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Application by Highways England

for an

Order Granting Development Consent

for the

A38 Derby Junctions Project

EREWASH BOROUGH COUNCIL'S RESPONSE TO THE EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS AND REQUESTS FOR INFORMATION ISSUED 14th JANUARY 2020

PINS Reference: TR010022

Local Authority Reference: 032176

No	Question to	Reference	Question
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. **EBC has now agreed the provisions.** b) Should the "*guillotine*" fall after 28 days or another period? **EBC is content with the 28 day 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? **EBC considers this to be useful.** d) Should the EA's suggested text be added: "*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*"? If so, to which Article(s)? **n/a.** e) Are EBC content with the current provisions? **EBC are content with the provisions.**
1.2.	Applicant	No materially new or materially worse adverse environmental effects Requirements 15(2), 16(2) Outline Environmental Management Plan (OEMP) [REP3-003] PW-G4, MW-G12	a) Please clarify the purpose of the tailpieces "*… taking into account the mitigation identified in it*" and "*… taking into account the lighting identified in it*". 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)?

No	Question to	Reference	Question
			c) Should the wording in the OEMP be amended to "*no materially new or materially worse adverse environmental effects in comparison with those reported in the Environmental Statement*"?
	Part 1 – Preliminary		
1.3.	Applicant	Interpretation Article 2(1) "*maintain*" ISH2 I&Q [PD-010] Q43 Applicant response [REP3-026]	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? b) Taking one example, please could the Applicant clarify whether reconstruction of the Little Eaton embankment has been assessed in the ES?
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]	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. b) Please could the EA clarify whether the protective provisions: • 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? 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?
1.5.	Applicant	Article 4 - Maintenance of drainage works ISH2 I&Q [PD-010] Q44 Applicant response [REP3-026] DCC response [REP3-029]	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. The Applicant has stated that it would be responsible for any damage caused to drainage and that it is therefore in its' "*interest to ensure*

No	Question to	Reference	Question
			that the land is appropriately maintained in all respects". 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. Please could Applicant comment and suggest amended dDCO wording to clarify responsibilities for maintenance of drainage works while it has temporary possession of land?
	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] DCiC response [REP3-027]	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 otherwise? Otherwise, is there the potential for maintenance responsibilities not to be defined e.g. for associated or ancillary development? **EBC considers that it should be a requirement unless the dDCO dictates otherwise.** 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. **EBC can advise that no discussions have taken place between EBC and the Applicant on this point.**
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?

No	Question to	Reference	Question
	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: • 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)?
1.9.	Applicant DCiC	Article 11 – Street works ISH2 I&Q [PD-010] Q48 Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027]	a) Please provide an update on discussions regarding any conflict between the ability for the undertaker to enter any streets within the Order Limits with DCiC's ability of to perform its' duties. b) Should the dDCO, OEMP or Traffic Management Plan (TMP) be amended to address DCiC's concerns? c) Please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.
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 "*On a date to be determined by the undertaker*"?
	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]	a) Do EA, DCC or DCiC consider it necessary for the following provisions should be added? If so, why? • *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?* • *This article does not authorise any groundwater activity or*

No	Question to	Reference	Question
		EA response [REP1-021]	*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 Environmental Permitting (England and Wales) Regulations 2016?* • *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)?* b) Does DCiC have any outstanding concerns regarding Article 20 with respect to non-main river watercourses or existing outfalls? c) Do the EA or DCC have any outstanding concerns regarding Article 20?
	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?
1.13.	Applicant	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]	a) Is the Applicant able to take a (reasonable) precautionary approach to specifying works in Schedule 7 so that the wide-ranging phrase "*or any other mitigation works in connection with the authorised development*" can be removed? b) DCiC has referred to further information being required at detail design stage. Is it satisfied that suitable provisions are included in the OEMP?

No	Question to	Reference	Question
	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]	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? **EBC has no concerns about the removal of vegetation subject to the delivery of the proposed mitigating landscaping.** 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? **n/a.** 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? **EBC considers that there should be a requirement to require the production of a Schedule and a plan for consultation with EBC for all hedgerows subject to the Regulations that are required to be removed to implement the scheme.** 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. **n/a.**
	Part 7 – Miscellaneous and General		
1.15.	Applicant	Article 43 - Defence to proceedings in respect of statutory nuisance ISH1 [PD-003] Q44 Applicant [REP1-004] DCiC [REP1-034]	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. 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 "*limited scope for delay in the progress of the Scheme*"?

No	Question to	Reference	Question
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? **EBC has agreed these provisions.** b) Do the Local Authorities consider that the process and timescales are fair and reasonable? **EBC considers the process and timescale fair and reasonable.** c) Are any amendments required to Article 50 or to the OEMP? **EBC does not require amendments to Article 50 or OEMP in this regard.** d) Please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination. **EBC has no outstanding matters in this regard.**
	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?
	Schedule 2 – Requirements		
1.18.	DCiC DCC **EBC**	Requirements 1-21 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	Further to the responses provided by the Applicant at Deadline 3, do the Local 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? **EBC has not outstanding concerns in this regard.** b) Consultation with the Lead Local Flood Authority to Requirements 12(1), 12(2), 13(1), 13(2), and 14(1)? **EBC has not outstanding concerns in this regard.** c) Consultation with Local Authorities with respect to potential

No	Question to	Reference	Question
		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]	impacts on Local Authority assets? **EBC has not outstanding concerns in this regard.** d) Consultation with Local Authorities regarding any improvements, diversions, stopping up or future maintenance liabilities for the Public Rights of Way network. **EBC has not outstanding concerns in this regard.**
1.19.	Applicant	Requirement 3 – Construction Environmental Management Plan (CEMP) Revised OEMP OEMP clean [REP3-003] OEMP tracked [REP3-004]	a) Requirement 3(d) and the item PW-G4 of the clean version of the OEMP include "*installation of bridge decks*". However, this is indicated as deleted in the tracked version of the OEMP as deleted. Please clarify. 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?
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? **EBC is in agreement with the requirement which the ExA is considering.**
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]	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? **EBC has no comments to make.** b) Should provisions be added to Requirement 3(4) that the HEMP must:

No	Question to	Reference	Question
		[REP3-026] EA response [REP3-034]	• 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? **EBC considers that this would be this would be a useful provision.**
1.22.	DCiC DCC **EBC** EA	The principle of consultation rather than agreement and details of consultation Requirements 3, 4, 5, 8, 11, 12, 13, 14, 15, 16, etc.. OEMP [REP3-003] ISH1 [PD-003] Q54, Q55, Q56 Applicant response [REP1-004] [REP2-020] DCiC response [REP1-034] EA response [REP1-021] ISH2 I&Q [PD-010] Q61 Applicant response [REP3-026] EA response [REP3-034]	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? **EBC are content to be consulted and for the Secretary of State to give agreement or approval.** b) Should a 28 day consultation period be added to Requirement 4? **EBC considers it appropriate for this to be added.** 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? **n/a.**
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-	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?

No	Question to	Reference	Question
		022] Applicant response [REP2-020] ISH2 I&Q [PD-010] Q59 Applicant response [REP3-026] EA response [REP3-034]	
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? **EBC is content for this not to be a requirement.** b) Preliminary works include the establishment of the main construction compound at Little Eaton, for which "*the surface of the construction compound 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: • 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. **EBC considers that the establishment of the main construction compound at Little Eaton should not be considered to be preliminary works.**
1.25.	Applicant	Requirement 10 – Protected species ISH1 [PD-003] Q59 Applicant response [REP1-004] ISH2 I&Q [PD-010] Q63	Please could Requirement 10 be updated to include for: 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

No	Question to	Reference	Question
		Applicant response [REP3-026]	species and not just to those not previously identified in the ES?
1.26.	Applicant DCiC EA	Requirement 14 – Flood compensatory storage ISH1 [PD-003] Q59 Applicant response [REP1-004] DCiC response [REP1-034]	a) Should Requirement 14 be amended to reflect the differing climate change 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?
	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] DCC response [REP3-029]	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: • 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 agreement is anticipated during the Examination. e) Please could the Applicant advise of any changes arising from its' rolling audit?
	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]	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'

No	Question to	Reference	Question
		DCC response [REP1-033] DCiC response [REP1-034] ISH2 I&Q [PD-010] Q68 Applicant [REP3-026]	rolling audit?
	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?
1.30.			
	Schedule 6 – Modification of Compensation and Compulsory Purchase Enactments, etc.		
1.31.	Applicant	Consistency with s126 of The Planning Act 2008 (PA2008)	Please could the Applicant explain whether the provisions are consistent with s126 of PA2008, which includes that: "*(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.* *(3) The order may not include provision the effect of which is to exclude the application of a compensation provision.*"
	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?
	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?

No	Question to	Reference	Question
	Schedule 9 – Protective Provisions		
1.34.	Applicant EA	Update on discussions ISH2 I&Q [PD-010] Q69 Applicant response [REP3-026] EA response [REP3-034]	a) Please provide an update on discussions between the Applicant and relevant statutory undertakers, Network Rail and the EA regarding agreement of the provisions. b) Please provide an update on the disapplication of by-laws relevant to the EA and associated protective provision. 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.
	Schedule 10 – Documents to be Certified		
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.
	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.
1.37.	Applicant	Other consents, permits, licenses and agreements	a) Please could the Applicant provide an update on any progress in obtaining other consents, permits, licenses and agreements.

No	Question to	Reference	Question
	EA DCiC	National Networks National Policy 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 "*satisfied that potential releases can be adequately regulated under the pollution control framework*"? d) Can any further comfort be provided that other consents, permits, licenses and agreements are likely to be granted?
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] 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]	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? **EBC are content with the provisions.** 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 that be secured in the dDCO or the OEMP? **EBC considers that there should be a requirement to keep them up to date but does not wish to be consulted on each revision.**

No	Question to	Reference	Question
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? **EBC has no comments to make.**
1.40.		Statement of Common Ground (SoCG) updates 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	a) Please provide updates to draft SoCG. 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?

No	Question to	Reference	Question
		Applicant response [REP3-014] [REP3-026] EA response [REP3-034]	
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] FWQ [PD-005] Q4.6, Q4.7, Q4.8, Q4.18, Q4.19, Q4.30, Q4.31 Applicant response [REP1-005] DCiC response [REP1-034] DCC response [REP1-033] Applicant response [REP2-020]	a) Is the use of the terms "*High*", "*Moderate*" or "*Low*" for driver stress level in tables 12.14, 12.16 and 12.17 consistent with the definition provided in table 12.5? b) Have the following terms "*very major increase or reduction*", "*major increase or reduction*", "*moderate increase or reduction*" or "*slight increase or reduction*" used in table 12.6 of the ES been quantified? 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? d) It is stated that "*the assessment also takes into account other stress factors such as congestion, route uncertainty, journey reliability, journey times and fear of accidents*". 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? e) Please justify why significance of impact is not identified at each separate location that is assessed? 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?

No	Question to	Reference	Question
			g) What weight should be given to the driver stress assessment when considering impacts on local traffic during construction? 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?
	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] DCiC response [REP3-027] DCC response [REP3-029]	a) Do DCC have any comments on the technical note referred to by the Applicant at ISH2? b) Have all banned turns, including those referred to by DCC, been included in the SATURN model for each construction phase? c) Should detailed LINSIG modelling of junctions be used to assist in the development of temporary traffic management proposals? 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? 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? f) DCiC has stated that it "*has not directly provided comments on the outputs of the construction traffic modelling*". 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?

No	Question to	Reference	Question
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? 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?
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 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.
2.5.	Applicant DCiC Intu Derby Cycling Group	Traffic Management Plan Update ISH2 I&Q [PD-010] Q3 Applicant [REP3-026] DCiC [REP1-034] [REP1-035] [REP3-027] DCC [REP3-029] Breadsall Parish Council [REP3-028] Intu [REP1-044] [REP3-037]	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 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;

No	Question to	Reference	Question
		Derby Cycling Group [REP3-033] [REP3-043] Royal Derby Hospital [REP3-041]	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 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 h) a temporary park and ride scheme at Kedleston Hall for the construction phase.
2.6.	DCiC	Council resources Applicant [REP2-020] DCiC [REP1-034] [REP1-035] [REP3-027] OEMP [REP3-003]	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? b) s 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.
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?

No	Question to	Reference	Question
	Operational traffic and permanent road closures		
2.8.	Applicant	Impacts on local roads Applicant [REP2-020] ISH2 I&Q [PD-010] Q5 Applicant response [REP3-014] [REP3-026] DCiC response [REP3-027] DCC response [REP3-029]	a) Please identify where assessment of impacts at local road network junctions, including those identified by DCiC, and their significance are addressed in the ES. 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? c) Is any other mitigation of significant adverse impacts required at the local road network junctions, including those identified by DCiC? d) Explain how impacts at local road network junctions have been fully considered in the air quality and noise assessments?
2.9.	DCiC	Increased journey times on Mansfield Road FWQ 4.36 [PD-005] Applicant response [REP1-005] [REP2-020] [REP3-022] DCiC response [REP1-034]	a) Do DCiC have any comments on the Applicant's amendments to the Traffic 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 MacDonald'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?

No	Question to	Reference	Question
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?
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?
	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] Royal Derby Hospital [REP3-041] David Clasby [REP3-032]	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 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?
2.14.	DCiC DCC	Support to public transport NPSNN Paragraph 5.205 ISH2 I&Q [PD-010] Q11	a) Has the Applicants considered reasonable opportunities to support other transport modes? b) Has enough consideration been given to the support of public transport and encouraging change in mode of transport, in accordance with sustainable transport policy?

No	Question to	Reference	Question
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]	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. 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 limit values, which the ExA has questioned during the Examination. The Applicant is asked to consider whether: 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?

No	Question to	Reference	Question
	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 • air quality assessment methodology for construction; and • assessment of no significant air quality impacts during construction?
3.3.	**EBC**	Dust monitoring OEMP [REP3-003] dDCO [REP3-002] 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]	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 is content with dust monitoring provisions.** b) If EBC is not content, please could it suggest how the wording should be amended? **n/a.**
	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: • air quality assessment methodology for operation; and • assessment of no significant air quality impacts during operation?
	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: • 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 reported as being compliant with the Air Quality

No	Question to	Reference	Question
		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]	Directive will become non-compliant; and • 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?
3.7.	**Mitigation and NO_2 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] EBC response [REP1-051] DCiC Local Impact Report [REP1-035] Applicant comments [REP2-020] ISH2 I&Q [PD-010] Q20 DCiC response [REP3-027]	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]: a) Should NO_2 monitoring be required of the Applicant during construction and, if so, where? b) Whether the OEMP provisions for communication and liaison with DCiC in 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?

No	Question to	Reference	Question
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 NO2 monitoring in the OEMP, noting that Requirement 3 of the dDCO requires it to be consulted during the development of the CEMP? **EBC is content with NO2 monitoring provisions.** b) If EBC is not content, please could it suggest how the wording should be amended? **n/a.**
4.	**Noise and vibration**		
	Construction noise, vibration and working hours		
4.1.	Applicant	Significance of effect for construction noise 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]	a) What is the likelihood of other receptors in addition to those identified in the ES experiencing noise levels above 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 "*the criteria will not be applied rigidly*"?
4.2.	Applicant	Consistency with BS5228 Part 1 FWQ [PD-005] Q6.14 Applicant response [REP1-005] ISH2 I&Q [PD-010] Q22 Applicant response [REP3-014]	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 "*A potential significant effect is indicated if the $L_{Aeq,T}$ noise level arising from the site exceeds the threshold level for the category appropriate to the ambient noise level.*" It then states that "*The assessor then*

No	Question to	Reference	Question
		[REP3-026] DCiC response [REP3-027] EBC response [AS-028]	*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*". 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 "*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*". 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. Annex E.4 refers to application "*in spite of the mitigation measures applied*". This appears to be contrary to the Applicant's suggestion that it would be applied at "*the onset of when an impact specifically requires mitigation*". 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)). a) Why has the 10 days in 15 criteria been adopted, but not the 40 days in 6 months criteria? 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?

No	Question to	Reference	Question
			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? d) Regarding precedent, does the degree of uncertainty with respect to the local road network during construction mean 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? 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?
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]	a) Do DCiC and EBC (still) consider any exceedance of SOAEL to be significant? **EBC is still finalising an answer to this question and will reply separately as soon as possible.** 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? **EBC is still finalising an answer to this question and will reply separately as soon as possible.**

No	Question to	Reference	Question
		EBC response [AS-028]	
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? **EBC is still finalising an answer to this question and will reply separately as soon as possible.** 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 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? **EBC is still finalising an answer to this question and will reply separately as soon as possible.**
4.5.	Applicant	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]	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 "*the prior agreement of the DCiC and EBC environmental health officers (as applicable)*" without delays to programme? b) The ExA is considering the following requirements and would welcome the Applicant's suggestion of appropriate wording for the dDCO: • 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 hours to include

No	Question to	Reference	Question
			consideration of the following matters identified by DCiC: 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.
4.6.	**EBC**	Construction uncertainties ISH2 I&Q [PD-010] Q23 EBC response [AS-028] Applicant response [REP3-026]	a) Is EBC in agreement with the views attributed to it that "*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*"? **EBC is in agreement.** 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? **EBC is content.**
4.7.	Applicant	Noise barrier adjacent to Royal School for the Deaf Derby ISH2 I&Q [PD-010] Q27 Applicant response [REP3-026] DCiC response [REP3-027]	a) Please clarify why it is not possible to commit to erection of the permanent 4m noise barrier before demolition of the Queensway buildings? b) Is it currently possible to establish whether there is enough space for the noise barrier to be fully erected before any house demolition? c) What other factors, if any, could prevent early erection of the noise barrier? Can those factors be assessed now? If not, why not? d) Will the installation of a reflective noise barrier on the western boundary of the school worsen noise levels in Markeaton Park?

No	Question to	Reference	Question
			Has the Applicant assessed this potential effect?
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?
5.	**The water environment**		
	Flood risk and drainage		
5.1.	DCiC	Flood risk modelling Relevant Representation (RR) by DCiC [RR-003] Applicant's Response to FWQ [REP1-005] Applicant's response to ISH2 [REP3-026]	DCiC 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.
	Water quality pollution control		
5.3.	Applicant DCiC	Surface water discharges Applicant's response to ISH2 [REP3-026]	DCiC a) Item 38 of the Applicant's response sets out the measures to control pollutants and silt. Specific reference is made to Mill

No	Question to	Reference	Question
	DCC	DCiC's response to ISH2 [REP3-027] DCC's response to ISH2 [REP3-029]	Pond, including a petrol interceptor upstream of Markeaton Lake culvert. Why are further petrol inceptors 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 total peak water discharge from the proposed drainage scheme? DCC 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? Applicant, DCiC, DCC g) Please provide further details of how the proposed drainage scheme would affect the Mill Pond public sewer outfall. 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.
5.4.	Applicant EA DCiC	Water Quality Applicant's Response to FWQ [REP1-005]	a) Is routine monitoring of water quality during the operation of the scheme necessary? Applicant

No	Question to	Reference	Question
	DCC	RR by the EA [RR-005]	b) What 'specific incidents' would trigger water quality monitoring. How would this be secured through the DCO?
	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]	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. 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? 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? Applicant, DCiC 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?
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] EBC Local Impact Report [REP1-050] EBC Response to FWQ [REP1-051]	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 is still in discussion with the Applicant and Derbyshire Wildlife Trust (DWT) in order to address EBC's outstanding concerns in respect to whether the enhancements outweigh the impact on the Local Wildlife Site.**

No	Question to	Reference	Question
		Revised OEMP [REP3-003 and REP3-004]	
	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.
	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 bio-diversity enhancement is acceptable. **EBC considers that approach taken by the applicant 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]. **EBC agrees with the applicant that there is no requirement for this Nationally Significant Infrastructure Project to use a Biodiversity Metric Assessment in its appraisal of the dDCO.**
6.4.			
7.	**Landscape and visual impact**		
	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	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].

No	Question to	Reference	Question
		[REP3-026] WHS Photomontages [REP3-018]	
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.
	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] McDonalds summary of ISH2	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; e) the provision of roadside signage; f) the effect of the proposal on access rights across the McDonalds

No	Question to	Reference	Question
		oral contributions [REP3-040]	and EG sites. Is a copy of the conveyance referred to in title number DY103730 available? g) Please summarise the outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.
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: • 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".
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]	NPSNN refers to the need "*… to ensure that, in relation to design and construction, the carbon footprint is not unnecessarily high.*" 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. a) Please clarify the use of the term "*where practicable*" in the OEMP and how this relates to "*not unnecessarily high*". How would the Applicant take account of carbon footprint during detailed design and how would it balance carbon footprint against cost? 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

No	Question to	Reference	Question
			development is not necessarily high? Otherwise how would it be demonstrated that the test has been met?
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?
9.4.	Applicant	Cyclist and pedestrian safety from construction vehicles Derby Cycling Group [REP1-036] ISH2 I&Q [PD-010] Q36 Applicant response [REP3-026] OEMP [REP3-003]	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. b) Please comment on whether the following interventions are factored into the OEMP, or their applicability for a Cyclist and Pedestrian Safety Plan: • 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?
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.
	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

No	Question to	Reference	Question
			or not consent will be granted for the proposed development?
10.3.	Applicant	Compulsory Acquisition (CA) in respect of land and rights acquired by agreement or through blight Book of Reference [AS-007] paragraph 2.1.4	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? 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? c) How can the unidentified rights of unidentified parties be considered? 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?
10.4.	Applicant	Minimisation of the need for CA "*at detailed design*" FWQ [PD-005] Q13.14, Q13.16, Q13.17, Q13.18, Q13.21 Applicant response [REP1-005] DCiC response [REP1-034] CAH1 Actions [EV-006] 1, 3, 4 Applicant response [REP3-025]	The Applicant states that the potential to reduce CA "*will be identified at detailed design stage, although this is considered unlikely*". 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? 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? c) Who would have the responsibility to challenge and, if appropriate, reduce the extent of CA "*at detailed design*" 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

No	Question to	Reference	Question
			as cost and programme?
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?
	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 Applicant response [REP3-013] [REP3-014] [REP3-025]	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 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: 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*"? b) Was it considered likely that the petrol filling station and fast food

No	Question to	Reference	Question
			restaurant would be able to remain operational and viable? 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? 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.
10.7.	Applicant	A38 alignment options and Queensway properties Variation of Road Based Study Option 2 CAH1 Actions [EV-006] 7, 18 Applicant response [REP3-013] [REP3-014] [REP3-025] DCiC [REP3-027]	The Applicant has also provided information on a "*theoretical westerly alignment based very loosely on option 2*", which it is understood would reduce land take from the petrol filling station and fast food restaurant when compared with Option 2. 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? b) Please justify that the access road to service remaining Queensway properties would require land take from the Royal School for the Deaf? Could it connect to the A52 opposite Sutton Close? 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 "*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*"? d) Is it likely that the potential impacts on Markeaton Lake and mature trees could be mitigated and not significant?
10.8.	Applicant	Ashbourne Road and Sutton Close gardens and access	a) Please provide a drawing to clarify the issues preventing direct access from 255 Ashbourne Road to the A52.

No	Question to	Reference	Question
	DCiC	alternatives A38 alignment options and Queensway properties CAH1 Actions [EV-006] 8, 27 Applicant response [REP3-014] [REP3-023] [REP3-025]	b) Would CA of gardens be justified for the provision of "*left and right in and out*" rather than "*left in and out*" access arrangement? 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? d) What would be the implications of the Applicant's statement that it may separately acquire 253 Ashbourne Road? e) Has the Applicant had any discussions with property owners or other Affected Persons about options for left in left out alternatives to CA?
	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 MacDonald's Restaurants Limited and Millennium Isle of Man Limited. c) The SoCG with Royal School for the Deaf Derby.
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?
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, durations and detail

No	Question to	Reference	Question
		CAH1 Actions [EV-006] 28 Applicant response [REP3-025]	on mitigation measures such as any replacement car parking and its proximity. Please could the Applicant assist? 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?
	Crown interests		
10.12.	Applicant	CA of Crown Land CAH1 Actions [EV-006] 8 Applicant response [REP3-014]	a) Please clarify the difference between "*compensate for open space lost to scheme*" and "*replacement land*". 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 Guidance[1]? b) Please clarify the justification for CA of the Crown Land given DCiC's statement with respect to Public Open Space that "*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*"? c) Please provide an update on securing written agreement and s135 consent during the Examination.
	Statutory Undertakers		
10.13.	Applicant	Protective provisions and SoCG CAH1 Actions [EV-006] 10, 11, 12, 13 Applicant response [REP3-025]	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. a) Protective provisions to be included in the dDCO. b) SoCG with Network Rail and Virgin. c) Confirmation of whether the case for the PA2008 tests have been met:

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

No	Question to	Reference	Question
			• 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?
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.
10.15.	Applicant	Justification for permanent acquisition of rights from Network Rail CAH1 Actions [EV-006] 29 Applicant response [REP3-025]	a) Please provide further clarification for the justification for CA and TP from Network Rail, including within the railway corridor and air rights. b) How has the area for which rights are sought been minimised? 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? d) Would CA or TP powers still be required if those measures were agreed? What powers and why?
	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 DCiC response [REP3-027]	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 sufficient certainty that CA is necessary to justify the CA powers being granted?
10.17.	DCiC	Replacement land	Further to the responses provided by the Applicant, does DCiC have

No	Question to	Reference	Question
		CAH1 Actions [EV-006] 15, 19, 31 Applicant response [REP3-014] [REP3-025] DCiC response [REP3-027]	any outstanding concerns with respect to: • the suitability of replacement land; • ownership of replacement land; or • alternatives to CA of Public Open Space or replacement land?
10.18.	Applicant DCiC	Markeaton Park 'Mundy covenant' CAH1 Actions [EV-006] 23, 24 Applicant response [REP3-025] DCiC response [REP3-027]	Please provide an update on the enforceability of the 'Mundy covenant' and any implications for the rights sought by the Applicant in Markeaton Park.
	Availability and adequacy of funds		
10.19.	Applicant	CAH1 Actions [EV-006] 20 Applicant response [REP3-014]	Please provide an update to the Funding Statement, to include • the availability of funding; • land cost estimates; • the Road Investment Strategy and the allocation of funding to the proposed development; and • any other changes.
	Other matters		
10.20.	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?

Abbreviations

BPM	Best Practicable Means	**ISH2 I&Q**	Issue Specific Hearing 2 Issues and Questions
BS	British Standard	**NMUs**	Non-Motorised Users
CEMP	Construction Environmental Management Plan	**NPSNN**	National Policy Statement for National Networks
CO_2	Carbon Dioxide	**NO_2**	Nitrogen Dioxide
DCC	Derbyshire County Council	**OEMP**	Outline Environmental Management Plan
DCiC	Derby City Council	**PA2008**	The Planning Act 2008 as amended
dDCO	Draft Development Consent Order	**RR**	Relevant Representation
DMRB	Design Manual for Roads and Bridges	**SoCG**	Statement of Common Ground
EA	Environment Agency	**SOAEL**	Significant Observed Adverse Effect Level
EBC	Erewash Borough Council	**SuDS**	Sustainable Drainage Systems
ES	Environmental Statement	**TMP**	Traffic Management Plan
ExA	Examining Authority	**TP**	Temporary Possession
FWQ	First Written Questions	**WHS**	World Heritage Site
HEMP	Handover Environmental Management Plan	**WR**	Written Representation
ISH	Issue Specific Hearing		

Signed [redacted] Date: 3rd February 2020

Steve Birkinshaw
Head of Planning & Regeneration