

A38 Derby Junctions

TR010022

8.92 Responses to Examining Authority's Further Written Questions

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A38 Derby Junctions

Development Consent Order 202[]

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1 Responses to the Examining Authority's Further 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) further written questions.
- 1.1.2 These can be found in **Table 1-1** below.

No	Question to	Reference	Question	Applicant's Response
1.	The draft Development Consent Order			
	Reference is made to the draft Development Consent Order submitted by the Applicant at Deadline 6 [REP6-002].			
Part 1 – Preliminary				
1.1.	Derby City Council (DCiC) Derbyshire County Council (DCC)	Article 3 Disapplication of legislative provisions	<p>a) Are DCiC and DCC content with the proposed disapplication of s.23 of the Land Drainage Act 1991 and with any other provisions required for them to accept disapplication, including those for consultation during the detailed design stage in the draft Development Consent Order (dDCO) and Outline Environmental Management Plan (OEMP)?</p> <p>b) Are DCiC and DCC content with the proposed disapplication of their permit schemes and with any other provisions required for them to accept disapplication, including those in Articles 11 and 12, in the Traffic Management Plan, and in the OEMP?</p>	a) and b) Highways England understands that the councils are content with these proposed disapplications. They confirmed the same at the DCO ISH3 hearing.
1.2.	Applicant Environment	Article 3	Does the Applicant accept the EA's proposed addition of 3(f) " <i>Regulation 12 (requirements for an environmental</i>	This amendment was made to the dDCO, submitted at D6.

No	Question to	Reference	Question	Applicant's Response
	Agency (EA)	Disapplication of legislative provisions	<i>permit) of the Environmental Permitting (England and Wales) Regulations 2016 in relation to the carrying on of a flood risk activity as defined within Schedule 25 Part 1 Paragraph 3 (1) of the said Regulations"? If not, please could the Applicant and the EA agree otherwise?</i>	
1.3.	DCiC DCC Affected Persons	Article 4 Maintenance of drainage works	<p>a) Are the Lead Local Flood Authorities content that the dDCO provisions would not prevent them from fulfilling their statutory duties?</p> <p>b) Do any parties have any concerns with respect to the effect of the dDCO provisions on any private drainage agreements?</p>	a) Highways England understands from ISH3 that the councils are content in this respect, particularly as the dDCO is not proposing to amend s.64 of the Land Drainage Act 1991.
Part 2 – Principal Powers				
1.4.	DCiC DCC EA Affected Persons	Article 6 Maintenance of authorised development	<p>a) Are the EA and the Lead Local Flood Authorities content that the dDCO provisions would not prevent them from fulfilling their statutory duties?</p> <p>b) Do any Affected Persons have any concerns with respect to the effect of the provisions on any private drainage obligations?</p>	<p>a) Highways England again considers that the EA and LLFAs have already confirmed these points during ISH3.</p> <p>c) Highways England considers that the ongoing engagement through the requirements, coupled with the extensive commitments in both the OEMP and the TMP,</p>

No	Question to	Reference	Question	Applicant's Response
			<p>c) Do DCiC and DCC consider that an acceptable process is secured for the identification of final maintenance and repair responsibilities? Have satisfactory principles for maintenance and repair been agreed?</p> <p>d) Are DCiC, DCC or EBC aware of any mitigation measures identified by the Applicant whose maintenance may not be addressed by the provisions?</p>	ensure that both maintenance and repair responsibilities will be appropriately dealt with through those processes.
Part 3 – Streets				
1.5.	DCiC	Article 13 Construction and maintenance of new, altered or diverted streets and other structures	Do DCiC have any outstanding concerns with respect to the dDCO provisions for the construction and maintenance of new, altered or diverted streets and other structures, or the related application of section 4 of the Highways Act 1980? How should any outstanding concerns be addressed?	For DCiC to respond.
1.6.	DCiC	Article 14 Classification of roads, etc.	Are DCiC content that an acceptable process is secured for the development of the detailed inventory and with any other	For DCiC to respond, however, Highways England understands that DCiC is content with the approach and the process outlined by

No	Question to	Reference	Question	Applicant's Response
			related provisions required in Articles 12 or 13, in Schedule 3 or in the OEMP?	Highways England in the OEMP and secured through the dDCO.
1.7.	DCiC	Article 18 Clearways	Do DCiC have any outstanding concerns with respect to the dDCO provisions for clearways? How should any outstanding concerns be addressed?	Highways England understands that DCiC has reviewed the provisions in respect of clearways and is content with them. Minor updates to Schedules 3 and 4 have been made and are reflected in the dDCO submitted at D9.
1.8.	DCiC	Article 19 Traffic regulations	Do DCiC have any outstanding concerns with respect to the dDCO provisions for traffic regulations? How should any outstanding concerns be addressed?	Highways England understands that DCiC has reviewed the provisions in respect of the TROs and is content with them. Minor updates to Schedules 3 and 4 have been made and are reflected in the dDCO submitted at D9.
Part 4 – Supplemental Powers				
1.9.	DCiC DCC	Article 20 Discharge of water	a) Are DCiC and DCC content that the following provisions are not added: <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</i>	a) Highways England has provided a response to this matter in its response to q.12 of the ISH3 Questions [ref: REP6-017] and q.14 of the ExA's proposed schedule of changes [REP8-008].

No	Question to	Reference	Question	Applicant's Response
			<p><i>watercourse, sewer or drain pursuant to paragraph (3)"?</i></p> <p>b) Are DCiC and DCC are content that the OEMP addresses their concerns regarding the need to limit the amount of water discharged to a sewer drain or watercourse?</p>	
Part 6 – Operations				
1.10.	DCiC	Article 40 Trees subject to tree preservation orders	Are DCiC content with these provisions and with the related provisions in Schedule 8 and in the OEMP? If not, how should they be amended?	<p>DCiC to comment.</p> <p>Based upon comments from DCiC [REP4-029], HE prepared an amended TPO loss table and figure – these details are included in the revised Appendix F to the ES Appendix 7.2: Arboricultural Impact Assessment Report [REP5-011]. Trees subject to tree preservation orders are also detailed in dDCO Schedule 8. In addition, the OEMP [REP6-007] has been amended to include a range of provisions regarding tree losses (see PW-LAN1), this includes the preparation of vegetation removal plans in consultation with the local authorities and the commitment that Highways England will aim to reduce the loss of vegetation, trees and hedgerows from those as illustrated in the plans provided in OEMP Appendix D. HE thus consider that no further changes (beyond</p>

No	Question to	Reference	Question	Applicant's Response
				those already agreed) are needed with regard to TPO provisions in Schedule 8 or in the OEMP.
Schedule 2 – Requirements				
1.11.	DCiC Erewash Borough Council (EBC)	Requirement 3 Construction Environmental Management Plan Adherence to the core hours.	<p>Are DCiC and EBC content with the ExA's proposed amendments (<u>underlined</u>):</p> <p><i>“(viii) any emergency works; <u>provided that written notification of the extent, timing and duration of each activity is given to relevant local authorities in advance of any works that are to be undertaken outside of core hours, except for any emergency works, which are to be notified to the relevant local authorities as soon as is practicable.</u></i></p> <p><i>Any other work carried out outside the core hours or any extension to the core hours <u>will only be permitted if there has been prior written agreement of the relevant environmental health officer provided that the activity does not result in materially new or materially worse environmental effects as reported in the environmental statement.</u></i></p>	Highways England has confirmed that it is content to accept these proposed changes to the DCO and they have been included in a revised version of the dDCO, submitted to the ExA at D9. This wording is also being included in the next version of the OEMP being submitted at D9.

No	Question to	Reference	Question	Applicant's Response
1.12.	DCiC DCC EBC	Requirement 3 Construction Environmental Management Plan Provisions for the Handover Environmental Management Plan	<p>Are DCiC, DCC and EBC content with the ExA's proposed amendments (<u>underlined</u>):</p> <p><i>"(5) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP as approved under sub-paragraph (4). <u>The HEMP must:</u></i></p> <p>(a) <u>be substantially in accordance with the relevant HEMP provisions included in the OEMP and CEMP;</u></p> <p>(b) <u>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</u></p> <p>(c) <u>incorporate the measures referred to in the environmental statement as being incorporated in the HEMP."</u></p>	<p>Highways England considers that the wording it provided in the dDCO at D6 covers off the concerns raised by the ExA in this respect, for the reasons given in response to q.20 of REP6-017 and q.18 of the ExA's proposed changes to the dDCO [REP8-008].</p>
1.13.	DCiC DCC EBC	Requirement 5 Landscaping	a) Are DCiC and DCC content with OEMP landscaping provisions, including for the preliminary works?	<p>a) DCiC and DCC to respond. The OEMP [REP6-007] has been amended to make it clear that the relevant local authorities</p>

No	Question to	Reference	Question	Applicant's Response
		Preliminary works	b) Are EBC content with the OEMP provisions with respect to the main construction compound and any related features that might be retained permanently?	<p>will be consulted during the detailed design of the preliminary works landscaping works (at PW-LAN3) and the main landscaping scheme (at MW-LAN4). The OEMP (at PW-LAN1) also makes commitments that vegetation clearance plans will be prepared indicating the extent of vegetation removal within the Scheme footprint and that HE will aim to reduce the loss of vegetation, trees and hedgerows from those as illustrated in the plans provided in OEMP Appendix D. PW-LAN1 also indicates that vegetation removal plans will be subject to consultation with the applicable local authorities, whilst DCiC will be consulted regarding the removal of significant trees and retention of felled timber within DCiC land at Mackworth Park and Markeaton Park. The applicable local authorities will also be consulted in advance of any vegetation clearance works (including trees, shrubs and hedgerows) – notice will be provided at least 14 days in advance of clearance works. Any public queries regarding tree clearance works will be directed to the Highways England Customer and Stakeholder Manager.</p> <p>b) EBC to respond.</p>

No	Question to	Reference	Question	Applicant's Response
				<p>The OEMP [REP6-007] has been amended at MW-G28 to state the following:</p> <p><i>“Decommissioning of the main construction compound: Following completion of the Main Works, the main construction compound at Little Eaton junction will be decommissioned and the site suitably restored to pre-works conditions. Certain aspects of the compound may be left in situ where these features are deemed to be of benefit to site conditions, subject to the agreement of the landowner and following consultation with EBC, on the basis that this does not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the Environmental Statement.”</i></p> <p>HE consider that this revision to the OEMP will ensure satisfactory decommissioning of the construction compound and allows for the retention of some features should they be of benefit to the site. This suggested OEMP text was sent to EBC on 24th Feb 2020, but no reply has yet been received by Highways England.</p>
1.14.	EBC	Requirement 13(1)	Are EBC and the EA content that OEMP provisions would provide enough	EBC and the EA to respond, although it is noted that the EA in their response at D8 state

No	Question to	Reference	Question	Applicant's Response
	EA	Surface and foul water drainage	protection for controlled and drinking waters in the vicinity of the main construction compound, including during the preliminary works?	<p>the following with regard to the main construction compound: <i>"After discussions in ISH4 on this matter, and subsequently responded to by the applicant in their response to deadline 6 (Ref 8.84, Page 123) we now understand that the details of drainage solutions and pollution prevention measures will now be included within the Preliminary Works CEMP. The Environment Agency will be happy to review this document at the relevant time"</i>.</p> <p>The OEMP [REP6-007] has been amended at PW-WAT1 to state the following (new text underlined): <i>"Highways England will develop and implement appropriate measures within the preliminary works CEMP for the preliminary works to control the risk of pollution due to construction works, materials and extreme weather events, including change to flow, flood storage volume, water levels and quality. This will be completed having regard to industry guidance. Such measures will be defined in consultation with the applicable local authorities and the Environment Agency. <u>The preliminary works CEMP will include details of pollution risk management measures at the main construction compound at Little Eaton</u>"</i></p>

No	Question to	Reference	Question	Applicant's Response
				<p><u>junction (including measures to be implemented during the site establishment phase), taking particular regard to the protection of the nearby groundwater Source Protection Zones and surface watercourses. The preliminary works CEMP will also include details of surface water drainage solutions at the main construction compound at Little Eaton junction to appropriately control and manage surface water runoff".</u></p> <p>HE consider that this revision to the OEMP will ensure satisfactory drainage solution for the construction compound and relevant pollution prevention measures to mitigate the risks of pollution to controlled waters from activities in this location.</p> <p>This suggested OEMP text was sent to EBC on 24th Feb 2020, but no reply has yet been received.</p>
<p>Schedule 5 – Land in Which New Rights, etc. May be Acquired</p>				
1.15.	Cadent Gas Limited	Schedule 5	Does Cadent Gas Limited have any outstanding concerns? How should any outstanding concerns be addressed?	Highways England's position in respect of Cadent's comments is set out in Highways England's responses to the D7 submissions [REP8-007]. Highways England has updated Schedule 9 in the dDCO submitted at D9 to

No	Question to	Reference	Question	Applicant's Response
				reflect an agreed change around anticipated costs. This is the only change that Highways England has agreed to make to the dDCO submitted at D6 and it considers that Cadent has adequate protection secured through the PPs in the dDCO.
Schedule 8 – Trees Subject to Tree Preservation Orders				
1.16.	DCiC	Schedule 8	Does DCiC have any outstanding concerns? How should any outstanding concerns be addressed?	For DCiC to respond, however, Highways England considers that Schedule 8 does not need any further amendments to be made to it, save for the changes already agreed see point 25 of REP8-008 and the subsequent changes made to the dDCO submitted at D9 to include the tree area numbers.
Schedule 9 – Protective Provisions				
1.17.	Network Rail Cadent Gas Limited Severn Trent Water	Schedule 9	a) Do Network Rail, Cadent Gas Limited, Severn Trent Water, or any other relevant statutory undertakers have any outstanding concerns? How should any outstanding concerns be addressed? b) Before the close of the Examination, please could the Applicant and any other relevant party provide a	a) For the listed bodies to respond. Highways England would point out that negotiations with all parties are ongoing and Highways England expects to be in a position where the PPs with these bodies are agreed before the close of the Examination. b) As noted, Highways England considers that the PPs can be agreed before the close of the Examination. If this does not happen then

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	Other relevant statutory undertakers		summary of any protective provisions that have not been agreed?	Highways England will submit a summary of outstanding issues for the ExA to consider – this will be submitted to the ExA before the close of the Examination.
Schedule 10 – Documents to be Certified				
1.18.	Applicant	Schedule 10	<p>The ExA does not consider that the Schedule provides references to:</p> <ul style="list-style-type: none"> the latest versions of all relevant new or updated documents provided by the Applicant during the Examination; and updated environmental statement documents incorporating all clarifications to paragraphs, tables, figures or plans provided by the Applicant in its' Written Representations during the Examination. <p>A list of example references, following a partial review by the ExA, was provided at item 33 of the issues and questions for Issue Specific Hearing 3 [PD-015].</p> <p>a) Please could the Applicant carry out a detailed review of its' submissions</p>	<p>Schedule 10 of the dDCO has been updated. Please see the revised version of the dDCO submitted by Highways England at D9.</p> <p>For clarity, the ES remains a certified document under the DCO. Where specified chapters and appendices in the ES have been superseded then this is made clear in Schedule 10 and the specified revision number/references have been included.</p> <p>Highways England has not been able to include all Examination references in Schedule 10 as these will be allocated after D9 by the ExA.</p> <p>As part of D9, Highways England is submitting the revised chapters of the ES and relevant appendices to the Examination as follows:</p> <ul style="list-style-type: none"> ES Chapter 8(a) Biodiversity CONFIDENTIAL (Document Reference 6.1)

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			<p>during the Examination, including both standalone documents and relevant material embedded in its responses to the ExA's questions and in its comments on submissions made by others?</p> <p>b) Please could the Applicant then update Schedule 10 and provided copies of the updated documents that are to be certified?</p>	<ul style="list-style-type: none"> • ES Chapter 8(a) Biodiversity - confidential content removed (Document Reference 6.1) • ES Chapter 12(a) People and Communities (Document Reference 6.1) • ES Figure 7.5(a) Representative Viewpoints 1 – 24 (Document Reference 6.2) (includes all viewpoints – updated viewpoints 8, 10 and 12 submitted at D2) • ES Appendix 7.2(a) Arboricultural Impact Assessment Report (including revised Appendix F submitted at D5) • ES Appendix 8.20(a) Summary of Biodiversity Effects - CONFIDENTIAL (Document Reference 6.3) • ES Appendix 8.20(a) Summary of Biodiversity Effects (Confidential information removed) (Document Reference 6.3) • ES Appendix 13.2A(a): Kingsway Flood Risk Assessment (Document Reference 6.3) (tracked version submitted at D4) • ES Appendix 13.2B(a): Markeaton Flood Risk Assessment (Document Reference 6.3) (tracked version submitted at D4)

No	Question to	Reference	Question	Applicant's Response
				<ul style="list-style-type: none"> Outline Environmental Management Plan (Document Reference 6.12(c)) (same as ES Appendix 2.1 - Document Reference 6.3)
2.	Transport networks and traffic			
2.1.	DCiC	Modelling of queueing and junctions during construction	Does DCiC have any residual concerns about the Applicant's modelling of queueing and junctions during construction? Is DCiC content the Applicant has given enough consideration to the potential for queues at one junction to effect other junctions and potentially lead to gridlock? How should any outstanding concerns be addressed?	Highways England added the processes to address outstanding concerns into the Traffic Management Plan [REP7-003], for example refer to chapter 7.
2.2.	DCiC	Congestion during construction	Does DCiC consider that the Applicant's assessment of congestion during construction represents a reasonable worst-case scenario?	For DCiC to respond.
2.3.	Applicant DCiC	Customer and Stakeholder Manager	Should the Customer and Stakeholder Manager be based in a site office, in DCiC's office, should they split their time between the two, or can the Applicant	The Customer and Stakeholder Manager and HE project staff will be based in and around the site so as best suited to deal with incidents as they occur. It has been agreed between Highways England and DCiC that DCiC will provide a desk for LinkConnex and HE project

No	Question to	Reference	Question	Applicant's Response
			and DCiC agree otherwise? Can the OEMP be updated accordingly?	team (including the Customer and Stakeholder Manager) to use in their office. This commitment has been included in the next version of the OEMP being submitted at D9.
	DCiC	Access to Royal Derby Hospital during construction	Please could DCiC comment on the potential for significant disruption to the Royal Derby Hospital and is it content with the Applicant's proposed mitigation measures? Should other mitigation be secured?	DCiC to respond. However, note that the OEMP [REP6-007] already states as follows: <i>"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 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"</i> .
2.4.	Derby Cycling Group DCiC DCC	Non-motorised users	Are there any further comments on the mitigation measures for non-motorised users that are set out in the Traffic Management Plan [REP7-003]? How should any outstanding concerns be addressed?	

No	Question to	Reference	Question	Applicant's Response
2.5.	DCiC DCC Derby A38 Behavioural Change Group	Traffic Management Plan	Are there any further comment or outstanding concerns regarding the Traffic Management Plan [REP7-003]? How should any outstanding concerns be addressed?	
2.6.	Applicant DCC Network Rail Derby Cycling Group	Ford Lane bridge	Please provide an update on the agreement of mitigation measures for Ford Lane bridge. How are the measures secured? Has there been consultation and agreement with Network Rail and Derby Cycling Group and, if so, please could evidence of that be provided?	<p>DCC has been provided with a draft of the bridge Assessment Report which shows the bridge to be able to carry a 40T vehicle subject to it being restricted to a single lane and subject to a verification survey to confirm an assessment assumption. The verification survey is scheduled for April/May (subject to COVID-19 restrictions).</p> <p>This is secured via the OEMP which states at MW-TRA12 (the below comprises amended text as included in the OEMP being submitted at D9):</p> <p><i>“Undertake verification survey of the Ford Lane Bridge to confirm assumptions made in the structural assessment in order to confirm load carrying capacity. Following receipt of the verification survey results, Highways England will consult with DCC in order to confirm the</i></p>

No	Question to	Reference	Question	Applicant's Response
				<p><i>bridge is capable of carrying a 40T vehicle and agree method for restricting traffic on the bridge to a single lane. Should the bridge not be capable of carrying a 40T vehicle, HE will need to propose an alternative solution (such as a strengthening scheme) to be progressed during the detailed design stage. If necessary, discussions will take place regarding the need for commuted sum payments to DCC or other means of ensuring the future management of the structure (as needed) to ensure the long-term serviceability and maintenance of the bridge in the interests of highway safety”.</i></p> <p>Network Rail has been advised of this position; in the response to their representation to the Planning Inspectorate of 10th February, Highways England made the following response in Its Deadline 6 submission of 3rd March 2020:</p> <p><i>“The design of the measures to restrict the bridge to one HGV at a time will be developed during the detailed design stage in consultation with Derbyshire County Council. Early discussions with Derbyshire County Council indicate that measures such as repositioning the kerbs across the bridge would be an</i></p>

No	Question to	Reference	Question	Applicant's Response
				<p><i>appropriate solution. This position has been agreed by Derbyshire County Council.</i></p> <p><i>An assessment of the Ford Lane/River Derwent bridge has been carried out and this determined that it is capable of carrying a 40T vehicle subject to a verification survey. This verification survey is needed to confirm an assessment assumption regarding continuity of reinforcement. The bridge will be restricted so that only one vehicle may be present on the bridge at a time”.</i></p> <p>This position was reconfirmed to Network Rail in an email on 23rd March 2020.</p> <p>Regarding Derby Cycling Group’s concern, as noted in the Applicant’s Responses to Information or Submissions Received by Deadline 6 [REP7-007]:</p> <p><i>“The narrowing of the roadway over the bridge will offer the opportunity to segregate pedestrians and cyclists from motorised traffic (as the bridge verges will become significantly wider). The details of this will be agreed with Derbyshire County Council in the detailed design stage”.</i></p>

No	Question to	Reference	Question	Applicant's Response
2.7.	Applicant DCiC	Ford Lane / A6 junction	Please provide an update on the agreement of mitigation measures for the Ford Lane / A6 junction. How are the measures secured?	The position on this has been agreed with DCiC in that it should be carried out during the detailed design stage. Refer to Table 3.3 of the DCiC SoCG [REP7-006] : <i>"It is agreed a Scheme is needed to address this issue and this will be agreed in consultation with DCiC through the detailed design process."</i> The OEMP being submitted at D9 has been amended to secure these measures (refer to MW-TRA14 in Table 3.2b).
3. Air quality				
3.1.	Applicant	The Applicant's commission from the Department of Transport	With reference to its request for removal of air quality from the agenda for Issue Specific Hearing 3 [EV-015], please could the Applicant provide an update on its position with respect to its commission from the Department of Transport?	<p>As set out in our communication to the Examination on the 17.02.20 [EV-015], HE has separately been commissioned by Department of Transport (DfT) to undertake air quality compliance work in relation to the Air Quality National Plan and its interactions with the Strategic Road Network. This national study has assessed air quality at qualifying features close to the A38 which includes footpaths.</p> <p>The national study is not yet complete with further work still to be carried out to assess compliance. However, in light of this work the</p>

No	Question to	Reference	Question	Applicant's Response
				<p>LA105 approach has been followed and an assessment made for compliance for the A38 Derby Junctions Scheme with particular attention given to footpaths close to the A38 where concentrations are likely to be highest. Refer to [REP6-020] and [REP7-009] for details.</p>
3.2.	DCiC EBC	<p>Applicant's Updated Air Quality Compliance Risk Assessment [REP6-020]</p> <p>Applicant's Supplement to Air Quality Compliance Risk Assessment [REP7-009]</p>	<p>Do DCiC or EBC have any outstanding concerns, including with respect to the consideration given to impacts during construction? How should any outstanding concerns be addressed?</p>	<p>DCiC and EBC both recognise that the construction impact assessment as reported in ES Chapter 5: Air Quality [APP-043] was based upon assumed information regarding the construction phase - this includes assumed information regarding construction phase traffic management proposals and construction methods – both DCiC and EBC have accepted the air quality impact assessment methodology (refer to the signed SoCG with DCiC [REP7-020] and EBC [REP1-008]). DCiC and EBC also agree with the defined construction phase air quality mitigation measures as set out in the OEMP. DCiC and EBC accept that the mitigation proposals as detailed in the OEMP will be translated into the Construction Environmental Management Plan (CEMP), noting that the local authorities will be consulted during CEMP preparation. Through</p>

No	Question to	Reference	Question	Applicant's Response
				<p>this consultation process there are procedures in place that will enable construction phase air quality effects to be managed in line with the ES conclusions.</p> <p>As set out in the OEMP [REP6-007], during the detailed design stage HE will review the detailed traffic management proposals and undertake an assessment of the potential air quality effects at that stage 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. In addition, the OEMP states that during the Scheme construction phase, HE will maintain close communications with DCiC regarding the Scheme's air quality effects as associated with the construction traffic management proposals. Highways England will work with DCiC to define appropriate solutions should any unexpected air quality effects associated with construction traffic</p>

No	Question to	Reference	Question	Applicant's Response
				<p>management be encountered. The OEMP also highlights that air quality mitigation measures to be implemented during construction will be set out in the Construction Environmental Management Plan (CEMP), as based upon the Best Practicable Means (BPM) as detailed in the OEMP. In preparing the CEMP, HE will consult with the local authorities (PW-G1 and MW-G5). It is considered that these secured commitments should address any outstanding local authority concerns regarding air quality impacts during the Scheme construction phase.</p>
3.3.	DCiC	DCiC's previous concerns	<p>Do the air quality concerns previously raised by DCiC remain:</p> <ul style="list-style-type: none"> • <i>“method for reconciling infrastructure scheme contributions with national PCM compliance modelling outputs”</i>; • <i>“modelling against EU Directive for some receptors”</i>; and • <i>“outstanding detail in CEMP”</i>. <p>If not, why not? How should any outstanding concerns be addressed?</p>	<p>As detailed modelling has been carried out at DCiC compliance receptors located 4m from the kerb [REP6-020], HE considers that this concern has been addressed. In addition, detailed modelling has been carried out at qualifying features in-line with LA105 [REP6-020] and [REP7-009]. This work was carried out in response to DCiC's comments in the second round of written questions [REP4-029] ref 3.32.</p> <p>Mitigation measures to be implemented during Scheme construction will be set out in the CEMP as based upon the mitigation measures</p>

No	Question to	Reference	Question	Applicant's Response
				detailed in the OEMP [REP6-007]. The CEMP will be prepared in consultation with the local authorities (PW-G1 and MW-G5) so their input will be taken into account.
3.4.	DCiC EBC	The Applicant's assessment	a) Do DCiC and EBC consider that the Applicant's air quality assessment represents a reasonable worst-case scenario? b) On balance, do DCiC and EBC agree that there are likely to be no significant air quality effects during construction or operation?	a) Locations that are likely to have the highest NO ₂ concentrations and have the largest concentration changes due to the Scheme have been assessed and reported in ES Chapter 5: Air Quality [APP-043]. The predictions included in the ES to assess air quality impacts at properties have used the conservative gap analysis method to predict future NO ₂ concentrations. The construction scenarios that have been modelled are those that are expected to have the largest increases. Emission rates for 2021 have been used for all construction traffic management scenarios whereas construction traffic management scenario 2 is expected to occur in 2022 and scenario 4 in 2023 when emission rates will be lower. ES Chapter 5: Air Quality [APP-043] and the OEMP [REP6-007] both highlight that dust mitigation measures for high risks site will be implemented for construction works next to the A38.

No	Question to	Reference	Question	Applicant's Response
				b) ES Chapter 5: Air Quality [APP-043] concluded that there are no significant impacts at properties during construction or operation of the Scheme. The compliance risk assessment [REP6-020] and [REP7-009] concluded that all areas would be compliant in the Scheme opening year (2024) both with and without operation of the Scheme and that during the construction phase, construction activities would not delay compliance. Therefore, no significant air quality impacts are expected.
3.5.	EBC	A compliant zone becoming non-compliant	Is EBC still content that the proposed development would not, or would be unlikely to, result in a zone/agglomeration currently compliant becoming non-compliant?	There are no PCM links that are included in the affected road network for the Scheme in the Borough of Erewash so the Scheme will not affect compliance in EBC's administrative area.
4.	The water environment			
4.1.	Applicant DCiC	Updated FRA for at the Markeaton junction [REP.	The Applicant's summary of oral responses to Issue Specific Hearing 4 [REP6-018] acknowledges that the surface water flood risk map shows overtopping of road that is outside of the boundary of the proposed changes to the road and that the hydraulic modelling	The modelling that determines the extent of surface water flooding as presented in the Markeaton junction Flood Risk Assessment (FRA) [REP4-010], being representative of existing conditions, has been produced by the Environment Agency and made publicly available. This modelling accounts for the flood

No	Question to	Reference	Question	Applicant's Response
			<p>focuses on the road. Please clarify the effect of the proposal on the risk of surface water flooding the areas adjoining the road. If the modelling does not cover such areas, how can the ExA be assured that the mitigation of an impacts would be effective? How would any mitigation be secured through the DCO?</p>	<p>risk both to and from areas adjoining the A38, as well as risk to and from the road itself. The model outputs form the surface water flood risk maps/ extents, and are the basis of the flood risk assessment.</p> <p>The surface water flood risk map shows overtopping of the existing road during the 0.1% AEP event (but not in the 1% AEP event). As noted by the summary of oral responses to Issue Specific Hearing 4 [REP6-018] and acknowledged in the ExA question, this overtopping is outside of the boundary of the proposed changes to the road. It is worth noting that the rainfall total associated with the modelled 0.1% AEP event surface water flood extent is on average 20% greater than the rainfall total for the 1% AEP event plus 40% climate change allowance (therefore the extent used to make the conclusion on lateral overtopping is conservative).</p> <p>Since the areas adjoining the A38 within the surface water flood extent (e.g. Markeaton Park, Markeaton Brook, Markeaton Lake) are not being amended as part of the Scheme (nor are there proposals to amend the watercourses and associated structures i.e. the existing culverts under the A38), the Scheme</p>

No	Question to	Reference	Question	Applicant's Response
				<p>will not have any impacts on these flood extents. Therefore, the Scheme will not have effects upon surface water flooding risks in the areas adjoining the road. As there are no impacts, there is no need for additional mitigation measures that need to be defined or secured. It is noted that more detailed modelling would only be required if any changes were being made within the Environment Agency modelled flood extents, or if significant changes were being made beyond these extents. It is therefore considered that the FRA prepared for Markeaton junction [REP4-010] has used appropriate methods of investigation and assessment, and that appropriate flood risk mitigation measures have been included in the Scheme design. It is stressed that the revised Markeaton junction FRA has been reviewed by DCiC (who are responsible for surface water flood management and control at Markeaton junction) and they have accepted the findings as per the signed SoCG [REP7-020], noting that DCiC will be consulted during the detailed design stage on issues associated with flooding and the highway drainage design (and as secured via the OEMP [REP6-007]).</p>

No	Question to	Reference	Question	Applicant's Response
4.2.	EBC Applicant	Little Eaton construction compound in relation to Source Protection Zones 2 and 1.	Does EBC consider that the OEMP [REP6-007] provisions regarding the Preliminary Works CEMP are enough to ensure a satisfactory drainage solution for the construction compound and relevant pollution prevention measures to mitigate the risks of pollution to controlled waters from activities in this location? Please provide an update on discussions regarding the condition in which the compound would be left.	<p>EBC to respond.</p> <p>The OEMP [REP6-007] has been amended at PW-WAT1 to state the following (new text underlined): <i>“Highways England will develop and implement appropriate measures within the preliminary works CEMP for the preliminary works to control the risk of pollution due to construction works, materials and extreme weather events, including change to flow, flood storage volume, water levels and quality. This will be completed having regard to industry guidance. Such measures will be defined in consultation with the applicable local authorities and the Environment Agency. <u>The preliminary works CEMP will include details of pollution risk management measures at the main construction compound at Little Eaton junction (including measures to be implemented during the site establishment phase), taking particular regard to the protection of the nearby groundwater Source Protection Zones and surface watercourses. The preliminary works CEMP will also include details of surface water drainage solutions at the main construction compound at Little Eaton</u></i></p>

No	Question to	Reference	Question	Applicant's Response
				<p><u>junction to appropriately control and manage surface water runoff</u>".</p> <p>HE consider that this revision to the OEMP will ensure satisfactory drainage solution for the construction compound and relevant pollution prevention measures to mitigate the risks of pollution to controlled waters from activities in this location.</p> <p>This suggested OEMP text was sent to EBC on 24th Feb 2020, but no reply has yet been received.</p>
5.	Biodiversity and ecological conservation			
5.1.	EBC	Alfreton Road Rough Grassland Local Wildlife Site	Having regard to the updated assessment of the Alfreton Road Rough Grassland Local Wildlife Site [REP4-023], does EBC still consider that the proposed development would have an unacceptable effect on the Local Wildlife Site?	EBC to respond, however, we understand that EBC's position is that they consider that the Scheme will have a significant effect on the LWS. Highways England does not agree with this position. The Highways England Technical Note submitted to the ExA at Deadline 4 [REP4-023] corrects an error regarding the percentage loss due to the Scheme of the Alfreton Road Rough Grassland Local Wildlife Site (LWS) as reported in the ES Chapter 8: Biodiversity [APP-046]. The Technical Note indicates that the Scheme will result in the

No	Question to	Reference	Question	Applicant's Response
				<p>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 [REP6-007].</p> <p>The Scheme and associated activities are not considered to undermine the conservation objectives of the LWS or negatively affect the conservation status of habitats or species for which the site is designated i.e. the floodplain grassland and/ or its interest in wetland birds. The LWS was assessed in 2018 and 2015 using criteria taken from the Derbyshire Wildlife Trust (DWT) (2003, 2011) Local Wildlife Assessment Guidance (refer to Botanical Survey Reports Appendix 8.4(a) [APP-182] and Appendix 8.4(c) [APP-184] for details). Additionally, the LWS has been assessed for breeding birds and wintering birds (refer to Breeding and Wintering Bird Survey Reports Appendix 8.8 (b to e) [APP-193] to [APP-196] and ES Chapter 8: Biodiversity [APP-046] for details). The Scheme protects and avoids harm to the core area of biodiversity interest of the LWS, namely the floodplain grassland (i.e. the inundation drawdown zone) of most</p>

No	Question to	Reference	Question	Applicant's Response
				<p>biodiversity interest botanically and for ornithology.</p> <p>Note that a separate Technical Note was submitted to EBC on 13.3.20 related to potential biodiversity enhancement opportunities associated with the Alfreton Road Rough Grassland LWS via the ongoing HE Designated Funds project (which is being progressed outside of the DCO process).</p>
<p>6. Historic environment</p>				
6.1.	Applicant	Terminology used for archaeological documents	Please clarify and, where necessary, amend the naming and terms of the archaeological mitigation documents (e.g. AMS, OWSI, SSWSI, HMP). Please ensure that there is consistency between Requirement 9 and the OEMP [REP6-007] regarding who will produce them, when and subject to what consultation.	<p>Clarification regarding the various archaeological mitigation documents is provided below.</p> <p>Archaeological Mitigation Strategy (AMS) and Overarching Written Scheme of Investigation (OWSI)</p> <p>The Archaeological Mitigation Strategy (AMS) and Overarching Written Scheme of Investigation (OWSI) will be prepared as a single document; the AMS as the overarching strategy for archaeological mitigation for the whole Scheme and the OWSI outlining the methods to be used by the Highways England</p>

No	Question to	Reference	Question	Applicant's Response
				<p>Archaeological Contractor. The AMS and OWSI will be produced by Highways England prior to the start of Preliminary Works. As stated in PW-CH2 of the OEMP [REP6-007], the Highways England's contractor will undertake the archaeological works, at all times, in accordance with the AMS (and the OWSI), noting that the AMS will be prepared by Highways England in consultation with the Derbyshire County Council (DCC) Archaeologist and the Derwent Valley Mills World Heritage Site Partnership (DVMWHSP) (via DCC). The AMS (and OWSI) will be provided to ensure that all archaeological works are undertaken to an approved archaeological strategy. The AMS (and OWSI) will be prepared prior to the start of the Preliminary Works.</p> <p>Site Specific Written Schemes of Investigation (SSWSI)</p> <p>The Site Specific Written Scheme of Investigation (SSWSI) will be prepared as a single document; the SSWSI will identify the detailed archaeological research questions and the mitigation measures to be carried out on site by Highways England. The SSWSI will be</p>

No	Question to	Reference	Question	Applicant's Response
				<p>produced by Highways England's prior to the start of works on site and will be in line with the AMS and the OWSI. As stated in PW-CH3 of the OEMP [REP6-007], the SSWSI will be prepared in consultation with the DCC Archaeologist and the DVMWHSP (via DCC).</p> <p>Heritage Management Plan (HMP)</p> <p>The Heritage Management Plan (HMP) will be prepared as a single document; the HMP will state how the historic environment is to be protected in a consistent and integrated manner, coordinated with all other relevant environmental topics. The HMP will be produced by Highway England's prior to the start of works on site and will be based on information contained within the AMS regarding which heritage assets/ archaeological remains require protective measures during both the Preliminary Works and also during the Main Works. As stated within PW-CH1 of the OEMP [REP6-007], the HMP shall be prepared in consultation with the DCiC conservation officer, the DCC Archaeologist and the DVMWHSP (via DCC) and shall address:</p>

No	Question to	Reference	Question	Applicant's Response
				<ul style="list-style-type: none"> • All temporary and permanent works, which may include, as relevant, boundary fencing, vegetation clearance, ground investigations, demolition, utility diversions, access routes/haul roads and works compounds. • Potential indirect impacts on heritage assets both inside and outside the Derwent Valley Mills World Heritage Site (WHS) from activities which may include, as relevant, ground vibration, light pollution, dust, dewatering, and the impact on buried archaeological remains of adverse ground conditions caused by weather events (rutting, compaction of soft ground etc.). • Issues of security for vulnerable sites/areas of archaeological interest outside the normal working hours, and at weekends. • Procedures for unexpected archaeological discoveries. <p>In summary, the AMS (including the OWSI), will be prepared by Highways England. This will then be used to prepare their SSWSI and the HMP. It is noted that as indicated in Table</p>

No	Question to	Reference	Question	Applicant's Response
				<p>2.1 of the OEMP [REP6-007], that the Highways England Archaeological Clerk of Works (ACoW) will be based on site and will be responsible for ensuring compliance with the measures as set out in the AMS (and the OWSI), the SSWSI and the HMP.</p> <p>The next version of the OEMP being submitted at D9 includes clarification text regarding these documents and who prepares them in accordance with the details above.</p> <p>Within the dDCO [REP6-002], archaeological investigation requirements are detailed in Requirement 9. It is noted that Requirement 9(1) makes reference to Environmental Statement Chapter 9, whereas this should reference Environmental Statement Chapter 6 – this amendment has been made to the dDCO submitted to the ExA at D9. Given that Requirement 9 refers to the Environmental Statement, and that the OEMP is a certified document, it is not considered necessary to amend this Requirement. If the ExA considers that the wording in Requirement 9 needs amending then Highways England would be happy to propose wording or consider changes as suggested by the ExA.</p>

No	Question to	Reference	Question	Applicant's Response
7. Landscape and visual impact				
7.1.	EBC	Existing hedgerows	Does EBC consider that enough information has been provided in the 'Hedgerows within the Order Limits' submission [REP3-021] to assess the effect of the proposed development on existing hedgerows at this stage of the project.	<p>EBC to respond.</p> <p>This relates to the provision of the plan during the Examination showing hedgerows to be lost due to the Scheme as related to the Hedgerow Reg – this plan was issued as [REP3-021], noting that this plan is also now included in the amended OEMP [REP6-007] as Appendix D and will be a certified document under the DCO.</p> <p>In addition the OEMP now states in PW-LAN1 that: <i>"Highways England will aim to reduce the loss of vegetation, trees and hedgerows from those as illustrated in the plans provided in Appendix D"</i>. The OEMP also states that: <i>"Vegetation removal plans will be subject to consultation with the applicable local authorities... The applicable local authorities (including the DCiC Arboriculture and Parks teams) will be consulted in advance of any vegetation clearance works (including trees, shrubs and hedgerows) – notice will be provided at least 14 days in advance of clearance works. Any public queries regarding</i></p>

No	Question to	Reference	Question	Applicant's Response
				<i>tree clearance works will be directed to the Highways England Customer and Stakeholder Manager".</i>
7.2.	DCiC	The effect of the proposed development on veteran tree T358 [REP7-008]	Has appropriate consideration been given to adjustments to the proposed development to increase the possibility of retaining the veteran tree? How would such adjustments, and/or the proposed mitigation measures if the tree is lost, be secured in the DCO [REP6-002] or OEMP [REP6-007]?	HE has submitted a Technical Note [REP7-008] that considers the veteran tree T358. This illustrates that the tree will be unavoidably impacted by the mainline carriageway excavation works within the tree's Root Protection Area (RPA), whilst the RPA will also be impacted by excavations for the highway drainage system, excavations for utilities diversions, footbridge foundations, plus passage of construction traffic/ plant. In addition, the new footbridge conflicts with the tree canopy. Given these combined effects, it has been assessed that the tree will be lost due to the Scheme. However, it is proposed that during the detailed design Highways England will examine whether the tree itself can be retained and that actions are taken that aim to reduce some of the Scheme's impacts upon the tree's RPA. This will include moving some Scheme elements in accordance with defined LoDs, plus some construction plant access restrictions. Nevertheless, the Scheme mainline works will still impact upon the tree's RPA. Thus whilst it may be possible to retain

No	Question to	Reference	Question	Applicant's Response
				<p>the tree itself and measures taken to reduce the Scheme impacts upon the tree's RPA, the Scheme works would still inevitably have a significant effect on the tree's RPA.</p> <p>Further exploration work will be needed to establish the underground/ root conditions for the tree and more information will be needed with regard to the design and construction methods to be used within the RPA. A decision can be made regarding the viability of the tree during and after the works once more information is known regarding the tree roots, detailed design of the Scheme in the vicinity of the tree and construction methods. In addition, if the tree is retained, it can be stress tested post works to ensure its stability and safety.</p> <p>It thus remains the most likely scenario (despite best endeavours if the works are heavily invasive in the RPA causing damage to the roots and tree structure) that the veteran tree will be unavoidably lost due to the Scheme. Actions to try and retain the tree and minimise effects upon the tree's RPA will be secured in the next version of the OEMP being submitted at D9 [REP6-007].</p>

No	Question to	Reference	Question	Applicant's Response
8.	Land use, social and economic impact			
8.1.	Applicant Euro Garages McDonald's Restaurants	The effect of the proposed development on the McDonald's and Euro Garages sites.	Please provide updates on discussions/agreement on the capacity and geometry of the proposed access arrangements, access from the proposed A38 slip road, existing access rights and the case for providing advance signage.	<p>Capacity of the proposed access - from the analysis and technical notes prepared during PCF Stage 3 (preliminary design), Highways England is confident that both capacity and geometry are acceptable. Analysis undertaken independently by McDonald's concurred with the capacity assessment (refer to ADL Traffic & Highway Engineering Ltd letter of 3 March 2020 [REP6-041]). Their independently developed LINSIG modelling has produced "broadly similar results to HE's own TRANSYT model", and "the model would appear to confirm HE's findings that suggest there would be sufficient storage for waiting vehicles" which was documented in the technical note supplied to them.</p> <p>The Applicant would be happy to engage in further discussions with McDonald's and Euro Garages during the detailed design stage but considers that the proposed approach is acceptable and no further refinement is needed.</p> <p>Geometry of the proposed access - The layout proposed by the scheme is very similar</p>

No	Question to	Reference	Question	Applicant's Response
				<p>to the current arrangement for the entry from the A52 which is considered to operate satisfactorily, i.e. the width of the proposed entry from the A52 is the same as the existing and the near-side kerb radius of the proposed entry is slightly greater than the existing (3.5m compared with 2.8m).</p> <p>A swept path analysis has been carried out and this demonstrates that HGVs (both rigid and articulated) can safely negotiate the entry and the drawings have been shared with Euro Garages.</p> <p>DCiC has confirmed that the geometry is acceptable in principle; part of the detailed design process will be to refine the design in consultation with DCiC.</p> <p>Access from the proposed A38 slip road - The Applicant notes that Euro Garages now accepts the reasoning behind the 'exit only' solution with the A38 diverge slip road [REP6-039]. McDonald's concerns with this in their last submission [REP6-041] related to the perception that the closure of the A38 entry would increase the number of vehicles wanting to use the A52 entry. However, the Applicant</p>

No	Question to	Reference	Question	Applicant's Response
				<p>believes the A52 entry has sufficient capacity and the geometry will be adequate to cope with this.</p> <p>Access rights - Highways England provided both Euro Garages and McDonald's with a drawing demonstrating the EG can access their site without needing to cross any land that isn't in their ownership, is already highway or is in McDonald's ownership where EG has rights of access.</p> <p>Advance signing – The provision of signing is being discussed internally within HE.</p>
8.2.	Applicant Derby Climate Change Coalition	Justification of the need for the Proposed Development,	Are the claimed economic benefits of the scheme are sufficiently supported by evidence from comparable road improvement schemes, having regard to the concerns expressed [REP6-030] and the documents appended to it?	<p>Yes.</p> <p>Nothing is appended to the document REP6-030; but HE has reviewed the electronic documents referenced having followed the links in the footnotes.</p> <p>The Scheme's economic benefits appraisal followed the Department for Transport's appraisal guidance (TAG) and called upon the knowledge and experience embedded within Highways England's own transport planning group. The economic overview is given in chapter 4 of the Planning Statement & NPS Accordance Table [APP-252].</p>

No	Question to	Reference	Question	Applicant's Response
9. Other policy and factual issues				
9.1.	Applicant DCiC DCC EBC	Climate change and CO ₂ emissions	<p>a) Please could the Applicant clarify the consideration given to cumulative CO₂ emissions, rather than for the proposed development in isolation?</p> <p>b) Please could DCiC, DCC and EBC comment on the cumulative impacts of the proposed development with other local emissions and in respect to relevant local policy and targets?</p>	<p>a) The greenhouse gas (GHG) impact assessment as presented in ES Chapter 14: Climate [APP-052] assesses the variation in operational CO₂e impact of the Scheme on the affected road network. Traffic flows were modelled over a large area that included all of Derby, the M1 to the east, the A50 to the south and M1 junction 28 to the north (refer to Figure 3.1 in Transport Assessment Report [APP-254]) so that increases and decreases in flows across the traffic model study area could be assessed both with and without the Scheme. As detailed in ES Chapter 4: EIA Methodology [APP-042] (refer to para. 4.2.14), the traffic model used included a wide range of other development projects within the traffic model area – this includes developments in Amber Valley, Derby City, Erewash, North West Leicestershire and South Derbyshire. Thus the influence of other development projects already forms an inherent part of the traffic forecasts upon which the assessments of the Scheme's effects have been based. It is</p>

No	Question to	Reference	Question	Applicant's Response
				<p>beyond the scope of the Scheme assessment to calculate the cumulative CO₂ emissions from all these potential developments, especially given that the assessment as set out in ES Chapter 14: Climate [APP-052] demonstrates that the Scheme's GHG impact as a proportion of current UK carbon budgets is negligible, such that it can be considered to be immaterial.</p> <p>It is acknowledged that current carbon budgets are based on the UK meeting a carbon target of 80% reduction on 1990 levels by 2050. Consideration has been made of the potential impact of the Scheme against the updated net zero GHG target by 2050 and Highways England does not consider that this gives cause to alter the assessment findings – refer to HE response to the ExA first written questions (question 2.1 in [REP1-005]).</p> <p>Further, DfT has confirmed that the programme of schemes described in the Roads Investment Strategy (RIS) 1 have been assessed and included in the UK Government's carbon budgets.</p> <p>Under these circumstances it is not considered that the combined CO₂e impact of the RIS1</p>

No	Question to	Reference	Question	Applicant's Response
				<p>schemes will compromise UK's ability to meet its carbon reduction targets.</p> <p>b) DCiC, DCC and EBC to comment.</p>
9.2.	Applicant DCiC DCC EBC	Climate change and net zero carbon by 2050	<p>a) Does the Applicant's approach to carbon emissions adequately consider the Government's updated target for net zero carbon by 2050 (Climate Change Act 2008 (2050 Target Amendment) Order 2019)?</p> <p>b) Please could DCiC, DCC and EBC comment on the carbon emissions from the proposed development with respect to relevant local carbon policy and targets?</p>	<p>a) Following the Government's commitment earlier this year to bring GHG emissions to net zero by 2050, Highways England are looking to play its part in achieving that target.</p> <p>It is acknowledged that the climate assessment presented in the ES Chapter 14: Climate [APP-052] was undertaken before the introduction of the revised net zero carbon emissions by the 2050 target and the Declaration of a Climate emergency by the UK Government in June 2019.</p> <p>The carbon assessment in ES Chapter 14: Climate [APP-052] was therefore undertaken using the set of carbon budgets available at the time of the assessment, which were calculated to meet the previous carbon reduction target i.e. an 80% reduction, based on 1990 levels 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</p>

No	Question to	Reference	Question	Applicant's Response
				<p>advice later this year (2020) on the sixth carbon budget. While it has, therefore, not been possible to update the GHG assessment against carbon budgets aligned to allow the UK to meet net zero carbon, consideration has been given to the impact the Scheme has on the UK meeting net zero emissions.</p> <p>The operational phase GHG footprint presented in ES Chapter 14: Climate [APP-052] does not consider the uptake of lower carbon fuels, electric vehicle technology and the decarbonisation of the grid as this is not accounted for under the HA207/07 approach used for the carbon assessment. In practice therefore, as the measures contained in the UK Government Strategy 'Road to Zero' [1] published in 2018 are realised (e.g. by 2030 between 50% and 70% of new car sales and 40% of new van sales will be ultra-low emission vehicles, and by 2040 all new car and van sales will be zero carbon vehicles), the carbon impact associated with road users will in practice be substantially lower than the numbers identified in the assessment. Additionally, Government is currently proposing to revise the 2040 target to 2035 in light of the 2050 net zero carbon target.</p>

No	Question to	Reference	Question	Applicant's Response
				<p>Furthermore, Highways England is committed to reducing the operational emissions of the road network at a national scale, as well as on an individual infrastructure project scale. Highways England is investing in renewable energy technology and feasibility studies across the network to reduce carbon emissions, including renewable energy solar farms to support the energy requirements of road tunnels, and photovoltaic noise barriers to power signage, cameras and roadside detectors. Highways England is also reducing the emissions of assets and buildings and rolling out improvements to depot efficiencies as part of the depot greening programme, including fitting solar panels and using LED task lighting. In practice, these Highway England programmes which are being assessed and managed across the strategic road transport network and estate will substantially decrease operational emissions beyond those stated in the assessment.</p> <p>The assessment as set out in ES Chapter 14: Climate [APP-052] demonstrates that the Scheme's GHG impact as a proportion of current UK carbon budgets is negligible, such that it can be considered to be immaterial. In</p>

No	Question to	Reference	Question	Applicant's Response
				<p>such circumstances, Highways England does not consider that the new net zero target gives cause to alter the assessment findings – refer to HE response to the ExA first written questions (question 2.1 in [REP1-005]).</p> <p>b) DCiC, DCC and EBC to comment.</p>
9.3.	Applicant	Climate change and adaptation updates	Does the Applicant consider that any updates are required to its position on climate change and adaptation, as per National Networks National Policy Statement paragraphs 4.38 to 4.47 and in relation to s10(3) of the Planning Act 2008 as per paragraph 4.38?	<p>Paragraphs 4.38 to 4.47 of the National Policy Statement for National Networks (NPS NN) set out how applicants and the Secretary of State should take the effects of climate change into account when developing and consenting transport infrastructure. Paragraph 4.41 states that the applicant should apply the UK Climate Projections 2009 (UKCP09) high emissions scenario (high impact, low likelihood) against the 2080 projections at the 50% probability level. While paragraph 4.42 states that an applicant should take into account the potential impacts of climate change using the latest UK Climate Projections available at the time and ensure any environment statement that is prepared identifies appropriate mitigation or adaptation measures.</p> <p>ES Chapter 14: Climate [APP-052] presents an assessment of climate change impacts on the Scheme. Climate change projections for the</p>

No	Question to	Reference	Question	Applicant's Response
				<p>location of the Scheme were assessed under the UKCP18 RCP8.5 scenario (the closest equivalent to the UKCP09 High Emissions Scenario), 50% probability level up to the 2070 - 2099 time period, and were used to generate estimates for the likelihood of climate impacts and the consequence of an impact during the operational phase of the Scheme. UKCP18 are the latest set of climate projection data available having replaced UKCP09 in November 2018.</p> <p>The assessment includes all infrastructure and assets associated with the Scheme and assesses resilience against both gradual climate change and the risks associated with an increased frequency of severe weather events. The outcome of the assessment of climate change impacts on the Scheme was identified as being not significant.</p> <p>The Scheme will be designed to improve its resilience to climate change through a range of design and material specification measures, including where practicable, the use of construction materials with superior properties (such as increased tolerance to fluctuating temperatures). Highways England will be defining materials to be used during the</p>

No	Question to	Reference	Question	Applicant's Response
				<p>detailed design process. Highways England will review these proposals to ensure, where economically and feasibly practicable within the design standards of a Scheme of this nature, that materials are of the highest specification. Further climate change resilience measures which have been built into the design of the Scheme as reported in Section 14.9 of ES Chapter 14: Climate [APP-052].</p> <p>In terms of the reference to s.10(3), Highways England does not consider that this is a standalone duty. Section 10(1) provides that the requirement in 10(3) - specifically to the Secretary of State having regard to the desirability of mitigation, and adapting to climate change - is a requirement in relation to the SoS's functions under ss. 5 and 6 of the Planning Act. Sections 5 and 6 deal with the designation and review of national policy statements and as such this matter needs to be considered in that context, not in the context of a DCO application. This point is similarly clear from para 4.36 of the NPS NN which provides that "Section 10(3) of the PA requires the SoS to have regard to the</p>

No	Question to	Reference	Question	Applicant's Response
				desirability of mitigating, and adapting to, climate change in designating an NPS"
9.4.	Applicant DCiC DCC EBC Interested Parties	Climate change and carbon footprint	a) Are there any comments or concerns regarding the mitigation set out in the OEMP to ensure that the carbon footprint would not be unnecessarily high? b) Has enough support been given to other transport modes and behavioural change? c) Has enough consideration been given to the climate change with respect to the loss of mature trees and the planting of new trees? d) How should the OEMP provisions be amended, if at all?	a) ES Chapter 14: Climate [APP-052] details the potential GHG emissions associated with Scheme construction, operation and road users. It sets out measures to mitigate the carbon footprint of the Scheme so that it is not unnecessarily high. Such measures will be enforced and evidenced through inclusion of an Energy and Carbon Plan in the Highways England construction contractor's Construction Environmental Management Plan (CEMP) (as required by the Outline Environmental Management Plan (OEMP) [REP6-007]). In addition, the contractor appointed by Highways England will be required to use Highways England's Carbon Calculator to report embodied carbon from the materials used. Highways England has set out general requirements for sustainable development and design in the Design Manual for Roads and Bridges (DMRB). These require road design to respond to sustainable development, including that carbon emissions associated with the

No	Question to	Reference	Question	Applicant's Response
				<p>whole life of a project shall be minimised and that resilience to future climatic conditions shall be incorporated into the design.</p> <p>Our Environmental Statements, drafted in accordance with the EIA Directive, provide evidence of how GHG reductions will be achieved.</p> <p>ES Chapter 14: Climate [APP-052], Section 14.9, Table 14.12 presents a series of measures to mitigate the impact of GHG emissions during the Scheme construction phase which include:</p> <ul style="list-style-type: none"> • Consideration of renewable and/ or low or zero carbon energy sources; • Use materials with lower embedded GHG emissions and water use; • Use of sustainably sourced materials; • Use of recycled or secondary materials; • Recording and reporting energy consumption and materials use on an ongoing basis during the construction phase of the Scheme using the Highways England Carbon Reporting Tool; and • Planting of trees, shrubs and hedgerows to reduce the impact associated with land use change and loss of carbon sink.

No	Question to	Reference	Question	Applicant's Response
				<p>As described in Table 14.12 in ES Chapter 14 [APP-052] “Where practicable, measures would be implemented to manage the use of material resources during Scheme construction”, including measures to reduce embodied carbon.</p> <p>The use of the term ‘where practicable’ has been used in the OEMP [REP6-007] to allow for flexibility in environmental, engineering and design requirements as the Scheme transitions from the DCO being granted to detailed design and construction stages. 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.</p> <p>During the development of the Scheme detailed design Highways England will continue to review these mitigation measures and seek further opportunities to minimise carbon emissions as required by the Design Manual for Roads and Bridges (DMRB) and in line with the net zero target.</p> <p>Further, Highways England monitors GHG generated by the company and its supply chain. Performance Indicators for carbon</p>

No	Question to	Reference	Question	Applicant's Response
				<p>dioxide equivalents (a measure of a range of greenhouse gases) associated with Highways England, and carbon dioxide equivalents associated with our supply chain, are recorded and inform improvements.</p> <p>b) With regard to support to other transport modes and behavioural change, Highways England is the strategic highway authority. Other transport modes are the responsibility of the DfT and the Local Highway Authority (which at two of the three junctions is DCiC). These organisations are responsible for promoting transport interventions that promote behavioural changes and the use of non-carbon-emitting transport modes. For example, refer to the recent Budget 2020 announcement: “£161 million for Derby & Nottingham, including over £25 million for bus rapid transit in Derby and over £10 million for a new cycle route between Nottingham, Derby and East Midlands Airport“</p> <p>Further transport interventions are likely to be considered in the forthcoming Comprehensive Spending Review (HM Treasury invites representations from interest groups / stakeholders by 20 May 2020).</p>

No	Question to	Reference	Question	Applicant's Response
				<p>c) During the development of the Scheme design, Highways England has sought to minimise the loss of existing trees, and where such losses are unavoidable, mitigation planting is proposed as indicated in the Environmental Masterplan figures (ES Figure 2.12A to 2.12H [APP-068]). Land use changes associated with the Scheme have been taken into account by the climate assessment as reported in ES Chapter 14:Climate [APP-052].</p> <p>d) Highways England consider that the OEMP [REP6-007] provisions regarding climate change and the Scheme carbon footprint do not need to be amended.</p>
10.	Compulsory Acquisition, Temporary Possession and funding			
The accuracy of the Book of Reference, Land Plans, updates and points of clarification				
10.1.	Applicant	Updates	Please could the Applicant provide any further updates before the close of the Examination.	The Book of Reference, Land Plans, and Statement of Reasons have all been updated and provided to the Examining Authority in a 'tracked' and 'clean' version. A schedule of changes has also been submitted explaining the rationale behind each change.

No	Question to	Reference	Question	Applicant's Response
Need for Compulsory Acquisition and Temporary Possession and minimisation of need				
10.2.	Applicant	CA of unknown interests	<p>The ExA is considering the case for CA of unknown rights and whether the risks and potential consequences of the Applicant being "<i>held to ransom</i>" would justify the acquisition of the unknown rights of unknown third parties. To assist with this, please could further clarification be provided with respect to the Applicant's request for powers to acquire unknown interests:</p> <ul style="list-style-type: none"> a) What is the potential for Article 1 of the First Protocol to be engaged? b) How have unknown human rights been considered and what weight has been given to them? c) What is the likelihood of disruption to the proposed development and what is the likely extent of that if powers were not granted for the CA of unknown rights? 	<p>a) Article 1 of the First Protocol states 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.' Highways England considers that the Scheme will accord with the provisions of this article for a number of reasons:</p> <ul style="list-style-type: none"> 1. There have been no objections to compulsory purchase by those parties who have been consulted and notified about the scheme. 2. Thorough due diligence has been carried out for the duration of the pre-application, and examination period to identify those with an interest in land. It is not unusual for schemes of this size to come across land that is unregistered or owners are unknown, this is generally as a result of historic errors in referencing, particularly when mapping was far less accurate.

No	Question to	Reference	Question	Applicant's Response
				<p>3. If CP powers were to be granted as part of the DCO, it would show that the Secretary of State was of the opinion that the CP of the land was in the public interest, and therefore the applicant would accord with Article 1 of the First Protocol.</p> <p>b) When establishing the order limits, the inclusion of all land has been considered in detail, multiple times throughout the evolution of the Scheme to ensure that the land included is required, necessary and its inclusion is justified. This consideration has included the human rights of all parties affected by CP and TP. Although the details of those with rights over the land are not in all cases known, an assessment of a hypothetical party has been considered. All land was considered in detail before its inclusion in the Order Limits, as previously stated this has included engineering, design and environmental considerations as well as Human Rights. It is not possible to give any of these considerations a 'weighting', but the land required is necessary and proportionate and no policy or statutory requirement has been</p>

No	Question to	Reference	Question	Applicant's Response
				<p>disregarded in the consideration of the land required and its inclusion in the Scheme.</p> <p>c) Lack of CA powers over land where the land is unregistered would cause significant impediment to the proposed scheme, whereas the inclusion of the land would not prejudice any persons who could demonstrate ownership of the land. Without the CA rights, acquisition of the land (and thus the progress of the Scheme development) would be delayed with resulting increased associated costs. Without the powers that have been applied for the Applicant may not be able to secure the land at all, meaning the scheme would not be deliverable.</p> <p>Should a person with an interest over land become aware of the vesting of their land they have 6 years from the date of vesting to agree compensation, and apply to Upper Tribunal (Lands Chamber) for a hearing, giving them a 'fair trial' in line with Article 6 of the European Convention of Human Rights .</p> <p>In cases where there is a lack of documented evidence to conclusively state the party with the interest, anticipated owners have been listed in Part 1 of the Book of Reference below</p>

No	Question to	Reference	Question	Applicant's Response
				<p>'Unregistered/Unknown'. Experience has shown that the smaller parcels of unregistered land are generally as a result of historical errors made before land registration became mandatory (in 1990), or as a result 'freehand' rather than digital mapping which leaves large margins for error. In the case of land which was last transferred prior to 1990, landowners are always advised to register their interest as it provides them with more security and protection of their rights but they have not always done so.</p> <p>Of the 42 remaining unregistered plots in the Book of Reference, there are 40 where we believe to have an understanding of who the owner is (as a result of historic use and occupation, ownership of surrounding land and physical boundaries). As such, there are only two parcels where we do not know who controls the freehold interest, and work is still ongoing to establish the ownership of these parcels. As the Applicant has stated before, and as is described in the Statement of Reasons (REP4-017), the Applicant has carried out exhaustive diligent inquiry (in accordance with the Planning Act 2008 requirements) to identify parties and make</p>

No	Question to	Reference	Question	Applicant's Response
				<p>them aware of the proposals by putting information in the public domain. This includes information during formal (S.42) consultation and before and during the Examination, with information displayed on site notices, for the attention of the owners or occupiers, of the land to come forward and get in touch with the project team. We have also spoken with adjoining landowners to see if they are aware of who owns the land and issued Land Interest Questionnaires to all those parties within the Book of Reference to confirm their land ownership, to assist in identifying plots of land that may be unregistered. There have been notices in local papers and local community facilities. The Scheme has also been reported on extensively in local media for some time, and therefore one would anticipate a party with a potential interest to have come forward, to express an interest or concern regarding the scheme.</p> <p>In summary, the Applicant has done all that could be expected of it to identify the 'unknown' parties, but those efforts will not cease post Examination. Even in the event that landowners were to come forward at a later date, they would not be prejudiced against</p>

No	Question to	Reference	Question	Applicant's Response
				<p>making a valid claim for compensation if they can evidence ownership of land in the Book of Reference. However, if powers were not granted over any land in the Book of Reference, as has been applied for by the Applicant, the delivery of the Scheme would be significantly prejudiced.</p>
10.3.	Applicant	Reduction of CA during detailed design	<p>The ExA is considering the potential for the requested CA powers not being the minimum required due to the design being at preliminary stage. It is also considering the likelihood that this would be mitigated at detailed design in a manner that would give appropriate weight to human rights at that stage. To assist with this, please could further clarification be provided:</p> <p>a) Has the "reasonable worst-case scenario" preliminary design taken a precautionary approach to the identification of the area of land required for the proposed development to ensure that there will not be an under-provision?</p>	<p>a) The preliminary design has been produced giving due consideration to the confined urban and semi-urban setting these A38 junctions are situated. The land considered for CA considers the physical extents of the highway infrastructure to be constructed and the land that is required to maintain it once it is in operation</p> <p>b) The level of detail applied at the preliminary design stage of this scheme has been done to higher level than is usual to major highway schemes.</p> <p>c) Further refinement will be done during the detailed design stage of the scheme, and where it is practicable to do so, CA will be kept to the minimum required to construct and operate the scheme. However, due to the robust nature of the preliminary design, it is felt that the identified CA is accurate.</p>

No	Question to	Reference	Question	Applicant's Response
			<p>b) Is this likely to result in some over-provision being identified following detailed design?</p> <p>c) What is the potential for CA to be reduced during detailed design?</p> <p>d) Would consideration would be given to human rights during detailed design in relation to any opportunities to reduce CA identified at that stage? If so, how human rights would be balanced against other factors.</p> <p>e) How can the ExA be confident that the assessments would be undertaken and that, if possible, CA would be reduced? Can an outline process be identified and secured?</p>	<p>d) Any changes that are made at the detailed design stage will be made with the same considerations that were had in designing the scheme that is currently being examined. Any changes will be made only after considering the same Health and Safety, engineering requirements, operational requirements, impact on the natural environment, existing use of the land to be acquired (public open space, residential, commercial, woodland) have been considered, as well as the responses that have been received in the consultation (see 1st Written Questions 13.69).</p> <p>e) It is an obligation on the Applicant to minimise the amount of land required for the scheme. This is because, to acquire more land than is necessary it would:</p> <ul style="list-style-type: none"> • Increase the impact on affected landowners and their human rights • Increase scheme costs • Burden the Applicant with additional maintenance liability for land not required for the scheme <p>The process to be followed would be that all of the CA land identified would be acquired temporarily at the start of the constructions</p>

No	Question to	Reference	Question	Applicant's Response
				phase, once the scheme is completed only the land that is essential for the scheme will be permanently acquired with the remaining land being returned to the land owner. This is in line with Crichel Down Rules which requires Highways England and other Government bodies to offer to sell back surplus land to the former owner once the land has become surplus to requirements - if the land was originally acquired by, or under threat of, compulsion.
Alternatives				
10.4.	Applicant DCiC	Alternatives to the CA of the Queensway properties	<p>a) Do the Applicant or DCiC consider that there is an alternative A38 alignment, based on the current position of the Markeaton roundabout, that would avoid the need for CA of the Queensway properties or any other residential properties other than those currently identified in Ashbourne Road and Sutton Close?</p> <p>b) It appears that any alternative identified in (a) above would result in the loss of a strip of land to the A38 edge of Markeaton Park and the loss</p>	<p>a) DCiC to also provide input.</p> <p>In short Highways England does not consider that there is such an alternative alignment and what is proposed as part of the application is the scheme which needs to be considered by the ExA and determined by the SoS.</p> <p>Please refer to item 5 of the 'Written Summary of Oral Submissions to CAH2' [REP6-015]:</p> <p><i>'Highways England summarised the approach that the Scheme has taken. The starting point is that this is a road improvement project, not a new road, and it is being delivered in a very constrained urban area. The properties at</i></p>

No	Question to	Reference	Question	Applicant's Response
			<p>of trees. How much relative weight should be given to the human rights that would be affected by the CA of residence on Queensway and to the loss of land and trees in Markeaton Park? Do the Applicant or DCiC consider that the loss of land and impacts on trees could be mitigated? If so, how?</p>	<p><i>Queensway are already significantly affected by the A38. Highways England confirmed that there are discussions ongoing regarding compensation, but that there is no outright objection from affected landowners and none of them is suggesting that the scheme could be delivered in another way and with another alignment. Highways England stressed the importance of this point and noted that it would have expected the owners to make such a case if there were believed to be alternative options that avoided the use of CA powers. In designing the scheme Highways England has had to balance environmental impacts (such as the loss of land and trees at Markeaton Park) with other interests such as Euro Garages and McDonald's. Highways England considers the scheme achieves the right balance of the various interests. Highways England considers it important to look at the scheme in front of the ExA now. Highways England cannot consider alternative options at this stage and no-one has suggested that Highways England could do that without the need for CA of Queensway properties. Highways England agreed to provide a separate written summary of this oral submission and submitted the Technical Note</i></p>

No	Question to	Reference	Question	Applicant's Response
				<p><i>on Human Rights and the Acquisition and Possession of Land for the Scheme [REP6-024]</i></p> <p>b) Alternative alignments that avoid the Queensway properties would inevitably increase the loss of public open space from Markeaton Park as well as result in the loss of more mature trees from the tree belt that currently lines the park. Under this scenario the Scheme would still need to provide replacement public open space, and given that the land occupied by the Queensway buildings would not be available for such exchange, it is unknown where replacement public open space could be provided. Given the lack of available suitable space, it is likely that suitable replacement land could therefore not be provided.</p> <p>With regard to additional tree loss, replacement tree planting could be undertaken within the park, although this would inevitably result in additional public objections, and may not be acceptable to DCiC, especially as such additional losses would remove much of the existing tree belt between the park and the A38.</p>

No	Question to	Reference	Question	Applicant's Response
10.5.	Applicant DCiC	The case for CA of Ashbourne Road and Sutton Close gardens	<p>a) What is the status of the Independent Safety Review Technical Note [Appendix A of REP6-014] with respect to the statutory procedures for the assessment of highway safety? Is the stated purpose of that review to “<i>maximise the safety of resident’s movements</i>” appropriate for the question being asked about the case for CA? Please could DCiC comment on the technical content of the review and on how much weight should be given to it?</p> <p>b) Please could the Applicant clarify the need for a turning head at 255 Ashbourne Road and whether there is an alternative for this to be provided at 253 Ashbourne Road? Please could DCiC comment?</p> <p>c) Considering the alternative of a shared left-in left-out access alternative for 253 and 255 Ashbourne Road to the proposed access road; what is the balance of safety and convenience against the human rights</p>	<p>a) It is one of the overriding responsibilities of Highways England and its designers to consider the safety of all aspects of any design and how risks can be managed practicably. An Independent Safety Review provides guidance to designers as to the level of risk that elements of the design introduce and how they may be mitigated. Road Safety Audits are carried out at key stages of the design process and the audit report is a key document in the PCF process (refer to the Design – Handover for Operation Process Note [REP4-026]). The Safety Audit is likely to raise concerns from any earlier safety reviews if they are still present in the design at the time of audit. Following the independent safety review carried out on this element of the design, it is considered appropriate to compulsorily acquire permanent rights over a part of the Sutton Turner Houses’ land and 253 Ashbourne Road to provide a safe and convenient access for the 3 properties.</p> <p>b) DCiC has made it clear that it does not consider adoption of the access by the Council to be appropriate. The previous assumption</p>

No	Question to	Reference	Question	Applicant's Response
			<p>considerations for the proposed CA of the 14 Sutton Close garden?</p> <p>d) What is the safe distance required between the Markeaton junction and a right-in right out and left-in left-out junction on the south/west side of Ashbourne Road? What is the relative proximity of the existing Sutton Gardens junction? Can the proposed CA of the gardens at 1 Sutton Close be avoided?</p>	<p>had been that it was a requirement to design the access to adoptable standards. In light of this the width of the access road will be narrowed and the turning head omitted. It will still need to permit access for larger vehicles such as refuse trucks and fire tenders. Refer to [REP6-019].</p> <p>c) As the access will now be provided as a private means of access the land acquisition requirements have now been reduced from CA of all Rights to TP with Permanent Rights of Access on the Sutton Turner Houses land and 253 Ashbourne Rd. 255 Ashbourne Rd has been revised to TP only; this redesign has resulted in updates to the dDCO and BoR (revised copies of which are submitted at D9).</p> <p>The owner of no. 255 Ashbourne Road has stated, in a letter to Highways England, he would strongly object to the provision of a left-in left-out arrangement on the grounds of safety and convenience; he supports the proposed joint access arrangements. The owner of no. 253 Ashbourne Road has not expressed an opinion on the access as they are proposing to serve a blight notice – it would</p>

No	Question to	Reference	Question	Applicant's Response
				<p>be reasonable to assume any future owner could object to the provision of a left-in left-out arrangement. Sutton Turner Houses would rather not share an access with 253 and 255 Ashbourne Road, but understand this is a safer arrangement for motorists.</p> <p>It should be noted that the land required for CA adjacent to 14 Sutton Close does not belong exclusively to No. 14 as it is a part of the Sutton Turner Houses site as a whole, the residents are tenants of the houses and the land is communal to all residents of 1 to 14 Sutton Close.</p> <p>As noted in a) above, it is considered appropriate to compulsorily acquire permanent rights over a part of the Sutton Turner Houses' land and 253 Ashbourne Road to provide a safe and convenient access for the 3 properties, however it has been possible to reduce the extent of the CA needed in relation to 253 and 255 Ashbourne Road and Sutton Turner Houses as explained below..</p> <p>To clarify, the requirements over each plot of land associated with these properties is as follows:</p>

No	Question to	Reference	Question	Applicant's Response
				<p>255 Ashbourne Road</p> <ul style="list-style-type: none"> - Plot 3/15b (51m²) still required as CA to facilitate the new Markeaton Junction and associated widening of the A52. - Plot 3/15a (84m²) now changed from CA to TP, this would facilitate the construction of the new means of access to the property and the area returned to the owner for car parking. 253 Ashbourne Road - Plot 3/16b (30m²) is still required as CA to facilitate the new Markeaton Junction and associated widening of the A52. - Plot 3/16a (100m²) now changed to TP with permanent rights over it. This would facilitate the construction of the new means of access, the rights required would be for No 255 Ashbourne Rd to pass and re-pass across the amended frontage of no. 253 Ashbourne Road. <p>Sutton Turner Houses</p> <ul style="list-style-type: none"> - Plot 3/18 (39m²) is still required as CA to facilitate the new Markeaton Junction and associated widening of the A52. - Plot 3/17 (234m²) changed to TP with rights over it. This would facilitate the

No	Question to	Reference	Question	Applicant's Response
				<p>construction of the new means of access, the rights required would be for nos. 255 and 253 Ashbourne Rd to pass and re-pass across the amended frontage of Sutton Turner Houses land.</p> <ul style="list-style-type: none"> - Plot 3/20 (9m²) is still required as CA to facilitate the new Markeaton Junction and associated widening of the A52. - Plot 3/19 (313m²) changed to TP with rights over it. This would facilitate the construction of the new means of access, the rights required would be for No 255 and No 253 Ashbourne Rd to pass and re-pass across the amended frontage of Sutton Turner Houses land. <p>Areas of land required with permanent rights to pass and repass would be reduced to that required to provide an appropriate width of access. TP land will be returned to the individual land owners on completion of the works.</p> <p>The assessment of the human rights of landowners is detailed in the Statement of Reasons, as is the balance of the need for compulsory acquisition of the land. In addition, the CA and Human Rights note produced by</p>

No	Question to	Reference	Question	Applicant's Response
				<p>Highways England and submitted to the ExA at D6 details the approach to these issues in more detail. Highways England does not consider that safety and convenience (which is part of the need case) should be weighed against the extent of human rights impacts as these are two distinct issues which need individual assessment in determining whether the relevant CA tests have been met.</p> <p>d) Under the DMRB design guides there is no specified minimum safe distance from a junction to position an access, the designer has to consider all factors relevant to each situation when considering the position of accesses to enable safe use by all groups of road users. The positioning of the proposed new access to Sutton Close, 253 and 255 Ashbourne Road considered the following aspects that would have a bearing on the safety of its users and other road users:</p> <ul style="list-style-type: none"> - Visibility of the new access and to any vehicles turning in or out of the access, - Location of all NMU facilities including Toucan Crossings, - Traffic queue lengths waiting at traffic signal using the Markeaton junction,

No	Question to	Reference	Question	Applicant's Response
				<p>– Provision of safe movement entering and egressing the access.</p> <p>The visibility provision must provide clear visibility for drivers exiting Markeaton junction of any stationary vehicles wishing to turn into the new access and/or slower moving vehicles egressing from the access, therefore, giving them reasonable time to adjust or react accordingly.</p> <p>The proposed access is positioned to the east of the existing access, outside No1 Sutton Close. Vehicles turning right into the proposed access will not block the Toucan Crossing. So that right-in and right-out manoeuvres can be executed with minimal impact to traffic, the anticipated average queue length from the A52 westbound traffic signals has been considered. This minimises the queuing back across the access and blocking vehicles waiting to turn right into the access and potentially obstructing the eastbound traffic.</p> <p>The proposed Sutton Close, 253 and 255 Ashbourne Road combined access position has been optimised so as to provide its users and other road users of the A52 with safest solution that promotes good driver behaviour.</p>

No	Question to	Reference	Question	Applicant's Response
Individual objections and issues				
10.6.	Applicant	Voluntary agreement and blight updates	<p>Please provide an update on progress in finalising voluntary agreements, potential acquisition due to blight and SoCG, including with respect to:</p> <ul style="list-style-type: none"> • the CA schedule; • residents of 12 Queensway; • 253 and 255 Ashbourne Road; • Millennium Isle of Man Limited; and • Royal School for the Deaf Derby. 	<p>Final SoCG's with Royal School for Deaf Derby and Sutton Turner Houses were submitted at Deadline 8. When further information is available as detailed design is progressed, remaining matters under discussion can be resolved.</p> <p>To date 9 blight notices have been served of which 8 have been deemed valid claims by Highways England and are due to be settled by Highways England. The cost of meeting these claims has been met by Highways England. Of these 8 claims deemed valid, 4 claims have been completed and 4 are in progress. The one outstanding blight claim is currently being considered by Highways England.</p> <p>Highways England is continuing to engage with the residents of 12 Queensway to find a solution, although no suitable relocation property has yet been found by the residents. Discussions are ongoing with the owner/occupier of 253 Ashbourne Road.</p>

No	Question to	Reference	Question	Applicant's Response
				<p>The owner of 255 Ashbourne Road has submitted a blight notice to HE, which is currently being considered.</p> <p>There is no update with Millennium Isle of Man Limited.</p> <p>HE continues in discussions with the Royal School for the Deaf to purchase land by agreement.</p>
10.7.	Applicant	Loss of car parking	Please summarise the impacts and mitigation for the loss of car parking at 253 and 255 Ashbourne Road. Can the impacts be reduced? How is the mitigation secured?	<p>No. 253 - the proposed layout for the new access would mean shortening the driveway but not impacting on the existing car parking area. Highways England anticipates that the final scheme (secured through detailed design) will allow for a similar number of cars to park as they currently do.</p> <p>No. 255 – for the current parking arrangements, vehicles block one another in to allow up to 7 cars to park at the premises. Highways England expects (and this is a matter to be confirmed through detailed design) that at least 3 parking spaces will be retained, it may be possible to retain more parking spaces if vehicles block each other in as in the current arrangement. As the current tenants are serving blight and leaving, the</p>

No	Question to	Reference	Question	Applicant's Response
				building use may change, and parking may no longer be an issue.
Crown interests				
10.8.	Applicant	Crown consent	Please provide an update on securing written agreement and s135 consent.	Highways England is engaged with the TA's lawyers on this point. The TA's lawyer has requested Highways England to provide it with a draft s.135 letter of consent which Highways England is in the process of preparing and expect this to be provided by to the TA during week commencing 30 March. Once this is provided, Highways England expect that this will be secured from the TA in time to be submitted to the Examination. Highways England will update the ExA as soon as possible on this matter.
Statutory Undertakers				
10.9.	Applicant Statutory Undertakers	Progress updates	Please provide an update on progress in: <ul style="list-style-type: none"> • finalising protective provisions and SoCG; and • consideration of the alternative to the acquisition of rights from Network Rail of a deed of easement, a bridge agreement, a framework agreement and 	The PPs are currently being finalised with each of the SUs. The PPs with the EA (which are in the current version of the dDCO) are agreed. Highways England understands that STW are content with the PPs in the DCO, subject to a side agreement being finalised with them. There are a number of small matters to be

No	Question to	Reference	Question	Applicant's Response
			<p>Relevant Asset Protection Agreement(s) suggested by Network Rail Limited.</p>	<p>resolved with this agreement, however, Highways England expects it to be finalised before close of the Examination.</p> <p>Highways England understands that WPD is, similarly, content with the PPs in the dDCO subject to a side agreement being completed. Again, this agreement is still being discussed with WPD and is close to being finalised. Highways England expects that it will be finalised before the close of the Examination.</p> <p>The PPs and side agreement with Cadent are still being discussed.</p> <p>Highways England is working with Network Rail to find an agreeable position on the PPs. Network Rail has proposed that Highways England enters into a Framework Agreement and Highways England is considering the content of this, expecting to return comments to Network Rail on this draft agreement during week commencing 30 March. Network Rail requires the Framework Agreement to be agreed with it in advance of the other agreements (Bridge Agreement, BAPA, Deed of Easement) and, provided agreement can be reached between Highways England and Network Rail on the Framework Agreement,</p>

No	Question to	Reference	Question	Applicant's Response
				<p>Highways England will review the timings in respect of these additional documents.</p> <p>Highways England will provide the ExA with an update on the discussions with all SUs before the close of the Examination.</p>
10.10.	Applicant Statutory Undertakers	Whether there is serious detriment	Is there evidence of any serious detriment? Have the Planning Act 2008 s127 and s138 tests been satisfied?	<p>Highways England's current position is that none of the bodies claiming serious detriment would suffer such detriment to their ongoing operations and activities. The Scheme has been designed to avoid serious detriment and all parties have, in Highways England's view, been provided with adequate protective provisions in the dDCO. Nevertheless, Highways England is (as noted in point 10.9 above) continuing to engage with all of the SUs to find a mutually agreeable position to allow the parties the opportunity to withdraw their objection to the Scheme.</p>
Special Category Land				
10.11.	Applicant DCiC	The Markeaton Park 'Mundy covenant'	a) Has any successor in title been identified and contacted? How have their rights been considered? How have alternatives to CA, such as voluntary agreement, been considered?	<p>The Applicant has identified who is believed to be the successor in title to the Mundy covenant and is awaiting formal documentation of their rights. They have stated that they would not object to any CA of the land over which they have the covenant. The party has confirmed</p>

No	Question to	Reference	Question	Applicant's Response
			<p>b) What consideration has been given to the rights of wider beneficiaries due to their use of the land as protected by the covenant, e.g. in relation to public amenity?</p>	<p>they have been aware of the scheme for some time and understands the proposals and are in support of the scheme. There has been no change to the approach to how their rights have been considered now that they have been identified as the successor in title, given the approach in assessing the rights of the 'hypothetical' landowner. Once formal confirmation of their rights is obtained, the Applicant we will seek to engage with them to agree for the acquisition of the right without the use of Compulsory Purchase Powers.</p> <p>b) This point is discussed in the Technical Note on Human Rights and the Acquisition and Possession of Land for the Scheme provided by Highways England at Deadline 6 [REP6-024]</p>
<p>Availability and adequacy of funds</p>				
10.12.	Applicant	Updates	<p>Please provide any updates with respect to:</p> <ul style="list-style-type: none"> • Government priorities and the Road Investment Strategy; and • the funding statement and land cost estimates? 	<p>The Scheme has been listed as a committed scheme in the latest RIS, announced on 11 March 2020.</p> <p>There is no update to the funding statement and land cost estimate submitted at D6.</p>

No	Question to	Reference	Question	Applicant's Response
Potential impediments to the proposed development				
10.13.	Applicant	Updates	<p>Please provide any updates with respect to:</p> <ul style="list-style-type: none"> the Consents and Agreements Position Statement, progress in obtaining other consents, and whether there are any known impediments; and any other changes to policy or priorities in the Applicant's programme that could affect the proposed development. 	<p>There are no substantive updates to report at this stage beyond the position as presented in the updated Consents and Agreement Position Statement submitted at Deadline 5. Ongoing discussions will continue, and Highways England will report a final update to the ExA at Deadline 10, including the provision of a final version of the Consents and Agreements Position Statement as needed.</p> <p>It remains the case that there are no known impediments either from the perspective of Highways England, or that Highways England have been made aware of in the discussions that have taken place to date with the relevant regulatory authorities.</p> <p>Highways England does not consider that, aside from the points raised by the ExA in this list of questions, there are any other changes to policy or priorities in Highways England's programme that could affect the proposed development.</p>

No	Question to	Reference	Question	Applicant's Response
Other matters				
10.14.	DCiC	Injurious affection	Have DCiC's concerns [REP4-029] regarding Part 1 and Section 10 claims for injurious affection been addressed by the Applicant's response [REP5-010]? Does DCiC have any outstanding concerns on this matter? If so, could a remedy be agreed with the Applicant?	
10.15.	DCiC	Trigger mechanism	Have DCiC's concerns [REP4-029] regarding the need for a trigger mechanism for 28 days or 44 days been addressed by the Applicant's response [REP5-010]? Does DCiC have any outstanding concerns on this matter? If so, could a remedy be agreed with the Applicant?	