

A38 Derby Junctions
TR010022

**8.94 Applicant's Responses to Information
or Submissions Received by Deadline 9**

Planning Act 2008
Rule 8 (1)(k)
The Infrastructure Planning (Examination Procedure) Rules 2010

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A38 Derby Junctions
Development Consent Order 202[]

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Table of Contents

Introduction

- 1 Environment Agency
- 2 Euro Garages Ltd
- 3 Anne Morgan
- 4 Mair Bain
- 5 Derby Climate Coalition
- 6 Joanna Watson
- 7 Derby & South Derbyshire Friends of the Earth
- 8 Friends of Markeaton Park
- 9 Cadent Gas
- 10 Network Rail
- 11 Erewash Borough Council
- 12 Derby City Council
- 13 Derby Cycling Group
- 14 McDonald's Restaurants Ltd
- 15 Derbyshire County Council

Applicant's Responses to Information or Submissions Received by Deadline 9

Introduction

This document provides the comments of Highways England (the Applicant) on some of the responses made by Interested Parties to the Planning Inspectorate on Deadline 9, 26 March 2020 in respect of the A38 Derby Junctions scheme (the Scheme) Development Consent Order (DCO) application. It also includes responses to some additional submissions made after deadline 9 and accepted at the discretion of the Examining Authority.

The Applicant has sought to provide comments where it appeared to be helpful to the Examination to do so, for instance where a response includes a request for further information or clarification from the Applicant or where the Applicant considers that it would be appropriate for the Examining Authority (ExA) to have the Applicant's comments on a matter raised by an Interested Party in its response.

Where an issue raised within a response has been dealt with previously by the Applicant, for instance in the Applicant's own response to a question posed by the ExA or within one of the documents submitted to the Examination, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.

The Applicant has not provided comments on every response made by an Interested Party to the submissions or questions raised. In some cases, no comments have been provided, for instance, because the response provided a short factual response, it reiterated previously expressed objections in principle to the Scheme or expressions of opinion without supporting evidence, or it simply contradicted the Applicant's previous response to a question without providing additional reasoning.

For the avoidance of doubt, where the Applicant has chosen not to comment on matters raised by Interested Parties this is not an indication that the Applicant agrees with the point or comment raised or opinion expressed in that response.

Ref	Comment	Applicant's Response
1) Environment Agency [REP9-033]		
REP9 - 033	A38 DERBY JUNCTIONS - ENVIRONMENT AGENCY REPRESENTATIONS FOR ISSUE SPECIFIC HEARING 5	The Environment Agency has submitted the same document that it submitted at Deadline 8. The Applicant responded to this document in its Deadline 9 submission (document 8.91 Applicant's Responses to Information or Submissions Received by Deadline 8 [REP9-028]).
2) Euro Garages Ltd [REP9-034]		
2.1 A52 Access Junction	<p>1. We are able to accept that the proposed A52 access can be built within either highway or within the existing right of way land. This point is now resolved.</p> <p>2. We are now been informed by the Applicant that Derby City Council, as highway authority for the A52 and the access, does not oppose the principle of the signalised A52 access. However, it is far from clear whether Derby City Council have reviewed and appreciated the detailed implications of this design particularly in light of the Safety Audit review prepared for EGL as well as the potential ongoing maintenance costs of this design.</p> <p>3. SCP has reviewed the work from McDonalds consultant in relation to the capacity of the A52 junction and would agree that based upon the analysis that the junction 'just about works'. There is a concern regarding queues on the egress arm from the site onto the A52 but given the standard methodology which uses a mean maximum queue length the junction would function. This does, of course, mean that the queues will exceed those</p>	<p>1. Noted and agreed.</p> <p>2. DCiC is a consultee during the detailed design process and the access design will be optimised during this process with safety being a key consideration. Euro Garages (and McDonald's) will be a part of the consultation process.</p> <p>3. Noted. As with any signalised junction, the signal phasing will be adjusted and optimised during the commissioning phase to take account of actual, not modelled, traffic flows.</p> <p>4. At the end of the detailed design stage, in accordance with Highways England's PCF process, the design will undergo a Stage 2 Road Safety Audit in which all of the concerns raised by Euro Garages will be considered along with any new issues raised by the independent auditors. All issues raised will need to be properly addressed before the scheme is allowed to enter the next PCF Stage (which will be the construction stage).</p>

Ref	Comment	Applicant's Response
	<p>predicted for half the cycle time. However, it should be borne in mind that the egress onto the A38 will be available if there is a perceived capacity problem onto the A52.</p> <p>4. The Safety Audit review, commissioned by EGL has been prepared by a suitably qualified Auditor who is totally independent of the design process and casts serious doubt about the detail of the proposed access into EGL land in terms of the sub standard nature of the left turn radius into the site and the associated risks of misjudgement and the like together with concerns in relation to the non motorised users of the junction. The Safety Audit review included an appraisal of the RSA extract provided by the Applicant and it is important to note that the information provided by the Applicant was very limited and did not fully consider the potential safety implications of the proposed A52 junction. It is recommended that the Applicant be requested to verify, in writing, that the proposed junction is considered to be suitable and safe for all users of the junction.</p> <p>5. It should also be noted that the approach to the A52 junction undertaken by the applicant is clearly different to the approach taken in respect of the A38 ingress where a Technical Note (TN) was produced by the Applicant to justify the 'no support for an ingress off the A38'. The contents of the TN are noted together with the degree of concern in relation to the designer potentially being required to 'justify the engineering decisions in front of a</p>	<p>The issues raised by Euro Garage's commissioned safety audit were commented on in the Applicant's responses to the Deadline 6 submissions [REP7-007].</p> <p>5, 6, 7: Whilst safety is paramount in the design process and all of the design will be subject of an independent safety audit, the approach taken for the access with the A38 slip road differs from that for the A52 access as it involves introducing a feature (i.e. an access/egress with a slip road) that is specifically precluded by current design Standards hence would require acceptance of a Departure from Standards. The situation with the A52 access is that the design is generally dictated by the physical constraints of the site.</p> <p>As noted in the Applicant's responses to the Deadline 6 submissions [REP7-007], the layout proposed by the Scheme is very similar 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>Swept path analyses has been carried out which demonstrate that HGVs (both rigid and articulated) are able to safely negotiate the entry.</p>

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	<p>Coroner's Court' and a potential liability being placed upon highways England. This approach is clearly at odds with approach being taken in respect of the A52 junction. It is difficult to understand the differential approach being taken between the two accesses.</p> <p>6. It is important to remember that the A52 ingress will be the only ingress to the site (ie for EGL and McDonalds) and will carry a significant amount of traffic on a daily basis including HGV's to both sites and the full oil tanker to supply EGL. The 3.5m radii is well below the normally accepted radii at a junction onto an A classified road and in order to access EGL site there is a need to perform a U turn manoeuvre. As such the manoeuvre into the EGL will need to be conducted precisely and at a very slow speed which could be at odds with other vehicles accelerating away from the stop lines at the junctions. It is also questionable whether the tightness of the left turn will be perceived by drivers at a sufficiently early stage in the manoeuvre to order to avoid the need for sudden braking which would be to the detriment of highway safety on the A52. Does the Applicant have any plans to provide any warning signs on the A52 to warn of the tight nature of the turn into the site?.</p> <p>7. It is however not possible to agree the layout of the A52 junction because all the evidence points towards there being safety issues at the junction in the future. The safety concerns associated with the A52 access are still unresolved.</p>	

Ref	Comment	Applicant's Response
<p>2.2 A38 Ingress</p>	<p>2. A38 Ingress</p> <p>1. It is noted that the Applicant will not support retention of an ingress into the overall site from the A38. The in principle objection raised by Highways England to the ingress is noted.</p> <p>2. The consequences of removal of the ingress from the A38 have not however been addressed because the right of way currently enjoyed by EGL will be frustrated. Additionally, the scheme includes locating additional parking spaces for McDonalds onto the right of way. This point needs to be tidied up by the Applicant.</p> <p>3. The McDonalds delivery / refuse manoeuvres will no longer be able to take place from the A38 and will have to pass through the existing car park using the sub standard A52 access. The swept path of the delivery vehicle illustrates that the vehicle will need to pass onto EGL land in order to make the manoeuvre. No allowance for this new right has been made in the DCO. It is not considered appropriate to rely upon McDonalds and EGL to have to come to an arrangement on this matter. This point needs to be clarified by the Applicant.</p>	<p>1. Noted.</p> <p>2. Note that the sketch proposal by the Applicant is a suggested use for the land which is owned by McDonald's and currently used as the ingress but will become redundant under the scheme proposals. It will be for McDonald's to decide whether they want to use the land in this way. The inclusion of the additional parking spaces would have no impact on the of operation Euro Garages' business following the completion of the works. As the land is not being acquired by Highways England and the current ownership/ interests will not be affected it would be for McDonald's and Euro Garages (not for Highways England through the DCO process) to agree whether they wish to amend the rights that currently exist over this piece of land.</p> <p>3. Swept path analyses have been carried out that demonstrate that HGVs (both rigid and articulated) can safely negotiate the entry from the A52. It should be noted that currently McDonald's delivery vehicles entering from the A38 encroach on to EGL's land in order to position themselves before reversing into their delivery bay. Under the Scheme proposals a similar encroachment would need to be made. Any agreement (formal or informal) that exists between McDonald's and Euro Garages for this would not be impacted by the Scheme.</p>
<p>2.3 A38 Egress</p>	<p>1. We have just received confirmation that the A38 egress proposed by the Applicant is acceptable to the regulatory arm of the HE. It is assumed that the applicant</p>	<p>Noted – a copy of the referenced email can be provided to the ExA if required.</p>

Ref	Comment	Applicant's Response
	will submit the email to the Inspector and on that basis this point is now resolved	
2.4 Advanced Warning Signage	1. We have submitted a note concerning signage to the applicant and await a response from the Applicant. There does appear to be a disconnect between the Applicant and the regulatory parts of HE and therefore approval of the requested signage cannot be taken for granted. This is still an outstanding issue.	HE is discussing the provision of signage internally.
2.5	<p>In summary, progress has been made where possible to reduce the outstanding issues and these can be reflected in a revision to the SoCG. However, there remains a material concern in respect of the safety aspects associated with the A52 access and includes the lack of agreement to date of the provision of advance warning signage of the trunk road. a definitive written response on this point is still required from the Applicant.</p> <p>The above provides a summary of the issues previously discussed and trust that this clarifies the position of EGL on this matter.</p>	Noted
3) Anne Morgan [REP9-044 & 045]		
3.1	<p>Mundy covenant</p> <p>Here is a map showing the extent of Markeaton Park at the time the restrictive covenant was set up.</p> <p>The dual carriageway Queensway is superimposed over the covenanted land.</p>	<p>No separate comment from HE is needed.</p> <p>Refer to the HE responses provided below to comments from the Friends of Markeaton Park.</p>

Ref	Comment	Applicant's Response
	<p>The map was prepared by Derby City Council February 2010 to support the bid to the Heritage Lottery Fund.</p> <p>BLANK author of history books on Markeaton, brought BLANK to meetings of Friends of Markeaton Brook and to the founding meetings of Friends of Markeaton Park fifteen years ago. I was privileged to be invited to the Stones to pore over maps with BLANK.</p> <p>May I discuss my limited knowledge with the Examiner by private email? before representing Friends of Markeaton Park in public?</p>	
	1 map and 4 photos provided and commentary.	-
4) Mair Bain [REP9-043]		
4.1	<p>8.2 Derby Climate Coalition - 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> <p>8.2 – This issue is not about economic benefits when compared to other road schemes. It is the how the Applicant and Department for Transport determine what is valuable and beneficial. In this Road Investment Strategy: Economic analysis of the investment plan document dated March 2015, it explains how the cost-benefit ratios for road schemes are calculated. These do</p>	<p>This statement is not correct. The transport economic evaluations are calculated in accordance with the Department of Transport's appraisal guidance. This guidance includes a method of monetising the impacts of greenhouse gas emissions, which (detrimental) value is then included within (deducted from) the net present value of the transport scheme. Greenhouse gas emissions <u>are</u> one of the environmental impacts that are expressed in monetary terms.</p> <p>It may also be argued that that the monetised value assigned to each tonne of CO_{2e} is undervalued by the DfT's appraisal guidance. However, the Present Value of Benefits of the A38 Derby Junctions improvement is £391million (<u>after</u> subtracting the £6.7million detrimental greenhouse</p>

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	<p>not account for the costs of climate change from further green house gas emissions.</p> <p><i>"2.7 Whilst the appraisal process allows some impacts to be expressed in monetary terms, this is not possible for all impacts. These 'nonmonetised' impacts can be significant. The Department's Value for Money (VfM) process is designed to ensure these impacts are taken into account. Figure 2.2 shows a summary of these impacts for those schemes where an assessment of non-monetised impacts has been completed. This chart provides an indication of the potential impacts, though it should be noted that the assessment in some cases has not yet been completed. The figures above each of the columns represents the number of schemes for which each of the impacts have been assessed."</i></p> <p><i>"2.12 Further monetisation of some of the environmental impacts would be likely to reduce the BCRs. A further factor which could influence impacts is the use of a new design panel for sensitive major schemes and a greater commitment to the landscape and aesthetic impact of schemes and tighter environmental standards. This may reduce the environmental impacts, but might have some impact on scheme costs. It will also raise some challenges around monetisation for these factors. The appraisal for these schemes will continue to be updated as the schemes develop. It is possible that some of these major schemes will as a result of further analysis of the economic, strategic and delivery</i></p>	<p>gas carbon value). Refer to [REP1-005] and the Applicant's response to question 10.26. Thus, the economic benefits of this transport scheme are significantly greater than the detrimental impact of greenhouse gas emissions.</p> <p>Refer to Highways England's response to Friends of the Earth Q53 (Ref. 7.4) for comment regarding the Paris Agreement.</p>

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	<p><i>cases be found to not be justified. In which case they would not be pursued and Highways England would have to explore other means of tackling the identified problems"</i></p> <p>So 2.7 shows that environmental factors have not been fully taken into account when calculating the CBR of the A38 junction works. There is no mention of the Paris Agreement, carbon budgets or future risks from climate change in these. 2.12 also highlights that these are subject to change. The UK has declared a climate emergency and committed to net zero by 2050.</p> <p>Highways England should conduct an updated economic benefits analysis that considers the latest climate and environmental policy. If they do this, it is likely that the scheme cannot be justified.</p> <p>If the applicant (Highways England) are unaware of the predicted economic impacts of climate change then here is a report by the McKinsey Global Institute and one by J.P. Morgan that I would urge them to read. When making any economic assessments, the costs of climate change cannot be ignored.</p>	
4.1	<p>9.2 a) Does the Applicant's approach to carbon emissions adequately consider the Government's updated target for net zero carbon by 2050 (Climate</p>	<p>The Applicant's approach to carbon emissions has used the Department for Transport's current appraisal guidance.</p>

Ref	Comment	Applicant's Response
	<p>Change Act 2008 (2050 Target Amendment) Order 2019)?</p> <p>I again wish to draw attention to this Road Investment Strategy: Economic analysis of the investment plan document and 2.12. "..... <i>It is possible that some of these major schemes will as a result of further analysis of the economic, strategic and delivery cases be found to not be justified. In which case they would not be pursued and Highways England would have to explore other means of tackling the identified problems</i>"</p> <p>Plans for a third runway at Heathrow airport have been ruled illegal by the court of appeal because ministers did not adequately take into account the government's commitments to tackle the climate crisis. This has set a precedent and the whole road investment strategy and A38 junction scheme urgently needs reviewing. The assessments were done in a pre-climate crisis era. They don't take into account the UK's commitment to Net Zero emissions.</p>	<p>The Scheme was confirmed as a priority by the Government on 11 March with its inclusion in the RIS2 announcement, and as such Highways England is expected to work towards delivering it in the next RIS period.</p>
4.3	<p>9.4 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?</p> <p>9.4 a) I wish to ask if Highways England (the Applicant) and the Department for Transport fully grasp the severity</p>	<p>Highways England is not in a position to comment on wider political issues, but Highways England is a government-owned company and has a role to play in tackling issues associated with climate change. As indicated in the document Climate Adaptation Risk Assessment Progress Update – 2016, Highways England "<i>recognise that we all have an important part to play in minimising the causes and</i></p>

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	<p>of the climate emergency and the urgent need to cut greenhouse gas emissions?</p>	<p><i>managing the risks associated with a changing climate. With this in mind, our report focuses on our climate resilience. That is, how we are changing the way we do things and the decisions we make to prepare for the potential effects of climate change”.</i></p> <p>Given the above, HE is committed to reducing the operational emissions of the road network at a national scale, as well as on an individual infrastructure project scale and to playing a part in the UK meeting the net zero target by 2050. HE 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. HE 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 HE programmes which are being assessed and managed across the strategic road transport network and estate will substantially decrease operational emissions. Highways England monitors greenhouse gases generated by the company and our supply chain. Performance Indicators for carbon 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>

Ref	Comment	Applicant's Response
		<p>With specific regard to the Scheme, ES Chapter 14: Climate [APP-052] presents a range of greenhouse gas mitigation measures – these are also detailed in the OEMP [REP9-019]. During the development of the Scheme detailed design HE 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>
4.4	<p>Do they know what life will look like in 2050 If projects like the A38 junctions and other out of date development schemes continue without considering the latest climate science and policy?</p>	<p>The environmental assessment as reported in the Environmental Statement (ES) has made reference to the latest climate change guidance.</p> <p>ES Chapter 14: Climate [APP-052] concluded that carbon emissions are not deemed to be significant in the context of the current UK carbon budgets. The assessment demonstrates that the Scheme's greenhouse gas (GHG) impact as a proportion of total UK carbon emissions is negligible, such that it can be considered to be immaterial. In such circumstances, Highways England has considered GHG emissions from the Scheme in the context of the UK's new net zero target set in 2019 and 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>
4.5	<p>Many of the people involved in this planning process will be parents or grandparents. I wish all them to read this extract from "The Future We Choose" and reflect on how</p>	<p>No comment from HE needed.</p>

Ref	Comment	Applicant's Response
	<p>their present actions and decisions will impact on future generations.</p> <p><i>"It is 2050. Beyond the emissions reductions registered in 2015, no further efforts were made to control emissions. We are heading for a world that will be more than 3C warmer by 2100</i></p> <p><i>The first thing that hits you is the air. In many places around the world, the air is hot, heavy and, depending on the day, clogged with particulate pollution. Your eyes often water. Your cough never seems to disappear. You think about some countries in Asia, where, out of consideration, sick people used to wear white masks to protect others from airborne infection. Now you often wear a mask to protect yourself from air pollution. You can no longer simply walk out your front door and breathe fresh air: there might not be any. Instead, before opening doors or windows in the morning, you check your phone to see what the air quality will be.</i></p> <p><i>Fewer people work outdoors and even indoors the air can taste slightly acidic, sometimes making you feel nauseated. The last coal furnaces closed 10 years ago, but that hasn't made much difference in air quality around the world because you are still breathing dangerous exhaust fumes from millions of cars and buses everywhere. Our world is getting hotter. Over the next two decades, projections tell us that temperatures in</i></p>	

Ref	Comment	Applicant's Response
	<p><i>some areas of the globe will rise even higher, an irreversible development now utterly beyond our control. Oceans, forests, plants, trees and soil had for many years absorbed half the carbon dioxide we spewed out. Now there are few forests left, most of them either logged or consumed by wildfire, and the permafrost is belching greenhouse gases into an already overburdened atmosphere. The increasing heat of the Earth is suffocating us and in five to 10 years, vast swaths of the planet will be increasingly inhospitable to humans. We don't know how hospitable the arid regions of Australia, South Africa and the western United States will be by 2100. No one knows what the future holds for their children and grandchildren: tipping point after tipping point is being reached, casting doubt on the form of future civilisation. Some say that humans will be cast to the winds again, gathering in small tribes, hunkered down and living on whatever patch of land might sustain them.</i></p> <p><i>More moisture in the air and higher sea surface temperatures have caused a surge in extreme hurricanes and tropical storms. Recently, coastal cities in Bangladesh, Mexico, the United States and elsewhere have suffered brutal infrastructure destruction and extreme flooding, killing many thousands and displacing millions. This happens with increasing frequency now. Every day, because of rising water levels, some part of the world must evacuate to higher ground. Every day, the news shows images of mothers with babies strapped to</i></p>	

Ref	Comment	Applicant's Response
	<p><i>their backs, wading through floodwaters and homes ripped apart by vicious currents that resemble mountain rivers. News stories tell of people living in houses with water up to their ankles because they have nowhere else to go, their children coughing and wheezing because of the mould growing in their beds, insurance companies declaring bankruptcy, leaving survivors without resources to rebuild their lives. Contaminated water supplies, sea salt intrusions and agricultural runoff are the order of the day. Because multiple disasters are often happening simultaneously, it can take weeks or even months for basic food and water relief to reach areas pummelled by extreme floods. Diseases such as malaria, dengue, cholera, respiratory illnesses and malnutrition are rampant.</i></p> <p><i>You try not to think about the 2 billion people who live in the hottest parts of the world, where, for upwards of 45 days per year, temperatures skyrocket to 60C (140F), a point at which the human body cannot be outside for longer than about six hours because it loses the ability to cool itself down. Places such as central India are becoming increasingly challenging to inhabit. Mass migrations to less hot rural areas are beset by a host of refugee problems, civil unrest and bloodshed over diminished water availability.</i></p> <p><i>Food production swings wildly from month to month, season to season, depending on where you live. More</i></p>	

Ref	Comment	Applicant's Response
	<p><i>people are starving than ever before. Climate zones have shifted, so some new areas have become available for agriculture (Alaska, the Arctic), while others have dried up (Mexico, California). Still others are unstable because of the extreme heat, never mind flooding, wildfire and tornadoes. This makes the food supply in general highly unpredictable. Global trade has slowed as countries seek to hold on to their own resources.</i></p> <p><i>Countries with enough food are resolute about holding on to it. As a result, food riots, coups and civil wars are throwing the world's most vulnerable from the frying pan into the fire. As developed countries seek to seal their borders from mass migration, they too feel the consequences. Most countries' armies are now just highly militarised border patrols. Some countries are letting people in, but only under conditions approaching indentured servitude.</i></p> <p><i>Those living within stable countries may be physically safe, yes, but the psychological toll is mounting. With each new tipping point passed, they feel hope slipping away. There is no chance of stopping the runaway warming of our planet and no doubt we are slowly but surely heading towards some kind of collapse. And not just because it's too hot. Melting permafrost is also releasing ancient microbes that today's humans have never been exposed to and, as a result, have no resistance to. Diseases spread by mosquitoes and ticks</i></p>	

Ref	Comment	Applicant's Response
	<p><i>are rampant as these species flourish in the changed climate, spreading to previously safe parts of the planet, increasingly overwhelming us. Worse still, the public health crisis of antibiotic resistance has only intensified as the population has grown denser in inhabitable areas and temperatures continue to rise.</i></p> <p><i>The demise of the human species is being discussed more and more. For many, the only uncertainty is how long we'll last, how many more generations will see the light of day. Suicides are the most obvious manifestation of the prevailing despair, but there are other indications: a sense of bottomless loss, unbearable guilt and fierce resentment at previous generations who didn't do what was necessary to ward off this unstoppable calamity.</i></p> <p>This is an edited extract from <i>The Future We Choose: Surviving the Climate Crisis</i> by Christiana Figueres and Tom Rivett-Carnac, published by Manilla Press.</p>	
4.6	<p>No amount of mitigation can substitute simply not proceeding with the A38 junctions scheme with regard to carbon emissions. It is not just the carbon from the construction phase but that transport infrastructure for fossil fuel powered cars is still being considered. The department of transport needs to review its whole road investment strategy and focus on decarbonised transport.</p>	<p>Refer to the response to Ref. 4.4 above which confirms that greenhouse gas (GHG) emissions associated with the Scheme are not assessed to be significant in the context of the current UK carbon budgets and that the Scheme's GHG impact as a proportion of total UK carbon emissions is negligible, such that it can be considered to be immaterial (refer to ES Chapter 14: Climate [APP-052] for details).</p>

Ref	Comment	Applicant's Response
		<p>Reference should be made to para 5.18 of the National Policy Statement for National Networks (NPS NN) which states: <i>"Therefore, any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets"</i>.</p> <p>The carbon assessment undertaken for the Scheme indicates that the Scheme will not have material impact on the ability of Government to meet its carbon reduction targets (which it is legally required to achieve).</p> <p>It should be noted that transport infrastructure developments are still needed regardless of the transport fleet's transition from fossil fuels to electric vehicles.</p>
4.7	<p>A policy prescription for slow, steady carbon reduction that might have been sufficient 25 years ago is no longer fit for purpose. Because we have left it so late to tackle carbon emissions from transport, we now have to take urgent action. Climate scientists are warning that the carbon targets set by the Committee on Climate Change are too lax and that we need to reach net zero emissions much sooner. But there is an almost total policy disconnect between the advice of these climate scientists and the thinking of the transport policy community, which is working on the relatively comfortable assumption - because it seems so distant - that we have until 2050 to get transport carbon emissions down to zero.</p>	<p>Refer to response Ref. 4.4 above regarding the carbon impact of the Scheme.</p>

Ref	Comment	Applicant's Response
4.8	The current Department for Transport carbon strategy is focused on electrifying the vehicle fleet, while still allowing traffic volumes to grow, building roads and expanding airport capacity. But if only 50% of new car sales are electric by 2030 (which is the government's current aim), car mileage will have to be cut by as much as 60% in order for emissions reductions to stay on track. And even if all new car sales are electric by 2030, it will still be necessary for car mileage to be at least 20% lower in 2030 than now (and possibly more than this), in order for our emissions to stay within a fair carbon budget.	No response needed from HE as not specific to the Scheme.
4.9	The carbon arithmetic is inescapable. It means that we must instigate a rapid transformation of our transport system to reduce car use, as well as achieving a faster transition from petrol and diesel to electric cars and significantly cutting aviation emissions.	No response needed from HE as not specific to the Scheme.
4.10	Road transport accounts for 91% of the UK's domestic transport emissions. So encouraging traffic growth whilst waiting for fantasy techno fixes is clearly going to lead to a car crash in terms of climate change. Research by Transport for Quality of Life for Friends of the Earth shows that even accepting the most optimistic forecasts for new electric car sales (100% market share by 2030), we would still need 20% traffic reduction to reach net-zero by 2050. Which shows we do not need bigger roads.	No response needed from HE as not specific to the Scheme.
4.11	9.4 b) Has enough support been given to other transport modes and behavioural change?	No response needed from HE as not specific to the Scheme. Local transportation actions and initiatives are for DCiC to consider.

Ref	Comment	Applicant's Response
	<p>9.4 b) At Derbyshire City Council's event, "Tackling Climate Change Together", Adam Jones explained how his company LiftShare has helped local authorities and large organisations all over the UK reduce congestion, green house emissions and air pollution through ride share schemes.</p> <p>LiftShare already have some data on the daily commute journeys happening through Derby City. They could do a much larger scoping report of journey routes and suggest more sustainable travel options. They are also willing to share this information with local bus operators so bus routes can be adapted to journey demands.</p> <p>Derby City is performing poorly on air quality (according to Client Earth https://www.clientearth.org/press/lawyers-issue-legal-risk-warning-over-council-air-pollution-inaction/) and this urgently needs to be addressed. Ride sharing could be one quick and low cost method to tackling this and result in the cancellation of the A38 junction scheme. I have emailed both Adam Jones and Councillor Matthew Holmes on 13 March 2020 regarding this but have received no reply yet (as of 25 March 2020).</p>	<p>Highways England understands that DCiC is implementing a range a methods to improve air quality within the city, this includes implementing traffic management measures to reduce traffic flows and improve air quality in Stafford Street as part of their Air Quality Action Plan. Stafford Street in the city centre currently has the highest NO₂ concentrations in Derby. As illustrated in ES Chapter 5: Air Quality [APP-043], operation of the Scheme is expected to result in improvements in air quality in Stafford Street.</p>
4.12	<p>9.4 c) Has enough consideration been given to the climate change with respect to the loss of mature trees and the planting of new trees?</p> <p>9.4 c) This is an additional question. Has Highways England (the Applicant) calculated the carbon capture</p>	<p>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]. It is acknowledged that newly planted trees will take time before they are able to take up as much carbon dioxide as mature trees. This has</p>

Ref	Comment	Applicant's Response
	and biodiversity benefits of mature trees versus planting of saplings? While also factoring in the predicted survival rates of saplings to mature trees?	been taken into account by the carbon impact assessment (as reported in ES Chapter 14: Climate [APP-052]) which assumes a worst case (i.e. the sequestration value of the planted trees always assumes saplings).
5) Derby Climate Coalition [REP9-039 & 040]		
5.1	<p>8.2 Derby Climate Coalition - 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> <p>There is a lack of robust empirical evidence on the economic benefits of road schemes Highways England's own meta-analysis of major road projects¹ could only find "anecdotal evidence" that these had provided local and regional economic benefits through congestion reduction and improved journey times. Contrary to their claim that 21 of the road schemes included in the meta-analysis which had a specific objective relating to 'stimulating the economy' had achieved their objective, this has been questioned by an independent review for CPRE which found little or weak empirical evidence for economic benefits.² This review found that out of 25 road schemes that had an objective relating to stimulus of the local or regional economy:</p> <ul style="list-style-type: none"> · Eight had no evidence presented to enable a judgement to be made about the economic impact of the scheme. 	<p>Refer to the Applicant's response to First Written Question 2.4 [REP1-005].</p> <p>Supplementary appraisal was not undertaken. This Scheme will be very good value for money without needing to claim the reliability benefits that will accrue to businesses and without needing to claim the additional wider economic benefits of local and regional development.</p>

Ref	Comment	Applicant's Response
	<ul style="list-style-type: none"> · Three schemes had weak negative evidence (i.e. suggesting that the scheme had actually resulted in a disbenefit to the local economy). · Three schemes relied on weak indirect evidence of a decrease in journey times to argue that an economic benefit could be inferred. · Six schemes had weak evidence that the scheme might have benefitted the local economy, typically anecdotal. <p>Five had moderate evidence of a relationship between economic development and the scheme. However, even this was questionable, and in some cases was as likely to suck money out of the local area as to bring it in.</p> <p>The CPRE study concluded that <i>“The evidence is considerably weaker than it is made to appear, and the most plausible meta-level conclusion would be that the economic impacts of road building are uncertain, and may be either positive or negative. That is, from the empirical evidence gathered by the POPE process over the last 15 years, it is far from proven that road schemes have an immediate impact in stimulating the local economy.”</i></p> <p>The CPRE study also looked at the academic literature for evidence. There is only one study that provides any evidence that road schemes have a positive effect on employment levels and even then the study noted that it was impossible to determine whether the jobs were truly ‘additional’, or whether they were simply a result of firm re-location.³ Other than this there is very little robust</p>	

Ref	Comment	Applicant's Response
	<p>evidence on the economic impacts of road projects. The What Works Centre for Local Economic Growth reviewed around 2,300 evaluations of the local economic impact of transport projects from the UK and other OECD countries, and found only 17 robust studies of the effect of road schemes on the local economy.⁴ The main findings of the review were:</p> <ul style="list-style-type: none"> - Roads can positively impact local employment. But effects are not always positive and a majority of evaluations show no (or mixed) effects on employment. - Road schemes may increase firm entry, although not necessarily the overall number of businesses (as new entrants may displace existing firms). <p>A blog by Dr Steve Melia of University of West England⁵, based on a longer article⁶, also challenges the prevailing view that roads creates economic growth citing a lack of evidence. He concludes:</p> <p>“Transport will never be the main driver of economic growth; its role is facilitative. Instead of pursuing illusory economic benefits, policy-makers should ask: What sort of society do we want? What sort of economy should serve it? And then: What sort of transport system should serve both?”</p> <p>The purported time savings of road schemes often do not materialise Further, most of the purported ‘benefits’ of the A38 widening are based on the predicted time savings for drivers – which in turn is based on miniscule time savings for individual drivers multiplied by millions of drivers over</p>	

Ref	Comment	Applicant's Response
	<p>decades. And yet, based on almost a hundred years of evidence that building roads creates more traffic⁷, such time savings are more than likely to disappear within a few years and the forecast benefits will not materialise. For example the SACTRA report on Trunk Roads and the Generation of Traffic⁸ suggested that the average road improvement would see an additional 10% of base traffic in the short term.</p> <p>In conclusion, there is NOT sufficient evidence to support the claim that this road scheme will bring economic benefit.</p>	
5.2	<p>9.1 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>I would like to point out that both DCC and DCiC have Local Transport Plans that were published in 2011 covering the period up to March 2026.</p> <p>DCiC declared a Climate Emergency in May 2019 but have not yet revised their Climate Change Strategy (produced in July 2015) or their Local Transport Plan to be in line with the government's 2050 target.</p> <p>In their 2015 Climate strategy DCiC identified Smarter travel options as a major theme. One action was to Work in partnership to invest and implement sustainable transport infrastructure and initiatives across the city.</p>	<p>Noted.</p> <p>Regarding the last paragraph, Erewash Borough Council is not a local highway authority. The Local Transport Plan for Erewash is managed by Derbyshire County Council as the responsible highway authority.</p>

Ref	Comment	Applicant's Response
	<p>In our view more work needs to be done in this area. The intention is to decrease the number of vehicles using the A38. It has been said that 55% of the vehicle use on the related sections of A38 around Derby is for local traffic. If DCiC were successful in implementing their alternative policies the load on the A38 would be decreased, making the case for this scheme even weaker.</p> <p>DCC, having failed to declare a Climate Emergency last May, have published a target to become carbon neutral by 2032. However, they have also failed to revise their Local Transport Plan published in 2011. So, both councils are working to outdated guidelines.</p> <p>Erewash Borough Council does not have a policy on the Climate Emergency and doesn't appear to have a Transport Policy.</p>	
5.3	<p>9.2 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>HE has stated in their response to ISH4 submissions: - ['The Green Book' is guidance issued by HM Treasury on how to appraise policies, programmes and projects and manage public money. The Green Book sets out the parameters and methods to be used. The DfT's transport appraisal guidance (TAG) follows this HM Treasury guidance.]</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. 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 given to 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>

Ref	Comment	Applicant's Response
	<p>In the TAG Section 4 Greenhouse Gases 4.1.2 says 'In June 2011, the fourth Carbon Budget was announced, amounting to an emissions cut of 50% on 1990 levels over the years 2023-2027. Further carbon budget periods may be announced in the future. Each sector must play its part in taking action to achieve these budgets.'</p> <p>Furthermore, the governments commitment to reach net zero carbon emissions by 2050, made in June last year, should require the 4th Carbon Budget to be even more ambitious.</p> <p>I can find no evidence that HE has considered how this scheme is going to help achieve a 50% cut on 1990 levels over the years 2023-2027 let alone a bigger cut to meet net zero by 2050. Their approach to carbon emissions is mainly to minimise emissions during construction, so does not adequately consider the government's 2050 net zero target.</p>	<p>The carbon assessment undertaken for the Scheme indicates that the Scheme will not have material impact on the ability of Government to meet its carbon reduction targets. Further, as detailed in Highways England's response to Derby & South Derbyshire Friends of the Earth Q38 in [REP9-028], 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. On this basis the <u>combined</u> CO₂e impact of the RIS1 schemes will not compromise UK's ability to meet its carbon reduction targets.</p>
5.4	<p>9.2 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>DCiC declared a Climate Emergency in May 2019 but have yet to come up with an Action Plan to reduce their greenhouse gas emissions in line with the government's 2050 target. The emergency declaration prioritises the reduction of greenhouse gas emissions yet surprisingly,</p>	<p>No response needed from HE as the comments refer to the policies of DCiC, DCC and EBC.</p>

Ref	Comment	Applicant's Response
	<p>in relationship to the A38 scheme, we cannot see any reference by DCiC to the increase in emissions, both in construction and caused by vehicles.</p> <p>Without a relevant and up-to-date policy, we are unsure whether DCiC can make an informed opinion on this question.</p> <p>DCC, having failed to declare a Climate Emergency last May, have published a target to become carbon neutral by 2032. However, this target is only for the Council to reduce emissions from its own operations to net zero. Although DCC claim to be 'Using its influence and role as a community leader to work with partners, businesses and communities to tackle climate change through a common framework for action across the county', it seems to be failing to use its influence in the field of surface transport by supporting this road scheme.</p> <p>Erewash Borough Council does not have a policy on the Climate Emergency and doesn't appear to have a Transport Policy.</p>	
5.5	<p>9.4 c) Has enough consideration been given to the climate change with respect to the loss of mature trees and the planting of new trees?</p> <p>Mature trees not only sequester a lot of carbon but are critical resources for biodiversity. The ecosystem that they support has taken decades to develop and cannot be replaced by planting young trees.</p>	<p>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]. It is acknowledged that newly planted trees will take time before they are able to take up as much carbon dioxide as mature trees. This has been taken into account by the carbon impact assessment (as reported in ES Chapter 14: Climate [APP-052]) which</p>

Ref	Comment	Applicant's Response
	<p>So, in response to this question I would like to you to consider the Submission on Biodiversity that I was prevented from giving at the ISH4 due to lack of time: -</p>	<p>assumes a worst case (i.e. the sequestration value of the planted trees always assumes saplings). A full assessment of the Scheme effects on ecology and biodiversity is provided in ES Chapter 8: Biodiversity [APP-046]. The assessment has taken into account the time taken for mitigation planting to establish.</p>
5.6	<p>Biodiversity</p> <p>The emergency that we face as a race is not just about climate – it is a Climate and Ecological Emergency.</p> <p>The UK is the most nature depleted country in the world – we have systematically eaten away at natural habitats</p> <ul style="list-style-type: none"> • We cover front gardens with hard-standing for cars • We cut down trees because they make a mess • Our industrial agriculture has produced a landscape that is predominantly made up of monocultures • We ‘manage’ large areas of land to suit people’s fishing, hunting and shooting hobbies. • Our gardens are dominated by manicured lawns – again an un-natural monoculture • AND WE BUILD UNNECESSARY ROADS AT THE EXPENSE OF NATURAL HABITATS 	<p>The comment made is outside of the scope of the DCO application. With regard to the point about building unnecessary roads at the expenses of natural habitats, Highways England would draw attention to the following significant benefits that the Scheme would deliver including (but not limited to):</p> <ul style="list-style-type: none"> • Separation of conflicting local and strategic traffic movements; • Addressing a significant problem of traffic congestion; • Building capacity into the network; • Contribution to supporting growth in Derby and the surrounding areas; • Journey time benefits which would see time saving derived from grade separation accumulated across all three junctions that would improve the average journey time for all vehicles travelling through on the A38 trunk road; • New pedestrian and/or cycle links; • Improvements in traffic safety for all users including vehicles, cyclists and local residents.

Ref	Comment	Applicant's Response
		<p>In order to assess the Scheme effects on ecology and biodiversity, extensive ecology surveys have been undertaken – refer to ES Appendix 8.3a [APP-180] to Appendix 8.15 [APP-212]. This includes surveys associated with botanical and river habitats, great crested newts, reptiles, barn owls, breeding and wintering birds, bats, badger, water vole and otter, white clawed crayfish, and terrestrial and aquatic invertebrates. With the baseline information collated, the Scheme ecologists have integrated a wide range of mitigation measures into the Scheme design – these are illustrated in the Environmental Masterplans (ES Figures 2.12A and 2.12H) [APP-068]. Such mitigation measures have been defined in consultation with key ecology stakeholders, including the local authorities, Natural England, the Environment Agency and Derbyshire Wildlife Trust. Taking into account the defined mitigation strategy, ES Chapter 8: Biodiversity [APP-046] provides details of the Scheme effects during both construction and operation. This chapter reports a moderate adverse significant effect (at the County or Unitary Authority scale) on the A38 Kingsway Roundabout Local Wildlife Site (LWS) due to complete permanent loss of this LWS. However, there is potential for there to be up to a moderate beneficial significant effect (at the County or Unitary Authority scale) on biodiversity in the medium to long term; particularly on standing water (ponds), running water, foraging and commuting bats, otter, terrestrial invertebrates, aquatic invertebrates and fish.</p>

Ref	Comment	Applicant's Response
		<p>It is noted that ecology survey techniques, mitigation measures and impact assessment findings with regard to statutory designated sites, protected habitats and species (where applicable) were all considered during the EIA scoping process and are all agreed with Natural England as detailed in the signed SoCG [REP1-009].</p>
5.7	<p>IPBES Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services Says:-</p> <ul style="list-style-type: none"> • The biosphere, upon which humanity as a whole depends, is being altered to an unparalleled degree across all spatial scales. Biodiversity – the diversity within species, between species and of ecosystems – is declining faster than at any time in human history. • More than 75 % of global food crop types, including fruits and vegetables and some of the most important cash crops, such as coffee, cocoa and almonds, rely on animal pollination. • Marine and terrestrial ecosystems are the sole sinks for anthropogenic carbon emissions, with a gross sequestration of 5.6 gigatons of carbon per year. • Nature across most of the globe has now been significantly altered by multiple human drivers, with the great majority of indicators of ecosystems and biodiversity showing a rapid decline. • Human actions threaten more species with global extinction now than ever before. 	<p>No response needed from HE as not specific to the Scheme.</p> <p>A discussion of the Scheme impacts upon the veteran oak T358 at Markeaton junction is provided in HE Technical Note [REP7-008]. Also refer to the response provided herein to the response to DCiC comments in Ref. 12.27.</p>

Ref	Comment	Applicant's Response
	<ul style="list-style-type: none"> • The rate of global change in nature during the past 50 years is unprecedented in human history. The direct drivers of change in nature with the largest global impact have been (starting with those with most impact): changes in land and sea use • Economic incentives have generally favoured expanding economic activity, and often environmental harm, over conservation or restoration. <p>The species that are particularly studied (Great crested newts, White-clawed Crayfish, Bats etc.) because they are known to be particularly at risk should not blind us to the overall destruction of natural habitats – for example a veteran oak provides a habitat for 2300 species, of which 320 are found only on oak.</p>	
5.8	<p>We have particular concerns about this scheme on the following ecological grounds:-</p> <ul style="list-style-type: none"> • Otters – experts at Sheffield University are concerned over the effect of the scheme on the local otter population which is known to be expanding in this area. The otter surveys carried out are rather out-of-date and it is known that 'Otters can travel over large areas. Some are known to use 20 kilometres or more of river habitat.' 	<p>Otter surveys undertaken for the Scheme assessment are reported in ES Appendices 8.11a [APP-205] and 8.11b [APP-206], with baseline results shown in ES Figures 8.28 [APP-119] and ES Figure 8.29 [APP-120]. The surveys undertaken conform to industry guidelines and the scope and extent of ecological surveys were confirmed with stakeholders to be appropriate for the ecological impact assessment. As indicated in ES Chapter 8: Biodiversity [APP-046] the Scheme would have neutral (not significant) effect upon otter during the Scheme construction, whilst during the operational phase the Scheme would potentially have a moderate significant benefit for otter in the long term, principally due to enhancement measures proposed for Dam Brook and creation of a net gain in open water</p>

Ref	Comment	Applicant's Response
		<p>channels. Pre-construction otter surveys would be undertaken (as detailed in the OEMP [REP9-019]) prior to construction works starting in order to establish any change in otter distribution and any new holt sites. Any changes identified could thus be considered in order to minimise potential risks of harm to otter during the construction works.</p>
5.9	<ul style="list-style-type: none"> Great crested newts are known to be found in an area just outside the 500m buffer zone – an area that was thought important enough to warrant a special survey 	<p>Extensive surveys for great crested newts were undertaken as reported in ES Appendices 8.6a [APP-187] and ES Appendix 8.6b [APP-188] – such surveys cover ponds within 500m of the Scheme in accordance with guidance and as agreed with ecology stakeholders. A 500m buffer was applied as this represents the likely worst case dispersal range of great crested newts from their breeding ponds (English Nature, 2001), and is widely accepted as an appropriate search area for the species to encompass the worst case potential zone of influence of a particular development. As indicated in ES Chapter 8: Biodiversity [APP-046] no great crested newts were found in any of the ponds surveyed within 500m of the Scheme boundary. As no great crested newts were recorded within 500m of the Scheme, the Scheme will not have any effects upon great crested newts.</p> <p>As detailed in the ES Appendix 8.6a: 2017 Great Crested Newt Survey Report [APP-187], three ponds to the west of the Scheme at Kingsway junction (>900m away) were reported in 2017 to have recent records of great crested newts by Derbyshire Wildlife Trust. Although these ponds</p>

Ref	Comment	Applicant's Response
		<p>were located more than 500m away from the Scheme boundary, they were considered to potentially be ecologically linked to the Scheme by optimum terrestrial habitat. As such, it was considered that if any great crested newts were discovered in ponds within 500m of the Scheme at Kingsway junction they may be part of a wider population. It was therefore considered necessary to gather data on these wider ponds to ensure sufficient information was available to support a Natural England European Protected Species Mitigation Licence application if required. However, as stated above, no great crested newts were found in any of the ponds surveyed within 500m of the Scheme boundary. As no great crested newts were recorded within 500m of the Scheme, the Scheme will not have any effects upon great crested newts.</p> <p>As stated within the OEMP [REP9-019], PW-BIO12 although great crested newts were scoped out of the assessment, preconstruction surveys will be carried out to reaffirm likely absence.</p>
5.10	<ul style="list-style-type: none"> There are 2 established colonies of bats that are going to have their chosen home knocked down and replaced with bats boxes 	<p>An extensive range of bat surveys have been undertaken (bat roost surveys, bat activity, bat trapping and radio tracking) as reported in ES Appendices 8.9a to 8.9f [APP-197] to [APP-202]. The results of the surveys are detailed in ES Figures 8.21 [APP-114] and Figure 8.22 [APP-115], and discussed in ES Chapter 8: Biodiversity [APP-046] – refer to Table 8.13. Taking into account gathered baseline survey data, mitigation measures associated with bats have been defined – refer to ES para. 8.9.10. Mitigation measures are</p>

Ref	Comment	Applicant's Response
		<p>detailed in Table 3.2c in the OEMP [REP9-019]. A draft protected species licence was produced and submitted to Natural England for bats based on the Scheme design and baseline conditions as detailed in Section 8.7 of the ES Chapter 8: Biodiversity [APP-046]. A Letter of No-Impediment was subsequently issued by Natural England and included in ES Appendix 8.9 [APP-216] which provides an agreement in principle on the essential mitigation measures proposed that are applicable to bats.</p> <p>Scheme effects upon bats are detailed in ES Section 8.10 and summarised in ES Appendix 8.20 [APP-217] which indicates that with the mitigation provided, the Scheme would have not significant (neutral) effects upon bats, although there would be potential for a slight beneficial effect in the long term for foraging and commuting bats.</p>
5.11	<ul style="list-style-type: none"> Derbyshire Wildlife Trust have concerns over the outdated Biodiversity Metrics used for the scheme and the inadequate Habitat surveys – meaning that HE are guessing at the mitigation required to leave the project with a biodiversity net gain. 	<p>Highways England has not been “<i>guessing at the mitigation required</i>”. As detailed above, ecological mitigation measures have been defined taking account baseline survey data and in consultation with key ecology stakeholders, including the local authorities, Natural England, the Environment Agency and Derbyshire Wildlife Trust.</p> <p>With regard to the use of a biodiversity metric, reference should be made to HE’s response to ExA question 37 ISH2 [REP3-026]. This issue was also discussed at ISH4 [REP6-018], with the result that it has now been agreed that in order to assist with the design of the Scheme landscaping proposals, and thereafter provide an evidence base for</p>

Ref	Comment	Applicant's Response
		<p>monitoring habitat management during the Scheme construction phase, the OEMP [REP9-019] at D-B31 (in Table 3.2c) commits to the "Use of a biodiversity metric to assist with the detailed design of the Scheme landscaping proposals, and thereafter provide an evidence base for monitoring habitat management during the Scheme construction phase".</p>
5.12	<ul style="list-style-type: none"> • Last time Little Eaton Roundabout was modified there were significant delays due to the presence of White clawed Crayfish 	<p>Extensive surveys for white clawed crayfish have been undertaken as detailed in ES Appendices 8.12a to 8.12c [APP-207] to [APP-209] – also refer to ES Figure 8.31 [APP-122]. As indicated in ES Table 8.13 [APP-046] surveys in 2017/18 indicate that white-clawed crayfish are no longer present at Little Eaton junction. American signal crayfish <i>Pacifastacus leniusculus</i> were identified on both the Watermeadows Ditch and the Dam Brook downstream and upstream of Little Eaton junction (at the weir) in 2017/18. It is highly likely that there is a strong correlation between the increasing numbers of signal crayfish (carriers of the well documented crayfish plague <i>Aphanomyces astaci</i>) and the apparent absence of white-clawed crayfish in Dam Brook and the connecting Watermeadows ditch. It is considered therefore that white-clawed crayfish are absent from these watercourses at Little Eaton junction.</p>
5.13	<ul style="list-style-type: none"> • The Woodland Trust are concerned about the felling of a veteran oak – T358 and point out that the National Planning Policy Framework states: "development resulting in the loss or deterioration of irreplaceable 	<p>A discussion of the Scheme impacts upon the veteran oak T358 at Markeaton junction is provided in Highways England's Technical Note [REP7-008]. Whilst the provisions in the National Planning Policy Framework</p>

Ref	Comment	Applicant's Response
	habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons".	(NPPF) may be relevant to the Scheme, for the purposes of the Scheme the provisions of the National Policy Statement for National Networks (NPS NN) is the relevant policy against which the Scheme is to be considered and it provides that the loss of the veteran tree is permissible provided the national need for, and benefits of, the development clearly outweigh the loss. Highways England considers that given the significant benefits of the Scheme and its national importance, the loss of the tree should be permitted (though, as Highways England provides in the Technical Note at [REP7-008], Highways England will seek to minimise the impacts on the tree where possible and if practicable).
5.14	<ul style="list-style-type: none"> Friends of the Earth are concerned on many grounds including climate, biodiversity, Open Space, Flooding and Human Rights. 	Refer to the HE responses to the various Friends of the Earth comments [REP7-007], [REP8-007], [REP9-028], as well as the responses to Friends of the Earth comments at D9 as detailed herein (refer to responses to Refs. 7.1 to 7.19).
5.15	Of course, the climate emergency goes hand-in-hand with the ecological emergency – they are intertwined. So, I would like to add the ecological harms of this scheme to the climate harms to add weight to our argument that this scheme SHOULD NOT GO AHEAD in this Climate and Ecological Emergency.	The Environmental Statement (ES) for the Scheme reports the Scheme effects upon biodiversity (ES Chapter 8 [APP-046]) and climate (ES Chapter 14 [APP-052]). The decision to award the DCO for the Scheme will be made by the Secretary of State taking into account all the evidence as presented during the Examination.
5.16	However, if the scheme does go ahead, we would insist on adequate, up-to-date surveys and the use of up-to-	The OEMP [REP9-019] commits to undertaking up-to-date pre-construction ecological surveys to inform the detailed

Ref	Comment	Applicant's Response
	<p>date Biodiversity Metrics to ensure an adequate level of Biodiversity mitigation instead of just guesswork.</p>	<p>design and the CEMP. Refer to the OEMP [REP9-019] for details.</p> <p>As detailed above, in order to assist with the design of the Scheme landscaping proposals, and thereafter provide an evidence base for monitoring habitat management during the Scheme construction phase, the OEMP [REP9-019] at D-B31 (in Table 3.2c) commits to the "Use of a biodiversity metric to assist with the detailed design of the Scheme landscaping proposals, and thereafter provide an evidence base for monitoring habitat management during the Scheme construction phase".</p>
5.17	<p>Comments from Derby Climate Coalition on HE's response to our ISH4 Submission</p> <p>In response to our submission regarding the complete lack of Option Generation in the Transport Appraisal for the scheme, HE have stated that The Scheme was originally defined by the road-based studies of 2002. A number of alternative options were investigated up to Preferred Route Announcement in January 2018. I can find no evidence to suggest that any of these alternatives are anything other than different route options.</p> <p>But Dft's Transport Appraisal Guidance (TAG May 2018) states that the three stages in the Transport Appraisal Process are as follows:</p> <ul style="list-style-type: none"> • Stage 1 – Option Development. This involves identifying the need for intervention and developing options to address a clear set of locally developed objectives which 	<p>The applicant's earlier response [REP7-007] to Derby Climate Coalition (20) is relevant given that Highways England is the highway authority for the strategic road network. This Road Investment Scheme is the highway part of the overall transport strategy for the area. At stage 1, development of options was focused on resolving the problem of long delay to journeys on the road network. The solutions are necessarily road-based options.</p> <p>Over the years, transport interventions using other transport modes have been examined by the local authority. These include park and ride schemes, some of which have been implemented, bus infrastructure improvements, cycling improvement schemes (e.g. Cycle Derby initiatives). There have been studies into potential congestion charging measures and work-place parking levies, which have not been implemented by the local authorities.</p>

Ref	Comment	Applicant's Response
	<p>express desired outcomes. These are then sifted for the better performing options to be taken on to further detailed appraisal in Stage 2. See Section 2.</p> <ul style="list-style-type: none"> • Stage 2 – Further Appraisal of a small number of better performing options in order to obtain sufficient information to enable decision-makers to make a rational and auditable decision about whether or not to proceed with intervention. The focus of analysis is on estimating the likely performance and impact of intervention(s) in sufficient detail. See Section 3. • Stage 3 – Implementation, Monitoring and Evaluation. See Section 4. 1 <p>HE have made overriding assumptions at all stages that the only solution to the perceived problems are to provide major road modifications. They have totally refrained from any consideration of options other than road-based ones.</p> <p>This is a blatant disregard of the Transport Appraisal Process and completely ignores the first of the three stages – Option Development.</p> <p>The need for this option development process to be reviewed properly was made even more necessary when the Climate Change Act came into force in 2008 and when the Paris Agreement was made in 2015. The TAG (May 2018) even states: -</p> <ul style="list-style-type: none"> • 2.8.2 It is important that as wide a range of options as possible should be considered, including all modes, 	<p>Other organisations within government are examining transport options by alternative modes. For example, Derbyshire County Council are supporting the enhancement of cycle routes (e.g. along the Derwent Valley). Network Rail/Midlands Mainline recently upgraded Derby station and reconfigured the tracks to the south of the station to improve journey times. The recent Budget 2020 announced support for a new cycle route to East Midlands Airport and £161M to develop a new electric Rapid Transit Route.</p> <p>To state that Highway England has a blatant disregard of other transport modes in developing the Scheme is to misunderstand the government-owned company's remit. It is not the role of Highways England to improve the rail network, to engage with bus quality partnerships or to implement enhancements to the local road network. Other government bodies fulfil these roles.</p> <p>This Highways England project is to address an acute existing problem on the existing strategic road network. The proposed Scheme will be very effective at improving transport efficiency in respect of inter-urban road trips.</p>

Ref	Comment	Applicant's Response
	<p>infrastructure, regulation, pricing and other ways of influencing behaviour. Options should include measures that reduce or influence the need to travel, as well as those that involve capital spend. Revenue options are likely to be of particular relevance in bringing about behavioural change and meeting the Government's climate change goal.</p> <ul style="list-style-type: none"> • 2.8.3 Studies should not start from an assertion about a preferred modal solution, or indeed that infrastructure provision is the only answer. • 2.8.5 Where highway solutions are being considered, options should include a consideration of different link/junction standards and other alternatives to address the problems in the area, such as public transport provision, demand management policies, traffic management measures and strategies. 	
5.18	<p>This is shown in TAG UNIT A3 - Environmental Impact Appraisal which states: -</p> <ul style="list-style-type: none"> • 4.1.2 In June 2011, the fourth Carbon Budget was announced, amounting to an emissions cut of 50% on 1990 levels over the years 2023-2027. Further carbon budget periods may be announced in the future. Each sector must play its part in taking action to achieve these budgets. <p>This scheme would be under construction during this 2023 – 2027 period and so must be shown to</p>	<p>ES Chapter 14: Climate [APP-052] concluded that carbon emissions are not deemed to be significant in the context of the current UK carbon budgets. The assessment demonstrates that the Scheme's greenhouse gas (GHG) impact as a proportion of total UK carbon emissions is negligible, such that it can be considered to be immaterial. In such circumstances, Highways England has considered GHG emissions from the Scheme in the context of the UK's new net zero target set in 2019 and does not consider that this gives cause to alter the assessment findings – refer to</p>

Ref	Comment	Applicant's Response
	<p>contribute to the 50% emissions reductions required in the 4th Carbon Budget.</p> <p>We are in a Climate Emergency requiring drastic reductions in carbon emissions – the target set last June of net zero carbon emissions by 2050 will require the 4th Carbon Budget reductions to be even higher. This is going to require not only a very quick conversion to EVs but also a reduction at least 20% in the number of cars on the road.</p> <p>In these circumstances a major road scheme such as this, with its associated increase in traffic volumes and carbon emissions, cannot be permitted to go ahead. It is essential that an Options Development Process is undergone to find more suitable solutions in a time of Climate and Ecological Emergency.</p> <p>In a crisis the first thing you do is stop making things worse! This scheme will only make climate change worse!</p> <p>The Planning Inspectorate surely has a responsibility to challenge the validity of this scheme in terms of national policy on climate change as well as the NPSNN.</p>	<p>HE response to the ExA first written questions (question 2.1 in [REP1-005]).</p> <p>Reference should be made to para 5.18 on the National Policy Statement for National Networks (NPS NN) which states: <i>“Therefore, any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets”</i>.</p> <p>The carbon assessment undertaken for the Scheme as reported in ES Chapter 14: Climate [APP-052] demonstrates that the Scheme will not have material impact on the ability of Government to meet its carbon reduction targets.</p>
<p>6) Joanna Watson [REP9-046]</p>		
6.1	<p>Why the A38 Derby works must now be stopped.</p> <p>In light of the current COVID-19 pandemic there are even stronger reasons for current Road Infrastructure Schemes like this one to be halted and re-assessed. The</p>	<p>Highways England is not able to respond for the Department for Transport.</p>

Ref	Comment	Applicant's Response
	<p>Department for Transport and Highways England must take responsibility to reduce road traffic which is causing unnecessary air pollution and a threat to public health.</p>	<p>With regard to the comment that HE must take responsibility to reduce unnecessary air pollution and threats to public health, HE would highlight the following:</p> <ul style="list-style-type: none"> • The air quality effects of the Scheme have been investigated and reported in ES Chapter 5: Air Quality [APP-043]. Overall, operation of the Scheme is expected to improve air quality slightly with a greater number of properties expected to have an improvement rather than a deterioration. The UK has set increasingly stringent vehicle emission standards to reduce emissions from vehicles with the most stringent, Euro 6/VI having been introduced for new vehicles from 2013 - 2015. In addition, the proportion of zero emission vehicles is increasing with the aim of all new cars having zero emissions by 2035. As these cleaner vehicles continue to penetrate the vehicle fleet, average emissions per vehicle in the vehicle fleet will decrease further. • The potential health effects of the Scheme have been considered and assessed in– refer to ES Chapter 12: People and Communities [APP-050]. The health assessment considers access to open and natural spaces as a determinant of human health. The assessment indicates that during Scheme operation there will be a range of long term benefits with regard to human health determinants, namely improved access to local healthcare services, improved connectivity to areas of public open space, improved local air quality,

Ref	Comment	Applicant's Response
		<p>increased opportunities for active travel, improved access to work and training, and improved social cohesion and lifetime neighbourhoods. The signed SoCG) with DCiC [REP7-020], DCC [REP6-010] and EBC [REP1-008] all indicate that the applicable local authorities are content that the Scheme will adopt adequate measures (as detailed in the OEMP [REP6-007]) to avoid, reduce and mitigate potential health effects.</p>
6.2	<p>Air pollution exacerbates viral uptake because it inflames and lowers immunity. The World Health Organisation describes nitrogen dioxide as a gas that causes significant inflammation of the airways. Above 200 micrograms per cubic metre air polluting particles may also be a vector for pathogens for spreading viruses like COVID-19.</p> <p>Paul Monks, professor of air pollution at the University of Leicester and former chair of the UK government's Science Advisory Committee on Air Quality recently stated:</p> <p>'Although the UK is more than a week behind Italy in terms of the spread of the disease and the government's response, roadside monitors already show significantly reduced levels of pollution at hotspots...</p> <p>'Road traffic accounts for about 80% of nitrogen dioxide emissions in the UK. For the average diesel car, each</p>	<p>Refer to the response in Ref. 6.1 above which indicates that Scheme operation is expected to improve air quality slightly (refer to ES Chapter 5: Air Quality [APP-043] for details). For nitrogen dioxide (NO₂), there are two criteria in the Air Quality Strategy objectives and EU limit values that have been set to protect human health. These are 40µg/m³ for the annual mean concentration and 200µg/m³ for the hourly concentrations which should not be exceeded more than 18 times per year (which is the 99.8th percentile of hourly values in a year). Based on the relationship between annual mean and the 99.8th percentile concentrations obtained from monitoring data, Defra found that if the annual mean NO₂ concentration was less than 60µg/m³, then the 99.8th percentile concentration was unlikely to be exceeded. None of the predicted annual mean NO₂ concentrations in 2021 or 2024 exceeded 60µg/m³, so the hourly criterion is unlikely to be exceeded at any location.</p>

Ref	Comment	Applicant's Response
	<p>kilometre not driven avoids 52 milligrammes of the pollutant entering the air.</p> <p>'What I think will come out of this [COVID-19 pandemic] is a realisation - because we are forced to - that there is considerable potential to change working practices and lifestyles. This challenges us in the future to think, do we really need to drive our car there... or burn fuel for that.'</p>	
6.3	<p>According to a 2019 UN report – the world needs to cut emissions by 7.6% per year until 2030 to limit global warming to 1.5C by the end of the century. An enormous task requiring radical societal changes. Road transport reduction, more home working and fewer flights will play a critical part in that. The government's 'Road to Zero' plan to transition to electric vehicles seems like a naive tinkering at the edge of the problems we are facing as we experience repeated societal disruption due to climate and ecological breakdown-related crises, pandemics being just one of them. The Cautionary Principal* must apply to UK transport - now more than ever before.</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. 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>
6.4	<p>The Department for Transport ought to think responsibly about the serious implications of over investment in road infrastructure when the current times require health promoting infrastructure, low carbon transport investment and resilient, self sustaining local economies. Existing Benefit to Cost Ratio models and Green book recommendations need thorough overhaul.</p>	<p>This is a question for the Department for Transport and not Highways England.</p>

Ref	Comment	Applicant's Response
6.5	<p>Highways England responded that the A38 poses an insignificant amount of CO2 in the overall UK carbon budget. At the same time I am aware that a disproportionate weighting is given to a perceived economic benefit to such road schemes, in spite of insignificant evidence that local economies have benefited from similar road schemes after their completion. (Campaign for Rural England).</p>	<p>Refer to the response in Ref. 6.3 above regarding the carbon impact of the Scheme.</p> <p>In relation to the weighting to be given to the economic benefit of road schemes, the Department of Transport's methodology for calculating the road based transport economic efficiency benefits was applied within the value for money appraisal. Please refer to applicant's response at 4.1 (Mair Bain) above. The transport economic case for the Scheme is clear in terms of journey time savings, road casualty savings and improved reliability. Whilst the wider economic benefits cannot be guaranteed, the Scheme plays an important wider economic role in supporting planned growth around Derby. Because Highways England recognised that there is a degree of uncertainty in the magnitude of the wider economic benefits assessments for the Scheme, these perceived wider economic values were <u>not</u> included within the analysis of monetised costs and benefits of the Scheme as part of its value for money assessment.</p> <p>The need for the Scheme is identified within a number of plans and policies prepared by the local authorities that presents collective evidence as to the strong need to bring the Scheme forward, so as to be able to deliver growth and economic development. This qualitative assessment of the wider economic benefits is outlined below:</p> <p><u>Growth</u></p> <ul style="list-style-type: none"> • Derby and its immediate surrounding area are expected to accommodate significant housing and employment

Ref	Comment	Applicant's Response
		<p>growth in the coming years. The Derby City Local Plan and LTP3 both state that if this Scheme cannot be funded and delivered it is likely that any future development to the west of the City of Derby will be severely restricted. The LTP3 specifically states that the A38 Derby junctions Scheme is critical to facilitating further housing growth with the west of Derby and that the Scheme will release land for development in and around the city.</p> <ul style="list-style-type: none"> • As a result of anticipated significant housing and employment growth, the traffic demands on the A38 through Derby are forecast to grow more quickly than the national average. Consequently, existing delays at the three at-grade roundabout junctions on the A38 are anticipated to worsen in the short term due to increasing levels of traffic. <p>The A38 Derby Junctions Scheme will make an important contribution to supporting growth in Derby and the surrounding areas. The development of infrastructure has a critical role to play in supporting economic growth and unless action is taken, the existing traffic conditions and the A38 Derby Junctions in its current form will continue to act as a barrier to growth.</p> <p>Due to the local and regional importance of the A38 and issues already identified, the policies of a number of local policy documents identify the need for a strategic response. These Local Policy documents include the local planning</p>

Ref	Comment	Applicant's Response
		<p>and transport planning policy documents of Derby City Council and Derbyshire County Council.</p> <p><u>Derby City Local Plan – Part 1 (2017)</u></p> <p>The adopted Local Plan of DCiC forms part of the statutory development plan for Derby alongside the saved policies in the City of Derby Local Plan Review (CDLPR) (2006)). The Derby City Local Plan recognises that the A38 carries heavy flows of long distance traffic and that where the A38 passes through Derby significant volumes of local traffic either cross, join or leave the A38 which results in congestion and delays at the Kingsway, Markeaton and Little Eaton junctions.</p> <p>The local plan recognises Highways England's longer-term proposals for the grade separation of the A38 Derby junctions to resolve this issue. The local Plan states that DCiC will work with partners to deliver the Council's long-term transport strategy and support the implementation of strategic proposals and initiatives including Highways England A38 Derby Junctions Grade Separation Scheme.</p> <p><u>Local Transport Plans</u></p> <p>This policy position of support is reinforced by the Local Transport Plans of both Derby City Council (Derby Local Transport Plan 3 (2011)) and Derbyshire County Council (Derbyshire County Council Local Transport Plan (DLTP (2011)) of which both documents which recognise the role of the Scheme in addressing traffic congestion through the</p>

Ref	Comment	Applicant's Response
		<p>separation of strategic and local traffic movements and supporting economic growth with the DCC LTP stating that: <i>"The A38 Derby junctions proposed by Highways England is critical to facilitating housing growth to the west of the city and that the Scheme has already been identified as both a sub-regional and local priority"</i>.</p>
6.6	<p>In looking for economic benefits of schemes such as this, I am interested to know how you researched alternative options around economic and health benefits for Derby. Increased NO2 pollution alone, released over the three-four years of its construction, will add significantly to Derby's already poor air quality and will detrimentally affect public health. Please explain what public transport modelling was employed in calculations for the scheme and how the benefits of that were weighted. Were tools such as the Propensity to Cycle Tool (PCT) - designed to assist transport planners and policy makers to prioritise investments and interventions to promote cycling - used as part of the A38 feasibility study? PCT shows real evidence of improvements to health and therefore fewer sick days with notable benefits to the local economy. Surely in 2020 this is the direction that transport investment ought to be heading.</p>	<p>The Scheme is to grade separate three junctions in and around Derby. By grade separating local traffic (including pedestrians and cyclists) from the heavy traffic flows on the strategic road network, there will be time-savings, health and road safety benefits for cyclists and pedestrians.</p> <p>These are benefits that could have been monetised (using appraisal tools and appropriate data, for example the PCT referred to by Joanna Watson's comment) and claimed to enhance the Scheme's value for money case. However, the value for money case for the Scheme was justified without needing to enhance the benefits further with additional such studies and appraisals.</p> <p>Similarly, the Scheme would deliver monetised benefits associated with reduced journey times for bus services. However, these public transport benefits were not specifically modelled and were not claimed as benefits for the Scheme in its value for money assessment.</p> <p>See also Applicant's response to Derby Climate Coalition (5) above.</p> <p>Refer to the response in Ref. 6.1 above regarding the air quality effects of the Scheme and the Scheme effects upon</p>

Ref	Comment	Applicant's Response
		<p>human health. Impacts of Scheme construction on local air quality have been assessed and reported in the ES Chapter 5: Air Quality [APP-043]. Air quality is predicted to achieve the Air Quality Strategy objectives and EU limit values which were set to protect human health at properties during the construction and operational phases so the Scheme will not detrimentally affect public health.</p>
<p>7) Derby & South Derbyshire Friends of the Earth [REP9-038]</p>		
<p>7.1</p>	<p>London parks are estimated to save the NHS £370 MILLION pounds yearly, in health benefit costs. We have asked NHS Derby for their estimates for Derby parks, though we do not expect a reply, due to the coronavirus crisis.</p>	<p>No response needed from HE.</p>
<p>7.2</p>	<p>We do not expect a reply from the Ministry of Defence either, regarding the increased flood risk from the 'important base flows' of the Markeaton brook, to the River Derwent</p>	<p>No response needed from HE, although it should be noted that the Scheme will not have an adverse effect on downstream flooding or flooding risks in Markeaton Brook, nor the River Derwent as set out in the flood risk assessments for Markeaton junction [REP9-018] and Little Eaton junction [APP-231].</p>
<p>7.3</p>	<p>Q52 In anticipation of the question Q26 not being answered again, in HE responses to previous submissions, we ask again, is HE attempting to place 15000 speeded up vehicles onto the A38 Kingsway Island hospital site, (Oral hearings tape 18th February) the most polluted site in the East Midlands? (FOE Enc 1)</p>	<p>The Scheme is to grade separate the A38/A5111 Kingsway junction. In operation, the Scheme will attract traffic away from the A516 Royal Derby Hospital roundabout.</p> <p>The "Kingsway Hospital" is accessed from the A5111 "Kings Highway" roundabout.</p> <p>The highest measured NO₂ concentrations were sampled on a footpath adjacent to the A38 near Windmill Hill Lane</p>

Ref	Comment	Applicant's Response
		<p>(site DT34 in Table 2 of ES Appendix 5.1: Air Quality Monitoring Data [APP-170]. NO₂ concentrations decrease rapidly with increasing distance from the road as shown by the measured concentrations further back from the A38 in areas more representative of properties (such as DJ011 in Windmill Hill Lane and DJ012 in Greenwich Drive North which measured NO₂ concentrations within the objective and limit value). Concentrations of NO₂ at the Royal Derby Hospital and Kingsway Hospital are predicted to be within the annual mean objective and limit value during construction and operation of the Scheme (based on the results for receptors H1, H2, H3, H4, H5 H6, R121 and R124 from ES Chapter 5: Air Quality [APP-043] and ES Appendix 5.3: Air Quality Results [APP-172].</p>
7.4	Q53 Does HE agree that the Paris Agreement – and associated human rights - is now National Policy?	<p>As Highways England has previously confirmed, the Scheme has to be determined in accordance with Government policy, which is set out in the National Policy Statement for National Networks (NPS NN). This approach is prescribed in s.104 of the Planning Act 2008. S104 requires that the Secretary of State in deciding the application has regard to the NPS NN and that his decision must be in accordance with any relevant NPS unless to do so would be unlawful or would breach any of the UK's international obligations (ss (4) to (8)). In addition to this, the Secretary of State must have regard to any other matters which the Secretary of State thinks are both important and relevant to his decision (ss(2)(d)). This should be determined on a case by case basis.</p>

Ref	Comment	Applicant's Response
		<p>The Paris Agreement is an international commitment to mitigating climate change, falling within the United Nations Framework Convention on Climate Change (UNFCCC), but outside of the Kyoto Protocol. It was ratified by Parliament in 2016 and is an unincorporated international agreement. The Paris Agreement's main objective is to seek to limit global temperature to well below 2°C (and to pursue efforts to limit it to 1.5°C).</p> <p>The Heathrow judgment ([2020] EWCA Civ 214) explains that in respect of the NPS for Aviation (NPSA) the commitments in the Paris Agreement constituted "Government policy" under section 5(8) of the Planning Act 2008 – this section deals with the designation of National Policy Statements – which the Government should have taken into account when designating the NPSA. In addition, in terms of considering the desirability of mitigating and adapting to climate change under s.10(3) (this section, again, relates to the designation of a NPS) the court provided that the Paris Agreement was material and should have been considered. The court was clear that the Secretary of State was not obliged to act in accordance with the Paris Agreement or to reach any particular outcome. The only legal obligation, in the court's view, was to take the Paris Agreement into account when arriving at the decision on whether to designate the ANPS; the weight to be afforded to the agreement being a matter for the Secretary of State to determine. It is worth noting that permission has</p>

Ref	Comment	Applicant's Response
		<p>been sought by the interested parties in that case to appeal the decision to the Supreme Court.</p> <p>Highways England has provided a significant amount of detail to the Examination in respect of climate change and has confirmed that the Department for Transport's RIS1 schemes have been included in the UK's current carbon budgets. As such, Highways England does not consider that the Scheme will render the UK in breach of its international obligations (including under the Paris Agreement) and therefore the requirement in section 104(4) of the Planning Act 2008 to determine the application in accordance with the NNNPS applies.</p>
7.5	<p>Q54 Have the additional ozone gas levels (nitrogen dioxide being a greenhouse gas precursor) been calculated, from 15000 extra vehicles, and those effects on greenhouse gas emissions?</p>	<p>Ozone is not one of the greenhouse gases covered by the Kyoto Protocol which is an international treaty that aims to reduce the onset of global warming. Ozone at ground level has a very short lifespan of minutes to days due to its high reactivity so its effects global warming (which is considered over a specific time horizon of 20, 100 or 500 years) is negligible. Thus ozone is not considered in greenhouse gas calculations.</p>
7.6	<p>Q55 HE response regarding air quality in the park being maintained once the trees are gone, is illogical, as the trees/scrub/hedges form a barrier to the current pollution, which, when destroyed, will mean that air quality in the park will be worsened. Does HE agree that the current tree cover/hedgerows/copses forms an air cleaning function, for vehicular air pollution?</p>	<p>At a national level across the UK, trees are important in removing air pollutants but at a local level, the removal of pollution by deposition and subsequent decrease in concentrations is small.</p> <p>During the development of the Scheme's design, HE has sought to minimise the loss of existing trees, include trees in Markeaton Park. Trees are being retained that will</p>

Ref	Comment	Applicant's Response
		<p>maintain the tree buffer between the new A38 and the park (refer to ES Figure 7.6A [APP-092]). With regard to replacement tree planting in Markeaton Park, HE will deliver a landscape design that results in a net increase in trees. During Scheme operation, air quality within the park will achieve the applicable air quality objectives set to protect human health. No significant changes in air quality are, therefore, expected.</p>
7.7	<p>Q56 Re HE response to Q30, Q32 -HE states that, regarding landfill emissions at Kingsway "It is not considered that any additional CO2 emissions will arise as a result of the scheme construction works" then admits that "a further site investigation is being planned" and that there 'risks to construction workers in confined spaces and/or excavations from at least one ground gas or from oxygen depletion at each of the junctions,' and "CO2 and other ground gases in this former landfill area need to be taken into account"</p> <p>It is quite obvious that, until these 'further investigations' can take place, HE cannot make statements regarding CO2 and safety of workers, 'negligible effect' on residents', shoppers, drivers at the junctions.</p> <p>In responses to Q32 the 'negligible risk', then suddenly becomes 'very low' risk, further on in the response, to construction workers, which does nothing to clarify the situation. In view of the extent of the contamination being</p>	<p>Further ground investigations will be undertaken to define working practices as detailed in the OEMP [REP9-019]. HE response to Q30 [REP8-007] noted that there are standard working practices available to ensure worker safety. With regard to CO₂ emissions, given that the landfill area is uncapped and that there is a passive landfill gas venting system, it is not considered that any additional CO₂ emissions will arise as a result of the Scheme construction works given that such gases are able to vent to the atmosphere in an unhindered manner. This conclusion is not anticipated to change as a result of future ground investigations.</p> <p>HE response to Q31 [REP8-007] stated that <i>"as illustrated in ES Chapter 10: Geology and Soils [APP-048], construction of the Scheme would be subject to measures and procedures as defined within the Outline Environmental Management Plan (OEMP) [REP6-007] for the Scheme – with the adoption of such measures effects upon local residents due to land contamination risks are defined as being negligible"</i>. This remains the case. HE's response to</p>

Ref	Comment	Applicant's Response
	<p>unknown, why would NHS Kingsway Hospital not be informed, especially as their business is health?</p>	<p>Q31, Q34 and Q37 all referred to a "very low risk". This risk does not refer to workers or local residents, but risks associated with the prevailing ground material on controlled waters, namely the Detailed Quantitative Risk Assessment (DQRA) [REP3-020] indicates that there is a very low risk to controlled waters from the presence of dissolved metal concentrations recorded in a very small number of samples at the junction. It is stressed that this risk rating refers to the ground material that is already present and not risks as associated with the Scheme. The Environment Agency has reviewed DQRA and has accepted that risks associated with land contamination will be appropriately managed by the Scheme - refer to the signed SoCG with the EA [REP5-008].</p> <p>Aspects as related to land contamination are regulated by the Environment Agency as well as DCiC – both will be consulted during the detailed design stage in accordance with the OEMP [REP9-019]. The signed SoCG with the Environment Agency [REP5-008] and DCiC [REP7-020] indicate that the applicable regulators are content that the Scheme will adopt adequate measures to appropriately control potential impacts associated with contaminated materials, including impacts upon controlled waters. As such, there is no need to consult with NHS Kingsway Hospital.</p>
7.8	<p>Q57 Why were FOUR of the trial pits at Kingsway halted at 1-2metre depth and why has worker safety not been properly evaluated ie "scheme effects upon</p>	<p>As detailed in ES Chapter 10: Geology and Soils [APP-048], para. 10.7.58 "<i>Four trial pits located within the former landfill were terminated at depths between 1m and 2m bgl</i></p>

Ref	Comment	Applicant's Response
	<p>construction workers was scoped out of the impact assessment" and who advised that worker safety should be 'scoped out', despite 'further investigations' needing to take place?</p>	<p><i>due to suspected asbestos</i>". This indicates that the trial pits were stopped when suspected asbestos containing materials were encountered (as is routine practice to avoid undue material disturbance and protect the investigation workforce), with such material being sampled and subject to appropriate testing.</p> <p>As detailed in the HE response to Q31 [REP8-007], Scheme effects upon construction workers was scoped out of the impact assessment (as reported in the Environmental Statement) given that the Scheme construction works must be undertaken in a manner that protects the health and safety of construction workers. There is thus a legal requirement to protect workers under separate health and safety legislation, and thus it follows that the Scheme works must be undertaken in a manner that does not have significant effects on workers. The scope of the environmental assessment was formalised via the EIA Scoping Report (2018) and the Planning Inspectorate's scoping opinion (April 2018) which states that "<i>The Inspectorate considers that effects of contaminated soils on construction workers may be scoped out, since contractors will be required to adopt safe working practices under relevant health and safety legislation, meaning that significant effects are unlikely to arise</i>".</p> <p>As detailed above, further ground investigations will be undertaken to define detailed working practices.</p>
7.9	Q58 (re HE response to Q33,Q34) Regarding asbestos, HE states that there is a 'negligible risk' to workers and	These are two separate matters. Asbestos is a risk to human health and not a risk to controlled waters. As

Ref	Comment	Applicant's Response
	<p>the general public, despite 'further investigations' being needed. Several trial pits were also halted. Therefore we have no confidence in HE statement that there is 'very low risk' of pollution to controlled waters, as they themselves do not know the extent of the contamination.</p>	<p>detailed in the HE response to Q33 [REP8-007] Asbestos Containing Material (ACM) is known to be present at Kingsway junction (primarily from the area of the link road to Kingsway Park Close which will be constructed through parts of the former Rowditch Tip landfill). As detailed in the OEMP [REP9-019], an Asbestos Management Plan will be prepared and implemented to ensure asbestos can be identified, removed and disposed of in a legally compliant manner. Given that any works associated with asbestos would have to be undertaken in a legally compliant manner, there will be negligible risks to workers and the general public.</p> <p>As indicated above, the “very low risk” of pollution to controlled waters refers to risks associated with the prevailing ground material, and not risks associated with the Scheme.</p> <p>Further ground investigations will further assist in defining working practices, but will not change the assigned significance of effect levels. It is stressed that the signed SoCG with the Environment Agency [REP5-008] and DCiC [REP7-020] indicate that the applicable regulators are content that the Scheme will adopt adequate measures to appropriately control potential impacts associated with contaminated materials (including asbestos) and well as impacts upon controlled waters.</p>
7.10	<p>Q59 (re HE response to Q35) Re flood risk 'variation' allowed. 141% of average February rainfall fell in February. HE “cannot predict the variability associated</p>	<p>HE is not attempting to assess the flooding impacts of specific observed/ actual events. The flood risk assessments undertaken use best practice methods</p>

Ref	Comment	Applicant's Response
	<p>with specific events or series of events at varying temporal scales” and 'the climate change allowances cannot predict the variability...” In that case why is HE attempting to do this?</p>	<p>accepted by the appropriate risk management authorities for assessing flood risk. This includes the latest accepted climate change predictions.</p> <p>As indicated in HE's response to Q35, there will always be variation in rainfall totals at a range of time intervals; the climate change allowances applied by the FRAs account for that variation and reflect the long-term predicted trend based on climate models for future emissions scenarios only. The climate change allowances thus use long-term predicted trends, and so do not attempt to model specific rain events. Ultimately, the climate change allowances applied are as per latest guidance and reflect the expected average impacts on rainfall intensity. They do not and ultimately cannot predict the variability associated with specific events or series of events at varying temporal scales. HE considers that the flood mitigation proposals included in the Scheme design are wholly appropriate, as are the associated flood risk assessments and reporting. It is also noted that the flood risk assessments and defined mitigation measures have been accepted by the applicable local authorities and the Environment Agency – refer to the signed SoCG with the Environment Agency [REP5-008], DCiC [REP7-020], DCC [REP6-010] and EBC [REP1-008].</p>
7.11	<p>Q60 The UK Government has acknowledged that rainfall is to increase, due to the declared climate emergency. Does HE agree with the UK Government climate emergency declaration?</p>	<p>As indicated in the response above, the flood risk assessments have applied climate change allowances as per latest UK government guidance which reflect the expected average impacts on rainfall intensity for the worst-</p>

Ref	Comment	Applicant's Response
		<p>case emissions scenario, as modelled by the UK Climate Projections tool.</p> <p>HE is not in a position to comment on wider political issues, but as Highways England is a government-owned company it recognises its responsibilities associated with climate change. As indicated in the document Climate Adaptation Risk Assessment Progress Update – 2016, Highways England <i>“recognise that we all have an important part to play in minimising the causes and managing the risks associated with a changing climate. With this in mind, our report focuses on our climate resilience. That is, how we are changing the way we do things and the decisions we make to prepare for the potential effects of climate change”</i>.</p> <p>Given the above, HE is committed to reducing the operational emissions of the road network at a national scale, as well as on an individual infrastructure project scale and to playing a part in the UK meeting the net zero target by 2050. HE 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. HE 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 HE programmes which are being assessed and managed across the strategic road transport network</p>

Ref	Comment	Applicant's Response
		<p>and estate will substantially decrease operational emissions. Highways England monitors greenhouse gases generated by the company and our supply chain. Performance Indicators for carbon 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>With specific regard to the Scheme, ES Chapter 14: Climate [APP-052] presents a range of greenhouse gas mitigation measures – these are also detailed in the OEMP [REP9-019]. During the development of the Scheme detailed design HE 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>
7.12	<p>Q61 HE flood risk assessments were based on DciC flood risk maps (see FOE SFRA Plans Allestree and Alvaston) These were from 2013 and are 7 years out of date. They do not take account of the flooding in November 2019 or the 141% rainfall event in February. Yet Markeaton Brook is 'forming an important source of base flow' to the River Derwent (REP 4.10 pg 4 2.4.3) '. Why is HE relying on outdated floodrisk maps?</p>	<p>HE has not relied upon outdated flood risk maps. The FRA for Markeaton junction [REP9-018] takes into account the latest flood risk guidance and climate change allowances. It is stressed that the Scheme will not amend the watercourses and associated structures (i.e. the existing culverts) under the A38, nor will the Scheme have any impacts on flood extents in surrounding areas. As such, the Scheme will not have effects upon surface water flooding risks in the areas adjoining the road or further downstream. The 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</p>

Ref	Comment	Applicant's Response
		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 [REP9-019]).
7.13	Q62 (HE response to Q36) Where are the EA referred 'points in writing' regarding the flood data at Markeaton Junction, relating to questions raised at the 19th February meeting?	We presume that this refers to the Environment Agency submission [REP6-037].
7.14	Q63 (HE response to Q37) At time of writing (25/3/2020), the climate emergency continues, globally, heavy rains in Northern Argentina, New South Wales in Australia, threatening flooding. Gulf states supercell storm in Saudi Arabia, United Arab Emirates and Oman. In Tunisia and Sicily, intense low pressure systems are causing wind, severe thunderstorms and rainfall. Global weather systems are being affected by worsening climatic changes. Yet HE states that 'most climate change taken into account'. As with the coronavirus crisis unravelling our global systems, has HE reviewed the effects of the climate emergency worldwide, or does HE believe that climate emergency effects are only seen in isolation, in the UK?	As stated above, the flood risk assessments have applied climate change allowances as per latest guidance and reflect the expected average impacts on rainfall intensity, noting that the climate allowances and flood risk finding have been accepted by the applicable regulators (refer to the signed SoCG with the Environment Agency [REP5-008], DCiC [REP7-020], DCC [REP6-010] and EBC [REP1-008]).
7.15	Q64 HE response 'runoff will be collected and controlled' As groundwater levels/run-off rise, with increased rainfall, in line with the climate emergency, does HE agree that rising levels of groundwater/run-off will cause	No – in our response to Q37 [REP8-007] HE highlighted that during the construction of the link road to the Kingsway Park Close, contaminated material will be treated and, where necessary, removed, with the Scheme being

Ref	Comment	Applicant's Response
	contamination from the Kingsway landfill – a site still set to undergo 'further investigations – to be brought to the surface and cause further contamination to controlled waters?	constructed and the associated earthworks formed with acceptable materials. Landfill material will not be present at the ground surface, and runoff from this area will be appropriately collected and controlled by the highway drainage system. The former landfill is within a former clay pit with a thick base layer of clay preventing movement of the underlying groundwater into the landfill materials. The underlying groundwater is separate and distinct to the perched groundwater within the landfill materials. Any perched groundwater encountered during the construction works will be collected, tested and treated before discharging to foul sewer, or similar, under a consent or environmental permit.
7.16	Q65 – The 2010 cost of the schemes is £270 million, which is an outdated underestimate. We ask what the 2020 cost is?	The Funding Statement [REP6-006] confirms the Scheme cost to be £229 million.
7.17	Q66 We have asked the NHS to provide figures for deaths from respiratory illnesses in Derby, though we do not expect answers, within the course of this inquiry, because of the worsening Coronavirus crisis. Does HE know that increased traffic emissions affect the respiratory systems of potential Coronavirus sufferers and make it harder to recover from the illness?	The air quality effects of the Scheme have been investigated and reported in ES Chapter 5: Air Quality [APP-043]. This indicates that air quality has been assessed at Derby schools, residential properties and hospitals that are near roads that would be affected by the Scheme either during construction or operation. With Derby City Council's (DCiC) traffic management measures implemented in Stafford Street, air quality at schools, residential properties and hospitals will be within the air quality criteria set to protect human health during construction and operation of the Scheme. The air quality

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		<p>criteria have been set to protect the most vulnerable members of society which includes children and the elderly. Operation of the Scheme, overall, is expected to result in a slight improvement in air quality at properties.</p>
7.18	<p>Q67 The Future Generations Bill states that impact assessments of the A38 Junctions scheme should be considered. We ask if HE considers that this is an essential requirement?</p>	<p>The Scheme has been listed in the RIS2 document, published on 11 March 2020, as one of the government's priorities for the Strategic Road Network. The Future Generations Bill was first introduced in October 2019 and has not yet been through the due process in Parliament. HE considers this requirement is premature given that the requirements in the Bill are not law and are of course subject to change. Nonetheless Highways England considers that it is likely that the Scheme will be a benefit to the well-being of future generations. For example, ES Chapter 12: People and Communities [APP-050] indicates that Scheme operation will have a range of long term benefits with regard to human health determinants, namely improved access to local healthcare services, improved connectivity to areas of public open space, improved local air quality, increased opportunities for active travel, improved access to work and training, and improved social cohesion and lifetime neighbourhoods.</p>
7.19	<p>National Friends of the Earth have sent their submissions, below, regarding HE responses to their evidence There is a legal requirement for legal limits to be likely to be met, not just for it to be possible - the conclusion of</p>	<p>The accuracy of the air quality model used for the Scheme assessment was considered via the calculation of the Root Mean Square Error (RMSE). The RMSE was found to be 4.9µg/m³ (refer to ES Appendix 5.2: Air Quality Methodologies [APP-171]). The model uncertainty is</p>

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	<p>the judgement in Client Earth 2, and re-iterated in Client Earth 3 as per below, sets this out:</p> <p>“73. As I explained in the November 2016 judgment, the proper construction of Article 23 imposes a three-fold obligation on the Secretary of State; he must aim to achieve compliance by the soonest date possible; he must choose a route to that objective which reduces exposure as quickly as possible; and that he must take steps which mean meeting the value limits is not just possible, but likely.” (emphasis added).</p> <p>We are not aware whether assessments have been made on the uncertainty of the models used, using the Root Mean Square Error (RMSE), by the local authority, but it seems likely that with the levels seen so close to 40ug/m3 it is unlikely that it could be assured that there is not serious risk of levels not being attained, and thus not at all necessarily being likely legal limits will be attained.</p> <p>Further it is not clear what allowances for risk HE have made – and the government's 2017 AQ Plan for NO2 refers to levels of uncertainty of +/- 29%, but presumably HE's results are based on the central case, with no sensitivity case of levels being +29%.</p> <p>This means that there is a high risk that levels could be considerably higher than projected, meaning further worsening of levels already over limits, and even new exceedances possible from levels currently assessed as below limits with the scheme (though of course levels could also be lower).</p>	<p>therefore 12% of the annual mean objective and limit value. The fractional bias of the model was also calculated which shows whether a model has a systematic tendency to over or under predict. The fractional bias for the Scheme model was 0.0 which shows that the model does not have a tendency to either under or over predict concentrations. Applying the measure of uncertainty (RMSE) to the results means that predicted NO₂ concentrations below 35.1µg/m³ are very unlikely to exceed and those above 44.9µg/m³ are very likely to exceed. Those with concentrations within the range 35.1 to 40 µg/m³ are on the balance of probabilities not expected to exceed and those with concentrations 40 to 44.9 µg/m³ are on the balance of probabilities, expected to exceed.</p> <p>Based on the predicted concentrations at properties (ES Chapter 5: Air Quality [APP-043]) in the Scheme opening year (2024), one receptor is predicted to be at risk of exceeding, R197 in Stafford Street, but NO₂ concentrations would decrease by 1.0µg/m³ at this location due to operation of the Scheme (based on Defra NO₂ projections) so the Scheme effect would be beneficial. During the Scheme construction phase, three receptors (R170, R197 and R231) are predicted to have concentrations above 35.1µg/m³ with increases in NO₂ concentrations predicted to be up to 0.1µg/m³ which is imperceptible. These imperceptible changes are not of concern.</p> <p>The compliance risk assessment has identified footpaths next to the A38 where NO₂ concentrations are predicted to</p>

Ref	Comment	Applicant's Response
	<p>This is also all more relevant as the Supplement to the AQ Compliance Risk Assessment clearly shows that in 2021 at the Qualifying Features that under Construction Scenario 0, there are 3 places where there are aggravated breaches – and others where levels are over 35ug/m3, including where the scheme is adding to the problem, including in construction scenarios 2 and 4 ie this is not an issue restricted to construction scenario 0.</p> <p>Derby City Council has no Air Quality Action Plan, despite the city being a UK Government designated Clean Air Zone city. HE clearly states (REP 6-035 Vol 8.84) that “Emissions overall would increase...” , “increased emissions from increased traffic on the A38...”</p> <p>The A38 Junctions schemes would not assist the council in achieving compliance, especially as DciC outline the additional and numerous city streets that would be impacted, by the A38 schemes. (REP6-037) We believe that HE cannot now demonstrate, exactly, why the A38 Junctions schemes should be constructed.</p>	<p>exceed 40µg/m³ during the construction phase both with and without the Scheme. During the detailed design stage, the traffic management proposals will be re-assessed and if air quality is predicted to be made worse by construction of the Scheme at footpaths adjacent to the Scheme, alternative routes for the footpaths will be identified where appropriate as mitigation [REP9-020] – also refer to the OEMP [REP9-019] MW-AIR4.. During operation of the Scheme in 2024, there are no qualifying features where NO₂ concentrations would exceed 35.1µg/m³ that would be made worse by the Scheme.</p> <p>Derby City Council has prepared a Local Air Quality Action Plan for tackling roadside NO₂ concentrations (https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/transport/airqualityplan/finalbusinesscase/Derby%20Full%20Business%20Case%2026%20March%202019.pdf) and a LAQM Air Quality Action Plan which is currently out to consultation (https://www.derby.gov.uk/transport-and-streets/air-quality-in-derby/tackling-poor-air-quality/current-consultation/). The Action Plans identify Stafford Street as requiring traffic management measures to reduce traffic flows in Stafford Street. Operation of the Scheme will also reduce traffic flows in Stafford Street which will help with compliance in this area. NO₂ concentrations in Stafford Street are expected to decrease by 1.0µg/m³ in 2024 due to operation of the Scheme.</p>

Ref	Comment	Applicant's Response
		Overall, operation of the Scheme will result in a slight improvement in air quality at properties across Derby.
8) Friends of Markeaton Park [REP9-042]		
8.1	<p>Emily Mundy bequeathed Markeaton Park for the people of Derby in 1929. Derby Borough Council purchased more of the surrounding grounds and built a ring road there, as much to give employment during the Great Depression as for any need of the road at that time. Estates of houses were built in Sinfin, Littleover, Mickleover, Mackworth and Allestree. The ring road was extended to give all those people a way to get to work without having to criss-cross Derby City Centre. By the late 60s the Borough Council wanted to make it dual carriageway. The Highways Agency thought it would be a splendid idea to combine the Devon to A1, A38 Trunk Road, with Derby's ring road, making it dual carriageway. Once that was done it quickly became apparent that mingling freight traffic with local traffic delayed both sets of drivers. The Highways Agency assumed that the delays were caused at crossing points; however that is not the case. To this day Derby people use the ring road to avoid going through the city centre. Surveys conducted by Cycling Derby have revealed that at times of most congestion 70% of the traffic is local traffic.</p>	<p>Highways England has undertaken its own traffic data collection. Highways England notes the statement "70% of the traffic is local" but also notes that this is meaningless without an understanding of how the local traffic has been measured by Cycling Derby and as a percentage of what flow.</p> <p>Highways England's own traffic data shows that 42% of the traffic flow on the A38 to the north of the A61 Little Eaton junction travels the full length of the A38 to a point south of the A5111 Kingsway junction.</p> <p>See also Applicant's response to Dr John Spincer [REP7-007] on PDF page 26.</p> <p>Highways England agrees that some journeys (but not as high as 70%) use the A38 to circumnavigate the city of Derby. These journeys will also benefit from the time savings of grade separating the Markeaton junction.</p> <p>The Scheme will improve journey times along the strategic road corridor and attract traffic away from less appropriate local roads. The Scheme will also improve journey times along Derby's radial routes.</p>

Ref	Comment	Applicant's Response
8.2	<p>Meanwhile Highways England has lost sight of the stated aim of the 3 junction project i.e. grade separation of local traffic from Trunk road traffic to reduce delays and congestion. The requirement set in 2015 to have a speed of 50 mph, with all the associated rules, has distorted the whole project. Closing Brackensdale Avenue and Raleigh Road forces local traffic to use the A52 Trunk Road, and closing the access and exit from Eurogarages and McDonalds adds HGVs to local traffic.</p>	<p>The A52 is an A-road and is maintained to accommodate heavy vehicle axle loading. The A52 is signed as a primary route.</p> <p>Raleigh Street and Brackensdale Avenue connections to the A38 will be closed with the Scheme. The A38 would become a 50mph speed limit. These two positive features of the Scheme are independent of each other.</p> <p>The vehicles displaced from the A38/Raleigh Street junction and the vehicles displaced from the A38/Brackensdale Avenue connection would divert to the new Kingsway Park Close connection to the new A38 Kingsway junction. The existing heavy vehicles travelling through the Mackworth area are destined for the employment areas adjacent to Kingsway Park Close. The Scheme will reconfigure the road link connections to the A38 and will eliminate the need for heavy vehicles originating at Kingsway Park Close to travel through the residential areas of Mackworth.</p>
8.3	<p>The exemptions granted to Highways England by the NPNNs have the unintended consequences of allowing it to dismiss the expertise and detailed knowledge of Local Authority officers and Derby citizens.</p>	<p>Firstly, it should be noted that the National Policy Statement for National Networks (NPS NN) constitutes current relevant national policy and in accordance with Section 104 of the PA 2008, the Secretary of State (SoS) in determining the application must have regard to the NPS NN and determine the Scheme in accordance with the NPS NN unless to do so would be unlawful or cause the UK to breach international obligations. HE are therefore seeking to deliver the Scheme in accordance with the Government's relevant national policy guidance.</p>

Ref	Comment	Applicant's Response
		<p>In any event, HE disagrees that the policy guidance encourages a position whereby detailed knowledge of Local Authority Officers and residents of Derby is ignored. In addition to having regard to the NPS NN, the SoS is also legally required under s104 of the Planning Act to have regard to the Local Impact Reports submitted by the relevant local authorities. There are significant obligations that the PA 2008 (and the associated guidance that sits alongside this) place on an applicant, alongside demonstrating compliance with the NPS NN. Significant efforts have been made by HE to engage with local authorities and other key stakeholders both during the examination stage and prior to that during the pre-application submission stage.</p> <p>The Consultation Report [APP-023] as submitted with the application sets out in detail the consultation that has been undertaken including how this consultation has been taken into account in finalising the Scheme prior to the submission of the application. In accepting the application for examination, the ExA have judged that HE have met the tests of the PA 2008 in delivering its consultation on the Scheme.</p> <p>In respect of the Local Authorities, there has been a significant amount of direct discussion. HE has listened to their concerns (taking account of their local knowledge and expertise) and made changes to the application submission where possible. This has culminated in reaching agreement with DCC, DCiC and EBC, with there now being final</p>

Ref	Comment	Applicant's Response
		<p>SOCG's that have been submitted to the ExA, with all matters now 'agreed.'</p> <p>In respect of the examination phase, HE has taken a positive and pro-active approach to responding to comments from all parties including the local community, statutory and non-statutory consultees and other third parties. The examination process provides a transparent means by which HE can provide a response, with submissions being published on the Planning Inspectorate's website; so far from being able to dismiss the expertise and knowledge of others, HE has sought to respond to all comments made during the examination, with the examination process and timetable supportive of the ability of other parties to judge the responses of HE and make further representations should they wish to do so.</p>
8.4	<p>Highways England completely disregards the promises that were made about the mitigation. It was going to be much better than what exists now. Instead it is what suits the purposes of HE i.e. translocation of protected wildlife into an unsuitable habitat elsewhere within HE working boundary. They want to disregard the rules about polluting the water courses.</p> <p>HE is offering land under the new curly footbridge as replacement Open Space land. I would like to hear what Emily Mundy herself had to say about that.</p>	<p>Mitigation proposals as associated with the Scheme are detailed in the Environmental Masterplans (ES Figures 2.12A to 2.12H [APP-068]) and also detailed in the OEMP [REP9-019]. The ES and the OEMP are documents certified by the DCO which is a legal document (a statutory instrument). Therefore, HE has a legal obligation to provide mitigation and the DCO provides means to maintain it.</p> <p>No rules are being disregarded with respect to water pollution – the Scheme will be provided with a suitable highway drainage design that will appropriately collect, attenuate and treat highway runoff. As such, the Scheme will not cause worse pollution in water courses, in fact water</p>

Ref	Comment	Applicant's Response
		<p>quality in Mill Pond is anticipated to improve with the Scheme.</p> <p>With regard to the loss of public open space at Markeaton Park, replacement land will be provided as part of the Scheme proposals which will be formally provided as Public Open Space land. The replacement land provided is of equal quality and will ensure there is no net loss of open space land as a result of the Scheme. . Further information is provided in Chapter 5 of the Planning Statement [APP-252]. The suitability of the replacement land has been confirmed by DCiC – refer to the signed SoCG with DCiC [REP7-020].</p>
8.5	<p>Far too many problems have been deferred to the “detailed design stage”. The time schedule is not long enough to resolve all the conflicting issues. HE completely disregards the difficulties of Local Authorities whose loss of Revenue Support Grant means they have to prioritise Adult and Children’s Care and statutory obligations, above all of their other services to council tax-payers. Highways Agency only fulfilled its promises on supplying maintenance money to the City Council when it wanted to proceed with further improvements to the trunk network to please the Freight-Goods companies. The silt was only cleared from the culvert under Queensway 32 years after the dualling despite repeated requests from Derby City Flood Defence team.</p>	<p>The Scheme’s transport economic assessment evaluated the travel time savings in the first year of opening (2024) at £6.5million (<i>in 2020 market prices and discounted to a 2010 present value year</i>). Highway England is progressing the Scheme as quickly as possible so that these transport efficiency improvements are delivered at the earliest possible opportunity. Derby City Council support the Scheme. HE is mindful that the beneficiaries will include residents of Derby’ Taking longer to develop and deliver the Scheme would defer the accrual of these large annual benefits.</p>

Ref	Comment	Applicant's Response
8.6	<p>Since the cost estimates were +done for the 3 junctions project the UK has left the EU, an event not envisaged in 2014 2015.</p>	<p>HE is charged with maintaining and improving the Strategic Road Network. The Scheme has been listed in the RIS2 document published on 11 March 2020 by DfT and HE is therefore charged with delivering this.</p>
8.7	<p>Costs of materials and labour</p> <p>The Prime Minister is adamant that the UK is to Leave under WTO Deal terms, so materials which will need to be imported, including plants, could soon carry tariffs, plus extra administrative costs from Customs checks, plus extra fuel costs caused by waiting in long queues at the ports. The 3rd lane in both directions increases the amount of materials required for building the road, plus the amounts needed for mitigating the loss of biodiversity.</p> <p>Extra cost of imported plants (from a short hunt on a gov.uk site on Statutory Instruments for Brexit, listing charges for inspection if imported from EU).</p> <p>The numbers are £ sterling, but it is not clear if those prices are for time spent and or per kilo of plant. This is a Customs import list not a tariff. There would be tariff costs as well.</p> <p>Shrubs, trees (other than cut Christmas trees), other woody nursery plants including forest reproductive material (other than seed) 182.38</p> <p>Bulbs, corms, rhizomes, tubers, intended for planting (other than tubers of potatoes) 205.04</p>	<p>Highways England is a government-owned company and does not respond to political commentary.</p> <p>HE cannot comment on import tariffs of specific items. It is noted that Highways England is a government owned company and ultimately obtains its revenue by direct and indirect taxation (i.e. through HM Treasury, HM Revenue & Customs, DVLA).</p>

Ref	Comment	Applicant's Response
8.8	<p>Labour costs</p> <p>CrossRail work is expected to continue for another two years. The Prime Minister has also promised to proceed with HS2 and with building 40 hospitals and millions of houses; that will result in an acute shortage of construction workers, which will lead to their pay having to rise. The job offer for earnings of immigrants has to be £25,600 pa as compared with the current basic pay of construction workers of £18,500pa.</p> <p>The extra costs on the NHS of missed appointments at the Royal hospital or of long term care for patients who did not get emergency care in time to make a full recovery, (caused by the gridlock when Northbound drivers leave the A38 before they get to the roadworks), would not appear on the books of Highways England but they would be on our tax bills.</p>	<p>HE is not in a position to comment on the provision of labour throughout the country. Inflationary pressures are included within risk and optimism bias adjustments.</p>
8.9	<p>Loss of hard earned reputation and income</p> <p>Friends of Markeaton Park work very hard to put on Festivals of Music and Flowers, and Craft Fairs. Before visiting that type of event people check where road works are taking place. The University of Derby has experienced a drop in student applications during work on the A52. Intu and other retailers in the city centre, and the City Council itself expect a severe long term, probably permanent, drop in footfall, thus in income, as people and potential students alter their habits and take their business elsewhere.</p>	<p>Refer to the Applicant's response to Anne Morgan's Deadline 8 submission under the point entitled 'Loss of hard earned reputation and income' [REP9-028].</p>

Ref	Comment	Applicant's Response
	<p>Allowing the Compulsory Aquisition of part of Markeaton Park and the removal of the trees will not be " for the benefit of the Public..." of Derby, but for the benefit of users of the trunk road system.</p> <p>Markeaton Park gives more and more to its beneficiaries, the citizens of Derby. There are around 100 events that take place in the park every year, attracting over 1.6m visitors to the park from the city and across the region. The park caters for the young and the old. The facilities reflect both the Heritage of the park and new upgrades for the needs of physically or mentally disabled, families, and exercisers who need open space for recreation.</p> <p>After the new paths suitable for wheelchairs and pushchairs were funded by the Heritage Lottery, lots more folk in Derby began to go to the park to enjoy being outside. There are cyclists before breakfast and joggers there at night (confirmed during the Bat Walks). The A38 traffic is hardly noticeable because it is shielded by a band of trees, some of those are hundreds of years old. Jogging alongside juggernaut lorries travelling at 50mph won't be so enjoyable once trees are replaced by an extra lane of trunk road.</p>	
8.10	<p>Highways England want to close the entrance and exits for McDonalds and Eurogarages. HGVs are to be added to local traffic not separated from it, and HE wants to close the Markeaton Park entrance off the A38 too, so a traffic-light controlled Right Turn Lane in Ashbourne Road will be needed. Thus the possibility exists that an extra</p>	<p>Refer to the Applicant's response to Anne Morgan's Deadline 8 submission under the point entitled 'Time and driver stress' [REP9-028].</p>

Ref	Comment	Applicant's Response
	<p>long low-loader lorry carrying 60ft long rail could be attempting to perform a U-turn left into Euro-garages simultaneously with a wide fairground vehicle turning right into Markeaton Park.</p> <p>There are no toilets at that end of Markeaton Park. Everyone who needs those facilities has to cross to McDonalds. Those pedestrians will have to fit in with the sequence of the traffic lights, they won't be able to fully cross the road in one walk. Will there be a big central island for pedestrians to wait safely at the right-turn traffic light? It will have to accommodate pushchairs and Non-Motorised-Units used by Physically disabled people.</p> <p>How far back to Ashbourne will the combined extra local traffic and the HGV A52 Trunk Road queue become, as it is held up by the vehicles and people activating the red light so they can enter Markeaton Park or cross to use the toilets?</p> <p>DCiC's Linsig computer model and HE's own TRANSYT computer model have not shown any problems with queues. A computer does not understand that drivers need to excrete and rest, or that hospitals get more emergency vehicles when roads are icy. The inputs to the computer models do not reflect the variability of seasons, day and night, or road works in other parts of the road system.</p> <p>The computers are not aware of the interconnected complexity of real life.</p>	

Ref	Comment	Applicant's Response
	<p>The City Council often has to deploy a human to manually over-ride traffic-light computer controls.</p>	
8.11	<p>Austropotamobius pallipes live upstream of the Markeaton Lake at Kedleston Hall National Trust lake; these seriously endangered White clawed Crayfish in the lake are on the Natural Environment and Rural Communities Act species list, they are a "Species of principal importance for the purpose of conserving biodiversity" covered under section 41 (England) of the NERC Act (2006) and therefore need to be taken into consideration by a public body when performing any of its functions.</p> <p>The Climate Change droughts and floods of recent years have further decimated populations in rivers with Special Area Conservation status, making the species even more endangered than it was fifteen years ago. Markeaton Lake is known to house a population of Invasive Non-Native Signal Crayfish. The Signal crayfish carry a fungal disease which is lethal to our native White Clawed Crayfish. Natural England, the Environment Agency, the University of Derby, Nottingham Trent University, student volunteers, Derby City Parks department, Derbyshire Wildlife Trust and the National Trust have been co-operating and last year they trapped more than 2000 of them. It is possible that the noise and especially the vibration of the 3 junction work will cause them to migrate away from Markeaton Park. They can travel some distance overland. Highways England must be asked to</p>	<p>Refer to the HE response provided to this same question in [REP9-028] (AS-058 Anne Morgan).</p>

Ref	Comment	Applicant's Response
	<p>watch day and night. It will have to obtain a licence from Natural England to intercept any that do seek a quieter life. It would be unlawful to allow any of them to move upstream to spread the disease to what is one of the last thriving colonies of White clawed crayfish.</p>	
8.12	<p>The Local Flood Authority have raised concerns about the disruption of the flows of ground water by Secant walls that could cause back-up of flood risk on Markeaton Park. The amount of ground water is also certain to rise if the trees and other vegetation is removed as proposed. Those mature trees abstract water from the ground during their transpiration, carrying as they do millions of leaves.</p> <p>https://www.ewra.net/ew/pdf/EW_2017_59_34.pdf M.S. Ozcelik Istanbul University, Faculty of Forestry, Department of Watershed Management, 34473, Istanbul, Turkey e-mail:</p> <p>Abstract: Transpiration is calculated as a component of evapotranspiration for planning water resources in watershed scale. To present this fact, water consumption of a single full grown sessile oak (<i>Quercus petraea</i> (Matt.) Liebl.) was determined in daily basis by the tissue heat balance method in Belgrad Forest, Istanbul. Study period covered one growing season in 2016. The sample tree was 18.5 m in height, 34.5 cm in diameter at breast height. Mean air temperature, humidity, and precipitation were 17.4°C, 76.6 (%) and 368 mm respectively, during</p>	<p>Refer to the HE response provided to this same question in [REP9-028] (AS-058 Anne Morgan):</p> <p>The revised Flood Risk Assessment for Markeaton junction [REP4-010] indicates that the use of secant form of pile construction within the Markeaton cutting will not form a barrier to groundwater flow given that the groundwater flow direction is parallel to the alignment of the underpass. As such, the Scheme will not increase the risk of groundwater flooding. Derby City Council (DCiC) is now content that the secant form of pile will not impact upon groundwater flow or flood risk as indicated by the signed SoCG with DCiC [REP7-020].</p> <p>The removal of trees within Markeaton Park will not have a significant effect on groundwater levels or groundwater movements.</p>

Ref	Comment	Applicant's Response
	<p>the study period. The maximum transpiration was 162.4 kg day⁻¹ in July and the minimum was 0.78 kg day⁻¹ in the first day of April. Total amount of water consumption by this single tree in the whole growing season was 18325 kg. Results of this study revealed that water consumption of the vegetation cover should be taken into account for effective water management.</p> <p>A single tree studied as described in this European Water research used "water consumption by this single tree in the whole growing season was 18325 kg." A tree of that size lives inside the curl of the footbridge. The vegetation on the area of Queensway to be cleared covers at least 155 times the area of the sample tree, evapotranspiration maybe 2,840,375kg water over a year.</p> <p>TPO loss Markeaton junction map HE514503.</p> <p>These stems have more suction than one tree. Most of the area to be cleared has this type of wooded cover. These plants have established over years, before the extreme rainfall rising from Climate Change. In dry summer times this soil becomes solid.</p>	
8.13	<p>Mitigation plants are not likely to survive, and they would not perform the benefits provided by the existing trees and scrub.</p>	<p>Tree planting in Markeaton Park will be undertaken in locations that are suitable for planting (e.g. not in saturated ground). In addition, Requirement 6 of the dDCO [REP8-006] states that "Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased,</p>

Ref	Comment	Applicant's Response
		<p><i>must be replaced in the first available planting season with a specimen of the same species and size as that originally planted</i>'.</p> <p>It is acknowledged that newly planted trees will take time before they are able to provide the mitigation provided by mature trees.</p>
8.14	<p>The embankment will be destabilised by</p> <ul style="list-style-type: none"> a) felling of trees and removing roots as necessary for b) digging a trench for the diverted utilities corridor c) planting mitigation saplings d) periodic inspection and upgrading of utilities <p>There could be 2,803,725 extra kg of water there when the plants are not transpiring the water into the atmosphere. Will Highways England have to bear the costs if the wet embankment suffered a mud slide or saucering in the years it took the new trees to develop root systems comparable to the ones stabilising it at present?</p> <p>Highways England has not divulged how much vegetation will be killed. It has not said how much mitigation planting will be done.</p>	<p>The removal of trees within Markeaton Park will not have a significant effect on groundwater levels or groundwater movements, or result in any ground destabilisation. It is noted that the Markeaton junction cutting will not be formed by using an embankment – it will comprise a cutting formed with vertical concrete retaining walls to a maximum depth of approximately 7.6m below existing ground levels, combined with a water excluding reinforced concrete base slab. As such, adjacent tree removal will have no effect on the stability of the cutting, whilst the cutting will not be at risk of mud slides.</p> <p>Vegetation loss figures are detailed in ES Figure 7.6A-B [APP-092], whilst mitigation planting proposals are indicated ES Figures 7.8A-C [APP-094]. With regard to replacement tree planting in Markeaton Park, HE will deliver a landscape design that results in a net increase in trees.</p>
8.15	<p>Semi-mature disease-resistant Elms are to be planted very close to the newly dug diverted utilities corridor. Won't they be disturbed if the any of the diverted utilities have to be inspected for preventative maintenance or for upgrade or repair? If one of the utilities in that corridor</p>	<p>With regard to the trees planted in the vicinity of the utilities corridor along the edge of Markeaton Park (including the proposed disease-resistant elms), these will be planted in locations back from the repositioned utilities such that should any future utilities work be needed, the planted trees</p>

Ref	Comment	Applicant's Response
	needs a repair when one of the trees turned into a totem pole there is successfully being used as Maternity Bat Roost, what a dilemma as the penalties per bat disturbed clash against penalties for loss of service of that utility.	will not be affected. The same is true of the three totem poles to be formed with felled trees – these too will be set back from the utilities' corridor such that any future utilities works will not disturb them.
8.16	The Friends of Markeaton Park manage the Walled Garden. That has been flooded several times in the past. Each time the level of the water has risen, and the damage caused has been worse. The floods of February 2020 reached a depth never reached before, and reached areas that had never been flooded in the past. There was a lot of damage to the contents of the polytunnels, and to the Victorian Bothy. Removing the trees increases the risk of floods; thus it harms the beneficiaries of the Mundy covenant in all corners of the remaining park, not only those enjoying the new paths.	The Walled Garden is located upstream and to the west of the A38. The flooding shown here is generated by surface runoff from upstream. The Scheme will have no impact on the flooding within the Walled Garden. The Markeaton junction Flood Risk Assessment (FRA) [REP9-018] indicates that the Scheme will not have effects upon surface water flooding risks in the areas adjoining the road (including within Markeaton Park), noting that the flood risk assessment has taken climate change into account. It is noted that the removal of trees will have a negligible impact on flood risk.
8.17	The on slip road from Kedleston Road is the place likely to have an accident, adjacent to the Mill Pond.	The Applicant is unable to respond as no reasoning has been provided as to why it "is the place likely to have an accident".
8.18	Highways England has not guaranteed that runoff from the widened A38 will have all available means to trap debris and remove pollutants before it is discharged into the local waterways, that are designated Wildlife sites. The water quality was good enough to host the Jensen Button triathlon charity swim run cycle in 2017.	With regard to the Jensen Button triathlon, this has involved a swim in Markeaton Park lake – it is noted that the lake is upstream of the Scheme and thus will be unaffected by highway runoff from the Scheme. Regardless, HE has proposed a drainage design as detailed in the Road Drainage Strategy [APP-234] which will involve the collection, attenuation and treatment of highway runoff. At Markeaton junction the highway drainage design will involve the collection, attenuation and treatment of some road

Ref	Comment	Applicant's Response
		discharges that currently discharge directly into receiving waterbodies in an uncontrolled manner – in such cases there would be betterment in that additional treatment will be provided over and above any treatment that is currently provided today e.g. treatment of road drainage prior to discharge into Mill Pond.
8.19	<p>Derby City Flood Authority We are particularly concerned that the cumulative effects of silt and other pollutants for the existing and proposed outfalls into Mill Pond will cause significant issues.</p> <p>Derby City Flood Authority response to Examiner questions</p> <p><i>“Any increase in water discharge to Mill Ponds is a significant concern. These are impounded water features. It forms part of the Markeaton Lake/Mill pond reservoir complex. It is our view that the reservoir panel inspector should be consulted on the outfalls proposed in this water feature. It should also be note that part of the dam forming the Mill Ponds breached in 1977.</i></p> <p><i>Water Quality In the drainage strategy not all outfalls are proposed to have any treatment. The method used in the ES to assess the requirement for treatment is the HAWRAT a Highway England assessment tool. However this does not accord well with the requirement of NPSNN and NPPF, which is to use SuDS where possible. This implied that all outfalls should have some water treatment. Our view is the SuDS Manual (C753)</i></p>	<p>These were comments made by DCiC in their response the ExA first written questions and post-hearing submissions [REP1-034] (November 2019). Since these comments were made HE has been in discussion with DCiC to clarify details regarding the Scheme drainage design and in particular Scheme highway runoff into Mill Pond.</p> <p>As detailed in [REP2-020] the Scheme drainage design at Markeaton junction was developed to include a surface attenuation pond (designed to remain wet) and include a second underground storage tank prior to water being discharged via a vegetated ditch into Mill Pond (refer to Environmental Masterplans as illustrated in Figures 2.12c [APP-068]). Runoff treatment within the wet pond will reduce the levels of suspended solids entering Mill Pond as well as reducing the levels of potential soluble pollutants. As discussed within ES Appendix 13.1 [APP-228], the measures incorporated into the surface water drainage design at Markeaton junction are considered likely to achieve 30% removal for suspended solids. The HAWRAT calculations for the Scheme design with mitigation in place indicate that whilst the potential for sediment to accumulate remains (due to the low flow environment within Mill Pond),</p>

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	<p><i>Published by Ciria should be used to determine the level of treatment that should be provided.</i></p> <p><i>We are particularly concerned that the cumulative effects of silt and other pollutants for the existing and proposed outfalls into Mill Pond will cause significant issues. The Mill ponds are impounded water feature with very low flow during dry periods, as such this is a very sensitive water feature. The fishing club that fish the ponds have previously complained about a build-up of silt and lack of oxygen for the fish in the water body."</i></p>	<p>the risk of chronic impacts due to sediment-bound pollutants has been removed. The provision of attenuation by the Scheme should result in a betterment over the existing situation given that silt laden drainage from the A38 currently enters watercourses unattenuated and untreated. DCiC is now content with the highway drainage proposals, subject to DCiC being consulted during the detailed design of the highway drainage system in accordance with the OEMP [REP9-019], including consultation regarding SuDS features at Markeaton junction and consultation regarding highway runoff discharge rates – refer to the signed SoCG with DCiC [REP7-020].</p>
8.20	<p>The Proposed mitigation has not been shown to have equal environmental value, and is unlikely to show any net gain.</p> <p>The mitigation saplings cannot absorb the same amounts of Carbon dioxide as trees and hedging that grow millions of leaves.</p>	<p>Refer to the HE response provided to the same question as [REP9-028] (AS-058 Anne Morgan).</p> <p>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]. It is acknowledged that newly planted trees will take time before they are able to take up as much carbon dioxide as mature trees. This has been taken into account by the carbon impact assessment.</p>
8.21	<p>More rain, storms, and drought make the saplings unlikely to survive.</p> <p>Above a utility corridor in land where the HE retains rights of access they will always be at risk of being dug up even if they do manage to grow.</p>	<p>As detailed above, tree planting in Markeaton Park will be undertaken in locations that are suitable for planting (e.g. not in saturated ground). In addition, Requirement 6 of the dDCO [REP8-006] states that "Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously</p>

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		<p><i>damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted</i>".</p> <p>With regard to the trees planted in the vicinity of the utilities corridor along the edge of Markeaton Park (including the proposed disease-resistant elms), these will be planted in locations back from the repositioned utilities such that should any future utilities work be needed, the planted trees will not be affected.</p>
8.22	Highways England has not divulged how much vegetation will be killed. It has not said how much mitigation planting will be done.	Refer to the HE response provided above to this same question.
8.23	<p>If the right turn from Ashbourne Road onto the A38 is to be removed from the Markeaton roundabout in the TR0 10022 scheme, all the Northbound traffic will be forced to go through the 5 Lamps junction, which does not have enough capacity for the local traffic using it now. That is a residential area.</p> <p>The inhabitants will suffer worse Air Quality all day if that is the only route available for Northbound trunk road traffic.</p>	<p>The right turn from Ashbourne Road onto the A38 will not be prohibited by the Scheme.</p> <p>During the construction phase 2 (only) at Markeaton (which is TM scenarios 2 and 3 and a duration of about 12 months) there is an opportunity to improve the capacity of the temporary traffic signals by restricting the right turn phases. This is described in the Traffic Management Plan [REP7-003] at paragraph 3.2.10.</p> <p>SATURN assignment traffic modelling of TM scenarios 2 and 3 indicated that the flow increases on Kedleston Road at the Five Lamps junction would be less than 100 vehicles per hour. This change is within the expected daily variations at the junction and was considered acceptable.</p>

Ref	Comment	Applicant's Response
		Air quality has been assessed in this area during Scheme construction and is predicted to be within the air quality criteria as shown in ES Chapter 5: Air Quality [APP-043].
8.24	The citizens of Derby who live nearest to Markeaton Park, who are in most need of its open space and recreation, will suffer a permanent loss from the Compulsory Aquisition by Highways England of land from the park.	With regard to the loss of public open space at Markeaton Park, replacement land will be provided as part of the Scheme proposals which will be formally provided as Public Open Space land. The replacement land provided is of suitable quality and will ensure there is no net loss of open space land as a result of the Scheme. Further information is provided in Chapter 5 of the Planning Statement [APP-252]. The suitability of the replacement land has been confirmed by DCiC – refer to the signed SoCG with DCiC [REP7-020].
8.25	They will get worse Air Quality where they live and will no longer be able to escape from the noise and fumes in Markeaton Park when trees no longer grow all the way along the edge, screening the trunk road.	During Scheme operation, traffic noise levels at the eastern side of Markeaton Park adjacent to the A38 are anticipated to reduce given that the A38 mainline will be realigned further away from the park and will be located in an underpass through the junction. Air quality within the park will achieve the applicable air quality objectives set to protect human health. As illustrated in the ES Figure 7.6A [APP-092] a belt of tress will be maintained along the edge of the park and the A38. In addition, additional tree planting will be provided. With regard to replacement tree planting in Markeaton Park, HE will deliver a landscape design that results in a net increase in trees.

Ref	Comment	Applicant's Response
8.26	The inhabitants of Mackworth will also suffer worse air pollution as traffic travelling to join the A38 or to enter Derby is constantly stopped by the Right Turn Lane red traffic light when people need to cross to McDonalds to use the toilets. Hundreds of vehicles enter the park on sunny days, and days when there are big events, or Open Days for the University of Derby. Even more traffic delays will arise from these alterations.	Air quality has been assessed at properties in areas, including Mackworth, that are expected to be affected by construction or operation of the Scheme with the results reported in ES: Chapter 5: Air Quality [APP-043]. Air quality at properties in Mackworth are predicted to be within the air quality criteria set to protect human health.
8.27	Derby City Council has been subjected to punitive cuts in funding from Central Government. It has been able to use the income from Markeaton Park to fund the provision of support for Friends of Parks voluntary groups who provide activities, nature walks, sport, exercise, fishing, a model boat club, art classes and big events such as Dog Shows and Classic car shows.	No response needed from HE.
8.28	With Derbyshire Wildlife Trust the Parks department collected seeds from Veteran trees to grow them to preserve a diverse gene pool. The Walled Garden in Markeaton Park was used as a nursery for the seedlings until they were grown enough to be planted.	No response needed from HE.
8.29	Charles Clark Maxwell attended the steering group meetings that founded Friends of Markeaton Park. He loved to walk to the park to listen to the sounds of children playing in the Mundy play centre. He said it was a loud sound when the paddling pool was full each summer. He would have particularly enjoyed the popular	No response needed from HE.

Ref	Comment	Applicant's Response
	History Walks. Had he lived he would have been the Patron of Friends of Markeaton Park.	
8.30	<p>There is No benefit from the A38 3 junctions scheme for the beneficiaries of Emily Mundy's bequest. There is only harm for Derby's residents.</p> <p>The people of Derby will have endure worse traffic jams on the inner city roads, worse pollution in the air, and worse pollution in the water courses.</p> <p>Derby City Council will have to carry more maintenance costs.</p>	<p>With regard to the comments made, HE would highlight the following:</p> <ul style="list-style-type: none"> • There are a number of benefits that the Scheme will deliver including (but not necessarily limited to): <ul style="list-style-type: none"> – Separation of conflicting local and strategic traffic movements; – Improved journey times at all times of day; – Reduced queues and smoother traffic flows in peak periods; – Improved network reliability and resilience; – Building capacity into the network to accommodate expected growth of trips; – Contribution to supporting growth in Derby and the surrounding areas; – Journey time benefits which would see time saving derived from grade separation accumulated across all three junctions that would improve the average journey time for all through journeys on the A38 trunk road; – New pedestrian and/or cycle links; – Reduced severance for pedestrians and cyclists accessing the Park; – Improvements in traffic safety for all users including vehicles, cyclists and pedestrians.

Ref	Comment	Applicant's Response
		<ul style="list-style-type: none"> • Overall, operation of the Scheme is expected to result in a slight improvement in air quality at properties across the city (refer to ES: Chapter 5 Air Quality [APP-043]). Operation of the Scheme will reduce traffic flows on Stafford Street which is the focus of Derby City Council's traffic management measures to improve air quality. • The Scheme will be provided with a suitable highway drainage design that will appropriately collect, attenuate and treat highway runoff (refer to the Road Drainage Strategy [APP-234]). As such, the Scheme will not cause worse pollution in watercourses. • In the short term DCiC will be handed new infrastructure following the completion of the works that would require less maintenance intervention. DCiC are being consulted about all elements of the design that they will be responsible for through the process to deliver the scheme. Changes to the local infrastructure associated with the scheme means that some area that DCiC are currently responsible for will be removed or altered, this should result in no significant net increase in maintenance liability to DCiC. • The Scheme will attract extra vehicle flows onto the A38, which is a part of the strategic road network that is maintained by Highways England. These rerouted vehicles will no longer be using (and wearing out) local roads maintained by Derby City Council.

Ref	Comment	Applicant's Response
8.31	<p>For years to come there will be a loss of income from businesses that used to get custom from the people attracted to Derby by events in Markeaton Park.</p> <p>There will be a loss of income from events on Markeaton Park. Who chooses to spend a day at the side of a trunk road, with lorries thundering past?</p>	<p>Access to Markeaton Park will become easier and safer following completion of the Scheme so it should continue to receive a similar number of visitors (if not more) as it currently does. There will be nothing different, following completion of the Scheme, to deter visitors to the park.</p> <p>In the existing case, visitors to the park are often delayed by queues at the A38/ A52 Markeaton roundabout. With the Scheme, users of the A38 strategic road network will not pass the park entrance and exit.</p> <p>With the Scheme, visitors arriving on foot or by bicycle from the A52 will no longer have to cross the high traffic flow volumes on the A38 in order to access the Markeaton Park.</p> <p>As detailed above, given that the new A38 will be realigned further away from the eastern edge of the park and will be located in an underpass through the junction, traffic noise levels at the eastern side of Markeaton Park adjacent to the A38 are anticipated to reduce. In addition, a belt of trees will be maintained along the edge of the park and the A38. This along with the mitigation planting proposed, means that the Scheme will not increase views of the A38 from Markeaton Park (again due to the Scheme being in cutting).</p>
9) Cadent Gas [REP9-032]		
9.1	Additional rights – Schedule 5 of the dDCO	<p>Cadent has raised a number of points relating to additional rights that they consider need to be included in the dDCO. Highways England maintains (as noted in its representations from previous deadlines) that the extent of the rights sought by Highways England in Schedule 5 of the</p>

Ref	Comment	Applicant's Response
		<p>dDCO are adequate for Cadent to divert the relevant apparatus and to continue its operations. The rights to divert, access and maintain the apparatus are broad enough, particularly when read in the light of the definition of "maintain" in article 2(1) of the dDCO and in the context of article 2(2).</p> <p>Highways England's position is that it is for the ExA to consider this point and for the Secretary of State to determine whether the rights to be acquired for Cadent are satisfactory.</p>
9.2	Article 10(4)	<p>In respect of the matters raised by Cadent regarding the application of article 10(4) in the dDCO, Highways England retracts the comments made on this point in previous submissions. Highways England did not intend to state that the dDCO will not allow it to transfer compulsory acquisition powers to third parties and that the dDCO only allows rights to be transferred to third parties. As Cadent points out in its D9 submission, the dDCO does not limit the exercise of any transfer of the powers secured in the DCO in this way.</p> <p>As such, Highways England agrees that article 10(4) does permit Highways England to transfer powers in the DCO (including compulsory acquisition powers) to third parties. However, in practice, (and the point Highways England intended to make in its previous submissions on this point) Highways England does not transfer compulsory acquisition powers to third parties because Highways England needs to maintain control of these powers in order to effectively deliver the project on time and in line with the intended</p>

Ref	Comment	Applicant's Response
		<p>construction programme. To ensure that the Scheme is delivered properly and Highways England retains control over its delivery, Highways England does not intend to transfer powers of compulsory acquisition to Cadent; it will transfer the rights listed in, secured and relevant to Cadent, as set out in Schedule 5 of the dDCO.</p>
9.3	<p>4. Protective Provisions</p> <p>4.1 Cadent welcomes the inclusion of protective provisions for its benefit in the Promoter's deadline 6 submission of the dDCO. Cadent notes that the Promoter (in its deadline 8 submission) made no comments on the protective provisions submitted by Cadent in its deadline 7 submission.</p> <p>4.2 Cadent's position remains as per its deadline 7 submission.</p>	<p>Cadent has reiterated that its preferred protective provisions were submitted to the ExA as part of D7. Highways England considers that the PPs submitted by it and included in the dDCO submitted to the ExA at D9 are adequate for Cadent. Highways England's comments on Cadent's proposed PPs are as follows:</p> <p>Item 3.4.1 – Paragraph 59(3)(c) - Indemnity</p> <p>Highways England considers that, without the inclusion of sub-paragraph 59(3)(c) in the Protective Provisions, the risk of potential costs and losses through no fault of its own would place an unreasonable and unjustified burden on Highways England as a public body sponsored by public funds. Should sub-paragraph 59(3)(c) not be included in the Protective Provisions it would unacceptably raise the financial risk of the sScheme. In particular, given the inability of Highways England to control the costs associated with any indirect losses, there is a real concern as to the potential adverse economic impacts on the delivery of the scheme.</p> <p>Highways England notes that the Secretary of State has previously endorsed the principle of excluding indirect and</p>

Ref	Comment	Applicant's Response
		<p>consequential losses of third parties which were not reasonably foreseeable (per the Secretary of State's decision in respect of the Application for the Eggborough Cycle Gas Turbine (Generating Station) Order and requests that the same approach is followed in this instance.</p> <p>Cadent's argument that it derives no benefit from the scheme and should not be exposed to any costs or losses as a result of the Project is misconceived: the Planning Act 2008, s.127 does not require a promoter to hold a utility harmless against the effects of a scheme, only to prevent "serious detriment" to its undertaking. Provided that such serious detriment can be avoided – as Highways England submits is the case here where only losses that are not reasonably foreseeable are to be excluded – then utilities are to be treated in the same way as society as a whole, sharing the costs and the benefits. There is no particular reason for Cadent to be treated differently from other utilities or the rest of society in this case.</p> <p>Item 3.4.2 – Paragraph 63 - Arbitration</p> <p>The inability to refer any dispute under paragraph 57 of the Protective Provisions to arbitration has the potential to frustrate the Scheme. Highways England is not permitted to commence any works to which paragraph 57 applies without obtaining Cadent's approval to the plan and method statement previously submitted. However, the basis upon which Cadent is permitted to withhold or condition its approval to the plan pursuant to sub-paragraph 57(4) is subject only to the requirement that the same must be</p>

Ref	Comment	Applicant's Response
		<p>'reasonable.' Without the ability to subject the reasonableness or otherwise of Cadent's decision to withhold or condition its approval to independent and impartial review, there is an unacceptable risk that the delivery of the scheme will be delayed and/or that it can only be secured in the event that Highways England agree to comply with conditions that it considers are onerous and which may add unacceptably to the costs of, or programme for, the delivery of the scheme.</p> <p>Cadent has restated its view that it must ensure that its apparatus is adequately protected to ensure network integrity. Highways England does not dispute this.</p> <p>However, it does not consider that allowing any dispute or difference under paragraph 57 to be referred to arbitration under paragraph 63 offends this principle. Any retained apparatus will be adequately protected, but such protection should not be at a cost or effort that threatens the timely delivery of the scheme.</p> <p>Given that Cadent has accepted that its ability to:</p> <ul style="list-style-type: none"> (i) condition and withhold approval to any plan under sub-paragraph 57(4); (ii) modify any plan under sub-paragraph 57(5); and (iii) require the removal of apparatus under sub-paragraph 57(8) is tempered by the requirement to act reasonably, Highways England fails to understand why independent scrutiny of its decisions under these provisions continues to

Ref	Comment	Applicant's Response
		<p>be resisted. Without the wording that Highways England requires, it would permit Cadent to ransom the Scheme.</p> <p>Item 3.4.3 – Paragraphs 59(5) and 59(6) – “Acceptable insurance”</p> <p>The parties have agreed a form of words which confirms Highways England’s status, the circumstances in which Highways England would take insurance and what constitutes “acceptable insurance” for those purposes.</p> <p>The difference between the parties is whether that agreed form of words (namely, paragraphs 59(5) and (6)) and the definition of “acceptable insurance” in paragraph 50) should properly be included in the DCO (as Cadent contends) or if they should instead be included in a Side Agreement negotiated between the parties (as Highways England contends).</p> <p>In short, Highways England considers that these paragraphs are not suitable to be included in legislation, and the fact that they have been agreed as a matter of expedience by other bodies, or by Highways England on another scheme (whether for reasons related to that specific scheme or otherwise) does not negate the substantive point.</p> <p>As regards sub-paragraph 59(5), Highways England considers that it is not appropriate or necessary for the DCO, which is a statutory instrument, to contain provisions which merely “confirm” its status or what it will do in certain circumstances. Such provisions are unnecessary and contrary to good statutory instrument drafting practice and</p>

Ref	Comment	Applicant's Response
		<p>their inclusion does not meet the “serious detriment” test in s.127 of the Planning Act 2008. As set out above, the purpose of the protective provisions is to make appropriate statutory provision in circumstances where contractual protection would be ineffectual, e.g. where a contractual provision between the promoter of a scheme and the affected utility would not bind a third party. That is not the case here. Moreover, as Cadent and Highways England have agreed this wording there is no evidence that the £50m figure needs to be in legislation and, indeed, there is good reason to exclude it, namely that it may need to be revised at a later date, so the flexibility of a private agreement is more practical.</p> <p>As regards sub-paragraph 59(6), equivalent provision regarding</p> <ul style="list-style-type: none"> a. Cadent being entitled to seek injunctive relief; and b. Cadent mitigating Highways England's losses; <p>has been made in the Side Agreement negotiated between the parties. Highways England therefore considers that including this sub-paragraph in the DCO is also unnecessary.</p> <p>Regarding the re-stated point that Cadent derives no benefit from the scheme, see the response to item 3.4.1 above.</p> <p>Item 3.4.4 – Paragraph 55(3) – obligation to assist</p> <p>The difference between the parties concerns the extent of Cadent's “assistance obligation” in para. 55(3). Cadent is concerned that Highways England will simply “pass the</p>

Ref	Comment	Applicant's Response
		<p>burden” of obtaining such rights to Cadent. This is not the case for the reasons stated below at a - d. Furthermore, Highways England considers that Cadent should be obliged to assist for the reasons stated below at e - g.</p> <p>a. Under para. 55(2), Highways England is itself first obliged to “afford to Cadent to its satisfaction ... the necessary facilities and rights ... (a) for the construction of alternative apparatus; and (b) subsequently for the maintenance of that apparatus” – so it is for Cadent to determine what facilities and rights are required, and Highways England must first seek those facilities and rights itself and cannot simply pass the burden onto Cadent;</p> <p>b. Cadent’s obligation under para. 55(3) would be limited to taking “such steps as are reasonable in the circumstances in an endeavour to assist”, which is less of an obligation than the “best endeavours” obligation applicable under paragraph 7(3), Schedule 9, Part 1, which is the traditional burden;</p> <p>c. Highways England is to meet Cadent’s costs in this regard (see para. 58(1)), and so if any burden is imposed on Cadent, it will be recoverable;</p> <p>d. The facilities and rights to be obtained are those required for the relocation of Cadent’s apparatus, therefore it is in Cadent’s interest that they be acquired;</p> <p>e. Cadent has a duty, under the Standard Special Conditions of its Gas Transporters Licence, to:</p>

Ref	Comment	Applicant's Response
		<p>“at all times act in a manner calculated to secure that it has available to itself such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:</p> <p>(a) to properly and efficiently carry on the transportation business of the licensee; and</p> <p>(b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to those activities authorised by this licence including, without limitation, its duty to develop and maintain an efficient, coordinated and economical system of gas transportation.”</p> <p>f. Accordingly, this obligation places Cadent under no additional burden but simply clarifies how its Licence obligation applies in these circumstances; and</p> <p>g. The practical effect of Cadent not assisting Highways England in acquiring those rights would be to stymie the scheme authorised by the DCO, therefore it is entirely appropriate that Cadent be placed under an obligation in that regard. Conversely, the wording proposed by Highways England is more likely to protect Cadent's statutory undertaking from serious detriment by ensuring that the necessary facilities and rights are obtained.</p> <p>Paragraph 58(1) – Expenses</p> <p>The additional wording proposed by Highways England seeks to pre-empt a situation where Highways England has</p>

Ref	Comment	Applicant's Response
		<p>to pay Cadent's 'reasonably anticipated' costs without any mechanism for prior approval of those costs or for reimbursing unspent funds.</p> <p>With the minor addition of the words 'to be' ('which is to be agreed'), Cadent's alternative wording is accepted, noting that any detailed design and estimate put forward by Cadent is subject to agreement between the parties.</p>
<p>10) Network Rail [REP9-036 & 037]</p>		
<p>1. Network Rail's responses to the ExA's Further Written Questions</p>		
<p>10.1</p>	<p>1.17 We had hoped to be able to submit agreed protective provisions for Network Rail's benefit for inclusion in the Order but the Applicant's team has not yet responded to our email to them of 20 February which set out the amendments that Network Rail requires to the protective provisions included in the latest draft of the Order.</p> <p>We attach Network Rail's preferred protective provisions and ask that they are included in the Order. We hope to be able to provide protective provisions that have been agreed with the Applicant at Deadline 10.</p>	<p>In response to Network Rail's submission on the protective provisions, Highways England is content to accept the changes proposed by Network Rail, save for the following:</p> <p>37(1) – Highways England considers that “are” should be retained and Network Rail's suggestion of “may be” excluded. The terms are used in respect of an increase in costs which “are” or “may be” expected to be incurred by Network Rail. It is unreasonable to add “may be” as this adds uncertainty into the equation and Highways England cannot be expected to have to pay costs which are not certain to be incurred and/or could be anticipatory.</p> <p>37(3) – it is not clear why “method of calculation” is being excluded. Highways England considers that this should be retained as it is an alternative to “formula” and the two aspects have different purposes and meanings. The terms are used in the context of “capitalised sums” which</p>

Ref	Comment	Applicant's Response
		<p>Highways England is to pay to Network Rail (both in the context of having to have been reasonably incurred by Network Rail). To Highways England it seems fair and reasonable to ensure that as much information as possible is provided to it where costs are expected to be paid by Highways England i.e. formula <i>and</i> method of calculation in order for Highways England to be provided with enough information to determine whether the sums have been reasonably incurred.</p> <p>38(d) it is not clear to Highways England why the term “reasonable” has been deleted. Highways England’s position is that “reasonable” should be retained as this qualifies any opinion which is being given by an engineer and, again, relates to potential costs which Highways England may have to make to Network Rail.</p> <p>39(6) No explanation regarding the meaning of “regular revenue earning operations comprised in the authorised development” has been provided by Network Rail. It is not clear what this is seeking to achieve and Highways England considers that this creates uncertainty. Highways England considers that the wording in its dDCO should be retained as the wording is clearer. Essentially the provision is agreed and Highways England acknowledges that there is a need to prevent EMI where this occurs during construction works (not operational activity). In line with the approach in the dDCO generally, Highways England considers that the trigger “completion of the authorised development” gives more certainty to when the provision ceases to have effect.</p>

Ref	Comment	Applicant's Response
		<p>It is worth noting that the wording proposed by Network Rail has not been used on other HE DCOs, e.g. the M4 Smart Motorway or A14 Cambridge to Huntingdon DCO</p> <p>42. Highways England does not agree with the inclusion of paragraph 42. Network Rail already has adequate costs protection in paragraph 37 of the draft PPs and as such, this broadening of the provisions adds uncertainty and inconsistency. In addition, the provision is open ended Highways England considers that it is unreasonable for this provision to be included in the PPs.</p>
10.2	<p>2.7 Network Rail has not, as the Applicant confirms in its Deadline 8 submission referred to at paragraph 2 of this Deadline 9 submission below, seen the relevant bridge assessment and verification surveys.</p>	<p>See response to relevant paragraph referred to below.</p>
10.3	<p>10.9 In relation to protective provisions, we refer to our response to question 1.17 above.</p> <p>Network Rail is working proactively to agree with the Applicant a Framework Agreement, Bridge Agreement and Deed of Easement.</p> <p>We are waiting for the Applicant's solicitors' response in respect of the draft Framework Agreement and Easement.</p> <p>A draft Bridge Agreement has been provided to the Applicant by Network Rail and comments on the draft are awaited.</p>	<p>Highways England is still in the process of considering these agreements and expects to have comments with Network Rail as soon as possible on these (and as quickly as possible after D10).</p>

Ref	Comment	Applicant's Response
10.4	<p>10.10 Network Rail set out its position in relation to section 127 and the serious detriment test in its response to the ExA's First Written Questions (REP01-025). By way of update, Network Rail notes that the draft protective provisions for its benefit in the Order (Part 4 of Schedule 9) include, at paragraph 32, provision that the Applicant shall not exercise powers under article 23 (compulsory acquisition of land) and article 26 (compulsory acquisition of rights), and a number of other articles, without Network Rail's consent.</p> <p>That consent will be provided by way of the Framework Agreement and other documents that it is committed to agreeing with the Applicant.</p> <p>On the basis that paragraph 32 is included in the protective provisions, Network Rail is content that the Order will not result in a serious detriment to its undertaking.</p>	Noted.
2. Response to the Applicant's Deadline 8 Submissions (REP8-007)		
10.5 REP7-019 (A) Ford Lane Bridge	Having not seen the design of the A6/Ford Lane junction Network Rail cannot comment on whether or not the proposed junction will provide suitable access for Network Rail vehicles that need to access the Midland Mainline for maintenance purposes.	Noted.

Ref	Comment	Applicant's Response
10.6	<p>We assume that the Applicant's Deadline 8 response refers to draft Requirement 12. That Requirement only provides for the Secretary of State to approve detailed designs that depart from the preliminary scheme design and the local highway authority is only required to be consulted in those circumstances.</p> <p>Network Rail submits that the Requirements should be amended to provide for DCiC to approve the detailed design (of both the Ford Bridge works and the Ford Lane/A6 Junction works), in consultation with Network Rail, before works commence.</p>	<p>The OEMP submitted at D9 [REP9-019] was amended to secure these measures (refer to MW-TRA14 in Table 3.2b) which states:</p> <p>A6/ Ford Lane Junction</p> <p><i>The position on revisions to the A6/ Ford Lane junction has been agreed with DCiC in that details will be confirmed during the detailed design stage. As recorded in the SoCG with DCiC "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." It is also recognised that the revised layout needs to accommodate the swept path of articulated low-loaders (60ft / 18.3m length) to facilitate Network Rail's continued access to their infrastructure.</i></p> <p>In addition to this, the OEMP will be converted into the CEMP under Requirement 3, on which DCC and DCiC will be consulted. As such, there are a number of mechanisms already in place and secured through the DCO which will ensure that the LHAs will be in a position to agree the approach on the design of the Ford Lane Bridge and the works to the Ford Lane / A6 Junction works. Highways England considers that on this basis, and the detailed and constructive dialogue Highways England has had with DCC and DCiC to date, that there is appropriate consultation requirements already in place and that no further requirement is required to be included in the dDCO. Highways England considers that it is right that DCC and DCiC should be consulted on these proposed works and</p>

Ref	Comment	Applicant's Response
		<p>measures as the bridge and junction form part of their networks and they will be responsible for these highways as local highways authority and are best placed to raise any concerns.</p>
10.7	<p>The Applicant relies on the Outline Environment Management Plan (OEMP) to provide reassurance that the Ford Lane Bridge will have a suitable load-bearing capacity. Network Rail notes that the draft Order provides (at Requirement 3; Schedule 2 Part 1) that no part of the authorised development is to commence until a CEMP has been prepared in consultation with the relevant local highway authority. It adds that "the CEMP must be substantially in accordance with the OEMP". Accordingly, the OEMP does not have "direct effect" but sets the framework for the CEMP. This appears to Network Rail to provide a rather weak level of control and Network Rail asks that a clearer Requirement is included in the Order that requires the suitability of the Ford Lane Bridge for the carrying of 40T vehicles to have been approved by DCiC before the relevant part of the authorised development is allowed to be used.</p>	<p>Highways England disagrees with Network Rail's that the level of control in Requirement 3 is weak. Requirement 3 sets out a formal process through which the Secretary of State will approve the content of the CEMP. No part of the authorised development can begin until the Secretary of State approves a CEMP for the relevant part. The CEMP has to be substantially in accordance with the OEMP (a certified document under the DCO) and the local highways authorities are consulted as part of the approval process for the CEMP.</p> <p>The local highway authority for the Ford Lane Bridge is Derbyshire County Council (DCC) and outside of the DCO process it would have authority to determine the appropriateness of measures to accommodate 40T vehicles. DCC has confirmed that it wants to ensure that the Ford Lane Bridge can accommodate 40T vehicles as part of the Scheme and is content that it can secure this through the CEMP (given the commitments given by Highways England through the OEMP). As such, Highways England considers that DCC is aware of this issue and is the appropriate body to continue to pursue this point. Highways England has given adequate commitments on the OEMP and the Secretary of State needs to sign off the CEMP. As such, whilst Network Rail's comment regarding the 40T</p>

Ref	Comment	Applicant's Response
		<p>capacity is noted, Highways England considers that DCC is best placed to sign this off (as the highway will still be part of DCC's network after Scheme completion) and Network Rail does not need to be included as a consultee in any requirement on this point.</p>
10.8	<p>Network Rail notes the Applicant's response but asks that a Requirement is included in the Order that provides:</p> <ol style="list-style-type: none"> 1. That the existing junction from the A38 onto Ford Lane remains open until the new junction from the A6 has been completed and is available for use. This is to avoid any period arising during which Network Rail cannot gain appropriate access to the Midland Mainline for maintenance purposes. 2. For DCiC to have approved the design of the new junction and to have confirmed in writing that it is suitable for use by 40T vehicles. 	<p>As noted above, these issues have been included in the OEMP which confirms that the local highways authorities will be consulted during the detailed design stage so the Applicant does not agree that a Requirement needs to be included in the dDCO to secure this.</p>
10.9 REP7-019 (B) Protective Provisions, Framework Agreement and other agreements	<p>Network Rail has not received the Applicant's comments on the draft PPs and Deed of Easement.</p> <p>Network Rail had hoped to be able to submit agreed protective provisions for Network Rail's benefit for inclusion in the Order but, in the absence of a response from the Applicant, we attach Network Rail's preferred protective provisions, showing the modifications sought to those included in the draft Order, and Network Rail asks that the attached protective provisions are included in the Order.</p>	<p>Highways England is still considering the suite of documents provided by Network Rail and will revert to Network Rail with comments as soon as possible. Highways England's comments on Network Rail's preferred PPs is provided above.</p>

Ref	Comment	Applicant's Response
11) Erewash Borough Council [REP9-031]		
11.1	<p>1.11 Requirement 3 Construction Environmental Management Plan Adherence to the core hours. Are DCiC and EBC content with the ExA's proposed amendments (underlined): <i>“(viii) any emergency works; 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. Any other work carried out outside the core hours or any extension to the core hours 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.”</i> EBC are content with the ExA's proposed amendments.</p>	<p>Noted and Highways England has included this text in its most recent version of the dDCO submitted to the ExA at D9.</p>
11.2	<p>1.12 Requirement 3 Construction Environmental Management Plan Provisions for the Handover Environmental Management Plan</p>	<p>Noted. Highways England has provided its response to this point and why it does not consider that this wording is needed to be included in the dDCO.</p>

Ref	Comment	Applicant's Response
	<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><i><u>(a) be substantially in accordance with the relevant HEMP provisions included in the OEMP and CEMP;</u></i></p> <p><i><u>(b) 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></i></p> <p><i><u>(c) incorporate the measures referred to in the environmental statement as being incorporated in the HEMP.”</u></i></p> <p>EBC are content with the ExA's proposed amendments.</p>	
11.3	<p>1.13 Requirement 5 Landscaping Preliminary works</p> <p>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> <p>b) EBC are content with these OEMP provisions.</p>	Noted
11.4	<p>1.14 Requirement 13(1) Surface and foul water drainage</p>	Noted

Ref	Comment	Applicant's Response
	<p>Are EBC and the EA content that OEMP provisions would provide enough protection for controlled and drinking waters in the vicinity of the main construction compound, including during the preliminary works? EBC are content with these OEMP provisions.</p>	
11.5	<p>3.2 Applicant's Updated Air Quality Compliance Risk Assessment [REP6-020] Applicant's Supplement to Air Quality Compliance Risk Assessment [REP7-009] 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? EBC have no outstanding concerns relating to construction impacts.</p>	Noted
11.6	<p>3.4 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) EBC consider the Applicant's air quality assessment represents a reasonable worst-case scenario.</p>	Noted

Ref	Comment	Applicant's Response
	b) EBC consider that based on the AQ assessment there should be no significant effects during construction or operation.	
11.7	<p>3.5 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?</p> <p>EBC is content that the proposed development would not result in a zone/agglomeration currently compliant becoming non-compliant.</p>	Noted
11.8	<p>4.2 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. EBC consider that the drainage provisions for preliminary works required in the CEMP by the OEMP are adequate. In terms of the condition in which the compound would be left, the current proposals for the de-commissioning of the construction compound set out in section MW-G28 of the</p>	<p>Comments regarding EBC's satisfaction with the OEMP provisions and drainage solutions for the construction compound are noted.</p> <p>With regard to EBC's comment that the OEMP provisions regarding the condition in which the main compound would be left are not considered to be adequate: EBC state that the site should not be restored to pre-work conditions but, as the construction compound involves works to an existing waste tip, it should be restored to a safe condition. MW-G28 in the OEMP states "<i>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</i></p>

Ref	Comment	Applicant's Response
	<p>OEMP (Page 53) are not considered to be adequate by EBC. The site should not be restored to pre-work conditions but, as the construction compound involves works to an existing waste tip, it should be restored to a safe condition.</p>	<p><i>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>A further ground investigation will be undertaken at the proposed compound site to enable HE to identify whether measures are needed to make the site acceptable to be used as a construction compound or whether works to it are required. Following completion of the Main Works, the main construction compound at Little Eaton junction will be decommissioned and the site suitably restored in accordance with the OEMP, leaving certain aspects of the compound in place if these are deemed to be of benefit to site conditions (and subject to agreement with the landowner and consultation with EBC). In this regard HE has no intention of leaving the site in a condition that would be considered to be unsafe, although it is not appropriate for HE to be made responsible for undertaking site remediation works above and beyond those associated with HE's temporary use of the site. Given that the site restoration details will not be confirmed until detailed design (taking into account the results of the ground investigation), it is proposed to amend the OEMP to state the following: <i>"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</i></p>

Ref	Comment	Applicant's Response
		<p><i>conditions following consultation with EBC and the land owner. 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". This will enable HE to discuss the specifics of the site restoration details with both EBC and the landowner, including the identification of compound features that are deemed to be of benefit to the site.</i></p>
11.9	<p>5.1 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 still considers the 17% loss of biodiversity to be unacceptable.</p>	<p>HE has nothing to add to the response to this question as detailed in [REP9-029].</p>
11.10	<p>7.1 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>	<p>Noted</p>

Ref	Comment	Applicant's Response
	EBC considers that adequate information has been provided to assess the effect on existing hedgerows.	
11.11	<p>9.1 Climate change and CO2 emissions</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>b) The EBC Local Impact Report (LIR) concludes that the development would be contrary to Erewash Core Strategy Policy 1 (Climate Change) in relation to the mitigation of climate changes but this is outweighed by the economic development benefits that would arise. EBC has no local climate change targets.</p>	HE has provided an analysis of the Scheme effects upon greenhouse gas emissions and climate – refer to ES Chapter 14: Climate [APP-052]. It is for the Secretary of State to consider the effects of the Scheme and whether these are outweighed by the Scheme's economic development benefits.
11.12	<p>9.2 Climate change and net zero carbon by 2050</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>b) The EBC Local Impact Report (LIR) concludes that the development would be contrary to Erewash Core Strategy Policy 1 (Climate Change) in relation to the mitigation of climate changes but this is outweighed by the economic development benefits that would arise. EBC has no local climate change targets.</p>	See response above in Ref. 11.11.
11.13	9.4 Climate change and carbon footprint	Noted

Ref	Comment	Applicant's Response
	<p>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?</p> <p>b) Has enough support been given to other transport modes and behavioural change?</p> <p>c) Has enough consideration been given to the climate change with respect to the loss of mature trees and the planting of new trees?</p> <p>d) How should the OEMP provisions be amended, if at all?</p> <p>EBC has no comments to make in relation to MW-CC1 (Climate Change GHG Mitigation of the March 2020 EMP, Page 90.</p>	
12) Derby City Council [REP9-030]		
12.1	<p>1.1a Disapplication of section 23 of the Land Drainage Act.</p> <p>DCiC believe that due to the offer of consultation in the Statement of Common Ground we will have sufficient opportunity to ensure our view will be fully considered during the detailed design. We are now content to withdraw our objection to the disapplication of s23 of the Land Drainage Act</p>	Noted
12.2	<p>1.3a article 4</p> <p>DCiCs understanding is that article 4 relates to the drainage of land. The article appears to restate the</p>	Noted

Ref	Comment	Applicant's Response
	<p>principles of the Land Drainage Act and common law. The Lead Local Flood Authority still retains powers under section 25 of the Land Drainage Act to ensure that proper flow in watercourses is maintained. DCiC is therefore content that the DCO would not prevent the Lead Local Flood Authority fulfilling their duty.</p>	
12.3	<p>1.3b DCiC is not aware of any concern relating to the dDCO and private drainage agreements.</p>	Noted
12.4	<p>1.4a DCiC is content that the dDCO would not prevent them from fulfilling their land drainage duties, given also the comfort referred to in item 1.1a</p>	Noted
12.5	<p>1.4c DCiC's only concern in this aspect is the maintenance of the flood storage areas at Kingsway Island which is to return to the original land owner. However, Highways England retains powers to undertake maintenance of the flood storage areas and this requirement for the maintenance will be developed in the Handover Environmental Management Plan where DCiC will be consulted. The HEMP will develop the maintenance requirements for maintain these areas.</p>	Noted and agreed.
12.6	<p>1.4d See answer to 1.4c</p>	As above in Ref 12.5.

Ref	Comment	Applicant's Response
12.7	<p>1.5 Article 13 Construction and maintenance of new, altered or diverted streets and other structures.</p> <p>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?</p> <p>The applicant's comments to REP6 8.84, in response to the Inspector's question (Hearing Agenda 4 Question) on how the impact on Section 4 of the Highways Act could be affected by the DCO, are very helpful.</p> <p>There are no further concerns.</p>	Noted
12.8	<p>1.6 Article 14</p> <p>Classification of roads, etc.</p> <p>Are DCiC content that an acceptable process is secured for the development of the detailed inventory and with any other related provisions required in Articles 12 or 13, in Schedule 3 or in the OEMP?</p> <p>Yes, DCiC is content that there is process to secure a detailed Inventory.</p>	Noted and agreed.
12.9	<p>1.7 Article 18 Clearways</p> <p>Do DCiC have any outstanding concerns with respect to the dDCO provisions for clearways? How should any outstanding concerns be addressed?</p>	Noted. The Schedules were updated and submitted at Deadline 9 following discussions with DCiC.

Ref	Comment	Applicant's Response
	<p>There are still a couple of minor amendments identified by DCiC that have not been included in the latest DCO Schedule. DCiC has sent these to the Applicant and they have agreed to update the Schedule.</p>	
12.10	<p>1.8 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? There are still a couple of minor amendments identified by DCiC and agreed with the applicant that have not been included in the latest DCO Schedule. DCiC has sent these to the Applicant and they have agreed to update the Schedule</p>	<p>Noted. The Schedules were updated and submitted at Deadline 9 following discussions with DCiC.</p>
12.11	<p>1.9(a) It may be a reasonable addition to ensure that the public sewerage company procedures are complied with however Article 20 appears to contain adequate provision.</p>	<p>Noted.</p>
12.12	<p>1.9(b) DCiC have been given assurances that they will be consulted fully during the detailed design stage and that their reasonable concerns will be addressed. Therefore, DCiC is content with the proposals in the OEMP.</p>	<p>Noted.</p>

Ref	Comment	Applicant's Response
12.13	<p>1.11 Are DCiC and EBC content with the ExA's proposed amendments (underlined): <i>“(viii) any emergency works; 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. Any other work carried out outside the core hours or any extension to the core hours 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.”</i> Yes, DCiC is content with this (notwithstanding potential Council resource implications that will need to be discussed).</p>	Noted.
12.14	<p>1.12 Are DCiC, DCC and EBC content with the ExA's proposed amendments (underlined): <i>“(5) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP as approved under sub-paragraph (4). The HEMP must:</i></p>	Noted. Highways England has explained to the ExA (at D9) why it does not consider that these additions are necessary.

Ref	Comment	Applicant's Response
	<p><i>(a) be substantially in accordance with the relevant HEMP provisions included in the OEMP and CEMP;</i></p> <p><i>(b) 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</i></p> <p><i>(c) incorporate the measures referred to in the environmental statement as being incorporated in the HEMP.”</i></p> <p>Yes, DCiC is content with this.</p>	
12.15	<p>1.13</p> <p>Requirement 5. Are DCiC content with the OEMP landscaping provisions including for preliminary works?</p> <p>DCiC has no further comments to add on this and is content.</p>	Noted.
12.16	<p>2.1</p> <p>a) Any residual concerns that Derby City Council (DCiC) has about the Applicant's modelling of queuing and junctions during construction.</p> <p>b) Whether DCiC is content the Applicant has given enough consideration to the potential for queues at one junction to effect other junctions and potentially lead to gridlock.</p> <p>It is noted that the applicant has offered further information to LA's. It would be useful to see the SATURN modelling report and outputs for the traffic</p>	<p>The traffic model assignments and the junction modelling are part of the process that is prescribed in the latest version of the Traffic Management Plan [REP7-003]. As was the case during the earlier PCF Stages, Highways England would continue to share these outputs with DCiC, which, in line with the development of the construction programme, will be more specific and detailed.</p>

Ref	Comment	Applicant's Response
	<p>management scenarios leading into discussions about detailed design.</p> <p>The answers to 3a, 3b, and 3c in REP6-027 sets out DCiC's comments on this issue.</p> <p>However the inclusion of junction modelling in the TMP to inform the design of temporary junctions as part of the traffic management phasing, is an important step. This will help refine the detail design of the traffic management scenarios through the detailed design stage.</p>	
12.17	<p>2.2</p> <p>Whether DCiC considers that the Applicant's assessment of congestion during construction represents a reasonable worst- case scenario.</p> <p>From an assessment of the environmental impacts, based on the strategic modelling and assessment of the changes in route patterns and traffic levels, then the applicant has undertaken a reasonable assessment of the construction scenarios and their impact at this stage of the design process.</p> <p>Again answers to 3a, 3b, and 3c in REP6-027 sets out DCiC's comments on this issue.</p>	Noted.
12.18	<p>2.3</p> <p>Whether the Customer and Stakeholder Manager should be based in a site office, in DCiC's office, or whether they should split their time between the two.</p>	Refer to the HE response to this question in [REP9-029].

Ref	Comment	Applicant's Response
	<p>It seems sensible that there is a split between the two. DCiC is prepared to make provision within its offices to facilitate this front line service and engagement.</p>	
12.19	<p>2.4 Access to Royal Derby Hospital during construction. Anticipated impacts and mitigation. DCiC's views on the potential for significant disruption. Really the key for the Royal Derby Hospital is the operation of the A516/Uttoxeter Road Gyratory and A5111 Manor Road/Uttoxeter New Road Junction. Because of the configuration and close proximity of the A38(T) A516 south on/north off slips and Kingsway Junction; the A516 slips tend to take Derby traffic on the Uttoxeter New Road/A5111 corridors travelling to and from the A38(T) south. The A38(T) Kingsway junction takes traffic from the Uttoxeter Road/A5111 corridors travelling to and from the A38(T) north. There is some traffic, around 150 PCUs during the weekday AM and PM Peaks that could potentially swap from the Kingsway to the Hospital Gyratory Junction. However, this demand isn't significant. The pressure on the Uttoxeter New Road Corridor, and the two junctions discussed above, will be the wider traffic that avoids travelling through the Markeaton Junction when TM Scenario 2 begins, and transfers to this corridor, particularly for destinations on the A38(T) south for journeys from Derby. According to the TMP TM</p>	<p>Agreed. During Markeaton Phase 2 (TM Scenarios 2 and 3), additional lanes will be constructed to the temporary Markeaton layout to mitigate potential increases in journey times along the A38 during construction. As stated in the Traffic Management Plan, this strategy will keep the traffic on the A38(T) and keep it off Derby City Council's network and off the A516 Uttoxeter New Road/ A5111 Manor Road corridors.</p>

Ref	Comment	Applicant's Response
	<p>Scenario 3, which lasts 161 days when traffic will be diverted to the newly constructed dumbbell roundabouts at Kingsway, will be the critical period of constraint on the area around the Hospital. However, the Kingsway junction will open to traffic after around 1.2 years into the main construction programme (TM Scenario 1 to 3). The Kingsway traffic signals need to be managed in a way that they can adapt to traffic conditions. In particular, if traffic during the weekday PM Peak backs up from the Kingsway Junction into the A5111/Manor Road/Uttoxeter Road, then this could cause additional congestion on the Uttoxeter New Road corridor and impact on the operation of the Hospital Gyratory.</p> <p>The philosophy of maintaining two lanes on the A38(T) during the construction is right because keeping the traffic on the A38(T) keeps it off Derby's network. Further, completing the Kingsway Scheme and opening it to traffic early on will give some certainty to the operation of the network around the Hospital.</p> <p>However, if certain issues arise that cause problems on the local network then it will be the contractor's response to this in terms of changing temporary signal phasing to prioritise traffic on the A5111 to clear traffic congestion to an acceptable level, which will be key to the traffic management of the network.</p> <p>From recent meetings with LinkConnex there is an understanding of local sensitivities and willingness to work through these with DCiC to inform the detail design</p>	

Ref	Comment	Applicant's Response
	<p>of the construction programme. The TMP identifies a mechanism to refine the traffic management scenarios through the detailed design of the scheme. However, communication with the Derby Royal Hospital will be critical to the traffic management scenarios. The TMP identifies that the Stakeholder Manager will engage directly with hospital and that any signed diversion routes and emergency access routes will be agreed with the Hospital.</p>	
12.20	<p>2.5 Traffic Management Plan (TMP) [REP7-003] mitigation measures for non-motorised users. How should any outstanding concerns be addressed? The Traffic Management Plan sets out sets out a standard of provision for NMU's and a process of engagement with users groups through the construction process, i.e. the Behaviour Change Group. This is a reasonable approach.</p>	<p>Agreed. We also note the comments of the Derby Cycling Group (see Applicant's responses at 13 below).</p>
12.21	<p>2.6 Any further comment or outstanding concerns regarding the Applicant's latest TMP [REP7-003]. How should any outstanding concerns be addressed? Most comments made by DCiC have been included in the latest draft. As such, there are no outstanding issues. At this stage the TMP is outline only and will need to be</p>	<p>Agreed.</p>

Ref	Comment	Applicant's Response
	updated as part of the detailed design process. DCiC will be consulted again at this stage.	
12.22	<p>2.8 Please provide an update on the agreement of mitigation measures for the Ford Lane / A6 junction. How are the measures secured? The applicant has identified that this scheme will be defined and agreed through the detailed design process.</p>	<p>It is noted that the OEMP [REP9-019] at MW-TRA14 (Table 3.2b) states: <i>"The position on revisions to the A6/ Ford Lane junction has been agreed with DCiC in that details will be confirmed during the detailed design stage. As recorded in the SoCG with DCiC "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." It is also recognised that the revised layout needs to accommodate the swept path of articulated low-loaders (60ft / 18.3m length) to facilitate Network Rail's continued access to their infrastructure"</i>.</p>
12.23	<p>3.2 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? DCiC is satisfied that the Applicant's Updated Air Quality Compliance Risk Assessment [REP6-020] and Supplement to Air Quality Compliance Risk Assessment [REP7-009] now apply the latest guidance and methodological approach set out in LA105. Notwithstanding the inherent uncertainties within all traffic and air quality modelling, DCiC maintains its overall position on air quality, that any temporary increases in emissions during the construction period are outweighed</p>	<p>Noted – refer to the HE response to this question in [REP9-029].</p>

Ref	Comment	Applicant's Response
	by the improvements expected to be brought about by the completed scheme.	
12.24	<p>3.3 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>DCiC's initial impression was that the application of LA105 Guidance would ensure consistency with the DEFRA's own compliance modelling, however it now appears that the approaches are still different with respect to the choice of modelled receptor points (DEFRA's national model utilises a point 4m from the kerb, however the HE Guidance is to model at all 'qualifying features' within 15m of the carriageway, which vary in terms of their distance from the kerb.</p> <p>It is important to note however, that neither HE nor DCiC are responsible for either reporting on, or determining, compliance against the EU Directive. This is the sole responsibility of the Secretary of State for DEFRA and</p>	<p>Noted – refer to the HE response to this question in [REP9-029].</p> <p>The National Policy Statement on National Networks (NPS NN) paragraph 5.13 states: <i>“The Secretary of State should refuse consent where, after taking into account mitigation, the air quality impacts of the scheme will:</i></p> <ul style="list-style-type: none"> • <i>Result in a zone / agglomeration which is currently reported as being compliant with the Air Quality Directive becoming non-compliant; or</i> • <i>Affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision.”</i> <p>The work carried out by Highways England demonstrates that the Scheme will not affect the ability of a non-complaint area to achieve compliance. Therefore, the Scheme should not be refused development consent on these grounds.</p>

Ref	Comment	Applicant's Response
	<p>subsequently, the European Commission. It is therefore not possible for DCiC to comment on whether compliance will or won't be achieved as a result of the scheme. In order to aid the examination process, DCiC would strongly recommend that formal commentary on this is requested from DEFRA.</p>	
12.25	<p>3.4</p> <p>a) Do DCiC and EBC consider that the Applicant's air quality assessment represents a reasonable worst-case scenario?</p> <p>b) On balance, do DCiC and EBC agree that there are likely to be no significant air quality effects during construction or operation?</p> <p>a) Yes. Both the ES and the updated compliance assessment work regarding air quality are based on robust and cautious data which should represent a worst-case scenario.</p> <p>b) The completed scheme is expected to provide net benefits to local air quality. DCiC maintains that any temporary increases in emissions during the construction period are outweighed by the improvements expected to be brought about by the completed scheme. This is largely due to the construction-related emissions being predicted to be around the A38 which is generally sufficiently far enough away from sensitive receptors (dwellings, schools etc). On balance therefore, significant</p>	<p>Noted – refer to the HE response to this question in [REP9-029].</p>

Ref	Comment	Applicant's Response
	impacts should be avoided when one considers the life of the construction and operation of the scheme.	
12.26	<p>4.1</p> <p>The modelling used is a national model that extends outside of the limits of the scheme. Highways England has effectively demonstrated that the flood flows pass over a section of the A38 which is not being altered. Hence the flood flows will not be altered. DCiC are therefore content that there will be no adverse effects on third party property.</p>	Noted – refer to the HE response to this question in [REP9-029].
12.27	<p>7.2</p> <p>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]?</p> <p>These comments should not be viewed as obstructive but rather are a demonstration that we have asked that the loss of a veteran tree is unavoidable and that its loss is justified. This is particularly important with Climate Change and wildlife habitats high on the agenda.</p> <p>4.3 HE statement: 'The A38 main carriageway LoD is restricted to 1m. In order to reduce the Scheme impact on the RPA of T358 the carriageway would require need to be relocated to the shifting west (an option which is not</p>	<p>DCiC's commentary states that "<i>DCiC suggest that the assessment of taking more land from Markeaton Park and risk of taking further mature trees is provided. APP-041 states that Option 4 is the preferred option and states that it was selected as it would avoid significant land take from Markeaton Park however it does not provide an actual assessment of this. An assessment would need to demonstrate that the retention of T358 would be more detrimental to wildlife and amenities</i>". Moving the Scheme mainline alignment further into Markeaton Park has been subject to further investigation during the Examination – refer to the HE responses to the ExA second written questions 10.6 and 10.7 in [REP4-024] and the HE response to ExA question 10.4 in [REP9-029]. These responses indicate that moving the mainline further into Markeaton Park has implications with regard to additional loss of public open space and difficulties in providing</p>

Ref	Comment	Applicant's Response
	<p>proposed by Highways England or included as part of the Scheme and is outside of what has been assessed as part of the DCO application). This shift to the west would, however, have a resultant impact of taking more and from Markeaton Park and risk taking further mature trees from the perimeter of the park. The options explored for the alignment of the A38 are provided in Environmental Statement Chapter 3 - Scheme History and Assessment of Alternatives [APP-041] and this note does not explore these alternative options any further as the justification for the alignment of this proposal has been made out in those documents. In addition, the location of the new footbridge is proposed to be as close as possible to the footprint of the existing footbridge and this location necessitates encroaching the tree and/or the RPA.'</p> <p>To demonstrate that the loss of T358 has been fully considered DCiC suggest that the assessment of taking more land from Markeaton Park and risk of taking further mature trees is provided. APP-041 states that Option 4 is the preferred option and states that it was selected as it would avoid significant land take from Markeaton Park however it does not provide an actual assessment of this. An assessment would need to demonstrate that the retention of T358 would be more detrimental to wildlife and amenities. It must also take into account that if the A38 is moved further west then more of the trees within the woodland to the south west could possibly be retained.</p>	<p>suitable replacement land, impacts upon the McDonald's and Euro Garages site which could affect their viability, further loss of trees in Markeaton Park (including the loss of the tree belt between the A38 and the park), as well as the revised alignment having an impact upon Markeaton Lake which would present an engineering challenge as well as having associated environmental impacts (which have not been assessed). Reference should be also made to DCiC's own response to Q10.4 regarding changing the Scheme alignment adjacent to Markeaton Park – this states that: <i>“Changing the alignment is likely to open up more detrimentally significant environmental impacts such as unacceptable loss of public open space and further significant tree loss which is unsustainable”</i>. This indicates that DCiC is in agreement that the mainline A38 cannot be moved further into Markeaton Park without additional losses of trees and losses of public open space that are unacceptable to DCiC. It thus remains HE's position that the mainline alignment at Markeaton junction should not be altered, and that Scheme alignment would result in unavoidable impacts upon the veteran tree T358 and its associated Root Protection Area (RPA).</p> <p>With regard to the measures taken to avoid and minimise the Scheme effects on the veteran tree, refer to Technical Note [REP7-008]. This Technical Note indicates that during the Scheme detailed design stage, Highways England will examine further options that increase the potential to retain tree T358 and reduce the Scheme impacts upon its RPA. Through these actions, it may be possible to retain the tree</p>

Ref	Comment	Applicant's Response
	<p>The HE statement mentions that there is some scope to move the A38 further to the west within the restrictions of the LoD. DCiC believe that even with the design being amended to within the LoD (see 5.2 of the HE statement) there would still be a significant impact on the RPA and that the tree could not be retained as a full canopy tree. DCiC agrees with the HE conclusion statement 5.5: In terms of the policy tests within the NPS NN, the loss of the veteran tree should be weighed in the balance against the clear national and local need for the Scheme coupled with the significant benefits of that the Scheme will bring, including unlocking future investment in the City of Derby and the time savings a less congested route will bring.</p> <p>It must be considered that if retaining T358 as a full canopy tree cannot be achieved then retaining it as a heavily reduced tree must be explored. This would accept that the full RPA is compromised and that the A38 embankment would be cut into the RPA. The RPA would need to be amended so that as much of the rooting environment is retained and that ground protection is installed to protect as much as the soil structure and soil biosphere/habitat as possible. Consideration would need to be given to re-routing or utilising engineering techniques for the installation of utilities/drainage to limit their impact on the amended RPA. Furthermore a robust method statement would be required for the demolition and resitting of the footbridge. Retaining the tree as</p>	<p>itself and reduce the Scheme impacts upon the tree's RPA, however, the Scheme mainline carriageway works will still inevitably have a significant effect on the tree's RPA. It thus remains the most likely scenario (despite best endeavours) that the veteran tree will be unavoidably lost due to the Scheme. It is agreed that it would be preferable that the tree is retained, even with an affected RPA. The option to use the trunk as a totem pole feature at the edge of Markeaton Park will only be actioned if the tree cannot be retained. Given this approach, the OEMP [REP9-019] has been amended to state the following at PW-LAN4: "<i>Highways England will investigate whether the veteran tree (reference T358 in ES Appendix 7.2: Arboricultural Impact Assessment Report [TR010022/APP/6.3] can be retained and the Scheme's impacts upon the tree's RPA reduced. Exploration work will be undertaken prior to any works to establish the trees underground/ root conditions. If the tree is retained, it will be stress tested post-works to ensure its stability and safety</i>". In addition, at D-B9 in the OEMP it states: "<i>The veteran tree to be lost by Markeaton footbridge (with its existing potential bat roost features retained) to be made into a totem pole feature and installed at the edge of Markeaton Park as part of the bat mitigation strategy. If the veteran tree can be retained (refer to PW-LAN4), a suitable alternative felled tree will be selected and made into a totem pole</i>".</p> <p>It is accepted that Table 8.15 in ES Chapter 8: Biodiversity [APP-046] states that 'One veteran tree would be permanently lost for construction of Markeaton footbridge',</p>

Ref	Comment	Applicant's Response
	<p>heavily reduced tree would more than likely have greater wildlife benefit than translocating it as a totem pole to Markeaton Park. If it is judged not to have a greater benefit then the stem could be relocated to Markeaton Park.</p> <p>DCiC is concerned that the compensation for the loss of the Veteran tree T358 has not been adequately addressed. Indeed the objective of the scheme is to achieve a no-net loss DCiC cannot see how this can be achieved if an irreplaceable veteran tree is being removed (albeit some mitigation of translocating the 'totem' is mentioned).</p> <p>It is misleading that Table 8.15 of the Environmental Statement states that 'One veteran tree would be permanently lost for construction of Markeaton footbridge.' It could be argued that the main reason for its loss is the incursion into the RPA where a better designed bridge accommodating the constraint might assist in retention of the tree.</p>	<p>whereas as indicated in Technical Note [REP7-008], the works associated with mainline carriageway construction are also a contributing factor towards the tree loss.</p> <p>With regard to compensation and mitigation, ES Table 8.15 and para 8.10.35 indicates that veteran trees are irreplaceable and as such their loss cannot be mitigated. Para 8.10.35 also states that "<i>the landscape design includes considerable tree planting across all three junctions. In addition, the veteran tree (with its potential bat roost features) would be made into a totem pole feature and installed at the edge of Markeaton Park as part of the bat mitigation strategy</i>". With regard to replacement tree planting in Markeaton Park, HE will deliver a landscape design that results in a net increase in trees, whilst retained vegetation and new planting will maintain the tree buffer between the A38 and the park.</p> <p>In terms of the Scheme achieving its objective of meeting no net loss (NNL) for biodiversity and ecosystem function, ES Chapter 8: Biodiversity [APP-046] states that there is potential to overall achieve NNL and potential net gain, this is in relation to certain habitats and species, based on the results of the ecological impact assessment considering all the mitigation hierarchy measures applied during the Scheme lifecycle – for further details refer to the HE response to the ExA FWQ 8.6 in [REP1-005].</p>
12.28	10.4	Noted and agreed.

Ref	Comment	Applicant's Response
	<p>No. Changing the alignment is likely to open up more detrimentally significant environmental impacts such as unacceptable loss of public open space and further significant tree loss which is unsustainable. It would also result in retaining houses in a worse environment for housing overlooking and detrimentally affected by a significant highway and infrastructure.</p>	
12.29	<p>10.15 No further points were raised by the specialist officers at DCiC.</p>	Noted.
<p>13) Derby Cycling Group [REP9-041]</p>		
13.1	<p>I have considered the revised Traffic Management Plan 7.4b in the context of our Deadline 6 submission on 25th February 2020.</p> <p>Noted Positive Amendments:</p> <p>I am very please to see the inclusion of the following new paragraphs or sections in the Traffic Management Plan, which largely satisfy our concerns expressed in Section E of our Deadline 6 submission:</p> <p>5.2.3 to 5.2.5: Under "Non Motorised Users":</p> <p>The inclusion of non motorised user movements in the Workplace Transport Management Plan, including manned crossings where NMU routes cross site access points with NMU priority.</p> <p>5.14.3: Under "Manoeuvring Vehicles":</p>	<p>The positive comments are welcomed.</p> <p>LinkConnex, the contractor, operates FORS to a minimum Silver standard and this will be written into the Contractor's supply chain requirements.</p> <p>There could be some exceptions for some specialist plant, but this would be kept to a minimum and plans would be put in place such that their movements would minimise interfacing with NMUs.</p>

Ref	Comment	Applicant's Response
	<p>Highways England's stated support for Silver Standard Fleet Operators Recognition Scheme (FORS) and the comment that this is "tiered down" to supplying contractors, so driver training and on-vehicle devices should be used to create awareness of NMUs to drivers and vehicle manoeuvres to NMUs.</p> <p>Can Highways England state if this means that contractors will have to possess a silver standard certification from FORS and if this means that all drivers will have passed the awareness assessments and that all vehicles must be fitted with the prerequisite equipment if they are to be allowed on site? We do hope that this is the case, otherwise mere support for the scheme, without proactive enforcement, will mean that safety levels will be too variable between contractors and individual drivers.</p> <p>We are also pleased to note that the use of Trixi mirrors will be used in appropriate locations to aid driver visibility of approaching NMUs.</p>	
13.2	<p>Noted Negative or Lack of Amendments:</p> <p>Our Deadline 6 submission parts A and B related to general and specific amendments we wished to see made to the Traffic Management Plan, to make it a more rounded document, covering non motorised traffic travelling through the construction area, as well as motorised traffic.</p> <p>Unfortunately none of the suggestions we made in sections A1, A2 and A3, nor any of our suggestions in</p>	<p>Whilst the contractor cannot make any firm commitment to increasing NMU usage around the works during the construction period at this stage (as the construction plans are still being developed), they have committed to consider their requirements and will ensure NMU flows are catered for and they will have adequate provision. Also, for the same reasons, they cannot make any firm commitment about width available to them or that they will have more routes than they currently have. Derby Cycling Group's feedback has not been incorporated yet as the TMP is still</p>

Ref	Comment	Applicant's Response
	<p>Section B have been incorporated into the Traffic Management Plan to date. We are very disappointed at this because we believe that it is only when the Traffic Management Plan reflects, in it's top level aims and objectives, to increase NMU traffic through the area while construction is in progress, and backs that up with detailed actions to enable it, can we have a chance of it being achieved. We very much hope that this Traffic Management Plan will be raised to a level which properly considers and plans for all forms of traffic, motorised and non-motorised, equitably.</p>	<p>in development and issues will continue to be resolved during the detailed design stage. The importance of involving DCG is recognised and a regular dialogue is now established through the Derby Behavioural Change Group. Highways England and its Contractor have already presented the current version of the TM plans, which indicated the NMU routes in each construction phase, to the Derby Behavioural Change Group and have revised these drawings to take the comments received at the workshop into account.</p>
<p>14) McDonald's Restaurants Ltd [REP9-035]</p>		
<p>14.1</p>	<p>a) Assessment of junction capacities As noted in our letter, our LINSIG modelling has produced "broadly similar" results to Highways England's own TRANSYT analysis. We do not propose further investigation of the junction capacity provided by either model, however, our concerns remain:</p> <ul style="list-style-type: none"> - Both computer models assume that the approach to the junction is standardised, i.e. uniform layout, straight and without any complications. Whilst manual adjustments can be made to reduce the overall capacity of a link within the model, this still needs to reflect situation at the proposals; the proposed stop line queue is clearly on a tight bend, with a 90° turn required from the McDonald's car park, into the queue. This is something which neither computer model can fully represent accurately. Neither 	<p>Noted. As with any signalised junction, the signal phasing will be adjusted and optimised during the commissioning phase to take account of actual, not modelled, traffic flows. As noted previously, the Applicant would be happy to consult with McDonald's (and Euro Garages and Derby City Council) during the detailed design stage to refine the design of the junction in order finalise a design that works for both parties without unduly impacting the operational layouts of either operator and is acceptable to Derby City Council.</p>

Ref	Comment	Applicant's Response
	<p>can the models account for drivers making 'selfish' lane choices.</p> <ul style="list-style-type: none"> - LINSIG utilises a flat traffic profile, which assumes an even distribution of cars over the modelled period. Traffic behaviour at the site is unlikely to follow a flat profile, given that customer behaviour will not be uniform over an hour. - It would be impossible to prepare a reliable microsimulation model of the proposed junction as it would not be possible to verify the results gained. We remain concerned that the modelling work cannot reasonably replicate the complexity of the proposed arrangements. <p>We note that HE would be happy to engage in further discussions with our Client, and neighbouring Euro Garages to refine the design of the junction. Given the limited space available to accommodate the design, as well as the efforts made by both the McDonald's and EuroGarages teams to derive a design that works for both parties without unduly impacting the operational layouts of either operator, it would be helpful if HE could come forward with refinements for our client(s) to review.</p>	
14.2	<p>b) Junction Geometry</p> <p>HE note that the A52 entry layout is similar to the existing arrangements, however, overlook that all site traffic will need to use the new access, whereas presently, traffic can access the site from the A38. Swept paths have been</p>	<p>It should be noted that vehicle tracking software has some built-in tolerance to allow for varying driver behaviour. This should allow for a degree of driver error, but it must be pointed out that it doesn't allow for 'bad' driving.</p>

Ref	Comment	Applicant's Response
	<p>prepared by HE and they note both rigids and artics can safely negotiate. They are shown to have almost zero allowance for driver variation or error. Tracking software assumes that a vehicle is in an optimum situation with a competent driver, a vehicle in good working order (i.e. correct tyre pressures) on a relatively level camber and gradient, and in dry conditions. In addition to this, Tracking software assumes that the vehicle is not fully laden. Therefore there is a definite possibility that a fully laden delivery to McDonald's, the PFS, or and HGV customer to the PFS could struggle to replicate the swept paths produced by HE. The manufacturers of tracking software note that a fully laden HGV with twin axles could have its turning circle affected by up to 0.5m while fully laden an manoeuvring close to, or at "full lock".</p> <p>It is our view that despite the modelling exercises and swept paths prepared to date, that the proposed junction is compromised in terms of both the storage space for vehicles seeking to exit McDonald's or EuroGarages, and the tight and precise manoeuvres required for each and every HGV arriving at the site, in order to access the site safely.</p> <p>Despite recent comments from HE we do not consider that the issue in their own safety audit has been satisfactorily addressed:</p> <p>"The proposed access into the new Esso/McDonalds access appears tight. If vehicles cannot safely turn into the access from Markeaton roundabout kerb strikes may</p>	<p>Also, the proposed nearside kerb radius is larger than the existing so this offers a further degree of comfort as the existing arrangement can be used safely by large vehicles. At the end of the detailed design stage, in accordance with Highways England's PCF process, the design will undergo a Stage 2 Road Safety Audit in which all elements of the design will be scrutinised. All issues raised will need to be properly addressed before the scheme is allowed to proceed to the next PCF Stage (which will be the construction stage).</p>

Ref	Comment	Applicant's Response
	<p>occur or grazing collisions with vehicles waiting to turn right out of the junction onto the A52.” Even if the scheme is “very similar” to the current arrangements, the necessary increase in use of the A52 access following the closure of the A38 represents an unreasonable intensification of use of a junction, which “appears tight”.</p>	
14.3	<p>c) The need to strengthen McDonald's car park McDonald's are in receipt of their site engineer's report and are reviewing the results. HE will be notified of the outcome of the review once completed.</p>	Noted
14.4	<p>d) Closure of the ingress from the A38 We note HE's comments and our client remains disappointed that such an inflexible view has been taken to maintaining the existing situation, particularly when criticism of the A52 access levelled by both McDonald's and EuroGarages is discounted by HE, because the proposed scheme is observed to be “very similar”. This approach appears to be wholly inconsistent in terms of how two entry points to the same site are considered.</p>	<p>As noted in the Technical Note submitted at Deadline 4, Markeaton Junction Northbound Diverge Slip Road – Access to Euro Garages and McDonald's [REP4-021], Highways England's safety and Standards specialists will not permit an access and egress arrangement with the slip road.</p>
14.5	<p>e) Advanced warning signage We await further details from HE.</p>	HE is discussing the provision of signage internally.
14.6	<p>f) Rights of access across the McDonald's and EuroGarages sites</p>	Noted – the Applicant does not believe there is an issue in this respect.

Ref	Comment	Applicant's Response
	<p>We have previously supplied the Land Registry filed plan for title number DY103730, which shows shaded in brown the land over which EG have rights. Investigations in relation to the implications of the scheme are still being considered by our client.</p>	
<p>15) Derbyshire County Council [REP9-047]</p>		
<p>Article 3 – Disapplication of Legislative Provisions</p>	<p>a) Yes Derbyshire County Council is content with the proposed disapplication of S23 of the Land Drainage Act and with other provisions requiring them to accept disapplication including those for consultation during the detailed design stage.</p> <p>b) As noted at the last hearing session on February 18th, Derbyshire County Council understands that the disapplication of Local Highway Authority Street Works Permitting Schemes appears to be common practice in other DCO applications processes. It is aware, however, of a number of examples where this has not been the case such as in the Thames Tidal Tunnel DCO application.</p> <p>In the context of the above, Derbyshire County Council would re-iterate its concerns, however, that it is important that Highways England consults closely, effectively and in a timely manner with Derbyshire County Council's Network Management Officers on any works that are carried out to streets by the applicant (that would otherwise subject to DCC's Permit Scheme) so that the Authority is fully aware of the works that are scheduled to</p>	<p>a) Noted</p> <p>b) Commitments to consult with DCC on the progress of the development are contained in the TMP. In addition, Articles 11 and 12 of the dDCO provide that DCC will be notified in accordance with an amended NRSWA procedure.</p>

Ref	Comment	Applicant's Response
	place and by whom, so that the Authority can manage and respond to any enquiries made by local residents affected by the works.	
Article 4: Maintenance of Drainage Works	Derbyshire County Council is content that the dDCO provisions would not prevent them fulfilling their statutory duties as Lead Local Flood Authority.	Noted
Article 6 – Maintenance of authorised development	<p>a) Derbyshire County Council as Lead Local Flood Authority is content that the dDCO provisions would not prevent it from fulfilling its statutory duties. From a highways and drainage perspective, the County Council is largely in agreement with Highways England, in that many of the issues around maintenance of both existing and future assets are a matter for the detailed design process. Discussion with Highways England about this has been positive and the Local Highways and Lead Local Flood Authority are keen to ensure continued engagement with Highways England during the detailed design of the emerging scheme(s) and their construction.</p> <p>C) See answer to b above D) No. None.</p>	Noted
Article 20 – Discharge of Water	<p>A) Yes Derbyshire County Council is content with this amendment and has no further comments.</p> <p>B) Yes Derbyshire County Council has been given assurances by Highways England that it will be fully consulted during the detailed design stage on this matter</p>	a) and b) Noted

Ref	Comment	Applicant's Response
	and is content that the OEMP appropriately addresses its concerns.	
Requirement 3: Construction Environment Management Plan and Handover Environment Management Plan	Yes Derbyshire County Council is content with requirements a, b and c.	Noted
Landscaping Preliminary Works	a) Derbyshire County Council is content with the OEMP landscaping provisions, including for the preliminary works and has no further comments to add.	Noted
Non-Motorised Users	No. Derbyshire County Council has no further comments to make on this issue.	Noted
Traffic Management Plan Update	No Derbyshire County Council has no further concerns or issues regarding the Traffic Management Plan.	Noted
Ford Lane closure and bridge	Ongoing discussions have been taking place with Highways England / Aecom regarding this issue and discussions are continuing. At the time of writing, the current situation with Ford Lane Bridge is that the County Council is waiting for the investigation to be carried out on site by the applicant's consultants to verify some assumptions in the theoretical assessment. The investigations are being organised by AECOM.	Noted and agreed.

Ref	Comment	Applicant's Response
	<p>The site investigations need a road closure to complete as they need to excavate over the centreline of the bridge and this cannot be carried out under lights. Once the consultants have carried out the investigation this will confirm if the re-assessment of the bridge to 40 tonnes capacity is valid.</p> <p>If it is, then the County Council will continue discussions with Highways England to agree a commuted sum / payment to cover DCC's increased maintenance liability. If a satisfactory payment is agreed then DCC will progress removal of the current 7.5 tonne weight restriction.</p>	
Climate Change and CO2 Emissions	<p>b) Please refer to pages 29 and 30 of the Final Statement of Common Ground that has been agreed between Derbyshire County Council and Highways England and submitted to the examination. DCC is satisfied that the applicant's Environment Statement (Chapter 15) has taken account of all relevant developments that should be considered in the assessment of the cumulative impacts of the scheme and the cumulative impact methodology that has been applied.</p>	Noted
Climate Change and Net Zero Carbon by 2050	<p>B) Derbyshire County Council has been working closely with its local authority partners (8 district and borough councils) to address the impacts of climate change and to reduce greenhouse gas emissions which are consistent with the allocated carbon budgets for Derbyshire and to reduce carbon emissions to net zero by 2050. To this end</p>	Noted and agreed.

Ref	Comment	Applicant's Response
	<p>the above Derbyshire local authorities published the Derbyshire Environment and Climate Change Framework in October 2019, which committed all the local authority partners to seek to achieve these targets. The Framework sets out 7 key themes, one of which is 'Travel', to deliver the climate change objectives and a range of strategies and action plans that will help deliver these objectives, including the Derbyshire Local Transport Plan 3 under the Travel theme.</p> <p>The LTP 3 was published in 2011 and includes 5 key goals one of which is to 'Tackle the Impacts of Climate Change' and sets out a range of proposed measures to achieve this goal, which include well maintained roads and rights of way; efficient transport network management; improving accessibility and achieving healthier travel habits; better safety and security; and a considered approach to new infrastructure. A Review of the LTP has been commenced by Derbyshire County Council but this is in its very early stages.</p> <p>As noted below, the applicant's OEMP (and associated CEMP) contain a range of measures to seek mitigate the impacts of the scheme on air quality and climate change. It will be essential that these measures are fully implemented and monitored by the applicant, in consultation with the appropriate local authorities, particularly during the construction phase of the scheme to ensure that the carbon footprint of the scheme is minimised, in line with the objectives and goals of the</p>	

Ref	Comment	Applicant's Response
	Derbyshire Environment and Climate Change Framework and Derbyshire Local Transport Plan.	
Climate Change and Carbon Footprint	<p>a) Derbyshire County Council has reviewed the contents of the applicant's OEMP particularly in respect of air quality and climate change and its proposed measures for mitigation and considers that the proposed measures appear to be appropriate, comprehensive and based on best practice to ensure that the carbon footprint of the scheme would not be necessarily high.</p> <p>b) Yes Derbyshire County Council considers that appropriate consideration has been given to other transport modes and behavioural change, particularly to accommodate the needs of public transport and linkages to the surrounding cycleway / public rights of way network.</p> <p>c) Yes Derbyshire County Council considers that the applicant has given sufficient consideration to the need to retain and protect existing trees during the construction phase of the development and to maximise the extent of planting of new trees wherever appropriate. DCC is content that it will be consulted at the detailed design stage of the scheme on the scheme's proposed landscaping proposals and mitigation strategy.</p> <p>d) No further comments.</p>	a) to d) Noted.

