

A38 Derby Junctions

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8.62 Responses to Examining Authority's Second Written Questions

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A38 Derby Junctions

Development Consent Order 202[]

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1 Responses to the Examining Authority's Second Written Questions

- 1.1.1 This document has been prepared by the Applicant to set out its responses to the Examining Authority's (ExA's) second written questions.
- 1.1.2 These can be found in **Table 1-1** below.

Table 1-1 Applicant's Response to the Examining Authority's Second Written Questions

No	Question to	Ref.	Question	Applicant's response
1.	The draft Development Consent Order and other general matters			
	Reference is made to the draft Development Consent Order submitted by the Applicant at Deadline 3 [REP3-002].			
	General matters and preamble			
1.1.	Applicant Derby City Council (DCiC) Erewash Borough Council (EBC) Environment Agency (EA)	"Guillotine" provisions Articles 15(6), 19(11), 20(7), 22(6) Issue Specific Hearing 2 Issues and Questions (ISH2 I&Q) [PD-010] Q41 Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] EA response [REP3-034]	a) Update on discussions between the Applicant and relevant consultees regarding the agreement of provisions that confer deemed consent if a consultee does not respond within a specified period. b) Should the "guillotine" fall after 28 days or another period? c) Should provisions contain an express requirement that any application for consent should contain a statement drawing the consultee's attention to the guillotine? d) Should the EA's suggested text be added: " <i>Nothing in this article overrides the requirement for an environmental permit under regulation 12 (requirement for environmental permits) of the Environmental Permitting (England and Wales) Regulations 2016</i> "? If so, to which Article(s)?	a) Highways England has consulted directly with both councils on this point and understands that DCiC considers that on most articles the notice period specified in the articles negates their concern over the guillotine period. Highways England notes that DCiC does have some concern with the time period specified in article 20. Highways England will discuss this further with DCiC and hopes to reach an agreed position before the next hearings. Highways England understands that DCC's initial response is that they do not have any issues with this. Erewash has confirmed that they are content with these provisions, although they have stated a preference that applications for deemed consent should include a statement drawing the attention of consultees to that effect. (See response to part c below). b) Highways England considers that 28 days is an adequate time within which to respond to any application made in respect of the

No	Question to	Ref.	Question	Applicant's response
			e) Are EBC content with the current provisions?	<p>relevant requirements. The term is consistent with other made DCOs, including Highways England DCOs (see for example A303 Ilminster, M20 Junction 10a etc.) On the basis of the councils' responses noted above, Highways England considers that 28 days is an appropriate period that will not delay securing the approvals that are necessary.</p> <p>c) As raised in ISH2, given the ongoing discussions around these provisions Highways England does not consider this is appropriate.</p> <p>d) Highways England does not consider that "for the avoidance of doubt" provisions are required as part of the DCO. Legally the EPR regime will continue to operate as no aspect of it is being disapplied through the DCO.</p> <p>e) EBC to respond</p>
1.2.	Applicant	<p>No materially new or materially worse adverse environmental effects Requirements 15(2), 16(2)</p> <p>Outline Environmental Management Plan (OEMP) [REP3-003] PW-G4, MW-G12</p>	<p>a) Please clarify the purpose of the tailpieces "... <i>taking into account the mitigation identified in it</i>" and "... <i>taking into account the lighting identified in it</i>".</p> <p>b) Are all relevant matters in the Environmental Statement (ES) already taken into account, as is presumably considered to be the case with other uses of similar wording elsewhere in the draft Development Consent Order (dDCO)?</p>	<p>a) The tailpieces are to ensure that any alternative mitigation proposed as part of the relevant requirements will not give rise to any materially new or materially worse adverse environmental effects, such effects being those identified in the ES together with the identified mitigation, not just the effects themselves.</p> <p>b) In terms of seeking to discharge the requirements and similar such wording appearing in the dDCO, the intention is for no</p>

No	Question to	Ref.	Question	Applicant's response
			<p>c) Should the wording in the OEMP be amended to "<i>no materially new or materially worse adverse environmental effects in comparison with those reported in the Environmental Statement</i>"?</p>	<p>materially new or materially worse adverse environmental effects to occur compared to those identified in the ES. So at the stage of discharge all relevant matters in the ES will be considered and clearly nothing which is outside of the scope of the ES will be consented as part of the DCO in any event.</p> <p>c) The OEMP [REP3-003] uses the terminology "<i>any materially new or materially worse adverse environmental effects in comparison with those reported in the Environmental Statement</i>" which is consistent with the wording used in the dDCO. Thus it is considered that the OEMP does not need to be amended.</p>
Part 1 – Preliminary				
1.3.	Applicant	Interpretation Article 2(1) " <i>maintain</i> " ISH2 I&Q [PD-010] Q43 Applicant response [REP3-026]	<p>a) Please could the Applicant suggest rewording of the definition to exclude any materially new or adverse environmental impacts in comparison with those reported in the ES?</p> <p>b) Taking one example, please could the Applicant clarify whether reconstruction of the Little Eaton embankment has been assessed in the ES?</p>	<p>a) The definition of "maintain" in the dDCO has been amended to reflect this.</p> <p>b) Reference should be made to the Applicant's response to ExA first written question 3.8 on maintenance issues [REP1-005]. This indicates that ES Chapter 2: The Scheme (para. 2.7.4) [APP-040] states that: "<i>Maintenance is defined as actions needed to inspect, repair, adjust, alter, remove, replace or reconstruct all aspects that relate to the Scheme. Typical maintenance activities include: the inspection and repair of safety barriers; signage; drainage infrastructure;</i></p>

No	Question to	Ref.	Question	Applicant's response
				<p><i>lighting; environmental barriers; structures; repairs to the carriageway surface; renewal of road markings; maintenance of highway verges and boundaries; management of the soft estate; and the inspection and clearance of road drains.</i>" As detailed in ES para. 2.7.7, maintenance could include asset repairs, such as the replacement of lighting columns. The ES has applied this definition in order to assess the potential environmental effects during the routine operation of the Scheme. This definition covers the activities that are currently undertaken on a routine basis by the East Midlands Asset Delivery team (Highways England) along the existing A38 through Derby. This definition covers activities associated with the management and maintenance of Scheme soft estate (e.g. landscape planting), surface assets and associated infrastructure assets (e.g. lighting columns, signage, gantries etc.). This definition does not cover activities such as the reconfiguration of junction layouts, replacement of Scheme structures such as bridges, construction of new carriageway or actions that would change traffic movements or priorities, changes to the highway vertical or horizontal alignment, changes to the soft estate or embankment profiles, or removal of essential mitigation features. Thus, the ES does not assess the reconstruction of the Little</p>

No	Question to	Ref.	Question	Applicant's response
				Eaton embankment during the Scheme operational phase as this is not considered to be a maintenance activity.
1.4.	Applicant, EA, DCiC Derbyshire County Council (DCC)	Article 3 - Disapplication of legislative provisions ISH2 I&Q [PD-010] Q44 Applicant response [REP3-026] EA response [REP3-034]	<p>a) Please provide an update 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. Please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.</p> <p>b) Please could the EA clarify whether the protective provisions:</p> <ul style="list-style-type: none"> • ensures that the EA's regulatory role is maintained when the legal provisions are disapplied; or • provide adequate protections for EA in the circumstances where its regulatory role is reduced in or altered? <p>c) Are there conflicts with the ability of a Lead Local Flood Authority to perform its duties and, if so, how can these be avoided?</p>	<p>a) Highways England has contacted the EA, DCiC and DCC to discuss the disapplication of these provisions. Highways England is awaiting formal responses to the justification it has given for these disapplications.</p> <p>Progress has been made with the EA on a number of points in respect of the disapplication of legislative provisions. Highways England and the EA are currently considering the extent of any byelaws that may be affected by the proposed disapplication of the Water Resources Act.</p> <p>DCiC's initial response provided to Highways England is that disapplying s.23 of the Land Drainage Act could affect the Council's ability (as the Lead Local Flood Authority) to manage flood risk from watercourses. Highways England will discuss this point further with DCiC and look to have the position resolved before the next set of hearings.</p> <p>Highways England will continue to discuss the disapplication provisions with all parties.</p> <p>b) EA to respond</p> <p>c) DCC/DCiC to respond</p>

No	Question to	Ref.	Question	Applicant's response
1.5.	Applicant	Article 4 - Maintenance of drainage works ISH2 I&Q [PD-010] Q44 Applicant response [REP3-026] DCC response [REP3-029]	<p>The Applicant has stated that it would maintain drainage while it has temporary possession of land. However, Article 4 would cause responsibility for maintenance to remain with third parties, whose rights would be interfered with.</p> <p>The Applicant has stated that it would be responsible for any damage caused to drainage and that it is therefore in its' <i>"interest to ensure that the land is appropriately maintained in all respects"</i>. However, it appears that the maintenance required to avoid damage during temporary possession could fall short of the maintenance required as part of a long-term plan.</p> <p>Please could Applicant comment and suggest amended dDCO wording to clarify responsibilities for maintenance of drainage works while it has temporary possession of land?</p>	The Applicant has stated previously that responsibility for drainage maintenance can be agreed in writing between Highways England and the person responsible for the relevant drainage (as per article 4(1)). As such, Highways England can and would normally agree provisions in this respect separately with landowners in advance of taking temporary possession.
Part 2 – Principal Powers				
1.6.	Applicant DCiC DCC EBC	Article 6 – Maintenance of authorised development ISH2 I&Q [PD-010] Q46 Applicant response [REP3-014] [REP3-026]	a) Article 6 allows the undertaker to maintain the authorised development but does not require it to do so. How is maintenance secured? For the avoidance of doubt should there be an overall requirement for the Applicant to maintain, unless the dDCO provides	a) Article 6 grants a power to Highways England under the DCO to maintain the authorised development (as, for example, Article 11 (Street works) does). It would, however, be inappropriate to impose a maintenance obligation on Highways England as it is under a separate duty to ensure the

No	Question to	Ref.	Question	Applicant's response
		DCiC response [REP3-027]	<p>otherwise? Otherwise, is there the potential for maintenance responsibilities not to be defined e.g. for associated or ancillary development?</p> <p>b) Please provide an update on discussions between the Applicant and Local Authorities regarding clarification of responsibilities for maintenance during construction and during operation. How will those responsibilities be secured? Please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.</p>	<p>strategic road network is adequately maintained. In addition to its duties under the Highways Act 1980 (as previously provided to the ExA), Highways England's network licence issued by the Department for Transport provides that Highways England has to maintain its network. This licence is supported by statutory directions and guidance, issued under s.6 of the Infrastructure Act 2015. As such, Highways England does not consider it appropriate or necessary for article 6 to impose a positive obligation on Highways England to maintain the authorised development.</p> <p>b) Discussions are continuing with the LHAs and HE Area Team (last meeting held 24/01/2020) to progress the maintenance arrangements for the operational stage of the scheme; the general principles have been agreed. The final details will be agreed during the next design stage when details become available for all aspects of all infrastructure.</p> <p>With respect to the construction stage, in accordance with GG182 "Major schemes: Enabling handover into operation and maintenance", part of Highways England's DMRB documents, a Detailed Local Operating Agreement (DLOA) will be produced in consultation with the LHAs and the HE Area Team by the Contractor during the detailed design stage of the scheme. The DLOA</p>

No	Question to	Ref.	Question	Applicant's response
				definition and purpose is in accordance with CDM Regulations 2015. The document is currently in its early stages and will continue to be developed prior to commencement of works on site, as secured by the outline TMP the final document will be appended to the TMP for Secretary of State approval at that time.
1.7.	Applicant	Article 8 – Limits of deviation ISH2 I&Q [PD-010] Q46 Applicant response [REP3-014] [REP3-026]	In the interests of clarity and to avoid any confusion, please could the lateral limits of deviation assessed in the ES be set out in the dDCO?	Highways England considers that the wording proposed in the amended article 8 provides sufficient clarity to as to avoid confusion as explained in the response given to the ExA FWQ 3.3.
Part 3 – Streets				
1.8.	DCiC DCC	Streets ISH2 I&Q [PD-010] Q49, Q50, Q52, Q53. Applicant response [REP3-026] DCiC response [REP3-027]	Do the Local Highways Authorities have any outstanding concerns with respect to: <ul style="list-style-type: none"> • how Section 4 of the Highways Act would be affected; • provisions for construction and maintenance of new, altered or diverted streets and other structures (Article 13); • clearways (Article 18) or • traffic regulations (Article 19)? 	LHAs to respond
1.9.	Applicant DCiC	Article 11 – Street works ISH2 I&Q [PD-010] Q48	a) Please provide an update on discussions regarding any conflict	a) Highways England understands that both DCC and DCiC have permit schemes in place.

No	Question to	Ref.	Question	Applicant's response
		<p>Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027]</p>	<p>between the ability for the undertaker to enter any streets within the Order Limits with DCiC's ability of to perform its' duties.</p> <p>b) Should the dDCO, OEMP or Traffic Management Plan (TMP) be amended to address DCiC's concerns?</p> <p>c) Please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.</p>	<p>These are statutory schemes which replace the New Roads and Street Works Act process of notifying the relevant local highways authority of works which are due to take place on their highway network. Instead, the permit scheme requires that anyone proposing to undertake works to the local highway authority's network must first obtain a permit from the local highway authority. In addition to this, to ensure the effective operation of the permit scheme and to avoid any conflict with the process set out in NRSWA, the permit scheme disapplies a number of the provisions in NRSWA; in fact, the permit scheme disapplies a number of the NRSWA provisions which Highways England seeks to rely on and modify through the DCO (through articles 11 and 12 in the dDCO).</p> <p>On this basis, to ensure the effective delivery of the Scheme and to avoid any potential ambiguity over the regime which applies to the Scheme, the only approach Highways England considers feasible is to disapply both permit schemes insofar as they apply to the affected streets within the Order limits. Highways England proposes to amend article 3 in the dDCO to this effect. Highways England is happy to discuss this approach with both councils and will aim to have an update on discussions ahead of the next set of hearings.</p>

No	Question to	Ref.	Question	Applicant's response
				b) see above c) see above
1.10.	DCiC DCC	Article 14 – Classification of roads, etc. ISH1 [PD-003] Q24 Applicant response [REP1-004]	Do the Local Highways Authorities have any comments on provisions taking effect “ <i>On a date to be determined by the undertaker</i> ”?	LHAs to respond
Part 4 – Supplemental Powers				
1.11.	EA DCiC DCC	Article 20 – Discharge of water ISH1 [PD-003] Q30, Q31 Applicant response [REP1-004] [REP2-020] DCiC response [REP1-034] EA response [REP1-021]	a) Do EA, DCC or DCiC consider it necessary for the following provisions should be added? If so, why? <ul style="list-style-type: none"> <i>The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river?</i> <i>This article does not authorise any groundwater activity or water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010 or nothing in this article overrides the requirement for an environmental permit under Regulation 12(1)(b) (requirement for environmental permit) of the</i> 	EA and LHAs to respond

No	Question to	Ref.	Question	Applicant's response
			<p><i>Environmental Permitting (England and Wales) Regulations 2016?</i></p> <ul style="list-style-type: none"> • <i>This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (3)?</i> <p>b) Does DCiC have any outstanding concerns regarding Article 20 with respect to non-main river watercourses or existing outfalls?</p> <p>c) Do the EA or DCC have any outstanding concerns regarding Article 20?</p>	
Part 5 – Powers of Acquisition				
1.12.	DCC	Article 27 – Public rights of way ISH1 [PD-003] Q30, Q31 Applicant response [REP1-004] [REP2-020] DCC response [REP1-032]	Do DCC have any outstanding concerns regarding Public Rights of Way that need to be addressed in the dDCO or TMP?	DCC to respond

No	Question to	Ref.	Question	Applicant's response
1.13.	Applicant DCiC	Article 33 - Temporary use of land for carrying out the authorised development ISH2 I&Q [PD-010] Q55 Applicant response [REP3-026] DCiC response [REP3-027]	<p>a) Is the Applicant able to take a (reasonable) precautionary approach to specifying works in Schedule 7 so that the wide-ranging phrase "<i>or any other mitigation works in connection with the authorised development</i>" can be removed?</p> <p>b) DCiC has referred to further information being required at detail design stage. Is it satisfied that suitable provisions are included in the OEMP?</p>	<p>a) At this stage of the delivery programme (i.e. the preliminary design stage) the phrase gives Highways England the flexibility it needs to ensure that appropriate mitigation works can be undertaken when the Scheme is constructed.</p> <p>b) DCiC to respond</p>
Part 6 – Operations				
1.14.	Applicant DCiC DCC EBC	Article 39 - Felling or lopping of trees and removal of hedgerows ISH1 [PD-003] Q41, Q42 Applicant response [REP1-004] ISH2 I&Q [PD-010] Q55 Applicant response [REP3-026] DCiC response [REP3-027]	<p>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?</p> <p>b) Please could the Applicant clarify how the potential for later removal of any hedgerows subject to protection under the Hedgerows Regulations 1997 that have not yet been identified is consistent with the ES representing a reasonable worst-case scenario?</p> <p>c) Should the dDCO require the production of a Schedule and a plan and consultation with the Local Authorities prior to the removal of any hedgerows subject to protection under the Hedgerows Regulations 1997?</p>	<p>a) LHAs to respond</p> <p>b) The Scheme Order Limits have been subject to intensive survey since 2015 and thus all hedgerows therein have been suitably identified. The plan submitted at Deadline 3 [REP3-021] illustrates hedgerows within the Order Limits and those that would be subject to removal. Hedgerows to be removed have been identified through liaison with the road design team and Highways England. The defined loss of hedgerows is considered to represent a reasonable worst case given that no further hedgerows are anticipated to require removal. In the unlikely occurrence were other hedgerows are identified that need to be removed which are protected under the Regulations, the provisions of those</p>

No	Question to	Ref.	Question	Applicant's response
			<p>d) How should DCiC's request to be provided advance notice of commencement of any removal of existing trees and shrubs in the event of any public queries and questions be addressed.</p>	<p>Regulations would need to be adhered to by Highways England i.e. out with the DCO process.</p> <p>c) The loss of hedgerows within the Order Limits are shown in the plan submitted at Deadline 3 [REP3-021]. It is thus not considered necessary for the dDCO to require the production of a further plan and schedule.</p> <p>d) During the detailed design stage vegetation clearance plans will be finalised. Such plans can be made available to the local authorities. The need to consult with the DCiC Arboriculture team in advance of commencement of any removal of existing trees and shrubs will be detailed in the next version of the OEMP.</p>
Part 7 – Miscellaneous and General				
1.15.	Applicant	<p>Article 43 - Defence to proceedings in respect of statutory nuisance ISH1 [PD-003] Q44 Applicant [REP1-004] DCiC [REP1-034]</p>	<p>a) Please justify why 42 days is provided to the undertaker to lodge an appeal, whereas a Local Authority would only have 10 days to respond.</p> <p>b) Why does the undertaker require 42 days rather than the Control of Pollution Act 1974 provision of 21 days and how is that consistent with there being "<i>limited scope for delay in the progress of the Scheme</i>"?</p>	<p>a) and b) It is assumed that this question is raised in respect of Article 50 and not 43. If so, Highways England is content to amend the time period and reduce it from 42 days to read "21 days" and this is reflected in the most recent version of the dDCO submitted at D4.</p>

No	Question to	Ref.	Question	Applicant's response
1.16.	Applicant DCiC EBC EA	Article 50 - Appeals relating to the Control of Pollution Act 1974 ISH1 [PD-003] Q44 Applicant [REP1-004]	Please provide an update on discussions. a) Have these provisions been agreed? b) Do the Local Authorities consider that the process and timescales are fair and reasonable? c) Are any amendments required to Article 50 or to the OEMP? d) Please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.	a) This provision is not relevant to the EA but to the councils only. Both councils have been asked for their opinion on this point and a response is expected as part of the D4 submissions. b) LAs to respond c) Highways England does not consider that any changes to the OEMP are required on the basis that the provisions of the article are sufficient. d) Please see response to a) above.
Schedule 1 – Authorised Development				
1.17.	Applicant	ISH1 [PD-003] Q50 Applicant [REP1-004]	Should the Ancillary Works be itemised separately, consistent with the dDCO for A303 Amesbury to Berwick Down?	As the ancillary works apply to a number of the works listed in Schedule 1 (as previously indicated to the ExA) Highways England does not consider that these works need to be itemised. The reason for the list of the ancillary works is to provide Highways England with the flexibility it needs at this stage of the development design. To ensure this flexibility the only other option would be to include the ancillary works list to every work number, which would make the DCO unduly long and cumbersome.
Schedule 2 – Requirements				
1.18.	DCiC DCC	Requirements 1-21	Further to the responses provided by the Applicant at Deadline 3, do the Local	LAs to respond

No	Question to	Ref.	Question	Applicant's response
	EBC	Provisions for consultation and agreement ISH1 [PD-003] Q58 Applicant response [REP1-004] [REP2-020] DCC response [REP1-032] First Written Questions (FWQ) [PD-005] Q1.5 DCiC response [REP1-034] Applicant response [REP2-020] ISH2 I&Q [PD-010] Q59 Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] DCC response [REP3-029]	Authorities have any outstanding concerns with respect to DCO or OEMP provisions for consultation and agreement. a) Consultation with Derwent Valley Mills World Heritage Site Partnership to Requirements 9 and 12? b) Consultation with the Lead Local Flood Authority to Requirements 12(1), 12(2), 13(1), 13(2), and 14(1)? c) Consultation with Local Authorities with respect to potential impacts on Local Authority assets? d) Consultation with Local Authorities regarding any improvements, diversions, stopping up or future maintenance liabilities for the Public Rights of Way network.	
1.19.	Applicant	Requirement 3 – Construction Environmental Management Plan (CEMP) Revised OEMP	a) Requirement 3(d) and the item PW-G4 of the clean version of the OEMP include “ <i>installation of bridge decks</i> ”. However, this is indicated as deleted in the tracked version of the OEMP as deleted. Please clarify.	a) “Installation of bridge decks” is deleted in PW-G4 in both the clean version of the OEMP [REP3-003] and in the tracked version of the OEMP [REP3-004]. b) CEMPs are living documents and so it is anticipated that each CEMP will be revised as

No	Question to	Ref.	Question	Applicant's response
		OEMP clean [REP3-003] OEMP tracked [REP3-004]	b) Should there be a requirement for the CEMP to be kept up to date with any material changes during construction and for consultation to be required on each revision? If so, should that be secured in the dDCO or the OEMP?	necessary during the construction phase by the contractor, in line with the principles of the OEMP. Each revised CEMP will be prepared in consultation with the relevant stakeholders as set out in the OEMP. This will be clarified in the next version of the OEMP.
1.20.	Applicant DCiC DCC EBC EA	CEMP and Handover Environmental Management Plan (HEMP) Requirement 3 ISH1 [PD-003] Q52 Applicant response [REP1-004]	The ExA is considering a requirement for the CEMP and HEMP to ensure no materially new or materially worse adverse environmental effects in comparison with those reported in the ES. The purposes of this are to reduce doubt and improve clarity that the detailed design and construction proposals and mitigation would be consistent with the ES. Please could the Applicant suggest appropriate wording?	The detailed design and construction proposals already have to be consistent with the ES (as does the Scheme as anything outside of the scope of the ES is not authorised – see requirement 12(1) regarding Detailed design). As the HEMP has to be based on the CEMP (requirement 3(4)), the CEMP incorporates the measures identified in the ES and the detailed design of the Scheme cannot include any materially new or materially worse adverse environmental effects in comparison with those reported in the ES, it is not considered that anything additional needs to be added to R3.
1.21.	DCiC DCC EBC EA	HEMP Requirement 3(4) OEMP [REP3-003] MW-G11 ISH2 I&Q [PD-010] Q61 Applicant response [REP3-014] [REP3-026]	a) Do the Local Authorities or the EA have any comments on the provisions for a Handover Environmental Management Plan in the dDCO or OEMP? b) Should provisions be added to Requirement 3(4) that the HEMP must:	EA and LAs to respond

No	Question to	Ref.	Question	Applicant's response
		EA response [REP3-034]	<ul style="list-style-type: none"> • be substantially in accordance with the HEMP provisions included in the OEMP and CEMP; • contain a record of all the sensitive environmental features that have the potential to be affected by the operation and maintenance of the proposed development; and • incorporate the measures referred to in the ES as being incorporated in the HEMP? 	
1.22.	DCiC DCC EBC EA	<p>The principle of consultation rather than agreement and details of consultation</p> <p>Requirements 3, 4, 5, 8, 11, 12, 13, 14, 15, 16, etc..</p> <p>OEMP [REP3-003]</p> <p>ISH1 [PD-003] Q54, Q55, Q56</p> <p>Applicant response [REP1-004] [REP2-020]</p> <p>DCiC response [REP1-034]</p> <p>EA response [REP1-021]</p> <p>ISH2 I&Q [PD-010] Q61</p>	<p>a) Further to the Applicant's responses, are the Local Authorities and the EA content with the principles in the dDCO and OEMP for them to be consulted on relevant discharging measures and that any agreement or approval would be given by the Secretary of State?</p> <p>b) Should a 28 day consultation period be added to Requirement 4?</p> <p>c) Is the EA satisfied Requirement 4(4) addresses its' concerns that the Applicant must provide reasons for not incorporating an undertaker's recommendations within the report to the Secretary of State?</p>	EA and LAs to respond

No	Question to	Ref.	Question	Applicant's response
		Applicant response [REP3-026] EA response [REP3-034]		
1.23.	Applicant EA	Verification Report Requirements 3 and 8 OEMP [REP3-003] MW-GEO3 FWQ [PD-005] Q1.5 EA response [REP1-020] [REP1-022] Applicant response [REP2-020] ISH2 I&Q [PD-010] Q59 Applicant response [REP3-026] EA response [REP3-034]	a) Does the EA have any comments on the inclusion of requirements for a Verification Report in the OEMP? b) Please could the Applicant and the EA agree whether provisions for a Verification Report and EA consultation during that process should be included in Requirement 8?	a) EA to respond b) Highways England understands that the EA is now content to accept a verification report process through the OEMP/CEMP as opposed to R8. The amended wording to be included in the OEMP will be discussed with the EA and an update provided to the ExA at D5.
1.24.	Applicant DCiC DCC EBC EA	Preliminary works Requirements 5(1), 11(1), 13(1) ISH2 I&Q [PD-010] Q41 Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] EA response [REP3-034]	a) Are DCiC, DCC, EBC and EA content that a CEMP for preliminary works would not be required to include a written landscaping scheme, a traffic management plan, or written details of the surface and foul water drainage system? b) Preliminary works include the establishment of the main construction compound at Little Eaton, for which " <i>the surface of the construction compound</i> "	a) EA and LAs to respond b) It is considered that the works to establish the main construction compound at Little Eaton junction need to be started during the preliminary works so that the main works can start on schedule. The mitigation measures that will be applied during such works to mitigate potential environmental effects are detailed in the OEMP [REP3-003] and secured through the DCO, noting that a

No	Question to	Ref.	Question	Applicant's response
			<p><i>area would be covered by approximately 600mm (subject to detailed design) of compacted stone". Is it appropriate for the establishment of the main construction compound to be preliminary works, considering:</i></p> <ul style="list-style-type: none"> • the scale and nature of those works, including the amount of material to be imported and the underlying landfill; • potential contamination, drainage, traffic, noise and air quality impacts; and • the potential for elements to be retained permanently. 	<p>preliminary works CEMP would be prepared and subject to consultation with the local authorities and the Environment Agency (refer to PW-G1). It is noted that elements of the compound are not planned to be retained permanently. As such, Highways England considers that the main construction compound is a preliminary work.</p>
1.25.	Applicant	Requirement 10 – Protected species ISH1 [PD-003] Q59 Applicant response [REP1-004] ISH2 I&Q [PD-010] Q63 Applicant response [REP3-026]	<p>Please could Requirement 10 be updated to include for:</p> <ol style="list-style-type: none"> a) the written scheme of protection and mitigation measures to be submitted to and approved in writing by the Secretary of State; and b) for consultation with Natural England to extend to all protected species and not just to those not previously identified in the ES? 	<p>a) It is not clear why this is being proposed. The ES identifies protected species which are likely to be encountered as part of the development of the Scheme and it proposes mitigation measures to ensure that the impacts on these species are minimised. No party has raised concerns about the adequacy of these assessments or the proposed action that will be taken in respect of the defined mitigation approaches. As such, in the event that unidentified species are identified, it is not clear why the Secretary of State should sign off on the proposals when Natural England will be consulted on the approach and there is a</p>

No	Question to	Ref.	Question	Applicant's response
				<p>strict requirement to cease development near to the location of the previously unidentified species. In any event, the purpose of the requirement is to ensure that a resolution to deal with unidentified species is found quickly. It is not clear what advantage consulting the SoS would give when a response would be needed quickly and the Secretary of State will revert to its expert advisors on the point i.e. Natural England.</p> <p>b) The current drafting of the requirement is adequate as those identified will be covered by the provisions in the ES and those that are not will be covered by the requirement. NE has been consulted on those species identified and they are content with the defined mitigation approaches. If species are discovered other than those identified, then NE will be consulted, thus giving them the full picture. It is noted that the OEMP [REP3-003] includes preconstruction ecological surveys (refer to Table 3.2a) that covers protected species known to be present within the Scheme footprint as well protected species that are currently considered to be absent – such surveys will aim to reaffirm the absence of protected species previously assumed not to be present.</p>
1.26.	Applicant DCiC	Requirement 14 – Flood compensatory storage	a) Should Requirement 14 be amended to reflect the differing climate change	a) Requirement 14 does not need amending since it appropriately reflects the differing

No	Question to	Ref.	Question	Applicant's response
	EA	ISH1 [PD-003] Q59 Applicant response [REP1-004] DCiC response [REP1-034]	allowances for peak river flow and peak rainfall intensity? b) Are the allowances consistent with the ES? c) Does the EA have any comments on the allowances?	climate change allowances associated with the assessment of flood risk at each junction. It is noted that both climate change allowances stated in Requirement 14 are based on the same UKCP09 climate projection i.e. the 'Upper end' for the 2080s epoch. b) The allowances stated in Requirement 14 are consistent with those stated in the ES and the accompanying FRAs. c) EA to respond
Schedule 3 – Classification of Roads, etc.				
1.27.	Applicant DCC DCiC	Local Highways Authority review and update on discussions ISH1 [PD-003] Q67 Applicant response [REP1-004] [REP2-020] DCC response [REP1-032] DCiC response [REP1-034] ISH2 I&Q [PD-010] Q65, Q68 Applicant response [REP3-014] [REP3-026]	a) Have the Local Highways Authorities carried out a detailed review of Parts 1-8 of Schedule 3? b) Are there any outstanding concerns with respect to the provisions in the dDCO? c) Please provide an update on any discussions including with respect to: <ul style="list-style-type: none"> • agreement of the dDCO provisions; • de-trunking; and • the Traffic Regulation Order making process. d) In each case please summarise the outstanding matters for agreement, the next steps to be taken and whether	a) and b) LHAs to respond c) Highways England has sought confirmation from DCC and DCiC on these points. Highways England is waiting for specific confirmation on the points and will continue to discuss these with the councils. However, it is understood that neither council has any major concerns with the minor detrunking proposals. In addition, Highways England has provided DCC with some additional information on the TRO process and offered to discuss any issues DCC may have in this respect. d) See above

No	Question to	Ref.	Question	Applicant's response
		DCC response [REP3-029]	agreement is anticipated during the Examination. e) Please could the Applicant advise of any changes arising from its' rolling audit?	e) Changes made to the Schedules are reflected in the revised dDCO submitted to the ExA as part of D4.
Schedule 4 – Permanent Stopping Up of Highways, etc.				
1.28.	Applicant DCC DCiC	Local Highways Authority review ISH1 [PD-003] Q69 Applicant response [REP1-004] [REP2-020] DCC response [REP1-033] DCiC response [REP1-034] ISH2 I&Q [PD-010] Q68 Applicant [REP3-026]	a) Have the Local Highways Authorities carried out a detailed review of Parts 1-4 of Schedule 4? b) Are there any outstanding concerns with respect to the provisions in the dDCO? c) Please could the Applicant advise of any updates arising from its' rolling audit?	a) and b) LHAs to respond c) Changes made to the Schedules are reflected in the revised dDCO submitted to the ExA as part of D4.
Schedule 5 – Land in Which New Rights, etc. May be Acquired				
1.29.	Applicant	Rolling review and updates ISH2 I&Q [PD-010] Q68 Applicant [REP3-026]	Please could the Applicant advise of any updates arising from its' rolling audit?	Changes made to the Schedules are reflected in the revised dDCO submitted to the ExA as part of D4.
1.30.	Not used			
Schedule 6 – Modification of Compensation and Compulsory Purchase Enactments, etc.				

No	Question to	Ref.	Question	Applicant's response
1.31.	3Applicant	Consistency with s126 of The Planning Act 2008 (PA2008)	<p>Please could the Applicant explain whether the provisions are consistent with s126 of PA2008, which includes that:</p> <p><i>“(2) The order may not include provision the effect of which is to modify the application of a compensation provision, except to the extent necessary to apply the provision to the compulsory acquisition of land authorised by the order.</i></p> <p><i>(3) The order may not include provision the effect of which is to exclude the application of a compensation provision.”</i></p>	Highways England considers that schedule 6 is consistent with s126 PA2008 and that the DCO also modifies the compulsory purchase regime in order to extend the regime to the acquisition of private rights.
Schedule 7 – Land for Which Temporary Possession Might be Taken				
1.32.	Applicant	Rolling review and updates ISH2 I&Q [PD-010] Q68 Applicant [REP3-026]	Please could the Applicant advise of any updates arising from its' rolling audit?	Changes made to the Schedules are reflected in the revised dDCO submitted to the ExA as part of D4.
Schedule 8 – Trees Subject to Tree Preservation Orders				
1.33.	DCiC	Tree removal	Does DCiC have any comments regarding that trees subject to tree preservation orders that are identified for removal?	DCiC to respond
Schedule 9 – Protective Provisions				
1.34.	Applicant EA	Update on discussions ISH2 I&Q [PD-010] Q69	a) Please provide an update on discussions between the Applicant and relevant statutory undertakers, Network	a) The most recent versions of the protective provisions being discussed with the SUs, the EA and NR are all currently back with their respective legal teams for further comment

No	Question to	Ref.	Question	Applicant's response
		<p>Applicant response [REP3-026] EA response [REP3-034]</p>	<p>Rail and the EA regarding agreement of the provisions.</p> <p>b) Please provide an update on the disapplication of by-laws relevant to the EA and associated protective provision.</p> <p>c) In each case please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.</p>	<p>and continue to be negotiated. The most recent versions of the protective provisions were returned:</p> <p>to Cadent Gas on 13 January 2020;</p> <p>to Severn Trent on 14 January 2020;</p> <p>to the EA on 31 January 2020;</p> <p>to WPD on 16 January 2020; and</p> <p>to Network Rail on 27 January 2020</p> <p>b) Disapplication of bye-laws is under discussion with the EA to determine which bye-laws are at issue and whether their disapplication is acceptable to the EA.</p> <p>c) In view of the engagement with SUs, Network Rail and the EA to date, Highways England expects that agreement will be reached with all parties during the Examination.</p> <p>Outstanding matters/next steps: responses to Highways England's most recent proposals are awaited.</p>
Schedule 10 – Documents to be Certified				

No	Question to	Ref.	Question	Applicant's response
1.35.	Applicant	Update ISH1 [PD-003] Q80, Q81, Q82 Applicant response [REP1-004]	Please provide an update ensuring that: a) all relevant documents are updated with changes and clarifications provided by the Applicant during the Examination; b) all updates are clearly identified; and c) each updated document is clearly distinguished from the version submitted with the Application and from other versions submitted during the Examination.	Please see the revised dDCO submitted as part of D4.
Other general matters				
1.36.	Applicant	Design Manual for Roads and Bridges (DMRB)	The DMRB has recently been updated by Highways England and copies of the old standard have been withdrawn from the publicly accessible website. Please confirm where on line the Examining Authority and participants to the Examination may access the withdrawn standards and interim advice notes. If no web access is available, please submit a copy of the previous DMRB standards to the Examination to allow scrutiny of the methodology on which the ES chapters are based.	The DMRB comprises 15 volumes, with 380 technical documents and over 16,000 pages. As such, there is no "one file" to be accessed. Volume 11 on the environment is over 1000 pages in itself. Highways England are in the process of building a website with the historical DMRB standards. In the meantime, Standards_Enquiries@highwaysengland.co.uk can be contacted to request the historic information by any interested parties, or they can be requested through the standards for highways website.
1.37.	Applicant EA DCiC	Other consents, permits, licenses and agreements National Networks National Policy	a) Please could the Applicant provide an update on any progress in obtaining other consents, permits, licenses and agreements.	a) Discussions are continuing with the EA as the principal regulator that would deal with the majority of the consents and permits identified within the Consents and Agreements Position Statement. This document is in the process of

No	Question to	Ref.	Question	Applicant's response
		Statement (NPSNN) paragraph 4.55 FWQ [PD-005] 1.12, 1.13 Applicant response [REP1-005] DCC response [REP1-033] DCiC response [REP1-034] EA Written Representation (WR) [REP1-020] ISH2 I&Q [PD-010] Q18 Applicant response [REP3-026] EA response [REP3-034]	b) Please could the Applicant update the Consents and Agreement Position Statement [APP-019]. c) With reference to the NPSNN, are the EA and DCiC " <i>satisfied that potential releases can be adequately regulated under the pollution control framework</i> "? d) Can any further comfort be provided that other consents, permits, licenses and agreements are likely to be granted?	being updated and will be provided at deadline 5. b) As per the response above, this will be provided at deadline 5. c) EA and DCiC to respond d) EA and DCiC to respond
1.38.	DCiC DCC EBC EA	Management and mitigation plans, strategies and written schemes FWQ [PD-005] Q3.11 Q3.12 Applicant response [REP1-005] [REP2-020] DCiC response [REP1-034]	a) Are the Local Authorities and EA content with dDCO and OEMP provisions for consultation with respect to the management and mitigation plans, strategies and written schemes? b) Should there be a requirement for these documents to be kept up to date with any material changes during construction and for consultation to be required on each revision? If so, should	EA and LAs to respond

No	Question to	Ref.	Question	Applicant's response
		DCC response [REP1-033] EBC response [REP1-051] EA response [REP1-022] ISH2 I&Q [PD-010] Q60 Applicant response [REP3-026] DCC response [REP3-029]	that be secured in the dDCO or the OEMP?	
1.39.	DCiC DCC EBC	Impact assessment and mitigation methodology Use of the Rochdale Envelope, cumulative impact assessment, length of construction programme, assessment of maintenance activities, mitigation measures during operation. FWQ [PD-005] Q3.3, Q3.5, Q3.7, Q3.8, Q3.9 Applicant response [REP1-005] ISH2 I&Q [PD-010] Q73	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?	LAs to respond
1.40.		Statement of Common Ground (SoCG) updates	a) Please provide updates to draft SoCG.	a) The following SoCGs are provided as part of the Deadline 4 response:

No	Question to	Ref.	Question	Applicant's response
		SoCG with DCC [REP1-007] SoCG with DCiC [REP2-013] SoCG with EA [REP1-011] SoCG with Euro Garages [RE1-041] SoCG with McDonald's [REP1-046] SoCG with Network Rail [REP2-014] SoCG with Virgin Media [REP2-015] SoCG with Royal School for the Deaf Derby [REP3-006] ISH2 I&Q [PD-010] Q75 Applicant response [REP3-014] [REP3-026] EA response [REP3-034]	b) In each case please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination. c) Are other SoCG anticipated to be submitted during the Examination? d) Will signed SoCG be submitted to the Examination so that there is enough time for comments by Interested Parties, questions by the ExA and responses to comments and questions?	<ul style="list-style-type: none"> • Virgin Media (final) • Environment Agency (draft) • Sutton Turner Homes (draft) b) c) The outstanding matters to be dealt with and the steps needed to reach agreement in each case are summarised below which includes the list of SoCGs that are expected to be submitted during the examination: <ul style="list-style-type: none"> • Environment Agency - wording within the OEMP does not refer to demonstrating the effectiveness of remedial measures. Highways England and the EA are liaising to resolve this. There are no other issues under discussion and all others are agreed. Highways England will continue to liaise with the EA to close-out these issues. • DCC - outstanding matters relate to, the road drainage design; hydraulic modelling produced as part of the draft DCO submission; whether Ford Lane bridge can facilitate 40 tonne vehicles; and how the maintenance of the bridge will be funded. Highways England will continue to liaise with DCC to close-out these issues • DCiC - outstanding matters include, agreement on drainage design; construction traffic management; the signalisation of the A6/ Ford Lane junction and the appropriateness of the traffic

No	Question to	Ref.	Question	Applicant's response
				<p>model used in designing the signals; and mitigating the traffic impacts of the scheme on local highways. Highways England will continue to liaise with DCiC to close-out these issues.</p> <ul style="list-style-type: none"> • Euro Garages - outstanding matters include, whether the combined site can be designated as a service area; the impact of the scheme on fuel deliveries; and the impact of the scheme on the viability and value of the site. Highways England will continue to liaise with EG to close-out these issues. • McDonalds - outstanding matters include the closure of the entrance from the A38; the proposed traffic lights; the proposed signalisation of the access onto the A52 Ashbourne Road; the validity of the site traffic data (in relation to customer numbers) used to inform traffic modelling; delivery access and routing; waste collection (access and routing); and land encroachment. Highways England will continue to liaise with McDonald's to close-out these issues. • Network Rail – Highways England do not anticipate a final signed version will be submitted to the examination as this matter is to be dealt with under protective provisions

No	Question to	Ref.	Question	Applicant's response
				<ul style="list-style-type: none"> • RSDD - the detailed design of noise barriers; details of noise mitigation during construction; access arrangements relating to the noise barrier; whether the air quality impacts at the school are of concern; and assurance as to whether access off the A52 will be maintained through-out the duration of the construction works. Highways England will continue to liaise with RSD to close-out these issues. • Sutton Turner Homes - outstanding issues relate to, access on to the A52; the management of construction noise, dust and other emissions; land take; recovery of costs; the responsibility of DCiC in relation to grass verges that bound the STH properties; and whether DCiC will adopt the proposed highway between STH properties and the A52. Highways England will continue to liaise with STH to close-out these issues. • Breadsall Parish Council - agreement in relation to, optioneering and the chosen option (it is unlikely that agreement in relation to this matter will be reached); landscape mitigation (species mix and quantity); and the re-routing of footpath FP3. Highways England will continue to liaise with BPC to close-out these issue (note: it is unlikely that agreement will be

No	Question to	Ref.	Question	Applicant's response
				<p>obtained in relation to the chosen option and the optioneering process).</p> <ul style="list-style-type: none"> Derby Cycling Groups - Derby Cycling Group (DCG) and Sustrans – outstanding matters include, agreement on the overall need for the Scheme in light off the climate emergency declared by the UK Government; and the design of numerous non-motorised user facilities including crossing facilities and road side footpaths/ cycleways. Highways England will continue to liaise with Sustrans and DCG to close-out these issues. <p>d) Highways England is seeking (wherever possible) to provide final signed versions of SoCGs by deadline 5 and 6 to support the ability for interested parties to comment and to allow for questions from the ExA.</p>
2.	Transport networks and traffic			
	Driver stress assessment			
2.1.	Applicant DCiC DCC	Driver Stress Assessment ES Chapter 12 [APP-050] Transport Assessment Report [REP3-005]	<p>a) Is the use of the terms “<i>High</i>”, “<i>Moderate</i>” or “<i>Low</i>” for driver stress level in tables 12.14, 12.16 and 12.17 consistent with the definition provided in table 12.5?</p> <p>b) Have the following terms “<i>very major increase or reduction</i>”, “<i>major increase</i></p>	<p>a) Yes the driver levels as detailed in the resubmitted Tables 12.14, 12.16 and 12.17 [REP1-006] are based on the traffic flow and average journey speed criteria set out in ES Table 12.5.</p> <p>b) Reference is made to the response to the similar FWQ 4.7a [REP1-005]. This indicated</p>

No	Question to	Ref.	Question	Applicant's response
		<p>FWQ [PD-005] Q4.6, Q4.7, Q4.8, Q4.18, Q4.19, Q4.30, Q4.31</p> <p>Applicant response [REP1-005]</p> <p>DCiC response [REP1-034]</p> <p>DCC response [REP1-033]</p> <p>Applicant response [REP2-020]</p>	<p><i>or reduction</i>", "<i>moderate increase or reduction</i>" or "<i>slight increase or reduction</i>" used in table 12.6 of the ES been quantified?</p> <p>c) Are the changes in driver stress level in tables 12.16 and 12.17 intended to relate to table 12.6 for the identification of significance of effect? If so, how?</p> <p>d) It is stated that "<i>the assessment also takes into account other stress factors such as congestion, route uncertainty, journey reliability, journey times and fear of accidents</i>". Where have such factors resulted in a change to an assessment derived from traffic flows and journey speed? How are those matters taken into account?</p> <p>e) Please justify why significance of impact is not identified at each separate location that is assessed?</p> <p>f) Please summarise details of difficulties, for example technical deficiencies or lack of knowledge, encountered when compiling the assessment of driver stress during both construction and operation. In each case, what are the main uncertainties?</p> <p>g) What weight should be given to the driver stress assessment when considering impacts on local traffic during construction?</p>	<p>that the vehicle travellers' part of the Design Manual for Roads and Bridges (DMRB) (Volume 11, Section 3, Part 9.2) used for the assessment does not contain specific assessment significance criteria for driver stress. As such, the terms describing the overall significance of driver stress levels as set out in ES Table 12.6 are based on qualitative as well as quantitative factors – these effect levels have been applied to the Scheme driver stress assessment. The quantitative elements are informed by the three-point scale (low, moderate and high) provided in the guidance are presented in ES Table 12.5 which provides the initial basis for assessing the change in driver stress levels across the Scheme. In addition, congestion, route uncertainty, journey reliability, journey times and fear of accidents are taken into account qualitatively.</p> <p>DMRB recommends that differences in driver stress levels, where applicable, should be identified at different sections of the route. As such, the baseline and the assessment establish the driver stress levels at five sections on the A38, and a further five sections on surrounding roads (in both directions of traffic flow). This creates a multitude of points at which the changes in driver stress levels are considered. In assigning the significance of effect, both the</p>

No	Question to	Ref.	Question	Applicant's response
			<p>h) Please could the Local Highways Authorities comment on the relevance of the driver stress assessment to the consideration of impacts on local traffic during construction?</p>	<p>scale of change in driver stress level (i.e. between high and low) and the extent of change (i.e. across the number of sections of the route) are considered. For example, a very major reduction in driver stress resulting from a scheme could be identified where there is a reduction from high to low driver stress levels as experienced at the majority of assessed route sections. In addition, shorter journey times and reduced accident rates are expected from scheme improvement works. The overall significance of effect for driver stress has been developed by professional judgement by taking into account the scale and extent of effects (beneficial or adverse). This approach has been applied in the assessments of other Highways England infrastructure development projects.</p> <p>c) No – the column titled “<i>Change in driver stress</i>” simply defines whether the driver stress levels during Scheme operation (in 2039) would increase, decrease or stay the same as compared with the situation without the Scheme. The change in driver stress levels as indicated are then taken into account during the assessment of effects, as based upon professional judgement.</p> <p>For clarity, it should be noted that there are no changes to the significance of effects conclusion as a result of resubmitted Tables 12.16 and 12.17 [REP1-006]. Results have</p>

No	Question to	Ref.	Question	Applicant's response
				<p>been reassessed based on the magnitude and significance criteria as defined in Tables 12.5 and 12.6, including application of professional judgement on the qualitative elements of the assessment.</p> <p>d) Reference is made to the responses provided to ExA FWQ 4.31 [REP1-005]. The revised Tables 12.16 and 12.17 [REP1-006] indicate that on the basis of vehicles flows and average speeds (as per ES Table 12.5), sections of the mainline A38 would experience either no change in driver stress levels or increases in stress levels, whilst on surrounding roads there would be no change to stress levels for the drivers on the majority of surrounding roads, plus an increase in driver stress from moderate to high on the westbound A52 Ashbourne Road north of Markeaton junction and an increase in driver stress from moderate to high on the northbound A61 (plus an increase in driver stress from moderate to high for users of the B5111 Kingsway westbound which are considered separately). However, traffic using the A38 would no longer be required to reduce their speed or stop to pass through the three signalised junctions that would be grade separated by the Scheme, whilst the majority of traffic would pass under or over these junctions on the A38 and therefore traffic using local roads would move more freely</p>

No	Question to	Ref.	Question	Applicant's response
				<p>through the junctions resulting in reduced congestion and improved journey reliability. Therefore, taking these factors into account it is assessed that there would be a reduction in driver stress on surrounding routes (other than the A5111) (slight beneficial effect), whilst on the A38 it is considered that the Scheme would have a moderate beneficial effect on driver stress for motorised vehicles using the A38 through the Scheme, based on improved journey reliability and improved journey times, and reduced fear of accidents. Thus, consideration of these factors has changed the assessment as derived just from the consideration of traffic flows and journey speed.</p> <p>e) Reference is made to the responses provided to ExA FWQ 4.30 [REP1-005]. As described in ES Chapter 12: People and Communities [APP-050] para. 12.6.3, the driver stress assessment focuses on users of the A38 and users on the surrounding roads within 500m of the Scheme. The significance of driver stress levels has therefore considered the A38 mainline carriageway users (at five separate locations along the route), and users of five surrounding roads. The assessment results are summarised in ES Table 12.19. The A38 route assessment results are considered to apply to the whole of the A38 through the Scheme, whilst any</p>

No	Question to	Ref.	Question	Applicant's response
				<p>differences in assessment results as associated with the surrounding roads – in this regard a distinction in operational effects was identified for users of B5111 Kingsway.</p> <p>It is considered that the assessment appropriately assesses the effects on users of the A38 and the surrounding roads, and where applicable we have highlighted where key differences should be noted (e.g. for the B5111 Kingsway).</p> <p>In addition, it is noted that previous recent Highways England assessments of driver stress have considered the impacts of the particular scheme at various selected locations but have then provided a single overall assessment score regarding the significance of scheme effects on driver stress (e.g. A303 Stonehenge and M42 Junction 6). Thus, such assessments have not defined the significance of effects for various sections of the applicable schemes. The A38 assessment goes further than this in that it considers impacts and effects upon the main A38 route, as well as upon key selected local roads. It is considered that this approach is appropriate and proportionate given that the scheme comprises upgrades to all junctions.</p> <p>Nevertheless, it is considered that if the assessment had looked at each junction in turn, moderate beneficial effects during Scheme operation would be reported given</p>

No	Question to	Ref.	Question	Applicant's response
				<p>that at each junction there would be benefits in terms of improved journey reliability, improved journey times, and reduced fear of accidents. With regard to the local roads assessment, it is reported that minor beneficial effects would be experienced except for the A5111 Kingsway where a minor adverse effect would be experienced.</p> <p>f) As detailed in the response to FWQ ExA question 4.31 [REP1-005], the main technical difficulty related to the driver stress assessment relates to the DMRB assessment methodology used which focuses on the links between junctions, rather than improvements at junctions – thus the analysis does not capture the traffic benefits of the Scheme through the junctions which are the principal components of the Scheme. In addition, the DMRB does not provide specific or defined methodology for assessing the degree of driver stress during construction.</p> <p>As a result of these limitations, professional judgement has been used in order to assess Scheme effects. It is considered that the assessment reported in the Environmental Statement is proportionate and that the assessment results reported for Scheme construction and operation are appropriate.</p> <p>g) The driver stress assessment was undertaken following the DMRB guidance</p>

No	Question to	Ref.	Question	Applicant's response
				<p>relevant at the time. Whilst there are some shortcomings to the assessment methodology (refer to the response above regarding the junction improvements), it is considered that the assessment reported in the Environmental Statement is proportionate and that the assessment results reported for Scheme construction and operation are appropriate. Factors that feed into the assessment of driver stress such as congestion, route uncertainty, journey reliability, journey times and fear of accidents are all important considerations for Scheme construction and a key aim of the Traffic Management Plan (TMP) is to keep traffic moving and minimise effects upon these stress determinants.</p> <p>h) LHAs to respond</p>
Construction traffic and temporary closures and diversions				
2.2.	Applicant DCC DCiC	Transport modelling and queuing Adequacy of Consultation [AoC-003] DCC comments ISH2 I&Q [PD-010] Q1, Q2 Applicant response [REP3-014]	<p>a) Do DCC have any comments on the technical note referred to by the Applicant at ISH2?</p> <p>b) Have all banned turns, including those referred to by DCC, been included in the SATURN model for each construction phase?</p> <p>c) Should detailed LINSIG modelling of junctions be used to assist in the development of temporary traffic management proposals?</p>	<p>a) LHAs to respond</p> <p>b) Yes. For the purpose of developing the traffic management layouts to support the environmental assessments, various buildability advisors were consulted. The resulting temporary junction layouts are described in the outline TMP [APP-254] at section 3.2. These are the layouts that were represented in the SATURN traffic model. It is noted that:</p>

No	Question to	Ref.	Question	Applicant's response
		<p>DCiC response [REP3-027] DCC response [REP3-029]</p>	<p>d) Do the Local Highways Authorities have any evidence to support their suggestion that the SATURN model has underestimated the maximum queue lengths? What are the potential implications of this for delays to local traffic? Are there any locations on the local road network of particular concern?</p> <p>e) Please could the Applicant clarify any tendency for the SATURN model to underestimate the potential for long queues at one junction affecting other junctions? If there is such a tendency, what are the potential implications for the assessment of traffic delays, air quality and noise? How can this be addressed during the Examination to demonstrate that the assessment is robust?</p> <p>f) DCiC has stated that it "<i>has not directly provided comments on the outputs of the construction traffic modelling</i>". Please could DCiC now comment on the outputs of the construction traffic modelling and whether it considers that they are likely to represent reasonable worst-case scenarios for the assessment of impacts on local roads?</p>	<p>In TM Scenario 2 at Markeaton junction, only right turns were banned. The ahead movements between A52 East and A52 West were accommodated.</p> <p>In TM Scenario 1 at Little Eaton junction, the trips from the B6179 to the A38 Southbound were banned. (Note: the option for a U-turn facility on A38 dual carriageway was not represented; subsequent considerations suggest that this option is not likely to be feasible).</p> <p>c) Transport model software, for the purpose of this quick explanation, may be categorised into three types. Type-1) Strategic model software contains modules for building and storing trip patterns (demand model), representing the transport network (supply model) and a method of applying route choices to produce flows on the transport links. Strategic models generally model one-hour average periods. Examples of strategic model software include: CUBE, SATURN, EMME, VISUM. Type-2) Micro-simulation models are a more recent development that resulted from the availability of cheap computer processing. Trips are represented as individual drivers whose behaviours and decisions are represented by random events constrained within a distribution of outcomes. One notable aspect of this modelling method is that the results are different for each run of</p>

No	Question to	Ref.	Question	Applicant's response
				<p>the model. This is not a helpful feature when developing layouts and designs. Examples of micro-simulation software include: Paramics and VISSIM. Type-3) The operational analysis of individual junctions is modelled with software appropriate to the type of junction. Trip are usually input as average one-hour demands but some software permits traffic demands to be profiled in smaller time-segments. Examples include: PICADY (priority junctions), ARCADY (roundabouts), OSCADY (traffic signals), TRANSYT (traffic signals), LINSIG (traffic signals).</p> <p>Each potential layout will need to be assessed with the appropriate modelling software. For example, where the proposed temporary junction layouts are to be traffic signalled, then the application of a combination of SATURN and LINSIG model software are likely to be appropriate.</p> <p>Highways England is confident that both the LHAs are skilled in appraising a junction's operation. The outline TMP will specify that appropriate junction modelling of the temporary junction layouts is undertaken and agreed with the relevant LHA.</p> <p>d) LHAs to respond</p> <p>e) SATURN is strategic traffic modelling software and trip patterns are stored as one-</p>

No	Question to	Ref.	Question	Applicant's response
				<p>hour averages. These trip patterns are assigned onto the representation of the highway network. Within its assignment process, the SATURN model generates cyclic-flow profiles, which allows the software to represent the queues at each stop line within a cycle of each traffic signal junction. The queues simulated at a traffic signal junction in SATURN are therefore the maximum queue lengths for the average-hour demand. SATURN's simulation algorithm notes the vehicles that pass through each junction and then keeps track of the queued-up vehicles at the end of each cyclic-flow-profile period. The queues are then accumulated over the modelled hour and reported. Excess queues stored at the end of each hour may be carried forward into the next modelled hour. The calculated queues are compared against the stacking capacity of each link in the highway network. When the stacking capacity on a link is exceeded, the excess queue is transferred onto the stacking capacity of the preceding link. This process is termed 'stacking-back'. In the SATURN simulation, this stacking-back will reduce the capacity of the upstream links and junctions.</p> <p>SATURN has been commonly used to assessing highway schemes in urban areas over many decades. Over this period, the evidence from post opening project evaluation</p>

No	Question to	Ref.	Question	Applicant's response
				<p>studies, indicates that the software produces useful results. The standard methods of assessing traffic delays, air quality, and noise assessments are all based on forecasts of average-hour flows, which are then accumulated over one day or one year as appropriate to the specific assessment.</p> <p>In conclusion, the SATURN simulation software accounts for the potential for long queues at one junction to affect the operational capacity of other junctions. The resulting forecast average-hour flows were used to assess the noise and air quality impacts using the standard approaches. These impacts are reported in the Environmental Statement. The results as presented are robust.</p> <p>f) DCiC to respond</p>
2.3.	Applicant	Impacts on local roads ISH2 I&Q [PD-010] Q4 Applicant response [REP3-026] DCiC response [REP3-027] DCC response [REP3-029]	a) Please identify where assessment of the significance of delays to local traffic during construction is addressed in the ES. b) Please summarise details of difficulties, for example technical deficiencies or lack of knowledge, encountered when compiling the assessment of delays to local traffic during construction. In each case, what are the main uncertainties?	a) The Environmental Statement (ES) does not assess the significance of traffic delays per se as delays are not an environmental effect. The ES does consider how such delays can affect drivers (as relevant receptors) through the consideration of driver stress and impacts upon the users of public transport. As illustrated in ES Chapter 12: People and Communities [APP-050] (refer to Section 12.10) significant effects are not predicted.

No	Question to	Ref.	Question	Applicant's response
			<p>c) The ExA is considering a requirement for the contractor's traffic management proposals to be amended if they give rise to new or materially worse traffic delays to those identified in the ES. What is the Applicant's view?</p>	<p>b) The traffic patterns during construction were appraised using the software SATURN [refer to item 2.2c and 2.2e above]. As noted by Mr Gibbard of DCiC during ISH2, this traffic model operates at a strategic level and assigns average hour traffic demands. The uncertainties are that, for a given 5-minute time-segment within the average hour, flow intensities could be greater than the average flow intensity for that hour. The environmental impacts are reported at an average-hour level (or longer durations for some impacts) and therefore this method of using average hour flows is appropriate for assessing the impacts of the Scheme.</p> <p>When assessing queue-lengths, a higher intensity flow demand for a short duration could lead to longer queue-lengths; but these longer queues would then dissipate later in the modelled hour because there would also be short durations when the flow-intensities would fall below the average flow for that hour.</p> <p>If these short-duration intense-flows were to cause the network to lock-up, then this might be an issue. The solution is to design the temporary junction layouts to operate at about 85% (for ARCADY) to 90% (for LINSIG) of their average-hour capacity. This is standard practice. This approach provides headroom to</p>

No	Question to	Ref.	Question	Applicant's response
				<p>guard against short-duration variations in the demand flows.</p> <p>c) It is not considered that this is necessary as the OEMP [REP3-003] already covers this – the OEMP states the following (MW-AIR4): <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 as 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 will indicate the need to amend the traffic management proposals or propose additional mitigation”</i>. A similar review is also indicated with regard to noise impacts (MW-NOI8). It should also be noted that anything which results in effects that are new or materially adverse compared to those reported in the ES will not be authorised by the DCO in any event.</p>
2.4.	Applicant	Derby Royal Hospital [REP3-041]	Derby Royal Hospital state that special attention would need to be given to the access arrangements to the Derby Royal Hospital, including the emergency access	Further to ISH2, Highways England attended a “Behavioural Change” meeting on Wednesday 15th January 2020.

No	Question to	Ref.	Question	Applicant's response
			<p>routes which may include sections of the A38 under Traffic Management measures and this would need to be discussed with both the hospital and the bus operatives that come to the hospital. Derby Royal Hospital ask when will the A38 behaviour change meetings (or a similar meeting) be recommencing and who will be coordinating the meeting as this would be an opportunity for these types of discussions to be made. Please confirm when you will be able to reach agreement on access arrangements with Derby Royal Hospital including any emergency access routes.</p>	<p>The question refers to both emergency vehicles (i.e. blue-light services) and bus services. These two road-users need to be treated separately as their needs are different.</p> <p>The philosophy within the traffic management plans is to maintain two lanes of traffic in each direction along the A38 through the works. At Kingsway – Markeaton the intention is to maintain the speed limit at 40mph to mitigate the deterrence in drivers' choice of routes and maintain the current provision for emergency vehicles. The requirements for different types of road users is recognised and will be considered during the development of the temporary traffic management layouts. Stakeholders, including Derby Royal Hospital, will be consulted during the development of temporary layouts before the start of works on site and at the regular Traffic Management clinics during construction. The temporary Traffic Management plans for each phase of the project will be completed prior to the start of works and will include all relevant details such as road markings and signage.</p>
2.5.	Applicant DCiC Intu	Traffic Management Plan Update ISH2 I&Q [PD-010] Q3 Applicant [REP3-026]	<p>There is widespread concern regarding the effect of the construction works on local communities, businesses and on Non-Motorised Users (NMUs). As a consequence, there is also concern that the TMP is not sufficiently detailed, flexible or</p>	<p>An update to the outline TMP is in preparation. DCiC's responses requested that the contents of the outline TMP is agreed with them. This dialogue is programmed for February 2020. An updated draft will be submitted at Deadline 5.</p>

No	Question to	Ref.	Question	Applicant's response
	Derby Cycling Group	DCiC [REP1-034] [REP1-035] [REP3-027] DCC [REP3-029] Breadsall Parish Council [REP3-028] Intu [REP1-044] [REP3-037] Derby Cycling Group [REP3-033] [REP3-043] Royal Derby Hospital [REP3-041]	inclusive to adequately deal with these construction phase effects. Whilst recognising that the details of the TMP will be finalised when the contractor is appointed, please provided an updated the TMP with more detailed information to address the following matters: a) the comments on the outline TMP provided by the Local Highways Authorities, Derby Cycling Group and Intu Derby at ISH2 and Deadline 3; b) the appointment, location and remit of a liaison officer; c) media relations and communications with the local community; d) specific local traffic effects identified in response to questions 2.2, 2.3 and 2.4 above; e) the identification and on-going engagement of the Local Highways Authorities and other stakeholders including the business community, health care providers, public transport providers, cycling and travel behaviour change and accessibility groups; f) diversion routes and safety measures for NMUs; g) provisions to update the TMP approved under DCO Requirements 4 and 11 at regular intervals or in response to emerging issues/problems, consultation	a) These comments are noted and are being considered. The routing of cyclists and NMU through the works will be indicated on TM layout plans. See also response to 2.4. b) and c) A dedicated TM manager will be appointed throughout the construction phase. d) the outline TMP will require the traffic managements arrangements to be agreed with the LHA. e) DCiC hosted an A38 Behavioural Change meeting in January 2020. The expectation is that these will continue at regular intervals up to and during construction. f) The outline TMP will require the traffic managements arrangements to be agreed with the LHA. g) Noted. h) The provision of a temporary park and ride scheme at Kedleston Hall for the construction phase is not part of Highways England's scheme proposals. This would be an issue for the A38 Behavioural Change group to consider.

No	Question to	Ref.	Question	Applicant's response
			<p>with the stakeholders identified in clause e above, triggers, review periods and provision for the Local Highways Authorities to agree updated versions of the TMP; and</p> <p>h) a temporary park and ride scheme at Kedleston Hall for the construction phase.</p>	
2.6.	DCiC	Council resources Applicant [REP2-020] DCiC [REP1-034] [REP1-035] [REP3-027] OEMP [REP3-003]	<p>a) Do the Community Relations Manager, Highways England Customer Contact Centre and other provisions in the OEMP give DCiC confidence in its ability to fulfil its obligations with respect to addressing local traffic matters during construction?</p> <p>b) Is it necessary for the Applicant to provide a dedicated resource within DCiC? If so, please justify and explain why their provision falls outside DCiC's remit.</p>	DCiC to respond
2.7.	Applicant Royal School for the Deaf Derby	Parking at the Royal School for the Deaf Derby site	Is it necessary for the OEMP to specify the number of parking spaces to be retained at the Royal School for the Deaf Derby site?	In the Scheme proposals there are no impacts on the existing car parking provisions for the school and visitors, as such, the OEMP does not need to be amended.
Operational traffic and permanent road closures				
2.8.	Applicant	Impacts on local roads Applicant [REP2-020] ISH2 I&Q [PD-010] Q5	a) Please identify where assessment of impacts at local road network junctions, including those identified by DCiC, and	a) The Environmental Statement (ES) does not assess the traffic impacts at local road network junctions per se as these are not an environmental effect. The ES does consider

No	Question to	Ref.	Question	Applicant's response
		<p>Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] DCC response [REP3-029]</p>	<p>their significance are addressed in the ES.</p> <p>b) At which of these junctions would “demand responsive traffic signals will automatically adapt themselves to the altered traffic patterns” be expected to provide enough mitigation?</p> <p>c) Is any other mitigation of significant adverse impacts required at the local road network junctions, including those identified by DCiC?</p> <p>d) Explain how impacts at local road network junctions have been fully considered in the air quality and noise assessments?</p>	<p>how traffic impacts can affect drivers (as relevant receptors) through the consideration of factors such as severance, driver stress and impacts upon the users of public transport. Refer to ES Chapter 12: People and Communities [APP-050] (refer to Section 12.10). Knock on implications of the change to traffic patterns as forecast by the traffic model, with regard to air quality and noise, are also reported in the ES. Refer also to Applicant's response to REP3-026, item No. 5.</p> <p>b) Highways England does not have a list of those traffic signalled junctions within Derby City's road network that are equipped with demand responsive control. Notwithstanding, the point [REP2-020; Ref:1.31] was that any physical intervention to improve a local junction – wherever that might be – would be determined at a later stage as the design of the Scheme is refined.</p> <p>c) No.</p> <p>d) Please see response to Q5. in Highways England's Responses to ISH2 [REP3-026] regarding traffic impacts on local roads. Air quality was assessed at receptors near the affected road network where air quality is likely to change as a result of the Scheme (refer to ES Chapter 5: Air Quality Figures 5.2 and 5.3 [APP-072 & APP-073]). The affected</p>

No	Question to	Ref.	Question	Applicant's response
				<p>road network was identified based on changes in traffic flows, speeds or road alignment due to the Scheme. The affected road network includes local and strategic roads and local road network junctions in the western half of Derby. The air quality impacts at receptors near local roads were therefore considered in the ES.</p> <p>The operational traffic noise assessment used the traffic model for the Scheme and surrounding existing roads. The model includes local road junctions, and also includes additional links in the vicinity of junctions, where appropriate, as required by IAN185/15, to better represent slower speeds in such locations. Any changes in traffic flow, composition and speed between the Do-Minimum and Do-Something scenarios at local road junctions were incorporated into the operational traffic noise assessment. Operational traffic noise impacts were predicted and assessed at all receptors within the detailed quantitative operational traffic noise study area. On this basis, it is considered that the operational traffic noise assessment fully considers any impacts at receptors in the vicinity of local road junctions.</p>
2.9.	DCiC	Increased journey times on Mansfield Road FWQ 4.36 [PD-005]	a) Do DCiC have any comments on the Applicant's amendments to the Traffic	DCiC to respond

No	Question to	Ref.	Question	Applicant's response
		Applicant response [REP1-005] [REP2-020] [REP3-022] DCiC response [REP1-034]	Assessment that were submitted at Deadline 3? b) Do journey times along the Mansfield Road route now appear to be represented correctly?	
2.10.	Applicant DCiC	Junction layouts ISH2 I&Q [PD-010] Q6 Applicant response [REP3-026] DCiC response [REP3-027]	a) Please could the Applicant and DCiC suggest an agreed way forward for resolving the layout of the A6 / Ford Lane junction and the McDonald's access. b) How this should be secured? c) Are there any potential implications for the ES? d) What changes, if any, are required to the dDCO, OEMP or TMP? e) Are there any implications for temporary possession and therefore the Book of Reference or Statement of Reasons? f) Are there any implications for the Plans?	a) DCiC has suggested an alternative option that utilises a signalised pedestrian crossing close to the junction that will create breaks in the A6 traffic so allowing traffic to exit Ford Lane easier. Highways England is considering this to see whether it can be accommodated within the design submitted as part of the DCO application. b) The solution included in the DCO application would be a 'worst case' solution. Any alternative options considered would represent a more minor intervention and would be contained within the existing highway boundaries. c) Given the above, there are no implications for the ES. d) No changes are required to the dDCO, OEMP or the TMP, as the dDCO includes for the reconfiguration on the junction. e) There are no implications on temporary possession as any work required would be within the red line boundary.

No	Question to	Ref.	Question	Applicant's response
				f) As presented in b) above, the solution included in the DCO application would be a 'worst case' solution.
2.11.	Applicant DCC	Ford Lane closure and bridge ISH2 I&Q [PD-010] Q9 Applicant response [REP3-014] [REP3-026] DCC response [REP3-029]	a) Have the Applicant and DCC agreed a solution for access over the Ford Lane bridge? b) Have any weight restrictions been agreed with Talbot Turf, Severn Trent Water and Network Rail? c) How should the mitigation be secured?	a) A meeting was held between Highways England and DCC on 23 rd January 2020 to discuss this matter further and the agreed way forward is for: <ul style="list-style-type: none"> • HE's designer to check one element of the assessment following a minor comment from DCC • HE's designer to develop an investigation methodology and agree with DCC to confirm an assessment assumption • HE and DCC to agree how to manage DCC's long-term maintenance liability in relation to this structure b) Talbot Turf, Network Rail and Severn Trent Water have all been consulted on this issue and there are no indications that there would be any issues for them if the bridge is assessed to be acceptable for 40T vehicles. c) Modifications to the bridge (to reduce it to a single lane) will be secured through the detailed design. Any changes to the maintenance liabilities will be captured in the DLOA and in the Maintenance and Repair Strategy Statement (MRSS). To assist the ExA, Highways England has produced a note (and submitted it to the ExA as part of D4) which explains how Highways

No	Question to	Ref.	Question	Applicant's response
				England manages the development and delivery of major projects and how the post-consent and construction phase would be managed along with how and when other parties would be engaged with and consulted before detailed approvals are sought.
2.12.	Applicant	Access to 56 Brackensdale Avenue DCiC [REP1-034] Applicant [REP2-020]	Should the drawings be updated in line with DCiC's suggestion in order to better reflect the proposals and good practice?	The current Preliminary design outlines the principles of what the scheme proposes to deliver. The detailed proposals will be developed during the next stage of the scheme design. DCiC will be consulted at that time to develop and agree the final design for this access.
Public transport				
2.13.	Applicant DCiC	Impacts on public transport during construction NPSNN Paragraph 5.205 DCiC [REP1-034] ISH2 I&Q [PD-010] Q11 Applicant response [REP3-026] DCiC response [REP3-027]	<ul style="list-style-type: none"> a) Please could the Applicant identify where assessment of the significance of delays to public transport during construction is addressed in the ES. b) Please could the Applicant respond to the access concerns raised by Royal Derby Hospital. c) Please could the Applicant identify the impacts and mitigation in relation to university student parking in Markeaton Park and using the bus service. d) Should DCiC convene the Behaviour Change Group and should the Applicant 	<ul style="list-style-type: none"> a) Impacts upon public transport due to delays during the Scheme construction phase are covered in Chapter 12: People and Communities [APP-050] – refer to Section 12.10 (section on severance during Scheme construction in paras. 12.10.71 to 12.10.76). b) The revised OEMP [REP3-003] states: “The contractor’s detailed TMP shall ensure that the Scheme construction phase traffic management proposals do not affect access into the Derby Royal Hospital site from the road network. Paragraph 7.4.1 of the TMP provided in [TR010022/APP/7.4] highlights the

No	Question to	Ref.	Question	Applicant's response
		<p>Royal Derby Hospital [REP3-041] David Clasby [REP3-032]</p>	<p>consult further with it, and include any comments from it on public transport impacts during construction in the version of the TMP submitted to the Examination?</p>	<p>requirement for the construction contractor to liaise with all key stakeholders involved, including the emergency services, to ensure that any impacts on the routes to the hospital during the construction phase are kept to an acceptably low level.”</p> <p>c) Markeaton Park is used to accommodate overspill student parking that cannot be accommodated with the University campus. The existing access to the car park is directly from the existing Markeaton roundabout. The onward bus service emerges from Markeaton Park's egress, which is onto the A52 West and then travels through the A38 Markeaton junction.</p> <p>The first construction phase of the Markeaton junction is to demolish the houses on Queensway and to construct the improved Markeaton Park access/egress junction on the A52 West. This improved junction would be commissioned in its final form and would be available throughout the remainder of the construction programme. Both the car access into the Markeaton car park and the egress for the ongoing bus service would be via this improved junction.</p> <p>Highways England envisages no detrimental impacts in relation to university parking. Should a detrimental impact arise, then the</p>

No	Question to	Ref.	Question	Applicant's response
				<p>stakeholder engagement process will be in place to seek a reasonable resolution.</p> <p>d) HE engaged with the A38 Derby Behavioural Change Group on 15 January 2020. The HE Project Manager has requested that all key stakeholders at the meeting capture in writing their concerns as the scheme moves to detailed design and preparation/planning in advance of the construction stage. These concerns are being collated by the HE Project Team and allocated into categories where they will be either captured in the DCO, such as the TMP / SoCGs, or in the Behavioural Change Group as part of the wider stakeholder engagement. Further to this a meeting at DCiC was held on 22 January 2020 with the councillors and lead officers to engage on topics such as the Behavioural Change Group but also to discuss how Highways England will support DCiC during the detailed design and construction of this scheme. Quarterly strategic meetings, a monthly Technical Working Group and 4-6 weekly Behavioural Change Working Group workshops are currently being organised.</p>
2.14.	DCiC DCC	Support to public transport NPSNN Paragraph 5.205 ISH2 I&Q [PD-010] Q11	<p>a) Has the Applicants considered reasonable opportunities to support other transport modes?</p> <p>b) Has enough consideration been given to the support of public transport and</p>	LHAs to respond

No	Question to	Ref.	Question	Applicant's response
			encouraging change in mode of transport, in accordance with sustainable transport policy?	
3.	Air quality			
	Baseline conditions and overall assessment methodology			
3.1.	Applicant	Changes in pollution concentration and LA105 ISH2 I&Q [PD-010] Q17 Applicant response [REP3-026] DCiC response [REP3-027] EBC response [AS-028]	<p>The ExA's recommendation report to the Secretary of State will consider changes to the key legal and policy matters considered in the Application. Common practice is for any changes up to the end of the Examination to be addressed and consulted on during the Examination. Changes during the reporting stage are typically considered by the ExA, who would then give recommendations for any additional consultation that it considers necessary. The Secretary of State is thereby provided with recommendations in relation to the latest policy.</p> <p>DMRB guidance LA 105 Air Quality was published in November 2019, some time after the Applicant's preparation of its' Environmental Statement. It does not constitute policy. However, it is key guidance for assessing and reporting the effects of highway projects on air quality. It also appears to be helpful for the consideration of increases in pollution below</p>	<p>a) Highways England considers that it has set out its position on the matter of the revised DMRB. This position is noted by the ExA in its question. The DMRB is guidance only and is not statutory. There is no requirement to reassess the Scheme on the basis of this revised guidance and Highways England considers that it is reasonable and appropriate for the application to proceed on the basis of the assessment carried out and submitted as part of the DCO application. Indeed, a change at this late stage would understandably cause significant reappraisal, cost and delay. Nevertheless, to assist the ExA on this point, Highways England has set out in the next two questions its high level considerations of the revised guidance in respect of the points raised by the ExA.</p> <p>b) The DMRB guidance and associated interim advice notes used in ES Chapter 5: Air Quality [APP-043] and the new DMRB guidance LA 105 (November, 2019) are fundamentally very similar. In particular, emissions are still considered through a speed</p>

No	Question to	Ref.	Question	Applicant's response
			<p>limit values, which the ExA has questioned during the Examination.</p> <p>The Applicant is asked to consider whether:</p> <ul style="list-style-type: none"> a) as a matter of in principle, consideration should be given to latest guidance available during the Examination; b) LA 105 now includes more up to date thinking that wasn't provided in the guidance that it replaces and that is material to the proposed development; and c) application of the methodology set out in LA 105 to the proposed development would be likely to give rise to any additional significant impacts or to materially new or materially worse adverse environmental effects in comparison with those reported in the ES? 	<p>banding approach, future air quality still uses the same rates of improvement on air quality over time, a compliance risk assessment is still included and the same overall approach to the determination of effect significance is retained. The new LA 105 guidance does not incorporate further consideration of changes in pollution below EU limit values, in line with the National Policy Statement for National Networks policy (paragraph 5.13) and the assessment carried out for the ES. However, if LA 105 rather than DMRB 11.3.1 had been followed for the ES using the latest available data, the following changes would have been made to the assessment:</p> <ul style="list-style-type: none"> • PM₁₀ would not have been modelled for future years as concentrations were well within the objectives and limit values in the base year. • For the compliance risk assessment, nitrogen dioxide (NO₂) concentrations would have been modelled at receptors placed 4m from the kerbside for road links within the affected road network for which there was a qualifying feature (e.g. residential properties, schools etc.) nearby. • Updated vehicle emission rates would have been used in the dispersion modelling.

No	Question to	Ref.	Question	Applicant's response
				<ul style="list-style-type: none"> • Additional types of ecological sites or features would have been considered. • A dust risk potential would have been identified which would have informed the mitigation measures to be included in the Outline Environmental Management Plan (OEMP) - these measures would be similar to or the same as those already proposed. <p>c) The three aspects of the air quality assessment guidance that have been updated that could affect the air impact assessment results or potentially result in materially new or materially worse adverse environmental effects in comparison with those reported in the ES are discussed below.</p> <p><i>Compliance Risk Assessment</i></p> <p>According to LA 105, road links in the affected road network should be reviewed to identify whether there are any qualifying features such as sensitive receptors or public access within 15m of the edge of the running lane (beyond 25m from a junction). For these road links, NO₂ concentrations should be modelled at a distance of 4m from the running lane to check compliance with the limit value. This approach was followed for the A38 Derby Junctions Scheme with the results presented in [REP3-019] concerning the "Do-Minimum" concentrations provided by DCiC for their</p>

No	Question to	Ref.	Question	Applicant's response
				<p>reporting to the Joint Air Quality Unit (JAQU). The changes in NO₂ concentrations at each receptor due to the Scheme were estimated from the modelled results reported in the ES [APP-043] and adjusted to a distance of 4m from the road. This approach is in-line with the LA 105 guidance. No new compliance risks are therefore expected through the application of the new LA 105 guidance as such an assessment has already been undertaken.</p> <p><i>Updated Emission Rates</i></p> <p>To accompany LA 105, the speed banded emission rates were updated. As background NO₂ and PM₁₀ concentrations contribute a large proportion of the total concentrations near roads, the effect of any change in traffic emissions on total concentrations will be considerably less than the change in emissions. The updated NO_x emission rates have been compared with those that were used in the ES [APP-043]. The emission rates for the base year of 2015 were within 1% of those used in the ES except for the non-motorway-heavy congestion speed band where the updated rates were 13% lower. The base year model predictions were used to verify the model results and a model adjustment factor applied to the predicted concentrations in the base year to bring them in-line with the measurements. The model</p>

No	Question to	Ref.	Question	Applicant's response
				<p>results reported in the ES were in good agreement with measurements after model adjustment. The modelled concentrations in future years were also adjusted in the same way. If lower emissions had been modelled in the base year, then the model adjustment factor is likely to have been higher in order to bring the model predictions in-line with the measurements which would then result in little change to the modelled concentrations.</p> <p>The updated emission rates for the non-motorway light congestion, free flow and high speed speed-bands in the construction year of 2021 and opening year of 2024 emissions are up to 3% higher than those used in the ES. Emissions for the heavy congestion speed band are around 20% lower in future years than those used in the ES. Concentrations at receptors near road links that do not have heavy congestion for a large part of the day, are not expected to be affected by the updated emission rates as the changes would be too small. Therefore, only receptors near road links with heavy congestion for a large part of the day have the potential to be affected and so these receptors are likely to be located close to busy junctions.</p> <p>For the air quality assessment at relevant receptors, apart from Stafford Street (R197), the receptors assessed in the ES all had predicted NO₂ concentrations less than</p>

No	Question to	Ref.	Question	Applicant's response
				<p>36µg/m³ and so were well within the objective and limit value at 40µg/m³. All but two of these receptors (R170 and R231) had concentrations below 34µg/m³ and at these two receptors, the maximum increase in predicted NO₂ concentrations was imperceptible at 0.1µg/m³. Decreasing the emissions from road links with heavy congestion is therefore not anticipated to cause a materially worse, a materially new or significant effect. At Stafford Street (R197) which is expected to have heavy congestion, the Scheme was predicted to cause either an imperceptible change or a small improvement to concentrations as reported in the ES with compliance assessed by DCiC according to JAQU guidance. Therefore, effects in Stafford Street due to the Scheme are not expected to be materially worse than those reported in the ES.</p> <p>The latest compliance risk assessment [REP3-019] was based on predictions made by DCiC according to JAQU guidance so these "Do-Minimum" predictions would not be affected by changes to Highways England emission rates. The compliance receptors have to be at least 25m from junctions so these receptors, which are located away from junctions, are much less likely to be affected by heavy congestion. The change in concentrations at the compliance receptors</p>

No	Question to	Ref.	Question	Applicant's response
				<p>due to the Scheme was calculated based on the results of the modelling carried out for the ES. Apart from Stafford Street, which will have traffic management measures implemented by DCiC in order to improve air quality, three receptors were identified as being most at risk of exceeding the limit value although concentrations were predicted to be within the limit value. These were DCiC receptors FID1623, FID 1159 and FID 370. FID1623 is located 4m from the kerb of the A38 southbound off-slip near the Royal School for the Deaf. The adjacent off-slip and the A38 itself has free flowing traffic with the Do-Something and Do-Minimum scenarios so any change in concentrations at this location (due to heavy congestion at Markeaton junction) would be small and is not expected to affect compliance. There is no heavy congestion on the A38 near FID1159 and FID 370 so these compliance receptors are not expected to be materially affected. A significant effect or a materially new effect or a materially worse effect as compared to those assessed for the Scheme are not expected due to the updated emissions for the compliance risk assessment.</p> <p>The updated PM₁₀ emission rates for each speed band are within 3% of those used in the ES, so no change or negligible changes are expected to the modelled concentrations reported.</p>

No	Question to	Ref.	Question	Applicant's response
				<p><i>Ecological Sites</i></p> <p>The additional ecological sites or features that should be considered under the new LA 105 guidance include local nature reserves, local wildlife sites, nature improvement areas, ancient woodland and veteran trees. Local nature reserves and local wildlife sites were considered in our response to the ExA's first set of written questions, Question 5.10 part b and Question 8.8 [REP1-005] which concluded that no significant effects are anticipated. There are no nature improvement areas or ancient woodlands near the affected road network that could be affected by the Scheme. There are some veteran trees near the affected road network, but changes in NOx and NO₂ concentrations at these locations are predicted to be either small or imperceptible as the majority of veteran trees are more than 50m from the affected road network or are located near receptors where small or imperceptible changes in air quality have been predicted. In the Statement of Common Ground between Highways England and Natural England [REP1-009, Section 3.2] , it has been agreed that the appropriate biodiversity resources have been assessed, that the assessment methodologies used are appropriate, that the impacts upon biodiversity resources have been appropriately identified and that air quality impacts upon ecological</p>

No	Question to	Ref.	Question	Applicant's response
				<p>resources have been considered. No materially worse, materially new or significant effects on the additional ecological sites or features would be expected if the new LA 105 guidance were to be applied.</p> <p>Summary</p> <p>In summary, application of LA 105 methodology rather than DMRB 11.3.1 used for the Scheme air quality assessment reported in ES Chapter 5 [APP-043] is not anticipated to cause any additional significant effects or materially new or materially worse adverse environmental effects or compliance risks in comparison with those reported in the ES.</p>
Construction dust and emissions				
3.2.	DCiC	Methodology and impacts FWQ Q5.21 [PD-005] DCiC response [REP1-034] SoCG with DCiC [REP2-013]	Is DCiC now satisfied with the Applicant's <ul style="list-style-type: none"> • air quality assessment methodology for construction; and • assessment of no significant air quality impacts during construction? 	DCiC to respond
3.3.	EBC	Dust monitoring OEMP [REP3-003] dDCO [REP3-002]	a) Is EBC content with the provisions for dust monitoring in the OEMP, noting that Requirement 3 the dDCO requires it to be consulted during the development of the CEMP?	EBC to respond

No	Question to	Ref.	Question	Applicant's response
		FWQ 5.31 [PD-005] Applicant response [REP1-005] EBC response [REP1-051] ISH2 I&Q [PD-010] Q18 Applicant response [REP3-026] EBC response [AS-028]	b) If EBC is not content, please could it suggest how the wording should be amended?	
Operational vehicle emissions				
3.4.	DCiC	Methodology and impacts FWQ 5.24 [PD-005] DCiC response [REP1-034] SoCG with DCiC [REP2-013]	Is DCiC now satisfied with the Applicant's: <ul style="list-style-type: none"> air quality assessment methodology for operation; and assessment of no significant air quality impacts during operation? 	DCiC to respond
Statutory compliance and other matters				
3.5.	DCiC	EU compliance NPSNN paragraph 5.13 FWQ Q5.26, Q5.27 [PD-005] DCiC response [REP1-034]	Is DCiC now satisfied with the Applicant's: <ul style="list-style-type: none"> air quality modelling methodology for assessment with respect to the European Union Directive for all receptors; assessment that it does not expect that any area which is currently 	DCiC to respond

No	Question to	Ref.	Question	Applicant's response
		Applicant response [REP2-020] SoCG with DCiC [REP2-013] ISH2 I&Q [PD-010] Q19 Applicant response [REP3-019] [REP3-026] DCiC response [REP3-027]	<p>reported as being compliant with the Air Quality Directive will become non-compliant; and</p> <ul style="list-style-type: none"> assessment that the Proposed Development will not affect the ability of any non-compliant area to achieve compliance within the most recent timescales reported to the European Commission? 	
3.6.	DCiC	Spondon Air Quality Management Area Applicant [AS-013] FWQ Q5.22 [PD-005] Applicant response [REP1-005]	Is DCiC satisfied with the Applicant's assessment that air quality effects of the proposed development on the Air Quality Management Area in Spondon would be insignificant?	DCiC to respond
3.7.	Mitigation and NO₂ monitoring			
3.8.	DCiC	NO ₂ mitigation and monitoring during construction ExA FWQ [PD-005] Q5.26, Q5.27, Q5.28, Q5.32 Applicant response [REP1-005] DCiC response [REP1-034]	<p>Please could DCiC provide a written response to the following matters included under item 20 of the ExA's issues and questions for Issue Specific Hearing 2 [PD-010]:</p> <ol style="list-style-type: none"> Should NO₂ monitoring be required of the Applicant during construction and, if so, where? Whether the OEMP provisions for communication and liaison with DCiC in 	DCiC to respond

No	Question to	Ref.	Question	Applicant's response
		EBC response [REP1-051] DCiC Local Impact Report [REP1-035] Applicant comments [REP2-020] ISH2 I&Q [PD-010] Q20 DCiC response [REP3-027]	respect to NO ₂ in Stafford Street are clear and adequate? c) 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? d) Whether mitigation measures are clear, adequate and secured appropriately by Requirement 3 and the OEMP?	
3.9.	EBC	NO ₂ monitoring FWQ [PD-005] Q5.32 EBC response [REP1-051] ISH2 I&Q [PD-010] Q20, Q21 EBC response [AS-028]	a) Is EBC content with the provisions for NO ₂ monitoring in the OEMP, noting that Requirement 3 of the dDCO requires it to be consulted during the development of the CEMP? b) If EBC is not content, please could it suggest how the wording should be amended?	EBC to respond
4.	Noise and vibration			
	Construction noise, vibration and working hours			
4.1.	Applicant	Significance of effect for construction noise	a) What is the likelihood of other receptors in addition to those identified in the ES experiencing noise levels above	a) The ES construction noise assessment is based on predicting the impact at a selection of 35 of the closest identified potentially

No	Question to	Ref.	Question	Applicant's response
		<p>FWQ [PD-005] Q6.15 Applicant response [REP1-005] ISH2 I&Q [PD-010] Q22 Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] EBC response [AS-028]</p>	<p>Significant Observed Adverse Effect Level (SOAEL) during construction? b) What is the likelihood of the durations of the significant adverse construction noise effects identified in the ES being exceeded? c) ES paragraph 9.3.23 states that the assessment accounts for a range of factors including the duration of the impact and the location of the impact at the receptor. The Applicant has clarified that no other factors would be considered. How can this be secured for any assessments that would be carried out later when more detailed information would be available? Is this approach consistent with BS5228? How is it consistent with the Applicant's statement that "<i>the criteria will not be applied rigidly</i>"?</p>	<p>sensitive receptors located along the works. In response to FWQ 6.15 [REP1-005] an estimate of the number of properties represented by each selected receptor has been provided. The assumptions upon which the construction noise and vibration assessment was based ensure the results of the assessment are robust because:</p> <ul style="list-style-type: none"> • BS 5228 provides noise source data for a range of plant, the assessment does not assume the quietest plant will be used, whereas the OEMP requires the contractor to adopt Best Practicable Means (BPM) including taking noise into consideration when developing construction methodologies and making plant choices. • All activities occurring in each month are assumed to occur at the same time. It is unlikely that this will be the case as some activities will occur consecutively. • No benefit from site hoarding has been assumed. <p>Inevitably some changes to the construction activities and plant used for the ES assessment will occur as the Scheme detailed design progresses. However, whilst the exact details may be subject to change, the overall picture of exceedances of the SOAEL are unlikely to be materially worse. Based on the robust approach taken in the ES, it is</p>

No	Question to	Ref.	Question	Applicant's response
				<p>reasonable to assume that additional exceedances of the SOAEL beyond those identified in the ES are unlikely, and that the number of receptors exceeding the SOAEL may well be less than those reported in the ES.</p> <p>b) The duration of exceedances of the SOAEL are provided in Appendix 9.2 of the ES [APP-219] on a monthly basis. In addition, a summary was provided in response to First WQ 6.15 [REP1-005].</p> <p>The durations of exceedance are based on the programme of the works provided by the buildability contractor appointed by Highways England for the ES. Inevitably some changes to the programme used for the ES will occur. However, whilst the exact details may be subject to change the overall picture of the duration of exceedances is unlikely to be materially worse. As the detailed design progresses more detailed information on durations, including at a greater level of granularity than whole months, will become available. Therefore, it is likely some durations of exceedances will reduce from that reported in the ES.</p> <p>c) The construction assessment of significance methodology, as set out in the ES, would be adopted for any future updates to the assessment as details of the</p>

No	Question to	Ref.	Question	Applicant's response
				<p>construction works are finalised during the detailed design stage. The OEMP [REP3-003] states that during the preparation of the Noise and Vibration Management Plan, information regarding actual plant requirements, as defined by the contractor would be used. The next version of the OEMP will include an addition specifying that information regarding the duration of construction activities will also be used.</p> <p>The approach to identifying significant construction noise effects is consistent with BS 5228. The thresholds from the ABC method in BS 5228 have been adopted as the SOAEL. The ABC method acknowledges duration is a factor in determining significance, but provides no further guidance on this. Guidance on duration of impact is provided in BS 5228 in both the 5dB change method and the Noise Insulation and Temporary Re-housing method. The 5dB change method uses a duration of 1 month or more. The Noise Insulation and Temporary Re-housing method uses a duration of 10 or more days of working in any 15 consecutive days, or a total number of days exceeding 40 in any 6 consecutive months.</p> <p>Of these two sources of guidance on duration, the more conservative approach in the Noise</p>

No	Question to	Ref.	Question	Applicant's response
				<p>Insulation and Temporary Re-housing method has been adopted.</p> <p>As with all assessments of significance, professional judgement is used in the application of the significance criteria, they are not simply applied in an automated manner (i.e. rigidly). The use of '<i>the professional judgement of competent experts</i>' in assigning significance of effect is set out in DMRB in LA104 Environmental assessment and monitoring (formerly HA 205/08).</p> <p>It is noted that with regard to assessing the significance of construction effects from road schemes, the current version of the Noise and Vibration section of DMRB LA111 (issued in late November 2019), specifically requires the use of the SOAEL/LOAEL and duration criteria as adopted in the ES. Therefore, the approach adopted in the ES is consistent with the current UK standard methodology for assessing construction impacts from road schemes.</p>
4.2.	Applicant	Consistency with BS5228 Part 1 FWQ [PD-005] Q6.14 Applicant response [REP1-005] ISH2 I&Q [PD-010] Q22	Annex E.3 of BS5228 Part 1 deals with potential significance based upon change in noise levels. The SOAEL noise levels in ES table 9.2 are the same as the example thresholds provided for the ABC method in table E.1 of BS5228 Part 1. Note 1 to Table E.1 states that " <i>A potential significant effect is indicated if the $L_{Aeq,T}$ noise level arising</i> "	a) Both the 10 or more days of working in any 15 consecutive days, and the total number of days exceeding 40 in any 6 consecutive months duration criteria have been adopted in the construction significance methodology reported in the ES Chapter 9: Noise and Vibration [APP-047]. This is set out in the first bullet point of para 9.3.23.

No	Question to	Ref.	Question	Applicant's response
		<p>Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] EBC response [AS-028]</p>	<p><i>from the site exceeds the threshold level for the category appropriate to the ambient noise level.</i> It then states that <i>"The assessor then needs to consider other project-specific factors, such as the number of receptors affected and the duration and character of the impact, to determine if there is a significant effect"</i>.</p> <p>Annex E.4 of BS5228 Part 1 specifically deals with thresholds used to determine the eligibility for noise insulation and temporary rehousing. It identifies noise levels that would lead to qualification for noise insulation (and separately for temporary rehousing) if they are exceeded <i>"for a period of 10 or more days of working in any 15 consecutive days or for a total number of days exceeding 40 in any 6 consecutive months"</i>. The noise levels in table E.2 are higher than those for Categories A and B in table E.1 and the averaging times are lower. There is no suggestion that any part of the approach set out in Table E.2 or Annex E.4 or is relevant to the assessment of significant effect.</p> <p>Annex E.4 refers to application <i>"in spite of the mitigation measures applied"</i>. This appears to be contrary to the Applicant's suggestion that it would be applied at <i>"the onset of when an impact specifically requires mitigation"</i>.</p>	<p>b) The ABC method acknowledges duration is a factor in determining significance, but provides no further guidance on this. Guidance on duration of impact is provided in BS 5228 in both the 5dB change method and the Noise Insulation and Temporary Re-housing method. The 5dB change method uses a duration of 1 month or more. The Noise Insulation and Temporary Re-housing method uses a duration of 10 or more days of working in any 15 consecutive days, or a total number of days exceeding 40 in any 6 consecutive months.</p> <p>Of these two sources of guidance on construction durations, the more conservative approach in the Noise Insulation and Temporary Re-housing method has been adopted.</p> <p>It is agreed that the Noise Insulation noise thresholds broadly correspond to Category C of the ABC method and are higher than Category A and B. Applying the same duration criteria to receptors within Category A and B, where absolute construction noise levels are lower, is a robust approach.</p> <p>It is agreed that the Noise Insulation and Temporary Re-housing section of BS 5228 does not explicitly refer to thresholds for identifying significant effects in EIA terms, as this is not the purpose of Annex E.4. It is also</p>

No	Question to	Ref.	Question	Applicant's response
			<p>The Applicant's methodology considers noise levels greater than SOAEL for up to 10 days in 15 as not significant. Based on 5.5 days of core working hours per 7 days, this appears to lead to a position where noise levels would not be considered significant if SOAEL was not exceeded for less than 1 working day per week (5.5 – (7x10/15)).</p> <p>a) Why has the 10 days in 15 criteria been adopted, but not the 40 days in 6 months criteria?</p> <p>b) Annex E.3 allows the assessor to consider other project-specific factors such as the duration of impact. Please could the Applicant justify how it considers it appropriate for such factors to lead to any exceedance of SOAEL for a high proportion of core hours to be reasonably considered as not significant?</p> <p>c) Does the Applicant consider that a later assessment of exceedances of SOAEL for (say) 9 days in 15 would not be a materially new or materially worse adverse noise effect in comparison with no exceedances of SOAEL considered in the ES? If so, please could it justify?</p> <p>d) Regarding precedent, does the degree of uncertainty with respect to the local road network during construction mean</p>	<p>agreed that the Noise Insulation and Temporary Re-housing thresholds would apply once other mitigation measures have been applied, as this aligns with the overarching philosophy of construction noise management to minimise construction noise levels. However, this does not mean there are not aspects of Annex E.4 which cannot reasonably be applied to the identification of significant effects in EIA terms. The thresholds apply to the point at which additional action is required to minimise an impact on a receptor, which is a comparable situation to a threshold at which an effect becomes significant.</p> <p>It is noted that with regard to assessing the significance of construction effects from road schemes, the current version of the Noise and Vibration section of DMRB LA111 (issued in late November 2019), specifically requires the use of the SOAEL/LOAEL and duration criteria as adopted in the ES. Therefore, the approach adopted in the ES is consistent with the current UK standard methodology for assessing construction impacts from road schemes.</p> <p>Highways England do not consider that the duration criteria adopted in the ES assessment methodology could lead to an exceedance of the SOAEL for a high proportion of core hours during the works to be considered not significant. The two parts to</p>

No	Question to	Ref.	Question	Applicant's response
			<p>that the proposed development is not typical of the Applicant's other national infrastructure projects when considering the potential for noise effects to be greater in practice that is assessed with reference to the preliminary design?</p> <p>e) The ExA seeks certainty that the ES assessment represents a reasonable worst case and is considering requirements to support that, including measures to set an appropriate context for future applications of Best Practicable Means. Please could the Applicant suggest how a requirement could be secured in the dDCO and OEMP for any assessment carried out later, when more detailed information would be available, to consider any exceedance of SOAEL as significant?</p>	<p>the duration criteria (10 working days in 15 consecutive days, or 40 in any 6 consecutive months) both apply. Therefore, the 40 days in 6 months criteria would prevent repeated exceedances for durations just below the 10 days in 15 criteria.</p> <p>The purpose of both the SOAEL and the duration criteria is for them to be used at the assessment stage of a project to identify potentially significant effects, and ensure any such significant effects are taken into account in the decision making process. They are not designed to be, or proposed to be, used as design criteria by the contractor.</p> <p>As detailed in the Applicant's response to Q22 at ISH2 [REP3-026], 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) [REP3-003], applies to all works regardless of whether they are a source of significant effects or not. The OEMP (PWNOI1 and MW-NOI1) requires that Highways England will detail the</p>

No	Question to	Ref.	Question	Applicant's response
				<p>application of BMP within the CEMP or NVMP as applicable. The NVMP (PW-NOI3 and MW-NOI3) shall also detail the <i>"integration of noise control measures in the preparation of all method statements for the works"</i>.</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 as they see fit.</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. the OEMP would not allow Highways England to generate noise in an uncontrolled manner as long as the duration criteria were not exceeded).</p> <p>This point is reiterated by DCiC in their response to ISH2 [REP3-027] Q22: <i>'The point around whether it may be appropriate or not to apply a concept that determines noise impact based on how many days the relevant SOAEL might be exceeded in any 15 day period, should not be used as a basis for construction noise management design as it is looking at it the wrong way round. In practice, the</i></p>

No	Question to	Ref.	Question	Applicant's response
				<p><i>construction noise management plan produced as part of the CEMP should be focussed on minimising noise impacts as far as possible, not outlining mitigation which ensures that the ES significance thresholds are not exceeded.'</i></p> <p>c) The Applicant does not consider that updating the decisions in the ES on potentially significant effects, once specific details on activity durations are available, could result in any materially new or materially worse adverse noise effects compared to the those reported in the ES. Due to the Scheme design being at the preliminary stage, a conservative approach was adopted and any anticipated exceedance of the SOAEL was identified as a potential significant effect. The later application of specific details on activity durations to the construction noise levels reported in the ES, in accordance with the methodology set out in the ES, could only ever reduce the number of potential significant effects identified.</p> <p>d) As with all predictions of future conditions, some uncertainty regarding construction traffic data is inevitable. The level of uncertainty is not considered to be greater for this Scheme than for other comparable Highways England schemes.</p>

No	Question to	Ref.	Question	Applicant's response
				<p>The level of detail in the construction traffic noise assessment completed for this scheme is greater than what would normally be adopted. Typically, the construction traffic noise assessment would be based on a spreadsheet exercise comparing the Calculation of Road Traffic Noise (CRTN) Basic Noise Level (BNL) of each road link with and without the construction traffic. For this Scheme traffic noise modelling of three construction traffic scenarios, identified as those with the potential to result in the largest impacts, was completed. This decision was taken due to the proposal to utilise the newly constructed sliproads for mainline traffic for various periods during the construction phase which would bring mainline traffic closer to nearby receptors than either the existing situation or the situation when the Scheme is operational.</p> <p>With regard to the risk of construction traffic noise impacts being greater than assessed in the ES, this is considered to be low because:</p> <ul style="list-style-type: none"> • fairly large changes in construction traffic would be required to have a material effect, as a rule of thumb a 25% increase in traffic flow is required to result in a 1dB increase in traffic noise; • the requirement set out in the OEMP [REP3-003] which states in clause MW-

No	Question to	Ref.	Question	Applicant's response
				<p>NOI8 that states: <i>'During the Scheme detailed design stage, Highways England will undertake an assessment of the potential traffic noise 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 as 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 will indicate the need for the contractor to amend the traffic management proposals or propose additional mitigation.'</i></p> <p>e) The Applicant's response to Question 4.1 sets out why the construction assessment reported in the ES is robust. The responses to 4.2 b) above and 4.4 below detail how the controls in the OEMP are considered to be sufficient, both by the Applicant and the local authorities. The Applicant and the local authorities are in agreement that duration is a relevant factor in the identification of significant construction effects, and therefore any exceedance of the SOAEL, no matter how briefly, should not automatically be considered as a significant adverse effect. On this basis the Applicant does not consider that an additional requirement in the dDCO or OEMP is necessary.</p>

No	Question to	Ref.	Question	Applicant's response
4.3.	DCiC EBC	Significance and exceedance of SOAEL FWQ [PD-005] Q6.14 Applicant response [REP1-005] EBC response [REP1-051] Recording of ISH2 [EV-011, EV-012, EV-013] ISH2 I&Q [PD-010] Q22 Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] EBC response [AS-028]	a) Do DCiC and EBC (still) consider any exceedance of SOAEL to be significant? b) The Applicant proposes that any assessment carried out later, when more detailed information would be available, would consider exceedance of SOAEL for up to 10 days (or 10 evenings, weekends or nights) in any 15 to be not significant. Is the Applicant's approach expected to lead to more impacts that DCiC and/or EBC would consider significant than are identified in the ES?	LAs to respond
4.4.	Applicant DCiC EBC	BPM and consistency with the ES ISH2 I&Q [PD-010] Q22, Q23 Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] EBC response [AS-028]	a) Does the Applicant consider that the construction contractor is likely to have enough flexibility to ensure that its' detailed design and construction proposals would not give rise to any materially new or materially worse adverse noise or vibration effects in comparison with those reported in the ES? b) In order to preserve the validity of the impact assessment and the basis of any decision regarding development consent, the ExA is considering a dDCO	a) Reference here should be to Highways England and not to the construction contractor given that Highways England is the applicant and the "undertaker" that will have the benefit of the DCO. Highways England considers it has enough flexibility in the design as this is what it has applied for consent for and assessed in the ES, in accordance with the Rochdale envelope principle. Based on the robust approach taken in the ES, it is reasonable to assume that additional significant effects beyond those identified in the ES are unlikely and that the number of

No	Question to	Ref.	Question	Applicant's response
			<p>or OEMP requirement for the construction contractor to explicitly demonstrate that its' detailed design and construction proposals would not give rise to any materially new or materially worse adverse noise or vibration effects in comparison with those reported in the ES, and for this to be subject to review by the Local Authorities and the Applicant and approval by the Secretary of State? Please could the Applicant comment?</p>	<p>significant effects may well be less than those reported in the ES given the conservative nature of the assumptions made.</p> <p>b) Detailed design is dealt with by requirement 12 and any deviation from the preliminary design (which is based on the assessments provided as part of the Application) must be approved by the Secretary of State on the basis that such departures do not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the ES. On this basis, any deviations from the assessments would need approval by the SoS provided they are within the scope of the effects assessed in the ES. The process for approval of noise mitigation is also secured through requirement 15 and the relevant planning authorities will be consulted through this process.</p> <p>With regard to construction, the OEMP includes PW-G4 and MW-G12 which state that any works carried out outside of core hours which are in addition to those currently anticipated and listed in the OEMP, these may be possible with the prior agreement of DCiC and EBC (as applicable) <i>'provided that the activity does not result in materially new or materially worse environmental effects as reported in the ES'</i>. In addition, the OEMP at MW-NOI8 states: <i>'During the Scheme detailed design stage, Highways England will</i></p>

No	Question to	Ref.	Question	Applicant's response
				<p><i>undertake an assessment of the potential traffic noise 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 as 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 will indicate the need for the contractor to amend the traffic management proposals or propose additional mitigation.'</i></p> <p>Further to the above, the assessment reported in the ES is based on information provided by the buildability contractor appointed by Highways England. The assumptions upon which the construction noise and vibration assessment was based ensure the results of the assessment are robust because:</p> <ul style="list-style-type: none"> • BS 5228 provides noise source data for a range of plant, the assessment does not assume the quietest plant will be used, whereas the OEMP requires the contractor to adopt Best Practicable Means (BPM) including taking noise into consideration when developing construction methodologies and making plant choices. • All activities occurring in each month are assumed to occur at the same time. It is

No	Question to	Ref.	Question	Applicant's response
				<p>unlikely that this will be the case as some activities will occur consecutively.</p> <ul style="list-style-type: none"> • No benefit from site hoarding has been assumed. <p>In addition, a conservative approach has been adopted in identifying potentially significant effects in that all activities identified as potentially exceeding the SOAEL have been identified, regardless of if the duration is likely to be very short. This approach was adopted as certainty on the duration of activities was not available at the ES stage, and to ensure the maximum number of potentially significant effects were identified to feed into the decision making process.</p> <p>Inevitably some changes to the construction activities, plant and programme used for the ES will occur as the Scheme detailed design progresses. However, whilst the exact details may be subject to change, the overall picture of significant effects is unlikely to be materially worse. Based on the robust approach taken in the ES, it is reasonable to assume that additional significant effects beyond those identified in the ES are unlikely, and that the number of significant effects may well be less than those reported in the ES.</p> <p>Previous responses/discussions with the local authorities indicate that they are comfortable with the controls currently in the OEMP. In</p>

No	Question to	Ref.	Question	Applicant's response
				<p>DCiC's response to FWQ 6.20 [REP1-034], DCiC comment that "DCiC would prefer to avoid outright limits in order to allow for greater flexibility to deal with issues as and when they arise".</p> <p>As detailed in the Applicants response to ISH2 Q23 a) and b) [REP3-026]: '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 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>'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>As detailed in DCiC's response to ISH2 [REP3-027] Q22: 'In practice, the construction noise management plan produced as part of the CEMP should be focussed on minimising noise impacts as far as possible, not outlining</p>

No	Question to	Ref.	Question	Applicant's response
				<p><i>mitigation which ensures that the ES significance thresholds are not exceeded.</i></p> <p><i>As it happens, the OEMP already does this by applying the principle of BPM and this approach has already been agreed by DCiC and is still the case.'</i></p> <p>Given the above, Highways England does not consider it necessary to have any additional requirement as suggested.</p>
4.5.	Applicant	<p>Work outside core hours DCiC [REP1-034] ISH2 I&Q [PD-010] Q23 Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] EBC response [AS-028]</p>	<p>a) In order to assist DCiC and EBC, please identify which of the works outside of core hours listed in the OEMP (PW-G4 and MW-G12) that the construction contractor could reasonably be expected to be able to plan in advance and allow time for <i>"the prior agreement of the DCiC and EBC environmental health officers (as applicable)"</i> without delays to programme?</p> <p>b) The ExA is considering the following requirements and would welcome the Applicant's suggestion of appropriate wording for the dDCO:</p> <ul style="list-style-type: none"> • for the Local Authorities to be informed of the timing and extent of works outside core hours in advance; and • for any consultation with the Local Authorities and for any prior notification of works outside core 	<p>a) Highways England considers that all the works outside of core hours listed in the OEMP (PW-G4 and MW-G12) other than <i>"any emergency work"</i> can reasonably be expected to be planned in advance. However, given the need for these listed activities is already known, it is the intention that they can take place without further prior agreement from the DCiC and EBC environmental health officers (as applicable). The finalised CEMP will be produced in consultation with the local authorities, therefore, they will have further opportunity to comment on the list of works outside core hours. Prior agreement of the DCiC and EBC environmental health officers (as applicable) would only need to be sought for any other works proposed to be carried out outside of the defined core working hours.</p> <p>(b) Highways England does not consider that this is necessary as suitable provisions are already included in the OEMP and dDCO. The</p>

No	Question to	Ref.	Question	Applicant's response
			<p>hours to include consideration of the following matters identified by DCiC:</p> <ol style="list-style-type: none"> a. the necessity for the works; b. the date, duration and nature of the works; c. full and proper public notification of the works; d. detailed measures to mitigate noise as far as possible; and e. contingency arrangements in the event of issues with noise. 	<p>necessity of the works currently identified as being required outside of core hours has been outlined in response to FWQ 6.19. Any other works outside of core hours must be agreed in advance with the local authority.</p> <p>In terms of notification of the works, this is secured through the processes set out in articles 11 and 12.</p> <p>One of the responsibilities of the Community Relations Manager (CRM), as outlined in Table 2.1 of the OEMP is '<i>Keeping the public informed of project progress and any construction activities that may cause inconvenience to local communities</i>'.</p> <p>The Noise and Vibration Management Plan (NVMP) required by PW-NOI3 and MW-NOI3 in the OEMP must include the following aspects for all works, including works outside of core hours:</p> <ul style="list-style-type: none"> • details of how Best Practicable Means (BPM) has been applied to the works; • details of how noise control measures have been integrated into the method statements for the works; • details of other mitigation measures such as site hoardings that will provide acoustic screening; • details of monitoring during the works and inspection and maintenance schedules;

No	Question to	Ref.	Question	Applicant's response
				<ul style="list-style-type: none"> processes to ensure ongoing compliance with all controls; and processes for implementing corrective actions, if required.
4.6.	EBC	Construction uncertainties ISH2 I&Q [PD-010] Q23 EBC response [AS-028] Applicant response [REP3-026]	<p>a) Is EBC in agreement with the views attributed to it that <i>"EBC is comfortable that the 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"</i>?</p> <p>b) Is EBC content with the Applicant's revisions to the OEMP (PW-NOI2 and MW-NOI2) to require a Section 61 application for works outside of core hours within EBC's administrative area?</p>	EBC to respond
4.7.	Applicant	Noise barrier adjacent to Royal School for the Deaf Derby ISH2 I&Q [PD-010] Q27 Applicant response [REP3-026]	<p>a) Please clarify why it is not possible to commit to erection of the permanent 4m noise barrier before demolition of the Queensway buildings?</p> <p>b) Is it currently possible to establish whether there is enough space for the noise barrier to be fully erected before any house demolition?</p>	a) Highways England may not get access to all the buildings and land at Queensway at the same time. If General Vesting Declarations are to be served and compulsory acquisition powers used to acquire land, there may be a delay to HE owning all the affected land. As such, HE can not commit to erecting the noise

No	Question to	Ref.	Question	Applicant's response
		DCiC response [REP3-027]	<p>c) What other factors, if any, could prevent early erection of the noise barrier? Can those factors be assessed now? If not, why not?</p> <p>d) Will the installation of a reflective noise barrier on the western boundary of the school worsen noise levels in Markeaton Park? Has the Applicant assessed this potential effect?</p>	<p>barrier until all this land is owned and properties are demolished.</p> <p>b) Subject to removing sheds, fences and vegetation, there is enough space for the noise barrier to be fully erected before any house demolition. However, as, Highways England does not currently own all the land required to construct the noise barrier and as such cannot erect a barrier in advance of the start of works. In order to do this in advance it would need to secure land agreements with the relevant landowners and also obtain planning permission for the barrier from the local planning authority (which is of course outside the scope of the DCO process).</p> <p>c) HE does not have the authority to obtain the necessary land by compulsion until the Secretary of State decision has been made the DCO and the land being acquired earlier by agreement (if possible) for this purpose is not currently intended. In terms of expected works, Highways England anticipates that vegetation clearance will be needed along the line of the barrier and flora/fauna may prevent its removal until the start of winter.</p> <p>d) The noise barrier at the Royal School for the Deaf Derby to the north of Markeaton junction is specified in the ES as reflective. The effect of a reflective barrier has been included in the assessment reported in the</p>

No	Question to	Ref.	Question	Applicant's response
				ES. An absorptive barrier in this location would have no effect on the school. An absorptive barrier at this location would be expected to result in a slight reduction in traffic noise levels at the edge of Markeaton Park on the opposite side of the A38. However, due to the realignment of the A38, this area of the park would already experience a reduction in traffic noise due to the Scheme, including the reflective barrier at the School. Therefore, a reflective barrier at the school would not worsen traffic noise levels in Markeaton Park. The reduction in traffic noise levels in the opening year at the edge of Markeaton Park is illustrated in ES Figure 9.4A [APP-133].
4.8.	DCiC	Cumulative impact assessment FWQ [PD-005] Q6.24 Applicant response [REP1-005] DCiC response [REP1-034] SoCG with DCiC [REP2-013]	Is DCiC content with the Applicant's consideration of construction and any other traffic from the other developments in its' noise and vibration assessment?	DCiC to respond
5.	The water environment			
	Flood risk and drainage			
5.1.	DCiC	Flood risk modelling	DCiC	DCiC to respond

No	Question to	Ref.	Question	Applicant's response
		Relevant Representation (RR) by DCiC [RR-003] Applicant's Response to FWQ [REP1-005] Applicant's response to ISH2 [REP3-026]	a) Have the LLFA's concerns regarding hydraulic modelling for the Markeaton junction been addressed following the meeting held with the Applicant on 15 October 2019? b) Does the revised version of dDCO Requirement 14 satisfactorily address the LLFA's concerns regarding groundwater flood risk at the Kingsway junction?	
5.2.	Applicant DCiC DCC	Ownership of flood storage facilities Applicant's response to ISH2 [REP3-026] DCiC's response to ISH2 [REP3-027]	Please confirm who will take ownership of the flood storage and attenuation facilities at each of the junctions.	The ownership and maintenance responsibilities of each of the highway drainage attenuation and flood storage features are as follows for each junction. Kingsway: The proposed drainage attenuation pond and flood storage area located between the A38 mainline and the northbound diverge slip road will be owned and maintained by Highways England. The highway drainage attenuation storage tank located within Mackworth Park will be the responsibility of Highways England to maintain. The permanent rights to do so are being sought within the dDCO. DCiC will remain responsible for maintaining the parkland on and around the storage tank. The flood storage feature proposed on land owned by Keir Homes will remain in their

No	Question to	Ref.	Question	Applicant's response
				<p>ownership. Through the dDCO the permanent rights are being sought for Highways England to access the land to maintain the flood control features, such as weirs, headwalls and flap valves. Keir will continue to maintain the grassland as an amenity to the new housing estate.</p> <p>Markeaton: The highway drainage attenuation consisting of two buried attenuation tanks and a forebay pond will be managed by Highways England. There are no flood storage features at this junction.</p> <p>Little Eaton: There are two drainage attenuation ponds proposed at the junction. The separate ponds collect water from the areas of highway managed by the different highway authorities. The roundabout and the A61 will be DCC's responsibility and water from these areas will be managed in the southernmost pond. The northern pond will be managed by Highways England as it collects water from the A38.</p> <p>The floodplain compensation area sited to the west of the River Derwent, after its creation will be returned to the landowner. There are no future maintenance responsibilities, the</p>

No	Question to	Ref.	Question	Applicant's response
				land will continue to be owned by the current owner for livestock grazing.
Water quality pollution control				
5.3.	Applicant DCiC DCC	Surface water discharges Applicant's response to ISH2 [REP3-026] DCiC's response to ISH2 [REP3-027] DCC's response to ISH2 [REP3-029]	DCiC a) Item 38 of the Applicant's response sets out the measures to control pollutants and silt. Specific reference is made to Mill Pond, including a petrol interceptor upstream of Markeaton Lake culvert. Why are further petrol interceptors necessary? b) Markeaton Lake is upstream of the proposed discharge points. Why are further pollution and siltation control measures necessary at this location? c) Is it necessary to provide further information on the proposed outfall to Mill Pond at this stage? Why could that not be dealt with when the details are submitted under Requirement 12? d) Is it necessary to provide further information on discharge rates and the volume of discharge at this stage? Why could that not be dealt with when the details are submitted under Requirement 12? e) What policy or guidance justification is there for seeking a 30% reduction in the	a to e) DCiC to respond f) DCC to respond g) The Applicant does not believe there are any public sewer outfalls into the Mill Pond. There are three known existing highway and surface water outfalls that discharge in the immediate vicinity of the culvert under the A38 connecting Markeaton Lake to the Mill Pond. Refer to REP2-020 Q1.23 and REP1-031 and Q7.14 with regard to proposed discharge rate and water quality. h) The existing foul sewer system is owned and maintained by Severn Trent Water, following diversion works this will remain the case. Refer to the response to Q5.2 with regard to the ownership and maintenance of the drainage attenuation features. The main A38 highway drainage will be responsibility of Highways England. Discussions are ongoing with the LHAs to agree the maintenance responsibility boundaries, the main principles have now been agreed to set the parameters by which the responsibilities will be defined.

No	Question to	Ref.	Question	Applicant's response
			<p>total peak water discharge from the proposed drainage scheme?</p> <p>DCC</p> <p>f) Is the Council content with the hydraulic calculations for the Dam Brook diversion which were appended to the Applicant's comments on D1 submissions?</p> <p>Applicant, DCiC, DCC</p> <p>g) Please provide further details of how the proposed drainage scheme would affect the Mill Pond public sewer outfall.</p> <p>h) Whilst Requirement 13 of the dDCO states that the surface and foul drainage system must be maintained, it does not specify who would be responsible for its maintenance. Please clarify the maintenance responsibilities for the drainage systems at each of the junctions. Provide an update on the Maintenance and Repair Strategy Statement.</p>	<p>This process will continue throughout the detailed design and construction stages for handover following completion of works. As the design progresses, the individual assets will be identified and maintenance responsibilities identified and agreed.</p> <p>At the Kingsway junction the A5111 and the new Kingsway Park Close link will be DCiC's responsibility along with their existing road network.</p> <p>At the Markeaton junction the A52, the new junction circulatory and the proposed access to Sutton Turner Close will be DCiC's responsibility along with their existing road network.</p> <p>At the Little Eaton junction the A61 and the new junction circulatory will be DCiC's responsibility along with their existing road network.</p> <p>At the end of the Preliminary Design stage the MRSS PCF product was signed off by Highways England, this version of the document is for the design as submitted for the dDCO. The MRSS is a live document and will be updated continuously through the next stages of the scheme. The interface plans that are being developed through consultation with the LHAs and HE EMAD will be appended to the MRSS. As mentioned above at 2.11(c), Highways England has produced a note (and</p>

No	Question to	Ref.	Question	Applicant's response
				<p>submitted it to the ExA as part of D4) which explains how Highways England manages the development and delivery of major projects and how the post-consent and construction phase would be managed along with how and when other parties would be engaged with and consulted before detailed approvals are sought.</p>
5.4.	Applicant EA DCiC DCC	Water Quality Applicant's Response to FWQ [REP1-005] RR by the EA [RR-005]	<p>a) Is routine monitoring of water quality during the operation of the scheme necessary?</p> <p>Applicant</p> <p>b) What 'specific incidents' would trigger water quality monitoring. How would this be secured through the DCO?</p>	<p>a) LAs to respond</p> <p>b) This refers to the Applicant's response to ExA FWQ 7.13 which stated "<i>We do not consider that water environment monitoring following completion of the construction works is required, unless in response to specific incidents</i>". It is not possible to define all potential "specific incidents" that would trigger water quality monitoring, but an example would be an accidental fuel spillage into a watercourse. If such an incident occurred during the construction phase (but after completion of construction), such monitoring would be required in accordance with the Pollution Incident Control Plan as contained within the CEMP (refer to the OEMP [REP3-003]). If such an incident occurred during the operational phase, monitoring requirements would be covered by the HEMP. As such, monitoring activities are appropriately secured through DCO Requirement 3.</p>

No	Question to	Ref.	Question	Applicant's response
Opportunities for enhancement				
5.5.	Applicant DCiC	Use of Sustainable Drainage Systems Applicant's response to ISH2 [REP3-026] DCiC's response to ISH2 [REP3-027]	<p>a) Please comment on DCiC's suggestions that the tank at Kingsway junction could be replaced by a pond and that there are opportunities in the POS north of Kingsway junction for natural flood risk management techniques.</p> <p>b) Are these suggestions necessary to ensure that the scheme accords with NPSNN and the National Planning Policy Framework policies for the use of Sustainable Drainage Systems?</p> <p>c) Would the use of the Public Open Space north of Kingsway for natural flood risk management techniques fall within the scope of the scheme?</p> <p>Applicant, DCiC</p> <p>d) Could any improvements to the layout of the Sustainable Drainage Systems scheme at Markeaton be dealt with when the details are submitted under Requirement 12?</p>	<p>a) The tank has been proposed in preference to an open pond feature due to the topography of the park at that location. DCiC had previously been consulted on an open pond feature, but this was very large and appeared as a heavy engineering solution which did not fit with DCiC's aspirations and generated further loss of POS. Highways England investigated a number of options following this consultation, however, no open features were considered as an adequate solution. In order to provide the volume of highway water attenuation, minimisation of POS loss and separation of the ground water run off DCiC have a concern over, the tank is the most practicable solution in this instance.</p> <p>This will be further considered at the detailed design stage once surveys of the existing drainage are completed and existing hydraulic models are produced. This will then confirm the type and size of attenuation feature at that time.</p> <p>Refer to response c) for commentary on the need for natural flood risk management techniques in the POS north of Kingsway junction (i.e. Mackworth Park). It is noted that the flood risk mitigation measures included in the Scheme design at Kingsway junction are not hard engineered structures, but are</p>

No	Question to	Ref.	Question	Applicant's response
				<p>features that will be developed as ecological habitats with additional benefits in terms of the Water Framework Directive.</p> <p>b) As the Scheme is an NSIP, Highways England considers that greater weight should be afforded to the NPSNN, in accordance with Section 104(a) of the PA 2008 than the NPPF. The NPSNN provides a clear policy direction and advocates an approach to SuDS based on the associated flood risk, with Paragraph 5.110 stating that the management of flood risk may include the use of SuDS and paragraph 5.2.30 stating that:</p> <p><i>'The National SuDs Standards will introduce a hierarchical approach to drainage design that promotes the most sustainable approach but recognises feasibility, and use of conventional drainage systems as part of a sustainable solution for any given site given its constraints.'</i></p> <p>Whilst acknowledging that paragraph 165 of the NPPF advocates that major developments should incorporate SuDS unless clear evidence indicates that this would be inappropriate, when considering the policies of both documents Highways England does not consider these changes are necessary to achieve policy compliance, based on the overriding thrust of the NPSNN and when considering the need to balance a number of</p>

No	Question to	Ref.	Question	Applicant's response
				<p>Scheme objectives within the constraints of the Scheme. The response above to part a) responds directly to the suggestions put forward by DCiC.</p> <p>c) The Scheme flood risks at Kingsway junction have been assessed and mitigation features included in the Scheme design (namely flood storage areas within the Kingsway hospital site and within the new junction). Given that the Scheme design includes measures to fully mitigate the Scheme effects upon flooding, further flood risk management measures within Mackworth Park are not considered to be necessary.</p> <p>d) The Applicant will be happy to discuss variations to the application proposals with respect to Sustainable Drainage Systems at Markeaton junction providing it does not compromise the provision of Public Open Space replacement land.</p>
6.	Biodiversity and ecological conservation			
	Non-statutory designated sites of interest			
6.1.	EBC	Alfredton Road Rough Grassland Local Wildlife Site Applicant's response to FWQ [REP1-005]	Please comment on the Applicant's assessment of the effect of the proposal on the Local Wildlife Site and the mitigation measures set out in the OEMP (for example, items PW-BIO4 and D-B4).	EBC to respond Highways England has submitted a Technical Note (TN) to the ExA at Deadline 4 that corrects an error regarding the percentage loss due to the Scheme of the Alfredton Road Rough Grassland Local Wildlife Site (LWS) as

No	Question to	Ref.	Question	Applicant's response
		EBC Local Impact Report [REP1-050] EBC Response to FWQ [REP1-051] Revised OEMP [REP3-003 and REP3-004]		reported in the ES. The TN indicates that the Scheme would result in the permanent loss of approximately 16% (0.64ha) of the LWS rather than 30% as reported in the ES. However, this does not change the significance of effect (non-significant (neutral) effects), nor the defined mitigation approach as detailed in the OEMP [REP3-003], or the conclusion that the Scheme would not have an adverse effect on the functional integrity of the LWS.
Protected species and other notable fauna				
6.2.	DCC Applicant	DCC WR [REP1-030] Applicant [REP2-020] and [REP3-026]	Please comment on the Applicant's latest submission on badger fencing and crossings.	DCC to respond
Opportunities for enhancement				
6.3.	DCiC EBC	Enhancement and the use of Biodiversity Metric Assessment DCiC response to FWQ [REP1-034] EBC response to FWQ [REP1-051] Applicant response to ISH2 [REP3-026]	a) Please confirm whether you consider that the Applicant's approach to biodiversity enhancement is acceptable. b) Please comment of the Applicant's justification for not using Biodiversity Metric Assessment in its assessment of the DCO application [REP3-026 item 37].	LAs to respond
7.	Landscape and visual impact			

No	Question to	Ref.	Question	Applicant's response
Townscape and visual impacts				
7.1.	Breadsall Parish Council	Landscape and visual effects on Breadsall BPC response to ISH2 [REP3-028] Applicant's response to ISH2 [REP3-026] WHS Photomontages [REP3-018]	Please comment on the effect of the proposal on visual receptors and landscape setting of Breadsall having regard to the Applicant's comments on this matter [REP3-026, item 16] and the WHS photomontages [viewpoints 11 and 24 in particular].	Breadsall Parish Council to respond
8.	Land use, social and economic impact			
Non-motorised users, public rights of way and accessibility				
8.1.	Applicant DCC Breadsall Parish Council	Footpath diversions at Little Eaton BPC response to ISH2 [REP3-028] Applicant's response to ISH2 [REP3-026] Applicant's Little Eaton Junction Existing & Proposed Rights of Way Plan [REP3-016] DCC response to ISH2 [REP3-029]	a) There appears to be disagreement over the existing alignment of FP3, particularly its route across the existing junction. Please provide the definitive footpath plan and comment on whether or not it has been diverted as suggested by the Applicant. b) Please comment on the suggested amendment to the diversion of FP3 suggested by DCC.	a) DCC to respond b) The Applicant does not consider that DCC has suggested an amendment to the diversion of FP3 – they did raise the following points however: DCC's response to ISH question 6a stated <i>"Highways England's consultant indicated that it proposed that a new pedestrian crossing would be provided on the A61 adjacent to where the Breadsall footpath diversion FP3 met with the A61. DCC has safety concerns about the location of this proposed junction [presumably meant to say 'crossing'] due to its proximity to the new junction layout. DCC is working with Highways England to facilitate a new toucan crossing further south on the A61</i>

No	Question to	Ref.	Question	Applicant's response
				<p><i>adjacent to the Croft Lane footpath, which is likely to provide for a safer alternative.”</i></p> <p>Under the Scheme, FP3 would be diverted 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. (FP1 has an existing crossing of the A61 at this point but it is not proposed that FP3 users should use this) - users wishing to walk to the southern part of Little Eaton would take a more direct route leaving the village on Croft Lane and crossing the A61 (at the location of the proposed new toucan crossing), they would then use the improved pedestrian facilities on the west side of the A61 and cross the scheme's west-facing slip roads utilising the proposed toucan crossings.</p> <p>DCC's response to ISH question 14a stated <i>“Derbyshire County Council's Officers have indicated that their only comment is in respect of the proposed alternative alignment of Breadsall Public Footpath 3. Officers understand why the alignment is so positioned and its shape however they consider that this is not a natural alignment for the public and that any person entering the field, roughly where your Breadsall FP 3 label arrow points on the Plan, are likely to turn left and head SW for the carriageway rather than walk around</i></p>

No	Question to	Ref.	Question	Applicant's response
				<p><i>the field. This is only speculation on Officer's part."</i></p> <p>As noted above, FP3 is proposed as a recreational route (for dog walkers and the like) so there would be no incentives to take a short cut and not follow the field boundary – following the field boundary would also be a more attractive route as it would follow the diverted Dam Brook.</p> <p>DCC's response to ISH question 14b stated <i>"Derbyshire County Council has not raised any objections relating to FP3 or FP8 and therefore it is down to the applicant to take a view on this relating to safety issues."</i></p> <p>Noted – the responses above address this.</p>
Severance and local access				
8.2.	Applicant Euro Garages McDonalds Restaurants	Euro Garages and McDonalds sites Applicant's response to ISH2 [REP3-026] Euro Garages summary of ISH2 oral contributions [REP3-035] Euro Garages post- hearing submission [REP3-036]	Provide an update on meeting/discussion between the applicant, McDonalds Restaurants and Euro Garages in respect of: a) assessment of junction capacities; b) junction geometry; c) the need to strengthen the McDonalds car park; d) justification for ingress to the McDonalds/EG facilities from the A38 slip road;	a) A meeting was held Wed 15 th Jan 2020 at which McDonald's agreed that they would carry out their own assessment of the capacity of the signalised junction with the A52 and determine the resulting queue lengths using computer software they are familiar with (LINSIG) and report back to the A38 project team. b) At the meeting of 15 th Jan 2020 both Euro Garages and McDonald's noted that agreement of the A52 access geometry is required with DCiC to ensure they are aware of future maintenance issues. Highways

No	Question to	Ref.	Question	Applicant's response
		McDonalds summary of ISH2 oral contributions [REP3-040]	<p>e) the provision of roadside signage;</p> <p>f) the effect of the proposal on access rights across the McDonalds and EG sites. Is a copy of the conveyance referred to in title number DY103730 available?</p> <p>g) Please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.</p>	<p>England note that DCiC has been involved in the preliminary development of the access arrangements and the current layout has recently been shared with DCiC and DCiC responded saying "...DCiC doesn't have an issue with the principle of the access layout and is currently looking through the proposals to provide more detailed comments."</p> <p>c) At the meeting of 15th Jan 2020, McDonald's noted that they have committed to taking core samples in their car park – the resulting information will be shared with Highways England's consultants to allow them to assess the loading capacity of the existing construction.</p> <p>d) The egress only solution onto the A38 northbound diverge slip road was arrived at following extensive discussions with Highways England's standards specialists as well as with Euro Garages and McDonald's. A Technical Note summarising these discussions has been prepared and submitted to the ExA at Deadline 4.</p> <p>e) At the meeting of 15th Jan 2020 it was agreed that Euro Garages and McDonald's would provide safety case for provision of signage; HE will then seek to progress within their relevant department.</p> <p>f) The Land Registry Title DY103730 gives reference to rights granted by a conveyance</p>

No	Question to	Ref.	Question	Applicant's response
				<p>dated 8 December 1982 between Derby City Council and Esso Petroleum Company. The full conveyance is not publicly available, and the Applicant is unable to comment on the full effect of the conveyance without seeing the whole document.</p> <p>The freehold title provides some detail, outlining that Esso (in common with Derby City Council the right 'to pass and repass along, over and upon roadways' shown in the Application land plans (APP-006) as plots 3/8a and 3/8b with or without vehicles and prohibiting Esso from acquiring any right of light or air which would prejudice the free use and enjoyment of any adjoining light or air by Derby City Council.</p> <p>At the meeting of 15th Jan 2020, the Applicant tabled a plan to demonstrate that EG and their customers can enter their facility without going outside any land that is either in EG or McD's ownership but has existing rights in place to allow EG (and their customers) to pass and re-pass over or is already highway land.</p> <p>This will not prejudice any party from claiming compensation for any interest that is extinguished as a result of the Scheme (subject to interest being demonstrated).</p> <p>g) The outstanding matters are as noted above with the key issue are:</p>

No	Question to	Ref.	Question	Applicant's response
				<ul style="list-style-type: none"> • McDonald's to provide A38 project team with results of their LINSIG analysis of A52 signalised junction • McDonald's to take core of existing car park and provide A38 project team with the results • Euro Garages and McDonald's to provide safety case for provision of advance signage <p>The Applicant will work closely with the two parties to try to resolve this before the end of the examination.</p>
9.	Other policy and factual issues			
9.1.	Applicant	Climate change, adaptation and carbon emissions WR by Alyson Lee [REP3-031] WR by David Clasby [REP3-032] WR by Mair Perkins [REP3-038] WR by Mary Smail [REP3-039]	Please respond to the WR submitted at Deadline 3, including with respect to: <ul style="list-style-type: none"> • the carbon budget for Derby; • the need to start now if zero net carbon emissions are to be met by 2050; • the need to protect mature trees for their carbon capture; and • that planning policies do not reflect "the Declaration of a Climate and Ecological Emergency made by Parliament and Derby City Council in May this year". 	Environmental Statement (ES) Chapter 14: Climate [APP-052] details the potential greenhouse gas emissions (GHG) associated with Scheme construction and operation. Carbon Budget for Derby In response to the written representation from Mr Clasby [REP3-032] regarding the Derby carbon budget, it is acknowledged that in September 2019 the Tyndall Centre published 'The Tyndall Carbon Budget Tool' to provide UK local authorities with climate change targets and budgets. The carbon budgets in this report are based on the Tyndall Centre translating the United Nations Paris Agreement to a national UK carbon budget. This report/tool was published after the

No	Question to	Ref.	Question	Applicant's response
				<p>submission of the ES. The budgets set within this report do not align with current UK carbon budgets.</p> <p>The impact of the Scheme on the climate due to GHG emissions has been assessed in line with the requirements set out in the National Planning Statement for National Networks (NPSNN). This requires that the impact of any Scheme is considered in the context of the UK meeting the carbon reduction commitments set out in the Climate Change Act 2008. The trajectory of delivery for the UK's 2050 carbon reduction target is set out through a series of legally binding five-year carbon reduction budgets published by the Government. To understand the CO₂e impact of the Scheme, estimated CO₂e emissions from the Scheme have been compared against the five-year carbon budget period in which they would arise to determine if the Scheme will have an impact on the UK meeting the 2050 target. The assessment in ES Chapter 14 [APP-052] was written prior to the publication of the new Government carbon reduction targets set within the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (i.e. the net zero target). As such, the assessment does not take the revised carbon reduction target into account.</p> <p>In response to the written representations from Alyson Lee [REP3-031] and Mary Smail</p>

No	Question to	Ref.	Question	Applicant's response
				<p>[REP3-039] the climate assessment presented in the ES was undertaken before the Declaration of a Climate emergency by the UK Government and Derby City Council. No further policy or guidance has been published by either Government or Derby City Council with regard to how the response to the climate emergency will be met.</p> <p>The carbon assessment in ES Chapter 14: Climate [APP-052] was undertaken using the set of carbon budgets available at the time of the assessment, which were calculated to meet the previous (80% reduction) target by 2050. The Committee on Climate Change, the body responsible for setting the carbon budgets, has announced it will revise its assessment of the appropriate path for emissions over the period to 2050 to meet the net zero carbon target as part of its advice later this year (2020) on the sixth carbon budget. It is therefore not possible to update the assessment of the CO₂e impact of the Scheme against the new net zero carbon target until the revised carbon budgets are published. However, the assessment as set out in ES Chapter 14: Climate [APP-052] demonstrates that the Scheme's GHG impact as a proportion of total UK carbon emissions is negligible, such that it can be considered to be immaterial. In such circumstances, Highways England does not consider that the</p>

No	Question to	Ref.	Question	Applicant's response
				<p>new net zero target gives cause to alter the assessment findings. Furthermore as this Scheme is part of national highways network, with GHG impacts considered across the wider affected road network, it is considered more appropriate to put the impacts of this Scheme into a national context.</p> <p>The Need to Start Now if Zero Net Carbon Emissions are to be Met by 2050</p> <p>Table 14.12, ES Chapter 14: Climate [APP-052] sets out the activities and measures that will be implemented to mitigate the impact of the Scheme on the climate. This includes measures to reduce construction and operational GHG emissions for example: Development of an Outline Environmental Management Plan (OEMP) which includes requirements on Highways England to reduce energy consumption and CO₂e emissions through:</p> <ul style="list-style-type: none"> • The consideration of renewable and/or low or zero carbon energy sources. • Monitoring of energy and material use. • Using construction materials that have lower embedded CO₂e, are sustainably sourced and use recycled secondary content. • Use of solar powered lighting studs to avoid the need to install lighting columns at Little Eaton junction.

No	Question to	Ref.	Question	Applicant's response
				<p>Further details are provided in the OEMP [REP3-003], including the need for an Energy and Carbon Plan.</p> <p>To allow for a gradual transition towards a low carbon UK economy, the carbon budget trajectory presents a steady decrease in the allowable threshold of GHG emissions towards the 2050 target. Construction emissions from the Scheme will fall under the near-term carbon budgets which permit a greater emission while still allowing the UK to remain on course to meet 2050 targets.</p> <p>It should also be noted that the GHG emissions presented in ES Chapter 14 [APP-052] are considered to represent a worse case scenario. For example, the assessment does not account for current or future Government policy promoting the update of low carbon and electric vehicles and the decarbonisation of the national electricity grid.</p> <p>The Need to Protect Mature Trees</p> <p>In response to the written representation from Mair Perkins [REP3-038] it is acknowledged that the Scheme will require the removal of some existing mature trees – details are provided in ES Chapter 7: Landscape and Visual [APP-045 and ES Chapter 8: Biodiversity [APP-046]. During the development of the Scheme design, Highways England has aimed to minimise the loss of</p>

No	Question to	Ref.	Question	Applicant's response
				<p>existing trees, and where such losses are unavoidable, mitigation planting is proposed. As indicated in the Environmental Masterplan figures (ES Figure 2.12C and 2.12D [APP-068]), the environmental design includes woodland, tree and shrub planting, as well as the provision of species-rich and amenity grassland. In addition, a wide range of ecology mitigation features will be provided across the Scheme.</p> <p>Planning Policies do not reflect “the Declaration of a Climate and Ecological Emergency</p> <p>Refer to the comments made in the section Carbon Budget for Derby – namely that the climate assessment presented in the ES [APP-052] was undertaken before the Declaration of a Climate emergency by the UK Government and Derby City Council. No further policy or guidance has been published by either Government or Derby City Council with regard to how the response to the climate emergency will be met.</p> <p>Road projects such as the A38 should be consistent with the National Policy Statement for National Networks, which states (at 5.17) “for road projects applicants should provide evidence of the carbon impact of the project and an assessment against the Government’s carbon budgets”. The National Policy</p>

No	Question to	Ref.	Question	Applicant's response
				Statement acknowledges (also at 5.17) that <i>"it is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets"</i> . The UK government is responsible for setting planning policy and the current scheme conforms with this policy.
9.2.	Applicant	Carbon footprint NPSNN paragraph 5.19 ISH2 I&Q [PD-010] Q34 Applicant response [REP3-014] [REP3-026] EA response [REP3-034] OEMP [REP3-003]	<p>NPSNN refers to the need <i>"... to ensure that, in relation to design and construction, the carbon footprint is not unnecessarily high."</i></p> <p>The Applicant has referred to the use of the Highways England Carbon Reporting Tool and the OEMP requires the production of an Energy and Carbon Plan.</p> <p>a) Please clarify the use of the term <i>"where practicable"</i> in the OEMP and how this relates to <i>"not unnecessarily high"</i>. How would the Applicant take account of carbon footprint during detailed design and how would it balance carbon footprint against cost?</p> <p>b) Should benchmarking of the carbon footprint of (all or part) of the proposed development with (all or part) of other developments across the Applicant's portfolio of projects be a necessary element of demonstrating that the carbon footprint of the proposed development is not necessarily high?</p>	<p>a) The use of the term <i>'where practicable'</i> has been used in the OEMP [REP3-003] to allow for flexibility in environmental, engineering and design requirements as the Scheme transitions from the DCO to detailed design and construction. For example, it is not always possible to determine the specification and supply of construction materials and products until the Scheme detailed design has been finalised and the construction contractor is appointed.</p> <p>Once appointed, Highway England's contractor has a contractual requirement to report on cost and carbon performance to Highways England. Highways England will require the contractor to report on carbon emissions from the Scheme on a quarterly basis through the Collaborative Performance Framework (CPF) which scores the contractor on 'tonnes of carbon per £'. The CPF is used to measure contractor performance and has commercial implications if the performance is poor. The contractor will also evaluate the use</p>

No	Question to	Ref.	Question	Applicant's response
			<p>Otherwise how would it be demonstrated that the test has been met?</p>	<p>of low emission carbon products and methods against more traditional higher emissions methods to demonstrate the reduction in carbon per every additional £ spent. This will inform decision making as well as taking into account any reduction or increase in risk.</p> <p>b) ES Chapter 14: Climate [APP-052] details the potential greenhouse gas emissions (GHG) associated with Scheme construction and operation. To demonstrate that the carbon footprint of the Scheme is not unnecessarily high, construction emissions from the Scheme have been benchmarked against construction emissions from a number of other highway schemes being proposed by Highways England. To allow for a transparent and meaningful comparison, carbon emissions for each scheme have been normalised based on tonnes of construction emissions per km of road built (tCO₂e/km).</p> <p>Carbon intensity per km has been calculated for a number of other highway schemes being proposed by Highways England, including the A46, the M54 and the A303. Carbon intensity of these highway schemes ranges from 19,054 tCO₂e/km to 35,915 tCO₂e/km. The carbon intensity of the Scheme is 23,793 tCO₂e per km which falls within the range of benchmarks calculated. On this evidence, it is</p>

No	Question to	Ref.	Question	Applicant's response
				<p>concluded that the Scheme does not have unnecessarily high carbon emissions.</p> <p>It has not been deemed appropriate to benchmark operational carbon emissions from highways schemes. Operational emissions are highly variable, driven largely by the geographical location of a scheme, and the impact on wider road network.</p>
9.3.	Applicant	Civil and Military Aviation and Defence FWQ [PD-005] Q12.11 Applicant response [REP1-005]	Has the Applicant received a response from the Civil Aviation Authority and, if so, can a copy be provided to the Examination?	<p>The Civil Aviation Authority have previously been consulted by Highways England under the auspices of Section 42 and Section 56 of the PA 2008, but no response has been received by Highways England.</p> <p>As a related matter, the Ministry of Defence did provide a response in respect of military aviation confirming that:</p> <p><i>"This application relates to a site outside of Ministry of Defence (MOD) statutory safeguarding areas. We can therefore confirm that the MOD has no safeguarding objections to this proposal."</i></p> <p>A copy of this letter is included within the deadline 4 submission.</p>
9.4.	Applicant	Cyclist and pedestrian safety from construction vehicles Derby Cycling Group [REP1-036]	a) With reference to comments from Derby Cycling Group please comment on the need for the OEMP to require the production of a Cyclist and Pedestrian Safety Plan.	a) As part of the Traffic Management Plan (TMP), the Contractor will produce a 'Workplace Transport Management Plan' which will cover the walking & access routes through the site and any interface with public crossings points. Direct interface with NMUs

No	Question to	Ref.	Question	Applicant's response
		ISH2 I&Q [PD-010] Q36 Applicant response [REP3-026] OEMP [REP3-003]	b) Please comment on whether the following interventions are factored into the OEMP, or their applicability for a Cyclist and Pedestrian Safety Plan: <ul style="list-style-type: none"> • Cyclist and pedestrian detection and protection devices and features fitted to vehicles; • Trixy mirrors at site entrances and where access roads cross pedestrian and cycle paths; and • Manning/signalisation of crossings where pedestrian and cycle paths cross access roads? 	<p>will be minimised wherever possible as segregation is preferred, but there will be isolated locations where NMUs will have to cross the site during the works. Crossing points will be manned during working hours to manage the interface and prevent unauthorised access to site. Priority will be given at these crossings to NMU users. Outside of working hours the site will be made secure. The surface of any crossings will be maintained to avoid trip hazards and remove any loose material from the works. Each Access / Egress point will be assessed to consider both NMU visibility by site vehicles and for road users to ensure adequate signage and sight lines.</p> <p>b)</p> <ul style="list-style-type: none"> • Highways England supports Fleet Operator Recognition Scheme (FORS) and will tier this down to their supply chain. (Silver standard). This entails: <ul style="list-style-type: none"> - Classroom session as well as drivers travelling round city on a bike. Also each driver completes e-training which includes safety of vulnerable road users For vehicles over 3.5T: <ul style="list-style-type: none"> - Additional awareness markings to increase vehicles' visibility - Blind spot cameras - Side proximity sensors

No	Question to	Ref.	Question	Applicant's response
				<ul style="list-style-type: none"> - Audible warning alarm to alert cyclists (and others) that a vehicle is turning left. • Highways England will commit to providing Trixi mirrors on the project where it is identified that their introduction would assist in supplementing other provisions for managing the interface between construction traffic and NMUs. • As noted in a) above, crossing points will be manned during working hours
10.	Compulsory Acquisition, Temporary Possession and funding			
	The accuracy of the Book of Reference, Land Plans, updates and points of clarification			
10.1.	Applicant	CAH1 Actions [EV-006] 3	Please provide updates to the Book of Reference, Statement of Reasons and Land Plans.	Update Book of reference and Statement of Reasons were submitted as part of Deadline 4. There are no amendments to the Land Plans, therefore those submitted as part of Deadline 2 Submission: 2.2 (b) - Land Plans should be used as the current version
	Need for Compulsory Acquisition and Temporary Possession and minimisation of need			
10.2.	Applicant	Affected Person participation in the Examination	During its' discussions with APs, for example in relation to blight, please could the Applicant confirm if and how it has made it clear to Affected Persons that a decision has not yet been made on whether or not consent will be granted for the proposed development?	In discussions with APs it has been made clear that the A38 Scheme must follow a statutory application process and that a consent would need to be granted by the Secretary of State before HE would have the powers to acquire land and properties compulsorily. Third parties have also been made aware that they can participate in this

No	Question to	Ref.	Question	Applicant's response
				<p>process and raise issues with the determining body accordingly.</p> <p>In terms of blight, it should be recalled that landowners are serving blight notices HE to purchase the properties and all of these property owners have been professionally represented, paid for by HE. It is for those advisors to discuss options with their clients rather than HE.</p> <p>Where HE are acquiring land by agreement (non-blight cases) it has been made clear in discussions that HE would not look to purchase land until there is a decision on the DCO from the Secretary of State. While figures in respect of the valuation of the properties can be agreed, HE will not purchase land (other than blight) until there is a confirmed DCO unless there are particular circumstances that warrant it (none of which have been identified to date).</p> <p>Finally, it has been part of the DCO material published by Highways England that an Examination will be held and it will be the Secretary of State who grants consent to develop the Scheme.</p>
10.3.	Applicant	Compulsory Acquisition (CA) in respect of land and rights acquired by	a) Please could the Applicant justify why CA powers should include any rights that have been identified and agreement has been reached with Affected Persons or have been acquired under blight?	a) CA powers are sought over all rights that exist in the relevant plots within the Order land, whether the rights have been identified or not and whether agreement has been reached to acquire the interest though private

No	Question to	Ref.	Question	Applicant's response
		<p>agreement or through blight</p> <p>Book of Reference [AS-007] paragraph 2.1.4</p>	<p>b) Has the Applicant given, or will it give, any undertakings to landowners etc who have reached an agreement, that the CA powers will not be used regarding identified rights in cases where there is an enforceable agreement in place?</p> <p>c) How can the unidentified rights of unidentified parties be considered?</p> <p>d) Is the Applicant seeking CA powers over land that it has held for some time? If so, please justify why CA powers should include rights that it already holds?</p>	<p>treaty or statutory means. This is 'to ensure that any known or unknown third party rights that exist do not impede the construction and implementation of the Scheme' refer to section 4.10.4 of the Statement of Reasons [APP-020]. The draft DCO permits HE to acquire 'compulsorily so much of the order land as is required to carry out or to facilitate, or is incidental to, the authorised development...'</p> <p>refer to Article 26 (1) of the dDCO [REP3-003]. This is included as there is potential that interests in the land may appear at a later date, or that agreements that have been signed become unenforceable. If either were the case, without CA powers, the Applicant may find themselves 'held to ransom' over land that is required for the development, and (potentially great) additional cost being incurred to acquire the interest, which conflicts with Highways England's obligation to 'acquire the land at best value' refer to section 4.10.2 of the Statement of Reasons [APP-020]. By including all interests, identified or not, and subject to an acquisition agreement or not, the Applicant is eliminating the risk of having to acquire the land when it has become a 'special purchaser' by virtue of the consented scheme.</p> <p>b) If an agreement is in place, the Applicant will rely on the terms of the agreement to acquire the land rather than the compulsory</p>

No	Question to	Ref.	Question	Applicant's response
				<p>purchase powers granted. The need to secure CA powers over such land is 'to ensure that any known or unknown third party rights that exist do not impede the construction and implementation of the Scheme' (refer to section 4.10.4 of the Statement of Reasons [APP-020]) and preventing any land becoming a 'ransom strip' should the terms of an existing agreement not be enforceable as a result of unforeseen circumstances, or (despite having followed diligent inquiry) unknown interests come to light post-consent Any agreement between a landowner and Highways England will take a standard approach and reserve Highways England the rights to use CA powers over the land included in the Order limits should the agreement not be enforceable for whatever reason.</p> <p>c) The Book of Reference lists the 'plots of land over which the Applicant is seeking powers of compulsory acquisition and powers of temporary possession in the DCO...' refer to Book of Reference [AS-007]. The land and/or rights sought for the development are described in column 3 of Part 1 'Description of Land', e.g. 'All interest in land comprising [description of land]', or 'Temporary possession and use of land and acquisition of rights over land [description of land]'. The description is worded to include the acquisition of both known and unknown interests, as</p>

No	Question to	Ref.	Question	Applicant's response
				<p>opposed to just the specific interests which are listed in subsequent columns.</p> <p>The subsequent columns list the Category 1 and 2 parties, who are 'within Category 1 if the Applicant after making diligent inquiry, knows that they are an owner, lessee, tenant, or occupier of the land' or 'within Category 2 if they are interested in the land or have the power to sell and convey or release the land.' refer to Section 2.1.3 of the Book of Reference [AS-007]. Diligent inquiry was carried out to identify the parties with such interests, and those identified have been recorded in the Book of Reference [AS-007]. The Applicant is aware that despite its continuing efforts to identify the interests in the land there is the potential that an unidentified owner later asserts an interest in the land. When a new interest is identified before the close of the Examination as a result of ongoing diligent inquiry, Highways England will engage with that party and provide an update to the ExA.</p> <p>A party's' right to claim compensation for land taken is not affected if the interest has not been identified prior to consent for the Scheme being granted.</p> <p>When the Applicant acquires the land the title will be registered free from any incumbrances – removing any known or unknown interests and therefore eliminating the need to</p>

No	Question to	Ref.	Question	Applicant's response
				<p>extinguish any rights that become known in the future.</p> <p>d) The Applicant is seeking CA rights over land to which it already holds the freehold. Highways England is seeking 'all rights' over these plots to 'ensure that [the Applicant] has the rights to acquire the interests it needs in the whole of the DCO land even where an unidentified owner later asserts an interest in land which the Applicant believes it owns' refer to Book of Reference [AS-007]. The Applicant is aware that despite their diligent inquiry, not all rights, particularly historic rights, may be known and listed in the Book of Reference [AS-007].</p> <p>Although the risk is thought to be small in the case of land that is already held by the Applicant, this approach ensures that for any rights which come to light that further steps to clear the title would not be necessary.</p>
10.4.	Applicant	<p>Minimisation of the need for CA "<i>at detailed design</i>"</p> <p>FWQ [PD-005] Q13.14, Q13.16, Q13.17, Q13.18, Q13.21</p> <p>Applicant response [REP1-005]</p>	<p>The Applicant states that the potential to reduce CA "<i>will be identified at detailed design stage, although this is considered unlikely</i>".</p> <p>a) With reference to policy and guidance most relevant to PA2008, please could the Applicant clarify whether the design relied on for the dDCO has progressed to the level of detail required to justify the CA powers sought?</p>	<p>a) Yes, the design is at an appropriate stage to justify the CA powers sought. The Scheme has been submitted to the SoS for determination and the justification for the acquisition of all land within the Order limits is clearly set out in the application documents, including the BoR and the SoR. The application is based on the preliminary design and conforms to the Rochdale envelope principle. As such, the ExA is considering the</p>

No	Question to	Ref.	Question	Applicant's response
		<p>DCiC response [REP1-034] CAH1 Actions [EV-006] 1, 3, 4 Applicant response [REP3-025]</p>	<p>b) A 1m limit of lateral deviation is suggested, in each direction. What area of CA does this represent over the length of the proposed development? What is the justification of CA powers being granted to this extent?</p> <p>c) Who would have the responsibility to challenge and, if appropriate, reduce the extent of CA "<i>at detailed design</i>" and how would a requirement to discharge this responsibility be established? If responsibility was to fall to the delivery contractor, what relevant contractual terms would typically be placed on them? How would it be ensured that appropriate weight would be given to human rights alongside other (commercial) factors such as cost and programme?</p>	<p>realistic worst-case scenario in terms of CA, and permitted by the DCO regime established under the PA2008. Highways England's CA approach has been well-publicised through consultation and third parties affected by the proposals are aware of the proposals. In addition, for the variety of reasons raised by those affected parties, there are no in principle objections to the CA proposals from residential property owners. The CA powers sought for the design as submitted for dDCO are considered robust and are necessary to ensure the delivery of the Scheme.</p> <p>b) It is not clear where this suggestion of 1m as a lateral deviation limit has come from, as such, Highways England is not in a position to answer this point as it is not something that Highways England is proposing as part of the DCO application.</p> <p>c) When the ExA refers to the delivery contractor it should be noted that the responsibility for DCO compliance and the exercise of CA powers will always be with Highways England as the undertaker authorised by the DCO. As such, the question should be directed to Highways England as the applicant and developer of the Scheme. The contractual arrangements with an appointed contractor are not relevant to the obligations that Highways England will be under as part of the DCO to deliver the</p>

No	Question to	Ref.	Question	Applicant's response
				<p>Scheme. In any event, Highways England will only use the land that it is necessary to in order to develop and operate the Scheme. Highways England will be incentivised to occupy as small amount of land as is feasible as there will be cost implications associated with permanently acquiring land and temporarily occupying it (with the landowner able to claim for 'any loss or damage' associated with that temporary occupation). Nevertheless, what is proposed as part of the DCO application before the ExA and the SoS is what, at this stage (being the preliminary design of the Scheme), is considered to be necessary to develop and operate the Scheme. In terms of Human Rights issues and how these are balanced against other factors, these are being considered in detail through the application documents and the Examination of the application.</p> <p>There are three rights that are relevant to property which are safeguarded by the European Convention on Human Rights (ECHR). These are:</p> <ul style="list-style-type: none"> • Article 6 – a right to a fair trial, which includes determination of the issues (ie compensation) within a reasonable time • Article 8(1) – a right to respect for private and family life including respect for a persons' home

No	Question to	Ref.	Question	Applicant's response
				<ul style="list-style-type: none"> • Article 1 of the First Protocol – a right to protection of property <p>ECHR requires that a fair balance must be struck between the public interest and an individual's right to peaceable enjoyment of his possessions – property. Any interference with this right must be necessary and proportionate. Proportionality is considered in two stages:</p> <ul style="list-style-type: none"> • Can the objective of compulsory purchase be achieved by means that interfere less with an individual's rights? • Does compulsory purchase have an excessive or disproportionate effect on the interests of the affected persons? <p>As a consequence of the need to demonstrate proportionality, Highways England has sought, and will continue to seek, to acquire land, or enter in to undertakings and option agreements to acquire land, to use compulsory purchase powers without agreement only as a last resort. Highways England will continue to negotiate with all landowners and the interests granted on that land to buy their interest by agreement before implementing the compulsory purchase procedure. For reference, the DCLG guidance states:</p> <p>'Applicants should seek to acquire land by negotiation wherever practicable. As a general</p>

No	Question to	Ref.	Question	Applicant's response
				<p>rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.'</p> <p>Highways England has formally consulted with all Affected Persons in the Book of Reference and wrote to all parties to initiate negotiations for the agreement of the acquisition of land and rights prior to the submission of the DCO application. Highways England has acquired a significant number of the dwellings directly affected by the scheme and has engaged with Affected Persons where there will be retained land to ensure impacts are mitigated where at all possible.</p> <p>The 'compensation code' and the relevant compensation articles provide for Affected Persons to be properly compensated, and in the scenario where the land acquired gives rise to a claim for material detriment the affected person can request the retained interest (dwelling) is acquired by the acquiring authority. Any dispute can be referred to the Upper Tribunal (Lands Chamber) whereby the affected person can have concerns addressed (ECHR Article 6), having also been formally consulted with and having had the opportunity to raise issues through the DCO Examination.</p>

No	Question to	Ref.	Question	Applicant's response
10.5.	DCiC	Temporary Possession (TP) of land and maintenance of environmental features in Markeaton Park and Mackworth Park DCiC [REP1-034] Applicant [REP2-020] CAH1 Actions [EV-006] 5, 25 Applicant response [REP3-014] [REP3-025]	Further to the responses provided by the Applicant, is DCiC satisfied: a) that the amount of land that would be subject to TP in Mackworth Park and Markeaton Park is justified and would be proportionate; b) that the potential effects on open space and events in the parks have been assessed and mitigated; c) with the proposals for permanent emergency egress from Markeaton park; and d) that any necessary mitigation is secured?	DCiC to respond
Alternatives				
10.6.	Applicant	A38 alignment options and Queensway and Ashbourne Road properties FWQ [PD-005] Q13.26 Applicant response [REP1-005] Road Based Study Option 2 CAH1 Actions [EV-006] 7	The Applicant's has set out their position that the proposed development is that described in the application documents. Nevertheless, the ExA considers it necessary to examine previous and other options to test the Applicant's consideration of alternatives to CA as a factor in the determination of whether CA powers should be granted. The ExA is grateful to the Applicant for its' assistance with this. The Applicant has provided information on a Road Based Study. Option 2 of that study would "avoid impacts on the houses on Queensway and Ashbourne Road. Land	a) Section 8.4.2 of the Road Based Study Final Report states the following: Markeaton Junction – Grade Separation <i>'Key' requirements of any new junction design include:</i> <ul style="list-style-type: none"> • Improve Safety • Reduce Congestion • Facilitate public transport priority measures in the A52 corridor • Improve facilities for cyclists / pedestrians <i>'Desirable' improvements of any design include:</i>

No	Question to	Ref.	Question	Applicant's response
		<p>Applicant response [REP3-013] [REP3-014] [REP3-025]</p>	<p>would be taken from Markeaton Park, the petrol filling station and fast food restaurant on the west side of the junction." In rejecting that option:</p> <p>a) In choosing Option 1 rather than Option 2 why was it "considered preferable to reduce the impact on Markeaton Park and petrol filling station and fast food restaurant albeit with increased impact on the residential properties on Queensway"?</p> <p>b) Was it considered likely that the petrol filling station and fast food restaurant would be able to remain operational and viable?</p> <p>c) What weight was given to the rights of Queensway and Ashbourne Road landowners and residents in comparison with impacts on Markeaton Park, the petrol filling station and fast food restaurant?</p> <p>d) Please provide extracts from assessment documents or other evidence to demonstrate that CA and human rights issues, other than financial cost, were factors in the consideration of options at the Markeaton junction.</p>	<p>• <i>Limit impact on Markeaton Park</i></p> <p><i>All of the options provide for all the key requirements. Only Options 1 and 3 specifically limit the impact on Markeaton Park.</i></p> <p>The RBS Option 2 alignment to the west into Markeaton Park would result in the loss of a significant amount of Public Open Space (in the order of an additional 2,000 to 7,000m² over that required by the Proposed Scheme). This significant amount of POS loss would present a major challenge in finding replacement land due to the urban location of the scheme. This is therefore an extremely difficult requirement to fulfil and which would be likely to undermine the value and function of Markeaton Park with the loss of open green space and recreational resource affecting a large number of people.</p> <p>Further, taking the constrained nature of the location and lack of alternative open space into account, replacement land for the loss of open space would be difficult to identify. This would require consideration of the use of compulsory acquisition power to try and provide replacement space elsewhere, simply moving the impact rather than avoiding it while increasing the amount of land affected. Where Highways England is unable to provide sufficient replacement land, including because</p>

No	Question to	Ref.	Question	Applicant's response
				<p>the impact of compulsory acquisition to do so could not be justified, then the requirements of Section 131 and 132 of the Planning Act 2008 could not be met and the application would likely be subject to Special Parliamentary Procedure. This process would create significant programme uncertainty and risk to the delivery of the Scheme.</p> <p>Option 2 would take land from the McDonald's and Euro Garages site resulting in adverse impacts such that (the Euro Garages site in particular) the businesses may cease to be viable.</p> <p>b) RBS Option 1 would avoid taking land from the McDonald's and Euro Garages site and so would have a similar impact as the proposed scheme on them hence the businesses would remain viable.</p> <p>c) and d) The Road based Study was completed over 17 years ago so evidence as to the weight given to the rights of Queensway and Ashbourne Road landowners and residents in comparison with impacts on Markeaton Park, the petrol filling station and fast food restaurant is not available. However, when the Scheme was recommenced in 2014, the first activity planned was to carry out a non-statutory public consultation. This consultation essentially presented the outcomes of the RBS and asked for</p>

No	Question to	Ref.	Question	Applicant's response
				<p>comments and suggestions for alternatives. Following the consultation, no suggestions were made for alternative alignments that moved the road away from the Queensway properties and 70% of respondents agreed with the proposed preferred option for Markeaton junction (Section 47 consultees from immediate vicinity).</p> <p>The 2015 Consultation Report, under "Matters relating to A38/A52 Markeaton junction", the issue "Why do the proposals require demolishing houses on Queensway?" was noted. The Highways Agency response stated "Moving the proposed alignment to avoid the properties on Queensway would result in the removal of McDonald's and the Esso filling station. It would also encroach onto Markeaton Park. This option was previously consulted in 2002, with the current preferred route being most favoured by members of the public.</p> <p>The park is classified as Public Open Space, defined in the Town and Country Planning Act 1990. As such, any development affecting the park land is required to provide suitable replacement land and is likely to face objections. Given the current development plans around Derby, it is anticipated that locating replacement land is likely to be problematic."</p>

No	Question to	Ref.	Question	Applicant's response
				<p>As a point of reference, it is worth noting that there have been no objections received to the compulsory acquisition of the properties on Queensway for the proposed scheme. Of the 15 properties, 6 are already owned by Highways England, 5 have had blight applications accepted and a further blight application is expected imminently from another. Two of them are investment properties with student tenants and the final one is Mr and Mrs Gartside with whom discussions are ongoing (Mr Gartside also stated, at the CA hearing, that he would not wish to live there even if the road could be moved to avoid the CA of his property due to the likely amenity issues he would face). As previously mentioned by Highways England, if the properties at Queensway were to be avoided (albeit this is not proposed as part of the application) it is likely that any alternative alignment of the highway would be in such close proximity to the Queensway properties that there would be an unacceptable impact on residential amenity for the occupants of these properties.</p> <p>Also, concerns were raised at the open floor hearings in January and in the summaries provided at Deadline 3 about the impacts on Markeaton Park and the loss of mature trees – there is more public concern about the environmental impacts on Markeaton park and</p>

No	Question to	Ref.	Question	Applicant's response
				<p>the ecological resource than the acquisition of residential properties.</p> <p>Notwithstanding these points (which, again do not form part of the Scheme being applied for by HE). No alternative alignment at Markeaton Park has been proposed by any party affected by this proposal. Highways England is proposing a scheme that is deliverable and seeks to balance the various impacts on affected parties, whilst having full regard to the compulsory acquisition tests including the Human Rights of those whose land it needs to acquire to deliver the Scheme.</p>
10.7.	Applicant	<p>A38 alignment options and Queensway properties</p> <p>Variation of Road Based Study Option 2</p> <p>CAH1 Actions [EV-006] 7, 18</p> <p>Applicant response [REP3-013] [REP3-014] [REP3-025]</p> <p>DCiC [REP3-027]</p>	<p>The Applicant has also provided information on a "<i>theoretical westerly alignment based very loosely on option 2</i>", which it is understood would reduce land take from the petrol filling station and fast food restaurant when compared with Option 2.</p> <p>a) Would the discounted option of swinging the alignment east into the Army Reserves land before swinging into Markeaton Park potentially reduce the impacts on the Queensway properties, the number that would need to be acquired and the access road?</p> <p>b) Please justify that the access road to service remaining Queensway properties would require land take from the Royal</p>	<p>a) Highways England has provided additional information on this point as part of a previous request made by the ExA. However, Highways England would reiterate that this theoretical scenario is not an alignment proposed as part of the Scheme. As such, Highways England does not consider that it is appropriate to further consider alternative alignments as these do not form part of the Scheme being considered by the ExA and to be determined by the Secretary of State. The impacts for any alternative would of course be slightly different to those proposed in the application and these have not been considered or assessed as they do not form part of the proposal. Highways England considers that the options considered which</p>

No	Question to	Ref.	Question	Applicant's response
			<p>School for the Deaf? Could it connect to the A52 opposite Sutton Close?</p> <p>c) Would loss of Public Open Space be justified by reduced CA of residential properties? Would acquisition of residential properties be justified for the provision of replacement land? What are the implications of DCiC's statement with respect to Public Open Space that <i>"Based on the quantity standard from the Local Plan, the North West analysis area currently has a surplus of 5.31 hectares per 1000 people"</i>?</p> <p>d) Is it likely that the potential impacts on Markeaton Lake and mature trees could be mitigated and not significant?</p>	<p>led to the decision to finalise the preliminary design is clearly set out in the application documents and notes that no party (other than the ExA) is suggesting that any alignment should be explored.</p> <p>As previously stated, swinging the alignment east into the Army Reserves land before swinging into Markeaton Park could potentially reduce the impacts on one or two of the Queensway properties but it would not remove the impact from all of them so would not remove the requirement for CA.</p> <p>b) If the access road to service the remaining Queensway properties were connected to the A52 opposite Sutton Close, it would still require land take from the Royal School for the Deaf (albeit a reduced amount), it would also mean the access would be very close to the exit from the new roundabout and it would result in 2 accesses in very close proximity (this one and that for the RSDD). Moving the access to opposite Sutton Close would offer no advantages over the option to combine the 2 accesses.</p> <p>c) It is likely that reduced CA of residential properties would have significant implications on the amount of equivalent POS land from Markeaton Park that would need to be subject to CA. The Scheme proposes the loss of linear strips of land to the fringes of Markeaton</p>

No	Question to	Ref.	Question	Applicant's response
				<p>Park, immediately next to the Highway and in this respect, with low amenity value. This increased land take would significantly impinge on the park and the more important higher value recreational spaces within it, providing significant disadvantage to public use of the park. Moreover, there would unlikely be suitable replacement land of a quantum and quality available by way of replacement in this scenario.</p> <p>CA of the residential properties is needed for the Scheme in any event, but the land is also considered to be suitable as replacement land, a view which is shared by DCiC.</p> <p>The statement made by DCiC is based on information that is not publicly available and Highways England are unable to verify the conclusions of this statement. A detailed response on this issue is already provided in the response to question 10.16 (a).</p> <p>d) The impact on Markeaton Lake would present an engineering challenge, the environmental impacts of which have not been assessed. The loss of the mature trees would be a greater issue as virtually all of the trees (that currently form a buffer between the grass area, used as playing fields, and the A38) would be lost. The loss of mature trees has been highlighted by local residents as a key concern, and therefore this has been</p>

No	Question to	Ref.	Question	Applicant's response
				minimised wherever possible. In addition, there is no space between the A38 and the grass areas to recreate this buffer.
10.8.	Applicant DCiC	Ashbourne Road and Sutton Close gardens and access alternatives A38 alignment options and Queensway properties CAH1 Actions [EV-006] 8, 27 Applicant response [REP3-014] [REP3-023] [REP3-025]	<p>a) Please provide a drawing to clarify the issues preventing direct access from 255 Ashbourne Road to the A52.</p> <p>b) Would CA of gardens be justified for the provision of "<i>left and right in and out</i>" rather than "<i>left in and out</i>" access arrangement?</p> <p>c) Does DCiC consider that a turning head would be required at the front of 255 Ashbourne Road for the proposed access road to be adoptable?</p> <p>d) What would be the implications of the Applicant's statement that it may separately acquire 253 Ashbourne Road?</p> <p>e) Has the Applicant had any discussions with property owners or other Affected Persons about options for left in left out alternatives to CA?</p>	<p>a) The Applicant already responded to this point and explained why direct access cannot be provided. It does not consider it necessary to provide a drawing given the conclusions of the assessment that such a proposal would not be appropriate on safety and convenience grounds.</p> <p>As noted below, the owners of both properties consider the access arrangements to be largely academic as they are both intending to submit blight claims. Confirmation will be provided to the Examination once the notices have been served on HE by the owners.</p> <p>b) Yes, CA is justified. The proposal for an all movement access has been assessed as the best solution for the properties as it safely allows all movements into and out of the properties and still retains a reasonable level of car parking.</p> <p>c) DCiC to respond</p> <p>d) Please see response to e) below.</p> <p>e) The Applicant has approached both Metropolitan Housing Trust (owner and occupier of no 253) and Haven Care Group (occupier of no 255) to discuss this issue. The agent acting for both parties considers the</p>

No	Question to	Ref.	Question	Applicant's response
				access arrangements to be largely academic as her clients are both resolved to submitting blight claims and that these will be submitted shortly.
Individual objections and issues				
10.9.	Applicant	CA and TP updates Applicant [REP3-014] CAH1 Actions [EV-006] 21, 26 Applicant response [REP3-025]	Please provide an update on progress with CA and TP matters listed below. In each case please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination. a) Voluntary agreements or blight for properties in Queensway, Ashbourne Road and Sutton Close. b) The CA schedule issued at Deadline 1 and on CA and TP related discussions with Residents of 12 Queensway, Euro Garages Limited and McDonald's Restaurants Limited and Millennium Isle of Man Limited. c) The SoCG with Royal School for the Deaf Derby.	a) Please see Appendix B of the Statement of Reasons which details the status of negotiations for all land within the scheme including those requested in Q10.8. b) <u>CA schedule</u> – Updates to all negotiations are provided in Annex B of the updated Statement of Reasons submitted as part of the Second Written Questions, and the Voluntary agreements or blight for properties in Queensway and Ashbourne Road or in Appendix 1 at the bottom of this document. <u>Residents of 12 Queensway</u> - A business case has been submitted internally within HE to request extra funding to compensate the residents, in line with their business' valuation. An outcome of this is expected early February. <u>Euro Garages Limited and McDonalds Restaurants Limited</u> – Euro Garages and McDonalds' queries have mostly been of a technical nature and an update to the progress of these discussions can be found above in response to question 8.2. The temporary land take will affect access, rather

No	Question to	Ref.	Question	Applicant's response
				<p>than operation, so there would be no payment for temporary loss of land.</p> <p><u>Millennium Isle of Man Limited</u> – No meetings have been requested to discuss access and use of site since September. Millennium Isle of Man's queries were more of a technical nature. In terms of financial loss resulting from the use of the land, Millennium Isle of Man need to evidence this and the District Valuer will progress a claim on their behalf.</p> <p>c) An engagement evening has been arranged at the school by the Applicant along with RSDD for the 13/02/2020. Dialogue continues with the school with regard to outstanding issues, now HE has appointed its contractor for the project and they will continue to is to engage with RSDD to provide a suitable solution to the noise barrier. The outcomes of the above will be included in the next iteration of the Statement of Common Ground</p>
10.10.	DCiC	Part 1 and Section 10 claims for injurious affection CAH1 Actions [EV-006] 8 Applicant response [REP3-014] [REP3-025]	Further to the responses provided by the Applicant, does DCiC have any outstanding concerns with respect to Part 1 and Section 10 claims for injurious affection?	DCiC to respond
10.11.	Applicant	Loss of car parking	The ExA is currently unable to identify the significance of temporary loss of car parking, including potential locations,	As Highways England develops the construction plans in detail it will minimise the temporary loss of any parking provision, but it

No	Question to	Ref.	Question	Applicant's response
		CAH1 Actions [EV-006] 28 Applicant response [REP3-025]	<p>durations and detail on mitigation measures such as any replacement car parking and its proximity. Please could the Applicant assist?</p> <p>Would there be any permanent loss of car parking in addition to that at 255 Ashbourne Road? If so, how would that be mitigated and how is the mitigation secured?</p>	<p>is likely there will be some areas where this will be unavoidable as access will be required to build the new works (most likely for the road widening between Markeaton and Kingsway such as Greenwich Drive North). Highways England will consult in advance with affected parties to minimise any impact.</p> <p>253 and 255 Ashbourne Road are the only properties that will permanently lose some car parking spaces. It is noted that the occupiers of these properties are preparing to submit blight claims.</p>
Crown interests				
10.12.	Applicant	CA of Crown Land CAH1 Actions [EV-006] 8 Applicant response [REP3-014]	<p>a) Please clarify the difference between “<i>compensate for open space lost to scheme</i>” and “<i>replacement land</i>”. If the Crown Land is not replacement land how can it be considered in exchange for Public Open Space in accordance with PA2008 and DCLG Guidance¹?</p> <p>b) Please clarify the justification for CA of the Crown Land given DCiC’s statement with respect to Public Open Space that “<i>Based on the quantity standard from the Local Plan, the North West analysis area</i></p>	<p>Crown Land, plots 3/5a, 3/5b, 3/5c, 3/5d, 3/6 and 3/7 are not currently public open space, nor is the intention to use the land as public open space post development. None of the above plots are listed in the Book of Reference in Part 5: Special Parliamentary Procedure, Special Category or Replacement Land (GHE).</p> <p>Crown land that is to be permanently acquired from the MoD is for the construction of the widened southbound carriageway,</p>

¹ Planning Act 2008, Guidance related to procedures for the compulsory acquisition of land, DCLG, September 2013

No	Question to	Ref.	Question	Applicant's response
			<p><i>currently has a surplus of 5.31 hectares per 1000 people"?</i></p> <p>c) Please provide an update on securing written agreement and s135 consent during the Examination.</p>	<p>southbound merge slip road and associated earthworks and retaining walls.</p> <p>The agreement to secure the acquisition of the land is with the Ministry of Defence's lawyers for consideration and Highways England is waiting for a response on this point. In terms of the s.135 consent Highways England is engaged with the Defence Infrastructure Organisation to secure this.</p>
Statutory Undertakers				
10.13.	Applicant	Protective provisions and SoCG CAH1 Actions [EV-006] 10, 11, 12, 13 Applicant response [REP3-025]	<p>Please provide an update on progress with respect to Statutory Undertakers on the matters listed below. In each case please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.</p> <p>a) Protective provisions to be included in the dDCO.</p> <p>b) SoCG with Network Rail and Virgin.</p> <p>c) Confirmation of whether the case for the PA2008 tests have been met:</p> <ul style="list-style-type: none"> • s127(3)(a) or (b) in relation to land; • s127(6)(a) or (b) in relation to rights; and • s138(4) in relation to the extinguishment or removal of apparatus? 	<p>a) Please see response to question 1.34 above for an update on the progress of the protective provisions with each SU.</p> <p>b) Draft SoCG with Network Rail and Virgin Media were submitted at Deadline 2. Network Rail wish to pursue matters under protective provisions and Virgin Media have been sent a final SoCG for signing that is anticipated to be submitted at Deadline 5.</p> <p>c) Highways England is not aware of any issue of serious detriment having been raised by any statutory undertaker. Highways England considers that the tests in ss. 127 and 138 have been met as part of the proposed measures set out in the application. For example, all statutory diversions are to be secured as part of the works (outlined in Schedule 1 of the DCO) and any specific requirements in terms of advance</p>

No	Question to	Ref.	Question	Applicant's response
				notice, consultation, consent etc. Are being discussed with the relevant bodies as part of the negotiations around the protective provisions.
10.14.	Statutory Undertakers	Evidence of any serious detriment CAH1 Actions [EV-006] 10, 11, 12, 13 Applicant response [REP3-025]	Do any Statutory Undertakers consider that the proposed development would be likely to cause any serious detriment to their undertaking? If they do, please could supporting evidence be provided.	SUs to respond
10.15.	Applicant	Justification for permanent acquisition of rights from Network Rail CAH1 Actions [EV-006] 29 Applicant response [REP3-025]	<p>a) Please provide further clarification for the justification for CA and TP from Network Rail, including within the railway corridor and air rights.</p> <p>b) How has the area for which rights are sought been minimised?</p> <p>c) Has the Applicant progressed a deed of easement, a bridge agreement, a framework agreement and Relevant Asset Protection Agreement(s) suggested by Network Rail Limited? If not, why not?</p> <p>d) Would CA or TP powers still be required if those measures were agreed? What powers and why?</p>	<p>a) Each of the plots of land associated with the works on Network Rail land and the rail corridor are as detailed below:</p> <ul style="list-style-type: none"> • 8/4b Existing west abutment (already owned by HE). This will be accessed during the works to facilitate the alterations to the existing bridge. • 8/4c Existing east abutment (already owned by HE) . This will be accessed during the works to facilitate the alterations to the existing bridge. • 8/5 Temporary possession required for working space to facilitate access for the alterations to be made to the existing bridge and its extension. • 8/6 Air rights required for bridge deck above NR tracks to permit the continued

No	Question to	Ref.	Question	Applicant's response
				<p>operation of the A38 above the rail corridor on the bridge and to provide rights to access the bridge soffit for the purpose of inspections and maintenance.</p> <ul style="list-style-type: none"> • 8/7 Permanent acquisition (widened west bridge abutment sited here). The CA is justified in order to extend the existing bridge abutment structure as defined in the Engineering Sections [APP-014], this has the intention of mirroring the existing arrangement. • 8/8 Temporary possession required for working space to facilitate access for the alterations to be made to the existing bridge and its extension. • 8/9 Permanent acquisition (widened east bridge abutment sited here). The CA is justified in order to extend the existing bridge abutment structure as defined in the Engineering Sections [APP-014], this has the intention of mirroring the existing arrangement. <p>b) The TP required is based upon buildability advice provided to the Applicant prior to submission of the dDCO. Now that Linkconnex has been appointed as HE's contractor, construction methods will be reviewed alongside the Detailed Design with consultation with Network Rail. The</p>

No	Question to	Ref.	Question	Applicant's response
				<p>Permanent Rights are sought to grant the operation and maintenance of the A38 across the rail corridor.</p> <p>The CA sought is to mirror the existing provision within the rail corridor in order to provide space for the new bridge abutments to be placed.</p> <p>c) The Applicant is currently reviewing the Bridge Agreement and the Asset Protection Agreement with the Legal Team.</p> <p>d) The Applicant would still seek CA or TP powers if an agreement was reached but these powers would not be used unnecessarily. They would only be used over the plot if other interests are discovered, or if the terms of any agreement with Network Rail did not permit the acquisition rights required to proceed with the scheme. Any Asset Protection Agreement would not be breached.</p>
Special Category Land				
10.16.	Applicant	Potential oversupply of Public Open Space FWQ [PD-005] Q13.28 Applicant response [REP1-005] CAH1 Actions [EV-006] 18	a) Please could the Applicant respond to DCiCs suggestion that there is currently an oversupply of Public Open Space? Does it agree? b) Has an independent assessment of a surplus been carried out that is sufficient for the purposes of NPSNN paragraph 5.167? If not, should it be? Is there	a) Highways England have been in contact with DCiC regarding this assertion, which has not been informed by publicly available information, but rather internal information held by DCiC. As such, it is unable to verify the information and therefore the validity of the conclusion that DCiC have come to. Notwithstanding this, even if it was concluded there was an oversupply of public open space

No	Question to	Ref.	Question	Applicant's response
		DCiC response [REP3-027]	sufficient certainty that CA is necessary to justify the CA powers being granted?	<p>land, the compulsory acquisition of existing public open space land is essential to deliver the scheme, as is the provision of replacement land, without which the scheme would be subject to Special Parliamentary Procedure (under the provisions of Sections 131 (3), (4) and (5) of the PA 2008)), which would present the potential for significant delay to the delivery of the Scheme.</p> <p>(b) It is noted that paragraph 5.1.67 does not explicitly refer to open space, but rather refers to the impact of a Scheme from a general land use perspective, including (where relevant) whether the local authority agrees with an independent assessment of whether land is surplus to requirements.</p> <p>Highways England has not previously commissioned an independent assessment of surplus land uses for areas of land to be taken as order land, but considers that it has fully justified the case for compulsory acquisition during the examination process. It is also noted that an independent assessment of land use supply is not something that has been previously requested by DCiC or other key stakeholders and/or landowners. On a related point, Highways England also note that paragraph 5.1.74 of the NPSNN refers to an independent assessment being undertaken (to determine the consequence of the loss of open space) or one by the local authority.</p>

No	Question to	Ref.	Question	Applicant's response
				<p>Highways England would suggest that if an assessment were to be undertaken, then DCiC are perhaps in the best position to undertake such an assessment, given the evidence base information they hold to assist in the preparation of the emerging local plan.</p> <p>As referred to above, Highways England considers there is clear justification for the compulsory acquisition of open space land that is essential for the delivery of the Scheme, including the provision of open space replacement land offered in exchange, in accordance with the requirements of the PA 2008.</p>
	DCiC	Replacement land CAH1 Actions [EV-006] 15, 19, 31 Applicant response [REP3-014] [REP3-025] DCiC response [REP3-027]	Further to the responses provided by the Applicant, does DCiC have any outstanding concerns with respect to: <ul style="list-style-type: none"> • the suitability of replacement land; • ownership of replacement land; or • alternatives to CA of Public Open Space or replacement land? 	DCiC to respond
10.17.	Applicant DCiC	Markeaton Park 'Mundy covenant' CAH1 Actions [EV-006] 23, 24 Applicant response [REP3-025]	Please provide an update on the enforceability of the 'Mundy covenant' and any implications for the rights sought by the Applicant in Markeaton Park.	The Covenant prohibits the use of Markeaton Park for any other purpose " <i>other than a Park or open space and place of recreation for the benefit of the Public and for their recreation and no buildings shall be erected or used in the Park other than buildings for or in</i>

No	Question to	Ref.	Question	Applicant's response
		DCiC response [REP3-027]		<p><i>connection with the purposes of education recreation or horticulture”.</i></p> <p>The covenant therefore will not apply where only rights are sought, but given it binds successors in title, the restrictions to use of the land would bind Highways England if it were to acquire the freehold of the land by private negotiation, unless the agreement for the acquisition of the freehold specifically removed the restriction.</p> <p>As Highways England intends to use its powers of compulsory acquisition secured through the DCO, the Covenant will be removed from the title of the land acquired by Highways England as the compulsory acquisition will cleanse the title, however the Covenant will remain over the remainder of Markeaton Park.</p> <p>For someone to be able to claim the benefit of the restrictive covenant (and therefore claim compensation) they must be able to demonstrate they are:</p> <ol style="list-style-type: none"> 1. The original parties to the deed; 2. Those for whom the original parties hold the benefit of the covenant on trust; or 3. Subsequent owners and occupiers of land benefitted by the restrictive covenant who can show title to the benefit of the covenant by express assignment, annexation or under a building scheme.

No	Question to	Ref.	Question	Applicant's response
				<p>If it is found that there is no person falling within any of these categories, then there will be no compensatable interest following the exercise of the CA powers through the DCO.</p> <p>The registered freehold owner of the land benefitting from the Munday Covenant died in 2012, and extensive due diligence has not identified any formal information of the successor in title. Highways England considers it has complied with its requirement to undertake diligent enquiries in this respect.</p> <p>Highways England are aware of an individual who has been in contact with DCiC purporting to be a successor in title. Highways England will seek further information from DCiC with a view to engaging with this individual and seek information to understand if they are able to claim the benefit of the restrictive covenant.</p>
Availability and adequacy of funds				
10.18.	Applicant	CAH1 Actions [EV-006] 20 Applicant response [REP3-014]	Please provide an update to the Funding Statement, to include <ul style="list-style-type: none"> • the availability of funding; • land cost estimates; • the Road Investment Strategy and the allocation of funding to the proposed development; and • any other changes. 	As previously requested, if they require updating HE will submit an updated funding statement, land cost estimate and update to the RIS in Deadline 6's submission.

No	Question to	Ref.	Question	Applicant's response
Other matters				
10.19.	DCiC	Trigger mechanisms CAH1 Actions [EV-006] 30 Applicant response [REP3-025]	Further to the responses provided by the Applicant, does DCiC have any outstanding concerns with respect to whether trigger mechanisms should be introduced to ensure suitable notice would be allowed to prepare for vacant possession, for example if proposed acquisitions or consents might involve third parties?	DCiC to respond

Appendix 1

Voluntary agreements or blight for properties in Queensway and Ashbourne Road

Property	Current status
2 Queensway	Claim now agreed in full and final settlement - Final Report to be issued by DV
4 Queensway	Agreed - Acquisition Completed
6 Queensway	Agreed - Acquisition Completed
8 Queensway	DV meeting owners 27th January - Acquisition by agreement on an Investment Property
10 Queensway	In negotiation, market value likely to be agreed imminently
12 Queensway	No blight claim submitted.
14 Queensway	Agreed - Acquisition Completed
16 Queensway	Market Value Agreed - Awaiting Solicitor details from agent before issuing interim report to HE
18 Queensway	No blight claim - Meeting 24/10/19, owner confirmed will appoint agent and looking to submit towards end of 2019
20 Queensway	HE owned historically
22 Queensway	HE owned historically

24 Queensway	HE owned historically
26 Queensway	DV meeting owners 27th January - Acquisition by agreement on an Investment Property
30 Queensway	Market Value Agreed - Awaiting disturbance claim
32 Queensway	Inspection undertaken - In negotiation, offer made by DV awaiting response from agent
253 Ashbourne Road	Met with Metropolitan Housing 24/10/2019, request for HE to purchase property, submission forwarded outlining issues, blight notice or discretionary purchase to be progressed by agent
255 Ashbourne Road	Agent for Haven Care to forward blight or discretionary blight submission as they want to relocate. Met with owner 24/10/19 to discuss land requirements.
257 Ashbourne Road	Owner now has an agent acting on his behalf, DV currently arranging an inspection
259 Ashbourne Road	DV has contacted resident and spoken with him, inviting meeting etc but resident is not engaging, does not return messages etc, letters sent by DV and HE but no response