by the NPS, ES Chapter 8: Biodiversity [APP-046] sets out any likely significant effects on internationally, nationally and locally designated sites of ecological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The Scheme avoids significant harm to biodiversity conservation interests, through appropriate application of the mitigation hierarchy including consideration of reasonable alternatives.</p> <p>The NPS makes no reference to achieving net gain in biodiversity being a requirement of the determination</p>

No	Reference	Issue or Question	Applicant's Response
			<p>process and use of biodiversity offsetting to devise compensation proposals is optional.</p> <p>The Scheme has aimed to maximise opportunities for enhancement in biodiversity associated with other mitigation measures for flora and fauna. These measures are detailed, together with mitigation measures, within Section 8.9 of the ES Chapter 8: Biodiversity [APP-046] and include the following:</p> <ul style="list-style-type: none"> • Management of invasive plant species which would potentially have a positive effect where locally eradicated, particularly at Little Eaton junction construction compound. • Loss of species-poor semi-improved grassland areas within the Scheme boundary would be replaced (i.e. 'traded-up') by species-rich grassland (of 'higher biodiversity value'). • Retention of felled trees within the landscape design to enrich woodland. • Maximising ecological and Water Framework Directive opportunities during the Bramble Brook and Dam Brook realignment. Bramble Brook is currently of poor quality and the realigned channel is to be enhanced, together with a wetland flood storage area to enhance riparian and macrophyte habitat. The new Dam Brook alignment would create a more sinuous channel with a net gain of 197m of open channel habitat, of benefit to riparian mammals, foraging and commuting bats, aquatic invertebrates, fish and birds.

No	Reference	Issue or Question	Applicant's Response
			<ul style="list-style-type: none"> • New water features and biodiversity enhancement opportunities associated with the drainage design. No ponds would be lost as a result of the Scheme; however, there would be the creation of six new water features including four attenuation ponds (which would develop into ecological habitats over time) and two ecology ponds. • Making effective use of former carriageway made redundant by the Scheme through landscape planting. • Habitat creation of benefit for amphibians, through the incorporation of ponds within the highways design including two new ecology ponds at Little Eaton junction, hibernacula/log piles and creation of grassland habitats. • Habitat creation of benefit to terrestrial invertebrates, including planting of disease resistant elms at Markeaton Park and Mackworth Park to assist continued survival of white-letter haired streak. • Habitat creation of benefit for bats with recommended planting as per Bat Conservation Trust (BCT) Encouraging Bats Guide (BCT, 2015) and incorporation of potential bat roost features within the noise barrier at Markeaton junction. • Habitat creation of benefit to riparian mammals, in association with the Bramble Brook and Dam Brook realignment (as noted above). • Habitat creation of benefit to aquatic invertebrates and fish, in association with the Highways drainage design and Bramble Brook and Dam Brook realignment (as noted above).

No	Reference	Issue or Question	Applicant's Response
			<ul style="list-style-type: none"> • Effective badger fencing, beneficial to the local badger population conservation status as well as the users of the road by avoiding collision with badgers trying to cross the road. <p>As per ES Chapter 8: Biodiversity [APP-046], the Scheme has the potential to deliver net gains in biodiversity for some biodiversity features assessed, particularly standing water (ponds), running water, foraging and commuting bats, otter, terrestrial invertebrates, aquatic invertebrates and fish (as noted above). It is considered that sufficient information has been provided to allow an assessment of biodiversity gains.</p> <p>For NSIPs there is no explicit requirement to demonstrate net gain using a Biodiversity Metric Assessment. Use of the metric is optional. The Scheme has been assessed biodiversity gains qualitatively based on the significance of effects for flora and fauna, to avoid significant harm to biodiversity. All measures to mitigate potentially significant adverse effects as a result of the Scheme are to be delivered within the DCO boundary and are detailed in Section 8.9 of the ES Chapter 8: Biodiversity [APP-046].</p> <p>The NPS paragraph 5.25 states that the applicant <i>may wish to make use of biodiversity offsetting in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated</i>. A Biodiversity Metric Assessment is a tool to facilitate determining compensation proposals. However, Highway's</p>

No	Reference	Issue or Question	Applicant's Response
			<p>England has not used a Biodiversity Metric assessment to support the DCO application.</p> <p>A Biodiversity Metric Assessment is being undertaken outside of the DCO examination process (for habitats only) to guide the Designated Fund projects referenced in the ES Chapter 8: Biodiversity [APP-046]. Designated Fund projects do not form part of this DCO application as appropriate biodiversity mitigation is included within the Scheme design. If Highways England determines that Designated Funds projects are appropriate, they will be progressed separately from the Scheme. Therefore, Highways England does not consider that discussion of Designated Fund projects is relevant to the examination and thus the Biodiversity Metric Assessment (which is ongoing and thus not yet complete) is not relevant to the examination process.</p> <p>The methodology for the Biodiversity Metric Assessment being used for the Designated Fund projects was agreed with Highways England. Discussions regarding the use of biodiversity metrics has not been discussed with any other stakeholders as this was not necessary for the commission.</p> <p>c) No. Highways England does not consider that additional mitigation, compensation, or enhancement measures are necessary to ensure the proposal accords with NPS on biodiversity. ES Chapter 8: Biodiversity [APP-046] Section 8.9 includes a wide range of ecological mitigation measures to be implemented during the Scheme construction phase to minimise any effects; as well as</p>

No	Reference	Issue or Question	Applicant's Response
			<p>additional mitigation measures within the Scheme design, including opportunities for enhancements associated with other mitigation measures. These actions to be taken are also detailed in the OEMP [APP-249]. Highways England does not consider NPS Paragraph 5.30 in relation to Marine Conservation Zones relevant to the Scheme given the location of the Scheme within Derby.</p> <p>d) Regarding potential conflict of desilting of Markeaton Lake by DCiC and the location of proposed translocated grassland from the A38 Kingsway Roundabout LWS, as stated by DCiC in their response to the ExA's First Written Questions (Question 12.15), Highways England in their response [REP2-020] to this stated:</p> <p><i>'The location of the proposed species rich grassland within Markeaton Park (to mitigate for the loss of the Kingsway LWS) (refer to Environmental Masterplan ES Figure 2.12D [APP-068]) was discussed and agreed with DCiC. If this location is no longer considered appropriate, Highways England would be happy to work with DCiC during the detailed design stage to agree an alternative location within Markeaton Park, on the basis that the selected location would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the Environmental Statement. This requirement will be detailed in the OMEP [APP-249].'</i> The update OEMP will be submitted at Deadline 3.</p>
The water environment			

No	Reference	Issue or Question	Applicant's Response
38.	<p>The effect of the proposals on flood risk at the Markeaton and Little Eaton junctions</p> <p>ExA issue / question [PD-003] Q1.5, 7.1, 7.5, 7.10, 7.14,</p> <p>Applicant response [REP1-005]</p> <p>DCC LIR [REP1-031]</p> <p>DCC response [REP1-033]</p> <p>DCiC response [REP1-034]</p> <p>Applicant comments [REP2-020]</p>	<p>a) Do the proposals provide adequate measures to prevent siltation and other pollutants at Markeaton Lake and Mill Pond?</p> <p>b) Have any steps been taken to ensure that the proposed discharges would not impact on the integrity of the dam feature at Mill Pond. Who is responsible for the structural security and maintenance of the dam feature?</p> <p>c) Has adequate information on existing and proposed discharge rates been provided to allow a proper assessment of flood risk?</p> <p>d) Do the proposals provide for adequate treatment of highway runoff before it discharges to outfalls?</p> <p>e) Do the proposals provide adequate safeguards to prevent flooding upstream of the realignment of Dam Brook? Any comments on the hydraulic calculations appended to the Applicant's comments on D1 submissions?</p> <p>f) Is it necessary to provide further details at this stage to ensure that the realignment of Dam Brook would be appropriately 'naturalised'?</p> <p>g) How would the monitoring and maintenance of the alleviation works associated with the Dam Brook</p>	<p>a) Markeaton Lake is upstream of the Scheme and will not receive any pollutants or sediments from the Scheme. Mill Pond will receive drainage from the Scheme. However, the Scheme incorporates measures to attenuate flows and reduce pollutants derived from the Scheme before the highway drainage is discharged into Mill Pond, including suspended sediments. As described in Section 4.3 of the Drainage Strategy (refer to ES Appendix 13.4 [APP-234]), attenuation features (that assist in the removal of silt) have been incorporated into the highway surface water drainage design at Markeaton junction where feasible and practicable to do so. The provision of attenuation should result in a betterment over the existing situation where silt laden drainage currently enters watercourses unattenuated.</p> <p>The Scheme drainage design at Markeaton junction has been developed to include a surface attenuation pond and includes a second underground storage tank prior to water being discharged via a vegetated ditch into Mill Pond (refer to Environmental Masterplans as illustrated in Figures 2.12c [APP-068]). Treatment within the pond would reduce the levels of suspended solids entering Mill Pond as well as reducing the levels of potential soluble pollutants.</p> <p>The Scheme drainage design also includes a petrol interceptor upstream of Markeaton Lake Culvert. This will reduce the amount of hydrocarbons entering Mill Pond via the culvert and is anticipated to result in a betterment over the existing situation.</p>

No	Reference	Issue or Question	Applicant's Response
		<p>realignment be secured through the dDCO?</p>	<p>It is thus considered that the Scheme provides adequate measures to prevent siltation and other pollutants at Markeaton Lake and Mill Pond.</p> <p>b) The Mill Pond dam wall integrity is not being disturbed directly by the Scheme. The highway drainage system design allows for the attenuation of flows so that there is no flooding from a 1 in 100 year +40% allowance for climate change event. The proposed outfall rates are less than the existing flow rates into the Mill Pond, whilst runoff is to be treated before being discharged. During the detailed design stage, the Reservoir Inspector for the area will be consulted.</p> <p>c) Discharges from the proposed highway drainage systems have been taken into account during the definition of potential Scheme flood risks at all three junctions. As the drainage design would either maintain existing runoff discharge rates from existing outfalls, or attenuate runoff from new sections of highway to greenfield rates, the flood risks associated with highway runoff with the Scheme are lower than the existing situation. Highway runoff discharges associated with Kingsway junction were incorporated into the hydraulic model used to assess flood risks – this assumed a worst case by including unattenuated discharges at existing rates for the proposed case. At Markeaton junction hydraulic modelling was not considered necessary but given that the Scheme would result in betterment in terms of highway runoff flows, flood risks associated with Mill Pond would be reduced (whilst the Scheme would not affect flooding associated with Middle Brook). At Little Eaton junction, highway runoff would be attenuated, thus reducing flood risks to Dam</p>

No	Reference	Issue or Question	Applicant's Response
			<p>Brook. Hydraulic modelling of Dam Brook took a worst-case approach to the consideration of highway discharges by applying rainfall directly onto the road, and therefore not accounting for attenuation of runoff passing through the defined road drainage network. Flood risk modelling of the River Derwent did not need to take account of such discharges given the insignificance of the flows in comparison to the River Derwent and the upstream nature of such discharges.</p> <p>d) In order to determine whether adequate treatment of highway runoff is being provided, the Highways Agency Water Risk Assessment Tool (HAWRAT) has been used which is approved by the Environment Agency and who have agreed that outputs from the tool can be used in the Environmental Impact Assessment of routine highway runoff on surface water quality (Highways England, 2009: DMRB, Vol 11, Section 3, Part 10, HD45/09, paragraph 5.6). The output from the HAWRAT calculations show that with the mitigation included within the Scheme drainage design, the Scheme passes the assessment for impacts on surface water quality. It is thus considered that adequate treatment of highway runoff before it discharges to outfalls is being provided.</p> <p>e) With regard to upstream flooding associated with the realignment of Dam Brook, details of hydraulic modelling were provided in Appendix 1 of [REP2-020] – this information has also been sent to DCC for their information. This modelling indicates that the Dam Brook realignment works would not result in upstream flooding.</p> <p>f) The revised OEMP includes the need for Highways England to consult with DCC during the detailed design of</p>

No	Reference	Issue or Question	Applicant's Response
			<p>the Dam Brook diversion works – this includes during the design of the biodiversity features associated with the brook diversion works. As detailed in the ES Chapter 8: Biodiversity [APP-046], it is the aim that realigned brook will provide a range of habitats that will be of benefit to local ecology. The amended OEMP will be submitted at Deadline 3.</p> <p>g) The OEMP is being amended (in D-RD7 in Table 3.2c) to state that: <i>“Monitoring to be undertaken to ensure that the flood alleviation channel is performing as designed, followed by ongoing maintenance in accordance with the HEMP.”</i> The amended OEMP will be submitted at Deadline 3.</p> <p>Requirement 13 in the revised dDCO also provides that works undertaken to the surface and foul water drainage systems (in accordance with the details approved under the requirement) must be maintained.</p>
39.	<p>Whether the proposal makes adequate use of Sustainable Drainage Systems (SuDS)</p> <p>ExA issue / question [PD-003] Q7.17</p> <p>Applicant response [REP1-005]</p> <p>DCC LIR [REP1-031]</p> <p>DCC response [REP1-033]</p>	<p>a) Having regard to NPSNN and NPPF advice and the limitations of the scheme, are the proposed attenuation storage facilities appropriate at:</p> <ul style="list-style-type: none"> • Kingsway – use of SuDS and Natural Flood Management; • Markeaton – use of SuDS in Queensway open space; • Little Eaton – use of SuDS in preference to by-pass separators. <p>b) Does the dDCO provide adequate provisions to secure the maintenance</p>	<p>a) The Scheme design as illustrated in the Environmental Masterplans [APP-068] takes a considered and reasonable approach to taking opportunities to use open space for multiple purposes such as amenity, wildlife habitat and flood storage uses, as well as incorporating SuDS into the design. However, in some locations, constraints associated with available space, public safety, public open space designations, have meant that features such as buried attenuation storage tanks have been incorporated into the design (e.g. buried highway runoff storage tank located within Mackworth Park). Details of where multiple purpose opportunities have been taken are detailed below for each junction:</p>

No	Reference	Issue or Question	Applicant's Response
	<p>DCiC response [REP1-034]</p> <p>Applicant comments [REP2-020]</p>	<p>of the proposed attention storage facilities?</p>	<ul style="list-style-type: none"> • Kingsway junction: The Scheme design includes four flood storage areas adjacent to Bramble Brook (three being within the Kingsway hospital site). Rather than these just being developed as grassed over depressions, by facilitating water access into these areas from the nearby brook, they would be developed into wetland habitats of biodiversity value [APP-046]. In addition, a new footpath with occasional seating would be provided around the perimeter of the flood storage areas adjacent to Bramble Brook within the Kingsway hospital development site which would be available for recreational use by local residents [APP-050]. • Markeaton junction: Due to the loss of public open space associated with the Scheme, an area of replacement public open space would be provided in the area left vacant by the demolition of the Queensway buildings. This area of replacement public open space would accommodate facilities for the collection and treatment of highway runoff (e.g. two underground storage tanks, a wet attenuation pond and discharge swale), as well as a new pedestrian and cycleway link from the A52 to the new Markeaton footbridge. The area would also be landscaped with native and ornamental shrub planting to promote biodiversity and provide visual screening and amenity. • Little Eaton junction: The Scheme design at this junction includes a range of integrated flood alleviation, drainage, SuDS, biodiversity and amenity features. This includes the realignment of Dam Brook to create a more sinuous channel form within a vegetated corridor, a new flood alleviation channel with a native wet woodland, two ecology ponds which would provide an area for fish

No	Reference	Issue or Question	Applicant's Response
			<p>spawning and shelter, two highway runoff ponds, extensive lengths of swale ditches, plus a footpath diversion along the realigned brook. The area would also be landscaped with a variety of trees, shrubs and species rich grassland.</p> <p>b) The Scheme design along with the necessary land acquisition and acquisition of rights have been included within the dDCO.</p> <p>Ongoing discussions to produce the Maintenance and Repair Strategy Statement (MRSS) with the Highways England Area Team and the LHAs, looks to secure the methodologies associated with the provisions in the Scheme proposals.</p>
The draft Development Consent Order; other consents, permits and licenses; other general matters			
The draft Development Consent Order - Parts 1 to 7			
40.	<p>The determination of compensation when not relating to Compulsory Acquisition</p> <p>ExA issue / question [PD-003] Q4</p> <p>Applicant response [REP1-004]</p>	<p>The need for a provision if the Tribunal does not accept jurisdiction.</p>	<p>Highways England reiterates its response to the ExA's Q4 in the DCO ISH questions. It is not clear why the ExA considers this is an issue given the Tribunal's authority will be derived from a Statutory Instrument i.e. the DCO.</p>
41.	<p>"Guillotine" provisions</p> <p>ExA issue / question [PD-003] Q5</p>	<p>a) Update on discussions between the Applicant and relevant consultees regarding the agreement of provisions that confer deemed consent if a</p>	<p>a) As part of the ongoing discussions that Highways England is having with the local authorities on various matters, no significant concerns have been raised in relation to this point by Derbyshire County Council or Erewash Borough Council, although it is noted that Derby</p>

No	Reference	Issue or Question	Applicant's Response
	<p>Applicant response [REP1-004] EA response [REP1-021] DCiC response [REP1-034] Applicant comments [REP2-020]</p>	<p>consultee does not respond within a specified period.</p> <p>b) Whether the “guillotine” should fall after 28 days, 42 days or any other period?</p> <p>c) Whether provisions should contain an express requirement that any application for consent should contain a statement drawing the consultee's attention to the guillotine?</p>	<p>City Council have expressed a concern. Highways England also note that the Environment Agency have confirmed they have no in principle objection to this approach as stated within their letter dated 4th November 2019.</p> <p>b) As noted above, Derby City Council is the only organisation to have expressed a concern with this matter. It remains the preference of Highways England that the guillotine would fall after 28 days to ensure the timely delivery of the Scheme and reflecting its importance as an NSIP.</p> <p>c) Highways England note this is a matter for the local authorities and the Environment Agency to advise upon, but does not consider it is reasonably necessary to incorporate within the dDCO. Notwithstanding the above, Highways England would endeavour to highlight this issue as a matter of courtesy when submitting a matter to a consultee for its consideration.</p>
42.	<p>Article 2(1) “commence” ExA issue / question [PD-003] Q9 ExA FWQ [PD-005] Q3.1 Applicant response [REP1-004]</p>	<p>a) Is it secured that activities to be carried out before commencement would not fall outside the scope of the ES and that any mitigation measures relied on in the ES for the assessment of significant effects would be applied?</p> <p>b) Should it be secured that the OEMP applies to any activities to be carried out before commencement?</p> <p>c) Should it be secured that activities to be carried out before commencement</p>	<p>a) - e): Highways England acknowledges that there is uncertainty over the extent of the excluded works in the definition of “commence”. As noted in responses to the DCO ISH questions, it is Highways England's intention for all works excluded from this definition to be minor and not to give rise to any need for control under the DCO. However, it is clear that there is a disconnect between the description of these excluded works and the works described as “preliminary works” in the OEMP.</p> <p>On this basis, Highways England is proposing to amend the dDCO so that the definition of “commence” contains</p>

No	Reference	Issue or Question	Applicant's Response
		<p>should be those identified as Preliminary Works listed in the OEMP?</p> <p>d) Noting the definition of "<i>commence</i>" in the dDCO, can it be clarified in the dDCO and/or OEMP whether the "<i>preliminary works</i>" referenced in the OEMP come under the use of the term "<i>construction</i>" in the dDCO, or whether the use of the term "<i>main works</i>" in the OEMP equates to the use of the term "<i>construction</i>" in the dDCO?</p> <p>e) Following from the previous point, does the use of the term "<i>construction</i>" in the ES include both "<i>preliminary works</i>" and "<i>main works</i>" and thereby differ from the use of "<i>construction</i>" used in the dDCO? If there is a difference, should this be clarified given the references to the ES in the dDCO?</p>	<p>only those preparatory and investigatory activities that do not require any controls under the dDCO or otherwise (i.e. they would not be development under the TCPA) and are reasonable to include in order to ensure that the preparation for the Scheme works are not impeded.</p> <p>To secure this Highways England is proposing to amend the definition of "<i>commence</i>" in the dDCO and will delete the wording "<i>remedial work in respect of any</i>". This covers off the ExA's concern that remedial work will be undertaken outside of the scope of the DCO and it also ensures that the excluded works now included in the definition of "<i>commence</i>" are minimal works which do not require any form of control or regulation.</p> <p>To secure alignment of the dDCO and the OEMP, Highways England is proposing to include a new definition in the dDCO of "<i>preliminary works</i>". These preliminary works will mirror the preliminary works described in the OEMP. The intention is for the preliminary works to secure their own CEMPs as and when they are needed and this will be done through an amendment to requirement 3 in the dDCO. This change will ensure that all preliminary works will be controlled by a CEMP securing appropriate controls which has been approved by the SoS, in consultation with the relevant planning authority and local highways authority.</p>
43.	Article 2(1) " <i>maintain</i> " ExA issue / question [PD-003] Q10	The ExA is minded that the dDCO should not inadvertently authorise major construction works during operation. There is concern about the potential for such	Highways England is content to accept a provision which links maintenance activity to what has been assessed in the ES i.e. that maintenance is permissible provided that it

No	Reference	Issue or Question	Applicant's Response
	Applicant response [REP1-004]	works to fall outside the scope assessed in the ES. There is concern about the potential for future confusion about the application of relevant consenting processes for such works. How can these concerns be addressed?	does not result in any materially new or adverse environmental impacts. Any works that need to be undertaken during operation of the Scheme are likely to be linked to safety and the need to ensure that the road network can operate as safely and effectively as possible. It may be that maintenance works result in an element of construction works due to the nature of the issue in hand. Highways England does not consider that it would be prudent in this respect to exclude construction from this definition, although Highways England notes that the definition provides for Highways England to "reconstruct". As such, this is to cover the eventuality where an element of the authorised development needs to be reconstructed in the future (on safety grounds) as opposed to constructing new development not covered by the DCO.
44.	Article 3 - Disapplication of legislative provisions ExA issue / question [PD-003] Q13, Q78 Applicant response [REP1-004] EA response [REP1-021] DCiC response [REP1-034] Applicant comments [REP2-020]	<ul style="list-style-type: none"> a) Updates on discussions between the Applicant, local authorities and the EA regarding the disapplication of the Water Resources Act 1991 and of the Land Drainage Act 1991. b) What is the inter-relationship between the disapplication of legislative provisions and the protective provisions for the EA? c) Are there still conflicts with the ability of a Lead Local Flood Authority to perform its duties and, if so, how can these be avoided? 	<ul style="list-style-type: none"> a) There are no significant new updates to report beyond that provided by Highways England in response to deadline one. These matters will be subject to ongoing discussions and Highways England will ensure the ExA are kept informed on progress throughout the examination period. b) Article 3 disapplies a number of legislative provisions. Sub-paragraphs 1(a) and (c) are relevant to the EA, being the EA's powers to make certain byelaws under the Water Resources Act 1991 and its ability to submit a scheme to the Secretary of State for revoking, varying or amending the provisions of an award under section 32 of the Land Drainage Act 1991. The disapplication of these provisions relates to the construction of any work or other operation for the construction of the authorised development and any

No	Reference	Issue or Question	Applicant's Response
			<p>maintenance of the authorised development within the five-year maintenance period referred to in article 34.</p> <p>With regard to byelaws, it is important that the Scheme is able to proceed on a certain legislative footing and that it is not at risk of existing byelaws impeding the Scheme or of new byelaws being introduced following the making of the DCO that impede the Scheme. The EA's powers to make certain byelaws (noting that it will retain the power to make byelaws other than those referred to in paragraphs 5, 6 and 6A of Schedule 25 to the 1991 Act and any such existing byelaws are unaffected by the dDCO) are therefore disapplied on the basis and for the duration set out in article 3. The protective provisions (currently being discussed with the EA) ensure that the EA's interests are properly and robustly protected during this period such that it should not consider it necessary to seek to rely on existing byelaws, or introduce new byelaws, in order to avoid harm being caused to its interests as a consequence of the Scheme.</p> <p>The position is similar in relation to the EA's ability to submit a scheme to the Secretary of State for revoking, varying or amending the provisions of an award under s.32. This seldom used statutory power could result in changes to the allocation of responsibility for drainage assets. Again, it is important that the Scheme is able to proceed with certainty. The protective provisions and other parts of the dDCO (see e.g. article 4 (maintenance of drainage works) and article 20 (discharge of water)) make provision in relation to drainage. Paragraph 23 of the protective provisions relates specifically to the maintenance of drainage works and includes protections</p>

No	Reference	Issue or Question	Applicant's Response
			<p>for the EA should it be dissatisfied with the way in which a drainage work is being maintained. Although the primary purpose of disapplying s.32 is to remove the requirement for Secretary of State consent to revoke, vary or amend an award, it is also important that the underlying position in terms of responsibility for drainage assets does not change during the construction of the Scheme and its subsequent maintenance in a way that might cut across or otherwise interfere with the provisions of the dDCO</p> <p>c) For the LLFA to comment. Highways England does not consider this to be a concern.</p>
45.	<p>Article 4 – Maintenance of drainage works ExA issue / question [PD-003] Q14 Applicant response [REP1-004] DCC LIR, item 7.3 [REP1-031] Applicant comments [REP2-020]</p>	<p>a) The Applicant's assurance that it would maintain drainage whilst in temporary possession appears to conflict with Article 4. Should Article 4 be amended? b) Update on discussions regarding who would be responsible for maintaining the flood alleviation channels, swales, etc. How would that be secured?</p>	<p>a) There is no conflict in this article. Highways England maintains that the DCO will not affect rights of third parties in respect of drainage maintenance. This is to ensure that enduring rights of maintenance are not affected by the Scheme. In terms of taking temporary possession of the land, Highways England will be liable to the landowner for any damage caused to the land through neglect or otherwise. As such, it will be in Highways England's interest to ensure that the land is appropriately maintained in all respects. The manner in which the provisions are drafted gives flexibility to all parties and ensures that third party rights are not inadvertently affected by the temporary possession.</p> <p>b) The maintenance interface plans include this detail and have been circulated to LHAs and the HE Area team for comment and HE is awaiting responses from these parties. These will be submitted to the examination once agreed with the highway authorities.</p>

No	Reference	Issue or Question	Applicant's Response
			The relevant requirements require the key elements of the drainage and flood measures to be maintained (see requirements 13 and 14).
46.	Article 6 – Maintenance of authorised development ExA issue / question [PD-003] Q15 Applicant response [REP1-004]	a) Do the local authorities have any comments regarding responsibilities for maintenance during construction or operation, including where these may not be taken by Highways England? b) What is the potential for maintenance responsibilities not to be agreed, to fall into the gaps between different parties, or not to be capable of being discharged? How can this be mitigated?	a) Local Highway Authorities to respond. b) HE is confident that the authorised development will be appropriately maintained - the DCO provides for the authorised development to be maintained as necessary, and key mitigation, such as the drainage works, there is an obligation in the requirements for these to be maintained. In order to clarify the position and to ensure that there is clarity over who is responsible and that nothing fall through the gaps. Maintenance interface plans have been circulated to LHAs and the HE Area team for comment and HE is awaiting responses from these parties. Once these are finalised, they will be submitted to the examination and any necessary amendments made to the documentation.
47.	Article 8 – Limits of deviation ExA issue / question [PD-003] Q17 Applicant response [REP1-004]	The “ <i>highway work limits of deviation</i> ” indicated on the Works Plans would appear to allow the main carriageway or the slip roads to deviate by several metres, and in some locations by tens of metres, from their drawn position. a) How has the assessment of potential significant effects in the ES considered the range of positions of the Works allowed for by the limits of deviation? b) As a specific example, what position(s) of the main carriageway have been considered for the assessment of noise effects for receptors adjacent to	a) and b) This is not the case or the intention. ES para. 2.5.41 [APP-040] states that given the constrained nature of the Scheme corridor, the A38 mainline and highway edge would not deviate horizontally by more than 1m from those lines and situations shown on the Works Plans [REP2-005], noting that the horizontal deviation through Kingsway and Markeaton junctions is anticipated to be no more than 0.5m. All such deviations are contained within the highway work limit of deviation, again, as illustrated in the Works Plans. This thus defines the maximum A38 mainline and highway edge deviations as assumed within the ES. The air quality assessment, and the noise and vibration assessment as reported in the ES [APP-043 and

No	Reference	Issue or Question	Applicant's Response
		opposite sides of the highway work limits of deviation?	<p>APP-047] accommodate this potential highway horizontal alignment deviation.</p> <p>In addition, Requirement 12 in the dDCO [REP2-007] states the following: <i>“The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and the engineering section drawings, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering section drawings showing departures from the preliminary design would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.”</i> It is thus secured that the final Scheme design will not have any materially new or materially worse adverse environmental effects (including noise and air quality effects) in comparison with those reported in the Environmental Statement.</p> <p>The limits of deviation shown on the Works Plans do not just cover the carriageway but include for all associated highway features such as footway/cycleways, drainage attenuation and the like to be adjusted during detailed design stage to allow for any required alterations – this is why they include additional land.</p>
48.	Article 11 – Street works ExA issue / question [PD-003] Q19	Would the ability to enter any streets within the Order Limits conflict with the	Highways England considers that the LHA will still be in a position to perform its statutory duties under the Highways Act 1980 and ensure that its network remains operational in accordance with that duty. In terms of the LHA's

No	Reference	Issue or Question	Applicant's Response
	<p>Applicant response [REP1-004]</p> <p>DCiC response [REP1-034]</p> <p>Applicant comments [REP2-020]</p>	<p>ability of a LHA to perform its duties and, if so, how can these be avoided?</p>	<p>management of the network there are requirements under the dDCO (see for example articles 11 (street works) and 12 (Application of the 1991 Act)) which ensure that sufficient notice is provided to the LHAs for works to their networks. In addition, the TMP provides provisions for consultation with the LHAs so that they are aware of when works will be undertaken and how these will affect the operation of their networks.</p>
49.	<p>Article 12 - Application of the 1991 Act</p> <p>ExA issue / question [PD-003] Q21</p> <p>Applicant response [REP1-004]</p> <p>DCiC response [REP1-034]</p> <p>Applicant comments [REP2-020]</p>	<p>Update on discussions between the Applicant and LHA regarding agreement of the provisions.</p>	<p>HE has not received any specific comments from the LHA in respect of this article. This will be picked up in the next iteration of the SoCGs with DCC and DCiC.</p>
50.	<p>Article 13 - Construction and maintenance of new, altered or diverted streets and other structures</p> <p>ExA issue / question [PD-003] Q22</p> <p>Applicant response [REP1-004]</p>	<p>Update on discussions between the Applicant and LHA regarding agreement of the provisions.</p>	<p>The LHAs have had the opportunity to comment on the proposals following submission of the DCO application and no comments have been received to date.</p> <p>It is proposed to include this issue in the updated versions of the Statements of Common Ground to obtain written agreement.</p>
51.	<p>Article 15 - Temporary stopping up and restriction</p>	<p>a) Recognising that it is not possible to be definitive at this stage, what is the</p>	<p>a) and b) It is recognised that is some locations (such as Greenwich Drive North and Ashbourne Road), works to</p>

No	Reference	Issue or Question	Applicant's Response
	<p>of use of streets and highways ExA issue / question [PD-003] Q27 Applicant response [REP1-004]</p>	<p>likely potential, during construction, for vehicles to be parked further from properties than currently? b) What distances from temporary parking to the properties, and what durations for parking not being accessible, are anticipated? c) How are impacts mitigated, including for people with special requirements, emergency access, any requirements for temporary parking provision, parking permits and deliveries to businesses? d) How is the mitigation secured?</p>	<p>construct elements such as retaining walls may result in some temporary loss of street parking outside residential properties. Until a contractor is appointed by Highways England and has developed its construction methodology, the extent and durations of such impact cannot be determined. Highways England will identify in advance any such circumstances as part of the traffic management planning and would liaise with the residents about how their needs could be accommodated. This could be provision of alternative areas as part of the revised site layout or temporary changes when parking is not in use. The important point is that it would be discussed and agreed in advance and would be done with the residents having a full appreciation as to why the changes are required and for how long the changes would be in place for. c) Highways England's stakeholder liaison officer (appointed through its contractor) will liaise with the community to ensure disruption is kept to a minimum and full consideration for people with special requirements, emergency access etc will be made. d) The engagement of a Community Relations Manager is included in the OEMP [APP-249].</p>
52.	<p>Article 18 – Clearways ExA issue / question [PD-003] Q28 Applicant response [REP1-004]</p>	<p>Update on discussions between the Applicant and LHA regarding agreement of the provisions.</p>	<p>The LHAs have had the opportunity to comment on the proposals following submission of the DCO application and no comments have been received to date. It is proposed to include this issue in the Statement of Common Grounds to obtain written agreement.</p>

No	Reference	Issue or Question	Applicant's Response
53.	Article 19 – Traffic regulations ExA issue / question [PD-003] Q29 Applicant response [REP1-004] Applicant comments [REP2-020]	Update on discussions between the Applicant and LHA regarding agreement of the provisions.	The LHAs have had the opportunity to comment on the proposals following submission of the DCO application and no comments have been received to date. It is proposed to include this issue in the Statement of Common Grounds to obtain written agreement.
54.	Article 27 – Public rights of way ExA issue / question [PD-003] Q33 Applicant response [REP1-004] DCC response [REP1-032] Applicant comments [REP2-020]	a) Recognising that it is not possible to be definitive at this stage, what temporary closure of footpaths or cycle tracks is anticipated, particularly to those considered to be well-used? b) What durations are anticipated for any temporary closures? c) Would any temporary routes, diversions, signage or other mitigation be provided? d) How is the mitigation secured?	a) to d) All existing pedestrian and cycle routes will remain available throughout the construction period. It may be necessary, from time to time, to provide some temporary detours to allow certain work activities to take place; such detours will be kept as short as possible in terms of both distance and duration. Once Highways England appoints its contractor, details of these will be included in, and secured by, the TMP, they will be enforceable through the approved TMP.
55.	Article 33 - Temporary use of land for carrying out the authorised development ExA issue / question [PD-003] Q35 Applicant's response [REP1-004]	Would it better serve the justification and ongoing minimisation of temporary possession if the specific purposes are all described in Schedule 7 and the term “or any other mitigation works in connection with the authorised development” is avoided?	Highways England considers that this phrase is necessary to ensure that flexibility in the implementation of the mitigation is achieved. For example, if bird boxes or bat boxes need to be placed in locations other than those specified or are required as an additional mitigation measure (and they are not necessarily specified at this stage because it is not clear whether they will be required) then this provision allows Highways England to undertake these activities.

No	Reference	Issue or Question	Applicant's Response
56.	Article 39 – Felling or lopping of trees and removal of hedgerows ExA issue / question [PD-003] Q41, Q42 Applicant response [REP1-004]	a) Do the local authorities have any comments on the importance of the existing screening trees and shrubs along the A38 corridor and how their removal should be controlled? b) Please could the Applicant identify any hedgerows within the Order Limits that are subject to protection under the Hedgerows Regulations 1997?	a) Local Highway Authorities to respond. b) Highways England has prepared a plan regarding hedgerows within the Order Limits which is being submitted to the ExA at Deadline 3.
57.	Article 45 – Crown Rights ExA issue / question [PD-003] Q45 Applicant response [REP1-004]	Update on discussions between the Applicant and Crown bodies and progress on achieving Crown consent under s.135 of the Planning Act 2008.	Highways England is in negotiation with the MoD to acquire the Crown land by agreement. Highways England is engaged with the MoD in order to secure the s.135 consent required for the acquisition of third-party rights affecting the Crown land.
58.	Article 50 - Appeals relating to the Control of Pollution Act 1974 ExA issue / question [PD-003] Q46 Applicant response [REP1-004]	Update on discussions between the Applicant and local authorities regarding agreement of the provisions.	HE has not received any specific comments from the LHA in respect of this article. This will be picked up in the next iteration of the SoCGs with DCC and DCiC.
The draft Development Consent Order: Schedule 2 - Requirements			
59.	Requirements 1-21 Provisions for consultation and agreement ExA FWQ [PD-005] Q1.5 EA response [REP1-022]	a) Provisions for consultation with the EA in Requirements 3, 8 and 14. b) Add provisions for consultation with Derwent Valley Mills World Heritage Site Partnership to Requirements 9 and 12?	a) The EA is now included as a consultee in requirements 3, 8 and 14. Please see the revised dDCO. b) As previously mentioned by Highways England, it is not considered that the DVMWHSP should be added to the list of consultees given that the relevant

No	Reference	Issue or Question	Applicant's Response
	<p>DCC response [REP1-033] DCiC Response [REP1-034]</p> <p>ExA issue / question [PD-003] Q57, Q58, Q63 Applicant response [REP1-004] DCC response [REP1-032] DCiC response [REP1-034] Applicant comments [REP2-020]</p>	<p>c) Add a provision for consultation with the Lead Local Flood Authority to Requirements 12(1), 12(2), 13(1), 13(2), and 14(1)?</p> <p>d) Add a provision for consultation with the sewerage undertaker to Requirement 13?</p> <p>e) Add provisions for consultation with local authorities with respect to potential impacts on local authority assets?</p> <p>f) Add provisions for consultation with local authorities regarding any improvements, diversions, stopping up or future maintenance liabilities for the Public Rights of Way network?</p> <p>g) Any further requests for consultation by local authorities or others?</p>	<p>planning authorities form part of this organisation and will consult with this body in any event. In addition, DVMWHSP consultation requirements as associated with archaeological investigation aspects (Requirement 9) and during the Scheme detailed design stage (Requirement 12) are now clarified in the revised OEMP to be submitted at Deadline 3.</p> <p>c) Highways England does not consider that this is necessary given that the relevant planning authority will be consulted as part of these requirements in any event. As far as Highways England is concerned, the relevant planning authorities will consult with the relevant LLFA's and coordinate their input as required (as they would, for example, as part of the consultation exercise undertaken as part of a planning application).</p> <p>d) It is not clear why the sewerage undertaker would need to be consulted as part of the discharge of this requirement. As far as Highways England is aware Severn Trent Water has not requested to be consulted as part of this requirement nor is it usual for them to be a consultee in this respect. Highways England is negotiating protective provisions with Severn Trent Water and it is through these provisions that their assets will be protected, as opposed to being consulted on the drainage requirements of the Scheme. It is worth noting too, in this regard, that it is not envisaged that there will be any foul drainage as part of the scheme.</p> <p>e) It is not clear what assets are being referred to here or which article/requirement is the cause for concern. Nevertheless, the local authorities are consultees for</p>

No	Reference	Issue or Question	Applicant's Response
			<p>the requirements which impact on their assets or duties to maintain the ongoing activity of their assets.</p> <p>f) The dDCO contains provisions which deal with the requirement for Highways England to obtain the local highway authority's consent prior to temporary stopping up, alteration, diversion or restriction of use of any PROW (see Article 15). Maintenance of the network will not change; where the PROW are part of the LHA's network, they will be responsible for the maintenance of the PROW. Where PROW are on third party land then the owners of that land will be responsible for the maintenance of the PROW as they would be where no Scheme existed. In terms of permanent stopping up, article 16 and Schedule 4 of the dDCO deal with this and the PROW to be stopped up and/or diverted are detailed. In terms of what is included in the dDCO, the LHAs have the chance to comment on these inclusions at this stage of the Examination. The works listed in this schedule need to be completed to the reasonable satisfaction of the LHA.</p> <p>g) Local Highway Authorities to respond.</p>
60.	Management and mitigation plans, strategies and written schemes ExA FWQ [PD-005] Q3.11, Q3.12 Applicant response [REP1-005]	Have all relevant parties that should be consulted been identified?	Details of consultation requirements as associated with the various management plans were detailed in Appendix 1.2 in [REP1-006]. Such consultation requirements are included in the amended OEMP submitted at Deadline 3.

No	Reference	Issue or Question	Applicant's Response
	DCC response [REP1-033] EA response [REP1-022]		
61.	Requirement 3 – Construction Environmental Management Plan ExA issue / question [PD-003] Q52 Applicant response [REP1-004] EA response [REP1-022]	a) What the Handover Environmental Management Plan should be drafted in accordance with and how that is secured. b) The necessity for provisions regarding consultation and approval of the Handover Environmental Management Plan.	a) As detailed in ES Chapter 2: The Scheme [APP-040] para. 2.7.8 states that “ <i>Upon completion of Scheme construction, the CEMP (refer to para. 2.6.107) would be converted into the HEMP. The HEMP must be submitted to the Secretary of State for approval within 28 days of the opening of the Scheme for public use, after which the Scheme would be maintained in accordance with the HEMP</i> ”. This process is clarified in the OEMP [APP-249] submitted at Deadline 3. Requirement 3 of the dDCO states that upon completion of construction of the authorised development, the CEMP must be converted into the HEMP (3.(4)). The dDCO has also been amended to reflect how this will be secured. b) The OEMP [APP-249] is being amended to state that Highways England shall prepare the HEMP in consultation with Highways England, the local authorities and relevant statutory bodies including the Environment Agency. The OEMP will also state that the HEMP would be subject to approval by the Secretary of State. Any revisions of the HEMP must remain substantially the same as the HEMP as signed off by Secretary of State and following consultation with applicable consultees. A revised OEMP is submitted at Deadline 3.
62.	Requirement 4 – Details of consultation	a) Should timescales be identified for consultation?	a) and b) If it would assist the parties, HE is happy to include a 28-day period for consultation. Matters that are not agreed are already dealt with –

No	Reference	Issue or Question	Applicant's Response
	<p>ExA issue / question [PD-003] Q56</p> <p>Applicant response [REP1-004]</p> <p>EA response [REP1-021]</p> <p>DCiC response [REP1-034]</p> <p>Applicant comments [REP2-020]</p>	<p>b) Should provisions be included to cater for matters that are not agreed between consultees and the undertaker?</p>	<p>The summary report provided to the SoS must explain the consultee responses and how Highways England has responded to these (4(1)).</p> <p>This report must also be provided to the relevant consultees (4(2)).</p> <p>Where possible the consultation responses are required to be reflected in the details submitted to the SoS (4(3)).</p> <p>And if this is not possible Highways England must explain why this is (4(4)).</p> <p>Clearly, on basis of that report SoS in deciding whether to discharge requirement will be able to have regard to consultee comments and how they have been taken account by Highways England.</p>
63.	<p>Requirement 10 – Protected Species ExA issue / question [PD-003] Q59</p> <p>Applicant response [REP1-004]</p>	<p>Should the provision for consultation with Natural England be extended to all protected species and not just to those not previously identified in the ES?</p>	<p>Highways England is content to include Natural England as a consultee for all protected species. This update has been made to the dDCO for D3.</p>
64.	<p>Requirement 11 – Traffic management</p>	<p>Has enough detail been provided in the TMP?</p>	<p>The TMP is currently an outline document and it will be developed in more detail once a contractor has been appointed by Highways England.</p> <p>Refer also to response to Q3 above.</p>
<p>The draft Development Consent Order: Schedules 3 to 10</p>			
65.	<p>Schedule 3 - Classification of roads, etc</p>	<p>Update on discussions between the Applicant and LHA regarding agreement of the provisions.</p>	<p>The LHAs have had the opportunity to comment on the proposals following submission of the DCO application and no comments have been received to date.</p>

No	Reference	Issue or Question	Applicant's Response
	ExA issue / question [PD-003] Q67 Applicant response [REP1-004] DCiC response [REP1-034] DCC's response [REP1-032] Applicant comments [REP2-020]		It is proposed to include this issue in the Statement of Common Grounds to obtain written agreement.
66.	Schedule 3 - Classification of roads, etc ExA FWQ [PD-005] Q1.6 Applicant response [REP1-005] DCC response [REP1-033] DCiC response [REP1-034] Applicant comments [REP2-020]	Update on discussions between the Applicant and LHA regarding de-trunking and Traffic Regulation Order engagement.	<p>The de-trunking proposals and the Classification of Roads Plans have been circulated to LHAs and the HE Area team for comment and HE is awaiting responses from these parties. These have been circulated with the Maintenance Interface Plans as they form part this matter.</p> <p>It is proposed to include this issue in the Statement of Common Grounds to obtain written agreement.</p> <p>Highways England has updated the dDCO (in article 14 – classification of roads, etc.) to include a provision to permit the de-trunking of the areas identified on the revised Classification of Roads plans. In addition, Schedule 3 (Classification of Roads) has been updated to reflect the extent of the de-trunking of the small areas of road at Kingsway, Markeaton and Little Eaton by reference to the revised classification of roads plans which are also provided by Highways England as part of D3.</p>

No	Reference	Issue or Question	Applicant's Response
67.	Schedule 6 – Modification of compensation and compulsory purchase enactments, etc ExA issue / question [PD-003] Q72 Applicant response [REP1-004]	The specific reasons for amending each element of existing legislation that the Applicant considers need to be amended.	Generally, the changes in the schedule are made to ensure the application of compulsory purchase legislation covers the acquisition of rights, not land. In addition, it ensures references are to the correct time period for implementing the CA approved under the Order. It also amends the references so that it refers to the correct judicial challenge period under the 2008 Act. In particular: <ul style="list-style-type: none"> - Paragraphs 2, 4 to 10 are amendments to ensure that the relevant provisions apply to acquisition of rights/restrictive covenants (not just land); - Paragraph 3 relates to correcting references for the relevant time period (i.e. 5 years under the Order rather than 3 years under the standard CPO legislation). The above explanation has been added to the EM for D3. The changes are based on previous Transport and Works Act Orders and DCOs. In particular the London Overground (Barking Riverside Extension) Order 2017 and the High-Speed Rail Act 2017 in respect of the Housing and Planning Act 2016 changes and in respect of the changes prior to that, the provisions are well precedented (see, for example, Schedule 6 of the A19 Coast Road Order 2016).
68.	Schedules 3, 4, 5 and 7 ExA issue / question [PD-003] Q71, Q73 Applicant response [REP1-004]	a) Responses to the ExA's Rule 17 Requests for Further Information: <ul style="list-style-type: none"> • whether the Applicant considers that it should audit dDCO Schedules 5 and 7; and 	a) Highways England will be undertaking a rolling audit of all schedules to the dDCO as the Examination progresses. This will be undertaken again prior to D3 and the issue of the revised dDCO to the ExA. b) Local Highway Authorities to respond.

No	Reference	Issue or Question	Applicant's Response
	<p>ExA FWQ [PD-005] Q1.9, Q1.10</p> <p>Applicant response [REP1-005]</p> <p>ExA Rule 17 Request for Further Information [PD-008]</p>	<ul style="list-style-type: none"> whether the Applicant considers that it should audit dDCO Schedules 3 and 4? <p>b) LHA reviews of dDCO Schedules 3 and 4.</p>	
69.	Schedule 9 – Protective provisions	Update on discussions between the Applicant and relevant statutory undertakers, Network Rail and the EA regarding agreement of the provisions.	All protective provisions discussions are still advancing with the relevant parties. Highways England is engaged with all of the statutory undertakers who have requested that protective provisions be discussed with them, namely WPD, NR, Cadent Gas, Severn Trent Water and the EA. As discussions are ongoing Highways England cannot give an indication of precise progress at this stage but is committed to securing agreement on these before close of the Examination.
Other consents, permits, licenses and agreements			
70.	<p>Consents, permits, licenses and agreements</p> <p>ExA FWQ [PD-005] Q1.12</p> <p>Applicant response [REP1-005]</p> <p>EA response [REP1-022]</p> <p>DCC response [REP1-033]</p>	<p>c) Update on discussions between the Applicant and relevance authorities regarding the position on required consents, permits, licenses and agreements.</p> <p>d) Whether the approach being adopted by the Applicant for permits and consents are acceptable to the relevant granting authorities.</p>	c) There are no significant updates to report beyond the position presented at deadline one in relation to the response to question 1.12. This response noted that many of the necessary consents, permits and agreements would be submitted as formal applications following the close of the examination. As applicable, Highways England will continue to progress further discussions during the examination period and will provide regular updates

No	Reference	Issue or Question	Applicant's Response
	DCiC response [REP1-034] Applicant comments [REP2-020]	e) Whether there is there any reason to believe that any relevant necessary consents, permits, licenses and agreements would not subsequently be granted.	throughout the remaining period of the examination on the outcome of these discussions. d) Highways England have not been made aware of any concerns to the approach adopted by any of the relevant granting authorities from the discussions that have taken place to date. e) Highways England do not foresee any reason that the consents, licences and agreements that are needed (beyond the powers set out within the draft DCO) for the Scheme will not be forthcoming.
71.	Regulation of pollution releases ExA FWQ [PD-005] Q1.13 Applicant response [REP1-005] EA response [REP1-022] DCC response [REP1-033] DCiC response [REP1-034] Applicant comments [REP2-020]	With reference to paragraphs 4.48 and 4.55-6 of the NPSNN, do the relevant pollution control authorities have any reason to believe that that potential releases from the Proposed Development would not be adequately regulated under the pollution control framework?	Pollution control authorities to respond.
72.	Consenting impediments to the Proposed Development	What information, if any, do consenting authorities require from the Applicant to be able to assist the ExA in identifying any consenting impediments to the Proposed Development?	Local Highway Authorities to respond.

No	Reference	Issue or Question	Applicant's Response
Other general matters			
73.	Use of the Rochdale Envelope, cumulative impact assessment, length of construction programme, assessment of maintenance activities, mitigation measures during operation, ExA FWQ [PD-005] Q3.3, Q3.5, Q3.7, Q3.8, Q3.9 Applicant response [REP1-005]	Do the local authorities have any comments on the Applicant's responses, including any implications for the identification of significant impacts, or on the need for mitigation measures?	Local Planning Authorities to respond.
74.	Impact and assessment methodology ExA FWQ [PD-005] Q3.10 Applicant response [REP1-005] DCC response [REP1-033] DCiC response [REP1-034] EBC response [REP1-051] EA response [REP1-022] Applicant comments [REP2-020]	Further to the Applicant's responses and comments, do the local authorities or the EA have any outstanding concerns, including with respect to: <ul style="list-style-type: none"> a) the traffic model; b) Public Rights of Way; c) flood risk; d) the closure of Ford Lane; e) groundwater; f) contaminated land; g) the Derwent Valley Mills WHS; h) the management and control of construction-related impacts under the Construction Environmental Management Plan; i) events in Markeaton Park; 	Local Highway Authorities to respond.

No	Reference	Issue or Question	Applicant's Response
		j) after care, monitoring and maintenance of the environmental mitigation measures and replacement public open space; and k) evidencing net gains, including enhancing the natural environment and reducing pollution?	
75.	SoCG	a) Updates to the draft SoCG and identification of any matters not currently agreed between the Applicant and: f) DCC [REP1-007] g) DCiC [REP2-013] h) EA [REP1-011] i) Euro Garages [RE1-041] j) McDonald's [REP1-046] k) Network Rail [REP2-014] l) Virgin Media [REP2-015] Other SoCG anticipated to be submitted during the Examination.	a. The following outlines the current status of the some of the Statements of Common Ground (SoCG) requested by the ExA: <ul style="list-style-type: none"> • DCC – A draft SoCG was submitted at Deadline 1. The main areas of ongoing discussion include: <ul style="list-style-type: none"> – The proposed design of the Little Eaton Junction. – Hydraulic calculations for the proposed highway drainage system. – The use of by-pass separators within the drainage strategy and the long-term maintenance cost of these. – The closure of Ford Lane and its impact on local businesses, particularly relating to proposed weight restrictions on the Ford Lane bridge. • DCiC – A draft SoCG was submitted at Deadline 2. The main areas of ongoing discussion include: <ul style="list-style-type: none"> – All issues related to flood risk and drainage are under discussion, except in relation to the use of the DCIM hydraulic model for the

No	Reference	Issue or Question	Applicant's Response
			<p>assessment of flood risk at the Kingsway Junction.</p> <ul style="list-style-type: none"> - Following further discussions after Deadline 2, all air quality issues are now agreed. - The majority of issues relating biodiversity impacts remain under discussion. - Impacts on Human Health remain under discussion. - The majority of issues relating to flood risk and drainage remain under discussion. - DCiC believes there are issues with the General Layout Drawings that need to be rectified at detailed design. - The impacts of the Ford Lane bridge closure and subsequent signalisation of the A6/ Ford Lane junction are under discussion. - Issue related to traffic management during discussion remain under discussion. <ul style="list-style-type: none"> • EA – A draft SoCG was submitted at Deadline 1. Discussions are on-going, and Highways England has provided the EA with additional information. • Euro Garages – Euro Garages submitted a draft version of the SoCG at Deadline 1. All issues remain under discussion, except that both parties agree to the principle of the Scheme. • McDonald's – McDonald's submitted a draft version of the SoCG at Deadline 1. Discussions are on-going. • Network Rail – A draft SoCG was submitted at Deadline 2. Discussions are on-going.

No	Reference	Issue or Question	Applicant's Response
			<ul style="list-style-type: none"> • Virgin Media – A draft SoCG was submitted at Deadline 2. Discussions are on-going. <p>b. Other SoCG anticipated to be submitted during the Examination.</p> <p>Highways England has agreed a draft SoCG with Royal School for the Deaf to be submitted at Deadline 3.</p> <p>Highways England has progressed SoCGs with the following parties, but has not reached a point at which they can be submitted to the ExA:</p> <ul style="list-style-type: none"> • Sutton Turner Houses • Haven Care Group • Breadsall Parish Council • National Grid/ Cadent Gas Ltd • Severn Trent Water Ltd • Western Power • Derby Cycling Group and Sustrans • Openreach City Fibre • CTiL • MBNL <p>It should be noted that Western Power has suggested that a Statement of Common Ground is not necessary, and that issues between the two parties can be dealt with through alternate means.</p>