

A38 Derby Junctions
TR010022

**8.103 Applicant's Responses to Information
or Submissions Received by Deadline 12**

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Rule 8 (1)(k)
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A38 Derby Junctions
Development Consent Order 202[]

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Applicant's Responses to Information or Submissions Received by Deadline 12

Introduction

This document provides the comments of Highways England (the Applicant) on the responses made by Interested Parties to the Planning Inspectorate on Deadline 12 (12 May 2020) in respect of the A38 Derby Junctions scheme (the Scheme) Development Consent Order (DCO) application.

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 David and Marion Gartside		
	<p>We are writing to inform you that over the past two weeks we have had a number of conversations with Highways England's project manager, Chris Archbold.</p> <p>These conversations have answered the outstanding questions that we had regarding the scheme including revised timescales. The conversations have also enabled progress to be made towards an agreement between them and us for the purchase of our property and relocation of our business.</p> <p>I am therefore informing you that we no longer wish to pursue those representations that we submitted in response to your letter of 21 April 2020 and do not wish to take part in the hearings scheduled for early June.</p>	Noted
2 Derbyshire Wildlife Trust		
	<p>I am writing to request that I may speak, if necessary, at the A38 Hearing. Derbyshire Wildlife Trust provide ecological and biodiversity advice to Erewash Borough Council and Derby City Council and we have assisted with recent written responses to questions on Biodiversity associated with the A38 development. My details are as follows:</p> <p>Name: Kieron Huston</p> <p>Representing: Erewash Borough Council and potentially Derby City Council as their Ecology adviser Speaking at</p>	Noted

Ref	Comment	Applicant's Response
	<p>Hearing 7,10, 13 and 16 (as necessary) Biodiversity and ecological conservation.</p> <p>Availability week commencing 1st June: I am currently available any day during that week.</p>	
3 Friends of Markeaton Park		
<p>Question 1.1a Article 3 Disapplication of permit schemes</p>	<p><i>a) Are DCiC content with the proposed disapplication of their permit scheme and with any other provisions required for them to accept disapplication, including those in Articles 11 and 12, in the Traffic Management Plan (TMP) [REP7-003], and in the Outline Environmental Management Plan (OEMP) [REP10-002]?</i></p> <p>Friends of Markeaton Park object to the closing of the existing entrance to the park from the traffic light controlled roundabout junction of the A38 and the A52. This scheme does not deliver the objectives of providing a safe and serviceable, free-flowing network, an improved environment, and an accessible and integrated network.</p> <p>Highways England has required other parties to dis-apply their legislative provisions. Highways England has no problem about ignoring its own rules with regard to TPO'd trees. Why can't HE dis-apply their own standard regulations for entrances to Markeaton Park, Eurogarages and McDonalds, where their alteration gives rise to a multitude of possibilities for accidents?</p>	<p>The question deals with the disapplication of DCiC's permit scheme and it is not clear how the response relates to the question. Nevertheless, dealing with the points raised: the Scheme design includes closing the existing entrance to the Markeaton Park directly off Markeaton Roundabout, which has historically been the source of shunt-type collisions, whilst the existing park exit onto the A52 will be reconfigured to create the new traffic signal controlled park access. These amended park access and exit arrangements will provide a safer means of park access for the travelling public, whilst the Scheme will also improve access for pedestrians and cyclists.</p> <p>Highways England disagrees with the comment that the Scheme will "<i>not deliver the objectives of providing a safe and serviceable, free-flowing network, an improved environment, and an accessible and integrated network</i>". The information provided to the Examination indicates that the Scheme fulfils its objectives and will provide a wide range of benefits for Derby (refer to the Planning Statement [APP-252]). In addition, the Transport Assessment Report [REP3-005] at section 5.5 predicts the road traffic collision</p>

Ref	Comment	Applicant's Response
		<p>reductions and the casualty savings that the Scheme will deliver across both the strategic and the local road networks.</p> <p>It is unclear what is meant by Highways England ignoring its own rules regarding TPO trees – Scheme effects upon TPOs are detailed in ES Appendix 7.2 [REP9-014]. During the development of the Scheme's design, Highways England has sought to minimise the loss of existing trees, include trees in Markeaton Park, and trees covered by existing TPOs (noting that TPOs impacts by the Scheme are located outside of Markeaton Park).</p> <p>Refer to the comments above regarding the new park access arrangements being safer than those that exist at present, both for pedestrians and the travelling public.</p>
	<p>Statements of Common Ground do not quadruple the actual area of land. Question 8.1</p>	<p>It is not clear as to what the Friends of Markeaton Park are referring to here.</p>
	<p>An accident such as a storm gust of wind toppling a high sided lorry manoeuvring a U-turn at the entrance of Esso to refuel, or a maintenance lorry hitting and disabling the Right Turn Lane traffic lights into Markeaton Park would immediately cause long delays in all directions. Vehicles entering Markeaton Park from the existing entrance from the traffic light controlled roundabout do not impede any other flow of traffic. Closing the 3 existing entrances directly from the A38 will exacerbate the congestion that arises in the Easterly bound A52 at the A52/A38 junction.</p>	<p>It is accepted that an accident anywhere on the highway network has the potential to cause delays, and that the Scheme cannot remove such one-off occurrences. Notwithstanding this, it is recognised that the existing entrance to the park from the Markeaton Roundabout is unsafe and the Scheme has addressed this by providing a safer entrance off the A52. Additionally, traffic modelling and appropriate Scheme design has demonstrated that the traffic flows into and from Markeaton Park, Euro Garages</p>

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	<p>There have been accidents there without adding 3 more flows. To the best of FOMP's knowledge no traffic flow surveys have been done at the current entrance into the Markeaton main car park, which has 700 places, with a probable turnover of two hours instigated by the parking charges. Several times each year cars will enter then not find a vacant spot. Shall we guess? A potential stop rate for Easterly traffic of 350 times an hour? If the detailed design stage does not reverse the closure of the current entrance, and does not relocate the Utilities diversion outside Markeaton Park, Severn Trent Utility maintenance long-vehicles carrying sewage pipes will have to use that entrance.</p>	<p>and McDonald's can all be safely accommodated by the proposed signalised junction with the A52.</p>
	<p>Received 05 August 2019 From McDonald's Restaurants Limited Representation <i>"McDonald's Real Estate LLP ("McDonald's") The basis on which McDonald's opposes the Works are as follows: 1. Access and congestion a) The Works involve closing the entrance to the Property from the A38. This would cause increased queuing at the Ashbourne Road entrance and exit to the Property, posing a health and safety risk to road users, as well as negatively impacting McDonald's business, brand, sales, operations and the amenity of the local area for residents (in each case during and after the works). Additionally, the increased capacity at the Ashbourne Road junction will go beyond its capability. b) The proposed installation of traffic lights at the Ashbourne Road junction will cause gridlock and queuing inside the</i></p>	<p>This was McDonald's written representation from August 2019 – since that time significant progress has been made with McDonald's Restaurants Limited thus the comments are out of date. For the current position with McDonald's Restaurants please refer to the more recent examination material [item 8.1, REP12-007].</p>

Ref	Comment	Applicant's Response
	<p><i>McDonald's site, especially around the access and egress to the Drive-Thru lanes.</i></p> <p>https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/?ipcsection=relreps&relrep=37025 McDonald's</p>	
	<p>Cadent is a licensed gas transporter under the Gas Act 1986, with a statutory responsibility to operate and maintain the gas distribution networks ... Cadent wishes to make a relevant representation to the A38 Derby Junctions DCO in order to protect its position in light of infrastructure which is within in close proximity to the proposed DCO boundary. ...Cadent has low, and medium pressure gas pipelines and associated below or above ground apparatus located within the order limits which are affected by works proposed and which may require diversions subject to the impact. Highways England require diversions to Cadent's gas distribution network, but these diversions have not yet reached detailed design stage and so the positioning, land and rights required for gas diversions included within the DCO may not be sufficient for Cadent. At this stage, Cadent is not satisfied that the DCO includes all land and rights required to accommodate such works. This is a fundamental matter of health and safety.</p>	<p>This looks to repeat a number of points raised by Cadent Gas Limited. Highways England has responded to Cadent's concerns throughout the Examination and these points are noted.</p>
	<p>STWater Any works required to be carried out on STW's assets must be planned and implemented to avoid risk of supply interruption or contamination, damage to the</p>	<p>These points are noted. Highways England has been and will remain engaged with STW throughout the Examination</p>

Ref	Comment	Applicant's Response
	<p>integrity of the water or sewerage networks, or environmental damage. Communication media will need space for cables as well.</p>	<p>and the development of the Scheme insofar as its assets are relevant.</p>
<p>REP6 041 Eurogarages</p>	<p><i>The Planning Inspectorate 3 March 2020 Page 3 We note the content of HE's Technical Note (ref: HE514503-ACM-HGN-Z2_JN_J2_J-TNCH-0002). Within the TN, HE SR-D note that: "...it must be possible to demonstrate that the resultant layout represents the best possible option when weighed up against the alternatives." It would seem that HE's concerns under the CDM regulations 2015 with regard to the designer's duty "to eliminate foreseeable health and safety risks where reasonably practicable" ...do not extend to the risks associated with introducing 100 u-turn movements per hour to the proposed traffic signal junction, which could otherwise be avoided, by maintaining access from the A38. Whilst HE's own team may foresee health and safety risks associated with maintaining access and egress from the A38, they have failed to acknowledge the wider implications and the potential risks associated with introducing a high number of u-turns off of the A52 into the site.</i></p> <p>What are drivers who want to enter Markeaton Park supposed to do when they arrive at the Right Turn Lane and discover that it is full? The Works map appears to have a possible queue length of only 2 cars.</p>	<p>It should be noted that the referenced examination document [REP6-041] was submitted by McDonald's Restaurants Limited and not Euro Garages.</p> <p>Notwithstanding this, the junction has been designed to ensure all vehicles can safely use it and the signals have been designed such that the forecast traffic flows can be accommodated safely.</p>

Ref	Comment	Applicant's Response
	<p>Isn't the first rule of Engineering "If it ain't broke DON'T FIX IT"?</p>	
<p>Question 1.9 Trees Subject to Tree Preservation Orders How should any outstanding concerns be addressed?</p>	<p>Friends of Markeaton Park object to the loss of trees subject to TPOs and of Veteran tree DWT no. 26, and others that qualify for that status but previously did not need that protection because they are growing on land owned by DCiC.</p> <p>This scheme does not deliver the objectives of providing a safe and serviceable, free-flowing network, an improved environment, and an accessible and integrated network.</p> <p>Highways England should be asked to redesign the A38 scheme. There are 4 miles of road in this scheme. Once utility engineers get involved in the Detailed Design stage far more land will be required for their apparatus. The width and depth of the Utility diversion corridor will have knock on effects on the ten-thousand two-year transplants that were mitigation from the previous activity of the Highways Agency. Now that tree belt has grown enough to provide screening as people use the new paths funded by the Heritage Lottery Fund.</p>	<p>Scheme effects upon TPOs are detailed in ES Appendix 7.2 [REP9-014]. During the development of the Scheme's design, Highways England has sought to minimise the loss of existing trees, include trees in Markeaton Park, and trees covered by existing TPOs (noting that none of the TPOs impacts by the Scheme are located within Markeaton Park). FOMP make reference to objecting to Scheme effects upon Veteran tree DWT no. 26 – this tree is a Common oak <i>Quercus robur</i> and is illustrated in ES Figure 8.9 [APP-103] and referenced as tree T287 in ES Appendix 7.2 [REP9-014]. The veteran tree is located within Markeaton Park beyond the Scheme boundary and will be unaffected by the Scheme (refer to tree retention plan ES Figure 7.6A [APP-092]). The Scheme will impact upon veteran tree T358 located adjacent to the existing footbridge near Mill Pond – refer to Highways England document [REP7-008], plus provisions in the OEMP [REP12-002] that indicate that during the detailed design stage Highways England will investigate whether the veteran tree can be retained and the Scheme's impacts upon the tree's Root Protection Area (RPA) reduced.</p> <p>Highways England disagrees with the comment that the Scheme will "not deliver the objectives of providing a safe and serviceable, free-flowing network, an improved environment, and an accessible and integrated network".</p>

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		<p>The information provided to the Examination indicates that the Scheme fulfils its objectives and will provide a wide range of benefits for Derby (refer to the Planning Statement [APP-252]).</p> <p>The Scheme is the alteration of an existing road. The 4 miles of road referred to already form part of the A38.</p> <p>The design and defined areas of impact within the Scheme boundary take into account works on utilities. The utility companies have been consulted over an extended period prior to the DCO submission. The utility corridor has been jointly developed with the utility companies in order to set the required area of land needed to construct the Scheme and conduct the required service diversions. As such, Highways England disagree with the comment that <i>“once utility engineers get involved in the Detailed Design stage far more land will be required for their apparatus”</i>. It is agreed that the utilities corridor along the edge of Markeaton Park will have impacts upon the tree belt resulting in some tree losses - refer to the tree retention plan ES Figure 7.6A [APP-092]. As such, the Scheme design includes appropriate mitigation – namely the landscape design retains a tree belt along the Scheme boundary with the park, replacement tree planting will result in a net increase in trees, whilst semi-mature trees will be planted along the edge of Markeaton Park. It is also noted that the landscape planting proposals for Markeaton Park will be defined in consultation with the park owners, DCiC.</p>

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<p>Question 3.5 Carbon footprint</p>	<p><i>a) Should carbon footprint targets be set in the OEMP to ensure that best practice is followed?</i></p> <p>Highways England must not ignore its Obligations under the Climate Act 2018 and Natural Environment and Rural Community Act. Increased rainfall is inflicting costly damage to the UK now. DCiC had paid £1000 for routine clearance of branch-catcher grids a few days before the February 2020 floods.</p> <p>They had to be cleared again immediately after the flood. Food crops have been damaged by drought. The Destruction of the ecosystem must stop at once.</p>	<p>A carbon assessment has been undertaken for the Scheme and is reported in ES Chapter 14: Climate [APP-052]. In addition, the flood risk assessments (FRAs) undertaken for the Scheme (refer to ES Appendices 13.2A [REP4-009], 13.2B [REP4-010] and 13.2C [APP-231]) and the Scheme drainage strategy (refer to ES Appendix 13.4 [APP-243]) all take account of climate change.</p>
<p>Question 3.5 Carbon footprint</p>	<p><i>b) Please could the Applicant advise whether the planting of new trees fully compensates for the loss of mature trees from a climate change and carbon sequestration perspective? If not, why not and should it? Please clarify the age of new planted trees considered in the response.</i></p> <p>HE has consistently evaded issuing the number of trees to be removed and evaded promising a ratio of replacements to lost trees. These photos reveals why ... there are too many to count.</p> <p>[photos attached]</p> <p>However Friends Of Markeaton Park can supply the number from the report of the Public Inquiry 1978. Throughout the 1970s Derby City Council fought attempts</p>	<p>The Scheme subject to this Examination is very different from that subject to the public inquiry in 1978 and thus comments made in 1978 are not relevant.</p> <p>During the development of the Scheme design Highways England has sought to minimise the loss of existing trees, and where such losses are unavoidable, mitigation planting is proposed (refer to the Environmental Masterplan figures (ES Figure 2.12A to 2.12H [APP-068])). The tree retention plans (ES Figure 7.6A [APP-092]) indicate that Highways England will retain a lot of trees within the Scheme boundary. As detailed in [REP6-018], the Scheme will result in the loss of approximately 50 individual trees within Markeaton park, noting that this figure does not include groups of trees. Exact figures for tree loss and tree replacement within Markeaton Park will be confirmed during</p>

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	<p>of the Highways Agency to add trunk road traffic to Derby's Ring Road. In 1978 the Highways Agency got permission to take 8.65 acres and 300 trees. Mitigation then lists 400 standard trees and 10,000 two year transplants. [extract from 1978 PI attached]</p> <p>The link between the park and the city was severed by widening the road. The mitigation for that was the establishment of Markeaton Brook Walk with a curly footbridge and signs if footpaths plus notice boards.</p>	<p>the detailed design stage. However, Highways England will deliver a landscape design that results in a net increase in the number of trees in Markeaton Park – this commitment is confirmed in the OEMP [REP12-002], noting that as detailed in ES Chapter 7: Landscape and Visual [APP-045] it is proposed to plant a number of semi-mature trees in prominent locations around the Scheme (detailed as plot type LE5.1 – individual trees on the landscape design drawings shown in Figures 7.8a to 7.8c [APP-094]). It is also noted that as confirmed in the OEMP [REP12-002], the landscape planting proposals for Markeaton Park will be defined in consultation with the park owners, DCiC.</p>
<p>Question 3.6 Support to other transport modes</p>	<p><i>The ExA questioned [PD-018] whether enough support has been given to other transport modes and behavioural change.</i></p> <p>The Government Policy is the Transport Decarbonisation Plan, 2020. It states "Public transport and active travel will be the natural first choice for our daily activities. We will use our cars less and be able to rely on a convenient, cost-effective and coherent public transport network".</p> <p>In September 2019, £220 million was announced to transform bus services, to deliver a better deal for bus users. This includes creating Britain's first all-electric bus town, which will see an entire place's bus fleet change over to zero emission electric capable buses. The town, which will be announced later this year, will serve as a</p>	<p>It is agreed that the DfT report Decarbonising Transport: Setting the Challenge (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878642/decarbonising-transport-setting-the-challenge.pdf) published in March 2020, sets an aspiration to develop a Transport Decarbonisation Plan which will set out aims for government, business and society to reduce emissions across all modes of transport, to achieve net zero emissions for every mode of transport by 2050. However, the Setting the Challenge document is the first step towards developing the policy (this initial document is not policy itself); the document provides that "This document marks the beginning of a conversation to develop the policies needed to decarbonise transport". The Transport</p>

Ref	Comment	Applicant's Response
	<p>model for zero-emission electric bus travel. The announcement also referred to a National Bus Strategy, with accompanying long-term funding, which government expects to be launched in 2020. The government considers that £220 million could fund buses to turn a whole town into zero emission.</p> <p>The proposed A38 project only expects a minor overall decrease in Air Pollution for a few years. Thousand of houses are in the planning system on the outskirts of Derby. It is impossible to increase the capacity of every road. Public Transport must become affordable. Pensioner bus passes take thousands of cars off road. Cross subsidy of fares must return soon; cars will have no room to move.</p>	<p>Decarbonisation Plan is not envisaged to be produced until mid-Autumn and, as such, there is not policy in place at this stage supporting these initial aims.</p> <p>Issues associated with the electrification of the bus fleet are for DCiC, noting that in [REP12-019] DCiC has confirmed that they are working on a draft interim Climate Change Action Plan which will identify a local carbon budget based on nationally available data sources – DCiC state that “<i>The aim of the interim Action Plan is not only to identify local emissions and an associated carbon budget for Derby but will also set a carbon reductions trajectory as part of the Governments net zero target. The city will effectively aim to become zero carbon in advance of 2050</i>”.</p> <p>With regard to air quality, ES Chapter 5: Air Quality [APP-043] indicates that operation of the Scheme is predicted to improve air quality slightly with a greater number of properties predicted to have an improvement rather than a deterioration. Emissions overall would increase slightly with increased emissions from increased traffic on the A38 but properties tend to be located further from the A38 than from roads within the city. Emissions in future years will be lower than currently as cleaner vehicles penetrate the vehicle fleet so the slight increase in emissions due to the Scheme is offset against a long term trend of decreasing emissions. The air quality assessment uses data from the traffic modelling which takes account of planned development</p>

Ref	Comment	Applicant's Response
		<p>proposals and the predicted traffic growth in Derby and the surrounding areas.</p> <p>As detailed above, local public transport options in Derby is an issue for DCiC and not the Scheme.</p>
<p>5.1 Groundwater levels and trees</p>	<p><i>In response to [AS-058], the Applicant has stated [REP9-028] that "It is considered that 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." Please provide details of the assessment which led to this finding.</i></p> <p>Highways England should publish the results of the bore-hole tests.</p> <p>What if utilities were refused a licence to repair because the wet ground was too dangerous? Highways England is signing contracts that it will pay all future costs and compensation if utilities fail in their statutory obligations. Highways England is knowingly insisting that apparatus essential for the delivery of those services is placed into unsuitable ground, also knowing that more rainfall is predicted and storms occur more frequently. Utility vehicles could arrive with a licence only to discover a fallen, weakened, remnant tree from previous mitigation, obstructing their work and delaying the swift restoration of service. How high the compensation bill to them from Highways England?</p>	<p>Highways England has published the borehole test results – refer to the Groundwater Monitoring Report (ES Appendix 10.2 [APP-223]). Also refer to Highway England's response to this question in [REP12-007] – this indicates that groundwater at the junction (at monitoring location BM09) is approximately 4.18 ± 0.52m below ground level (bgl) (thus approximately at a level of 60.18m above ordnance datum (AOD)). Groundwater levels towards Markeaton Lake (at monitoring location BM16) are approximately 1.11 ± 0.27 bgl (thus at a level of approximately 56.57m AOD). Thus groundwater levels fall by approximately 3.6m from the junction towards Markeaton Lake, noting that as expected, groundwater is shallower towards the lake. Highway England's response in [REP12-007] indicates that tree removal in Markeaton Park will not significantly increase groundwater levels given that the groundwater is unconfined and has flow paths driven by topographic influences. As such, the Scheme will not result in wet ground that is "too dangerous" for utilities repairs. Therefore Highways England does not agree that "Highways England is knowingly insisting that apparatus essential for the delivery of those services is placed into unsuitable ground".</p>

Ref	Comment	Applicant's Response
	<p>Friends Of Markeaton Park Park notes that some Figures show a path and utilities under the coil of the new footbridge. That too would delay making an immediate repair. Is it a preliminary sketch? Not to scale? The utility corridor not wide enough?</p>	<p>It is also noted that trees within Markeaton Park are managed by DCiC.</p> <p>The plans provided to Highways England for the existing utility services do show that some currently pass under the western spiral of the access ramp to the existing footbridge. This route has been chosen to avoid going further into park land and avoid the areas of trees. This is not an uncommon arrangement that service companies use land owned, managed or operated by highway authorities. The western access ramp spiral to the proposed foot and cycleway bridge has been designed to fit within the footprint of the existing bridge to minimise impacts to the surrounding trees. This design has been developed to not impact on the safe delivery of the main works or to the future access for maintenance for either the utility service companies or the highway authority.</p> <p>The utility companies have been consulted over an extended period prior to the DCO submission. The utility corridor has been jointly developed with the utility companies in order to set the required area of land needed to construct the Scheme and conduct the required service diversions.</p>
<p>Question 7.1 The effect of the proposed development on veteran tree T358</p>	<p>Why can't the utility corridor, the pumps and drainage be placed in the TA dry land to the South of Markeaton roundabout? The covenanted land in the current design is often unable to absorb extra water. The designers must be</p>	<p>The utilities that need to be diverted are generally located on the north and west side of Markeaton junction; as such diversion works must take place in this location on both sides of the new A38 carriageway. There would be no way of utilising the TA land as a utility crossing without</p>

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	<p>able to find other positions for the utility cables and drainage ditch than the roots of TPO 358.</p>	<p>impacting on the TA centre building and on Euro Garages' and McDonald's land The positioning of the utility corridor along the edge of Markeaton Park is considered the best option to achieve the required diversion works without impacting upon other areas within the park. With regard to the pump station and drainage features, these cannot be located in the land at the TA centre given that this land is too distant from the low point of the new A38 carriageway. Additionally, the resulting discharge from the pumping station needs to flow into a suitable watercourse (i.e. Mill Pond) – there is no available watercourse near to the TA land.</p> <p>With regard to the comment "<i>The covenanted land in the current design is often unable to absorb extra water</i>" it is noted that the Scheme will not result in any additional surface water discharges to Markeaton Park, nor Markeaton Lake.</p> <p>With regard to utilities and drainage impacts upon veteran tree T358 (noting that this tree is not covered by a TPO), as indicated in Highways England document [REP7-008] (plus the provisions in the OEMP [REP12-002]) during the detailed design stage Highways England will investigate whether the veteran tree can be retained and if so whether the Scheme's impacts upon the tree's Root Protection Area (RPA) can be reduced.</p>

Ref	Comment	Applicant's Response
<p>8.1 The effect of the proposed development on the McDonald's and Euro Garages sites.</p>	<p><i>8.1b rights access and the strengthening of the McDonald car park, are these matters which should be addressed through the DCO or are they matters for compensation?</i></p> <p>How could Highways England compensate these two businesses if they lose so many customers they had to close? Both know of businesses in other locations that have suffered that fate following work by Highways England.</p>	<p>Any compensation payable is governed by the Compensation Code and can include payment for:</p> <ul style="list-style-type: none"> • The value of any land taken; • Severance and/ or injurious affection; • Disturbance; • Other losses not directly based on the value of the land; and • Fees. <p>This is assessed independently and outside of the DCO process. Depending on the degree of impact to the business, the quantum involved varies depending on the relevant and pertinent issues.</p>
<p>Question 9.4b Alternatives to the CA of the Queensway properties</p>	<p><i>It appears that any alternative identified in (a) above would result in the loss of a strip of land to the A38 edge of Markeaton Park and loss of trees. Do DCiC consider that the loss of land and impacts on trees could be mitigated? If so, how?</i></p> <p>FOMP notes the statements of the utility companies with regard to their previous experience with Highways England schemes. They report that insufficient land has been allocated to them to carry out their statutory obligations. FOMP expects that the utility corridor will have to be considerably widened during the Detail Design stage, and that the machinery brought into the park to excavate the</p>	<p>The Scheme design includes sufficient land to accommodate the utilities diversions and thus Highways England disagrees with FOMP's view that the utility corridor will have to be widened further during the detail design stage. During the Scheme construction phase, construction vehicles will access the utility corridor from the Scheme site and not from within the park, thus avoiding impacts to trees (and their RPAs) located outside the Scheme boundary. As detailed in ES Chapter 8: Biodiversity [REP9-009], it is proposed that some felled trees at Markeaton junction are retained on site and used as part of the environmental mitigation approach (refer to the Environmental Masterplan figures – ES Figure 2.12C/ D [APP-068]. This includes the installation of three 'totem poles' within Markeaton Park</p>

Ref	Comment	Applicant's Response
	<p>trench will have to cross the root protection areas of the trees.</p> <p>FOMP also sees Mitigation maps showing that Felled trees are to be attached to trees next to the Utility corridor to become Bat Totem poles why? (? proposals for mitigation to get round the strict laws about protection of bats?). That work will also involve machinery at the base of the trunks of the trees. FOMP expects most of the trees in the screen belt (mitigation for the last time Highways Agency worked on the park) will die, including the ones that had been growing there for years before the 1985 mitigation was needed, that are labelled "to be retained." Demolition of the properties on Queensway will not save the trees if the utility corridor is allowed in that area. There is no case for Compulsory Acquisition.</p> <p>FOMP does not consider the loss of those irreplaceable trees could be mitigated. Money can't buy 450 no. year's worth of growth. Tree DWT no 26 took four people to measure the girth of its trunk. It must have been growing there for hundreds of years; it has reached the maturity to begin to shed its own branches, typical of recorded Veteran Oaks. DCiC stated more of the trees would have protected but it was not deemed necessary when DCiC owned the land.</p> <p>Friends Of Markeaton Park is disappointed that a number of mitigation proposals promised around 2015 have not been incorporated in this scheme. FOMP would be interested to compare the recommendations of the</p>	<p>made from felled trees with existing bat roost features to mitigate for potential roost features lost across the Scheme. These features will be located in areas that do not impact upon retained trees, nor their RPAs.</p> <p>It is not clear what is being implied by the comment "<i>proposals for mitigation to get round the strict laws about protection of bats</i>", but it should be noted that all works to confirmed bat roosts will be undertaken under a Natural England (NE) European Protected Species Mitigation Licence (EPSML) which has already been provisionally agreed with NE (refer to ES Appendix 8.19: Letter of No Impediment [APP-216]).</p> <p>Given the points raised above, Highways England disagrees with the comment that "<i>most of the trees in the screen belt (.....) will die</i>" – trees to be lost and retained by the Scheme at Markeaton junction are illustrated in ES Figure 7.6A [APP-092] which indicates that a belt of trees between the Scheme and Markeaton Park will be retained. In addition, Highways England will deliver a landscape design that results in a net increase in the number of trees in Markeaton Park, with tree planting proposals being defined following consultation with DCiC.</p> <p>It is not clear what is meant by the comment "<i>That there is no case for compulsory acquisition</i>", although it is presumed that this refers to the Queensway buildings. Highways England's case for the compulsory acquisition of</p>

Ref	Comment	Applicant's Response
	<p>ecologists who carried out the Phase 1 Habitat surveys with the unrealistic maps in Environment Statements now.</p>	<p>these properties is detailed in the Statement of Reasons [REP9-005].</p> <p>With regard to the comment that FOMP do not consider that the loss of those irreplaceable trees (from the tree belt) could be mitigated, including impacts upon veteran tree DWT no. 26. As detailed above, veteran tree DWT no. 26 is located within Markeaton Park beyond the Scheme boundary and will be unaffected by the Scheme – thus no mitigation for this tree has been provide. With regard to Scheme impacts upon veteran tree T358 located adjacent to the existing footbridge near Mill Pond – if this tree is lost, it is agreed the loss of such a veteran tree cannot be mitigated. This is why during the detailed design stage Highways England will investigate whether the veteran tree can be retained and the Scheme's impacts upon the tree's Root Protection Area (RPA) reduced (refer to Highways England document [REP7-008], plus provisions in the OEMP [REP12-002]). The loss of the other trees from the tree belt will be mitigated via replacement tree planting – noting that Highways England will deliver a landscape design that results in a net increase in the number of trees in Markeaton park – this commitment is confirmed in the OEMP [REP12-002]. It is also noted that a number of semi-mature trees will be planted in prominent locations around the Scheme (detailed as plot type LE5.1 – individual trees on the landscape design drawings shown in Figures 7.8a to 7.8c [APP-094]) – this includes along the edge of</p>

Ref	Comment	Applicant's Response
		<p>Markeaton Park. It is also noted that as confirmed in the OEMP [REP12-002], the landscape planting proposals for Markeaton Park will be defined in consultation with the park owners, DCiC.</p> <p>It is unclear what mitigation proposals FOMP are referring to that were "<i>promised around 2015</i>". Regardless, the mitigation proposals as included in the Scheme design detailed in the Environmental Masterplan figures (ES Figure 2.12C/ D [APP-068]) takes account of Scheme design evolutions since 2015 and the findings of environmental surveys undertaken to support the environmental impact assessment as reported in the ES. It is noted that the AECOM ecology team has been providing ecology survey and mitigation design inputs to the Scheme since 2014. Thus Highways England disagree that there are "<i>unrealistic maps</i>" in the ES.</p>
<p>Question 9.1 Special Category Land The Markeaton Park 'Mundy covenant</p>	<p>In 2003 the covenant guardian's father was alive. Then he would have supported the principle of grade separation. Trustees who attended the 2015 consultation believed the assurances that mitigation would make-up for losses. The current holder does not live in Derby but acts regularly, upholding the responsibility of the restrictions and covenant. Friends of Markeaton park respect her diligence. The information that is sent from Derby is unlikely to include the detailed scrutiny the Examining Panel has instigated. Information is dispersed over thousands of pages and dozens of maps; it is extremely difficult to</p>	<p>It is not clear what relevance these comments regarding the Mundy covenant have to the Scheme, although they are noted.</p> <p>With regard to the comment "<i>will the "net gain" for Markeaton Park be one extra sapling</i>". Highways England will deliver a landscape design that results in a net increase in the number of trees in Markeaton Park – this commitment is confirmed in the OEMP [REP12-002]. The landscape planting proposals for Markeaton Park will be defined during the detailed design stage as based upon ES Figures 7.8A-C [APP-094]. As such it is not currently possible to</p>

Ref	Comment	Applicant's Response
	<p>understand the whole impact. People who have a Day job to do with lots of responsibilities can't neglect those. Highways England is the agency that made contact about the covenant.</p> <p>Will the "net gain" for Markeaton Park be one extra sapling? Swap a tree shield for a line of phone masts? Jog beside Fenced-off sewage pipe repairs? Hardly what Emily Mundy intended.</p> <p>Friends of Markeaton Park strongly objects to the building of a Utility corridor across Markeaton Park, plus the Acquisition of permanent rights of access to plots 3.1.w, 4.1b, 4.1d, 3.1x, 3.1a. We object to being informed that a strip of land adjacent to the on slip road from the A52, strips of ground under the replacement footbridge where the previous one used to be, and the embankment adjacent to the off slip road up to Kedleston Road are replacement Open Space.</p> <p>Friends of Markeaton Park object to the loss of trees subject to TPOs and of Veteran tree DWT no. 26, and others that qualify for that status but previously did not need that protection because they are growing on land owned by DCiC.</p> <p>This scheme does not deliver the objectives of providing a safe and serviceable, free-flowing network, an improved environment, and an accessible and integrated network.</p>	<p>state the exact number of trees to be planted within the park, although it is noted that the planting proposals will be developed in consultation with the park owners, DCiC.</p> <p>Highways England disagree with the comment that the Scheme will "<i>swap a tree shield for a line of phone masts</i>", which we assume is a reference to the three totem poles (made from felled trees with existing bat roost features) to be installed for bat mitigation within the park. As indicated in the landscape design ES Figure 7.8B [APP-094], a tree belt along the edge of the park will be retained, with additional tree planting being provided (including a number of semi-mature trees along the park boundary with the Scheme), resulting in a net increase in the number of trees within the park.</p> <p>Regarding the comment "<i>jog beside fenced-off sewage pipe repairs</i>", we assume this to be a reference to the occurrence when a utility within the utility corridor within the park requires excavation and repair – such occurrences are anticipated to be highly infrequent and would be temporary in nature, with the area affected being suitably restored, noting that any such works would not require closure of the footpath that runs parallel to the utility corridor. It is noted that existing utility services already traverse Markeaton Park, so the proposed arrangement replicates the current situation.</p> <p>With regard to the loss of public open space (public land), replacement land will be provided as part of the Scheme</p>

Ref	Comment	Applicant's Response
		<p>proposals which will be formally provided as Public Open Space land. The replacement land provided will ensure there is no net loss of open space land as a result of the Scheme and as such is also considered to be of equal standing in qualitative terms to the land being lost. Further information is provided in Chapter 5 of the Planning Statement [APP-252]. The replacement public open space provisions have been agreed with DCiC (refer to the signed SoCG [REP7-020]). Also refer to the Technical Note on Public Open Space and Replacement Land [REP6-023].</p> <p>It is acknowledged that whilst Highways England has sought to minimise the loss of existing trees, the Scheme will have impacts upon some TPOs as detailed in ES Appendix 7.2 [REP9-014], noting that none of these are located within Markeaton Park. As indicated above, veteran tree DWT no. 26 is located within Markeaton Park beyond the Scheme boundary and will be unaffected by the Scheme. Highways England consider that the landscape design for Markeaton Park provides appropriate mitigation given that it retains a tree belt along the Scheme boundary with the park, it will provide replacement tree planting resulting in a net increase in trees, with semi-mature trees being planted along the edge of Markeaton Park. It is also noted that the landscape planting proposals for Markeaton Park will be defined in consultation with the park owners, DCiC.</p>

Ref	Comment	Applicant's Response
		<p>Highways England disagrees with the comment that the Scheme will “<i>not deliver the objectives of providing a safe and serviceable, free-flowing network, an improved environment, and an accessible and integrated network</i>”. The information provided to the Examination indicates that the Scheme fulfils its objectives and will provide a wide range of benefits for Derby (refer to the Planning Statement [APP-252]).</p>
Question 9.1 b)	<p><i>Please clarify the consideration given to the rights of wider beneficiaries due to their use of the land as protected by the covenant, e.g. in relation to public amenity, for this specific matter.</i></p> <p>Emily Mundy bequeathed the land to the people living in Derby. Those beneficiaries have repeatedly had to defend the bequest from efforts to use the land in a different way from the purpose she stipulated in her Will. During the 1970s nearly two thousand of people wrote objections to the widening of Queensway into a dual carriageway, and Derby City Council, Groups and individuals were prepared to pay Counsel and attend the relevant Public Inquiries to speak in person against the proposal. Several Councillors also spoke for their wards in person. They argued that the M42 was going to be built. The A50 has been added to the strategic network for East-West traffic as well. Scarcely ten years elapsed before the Highways Agency returned for more.</p>	<p>To clarify the position regarding the ownership of the land, Highways England notes that the land was in fact purchased in 1930 by the ‘The Mayor Aldermen and Burgess of the Borough of Derby’, now the City Council, from the Reverend Prebendary William Clark- Maxwell.</p> <p>The land was purchased with the burden of the ‘Mundy Covenant’ which was made by Emily Maria Georgiana Mundy in 1903 after the death of her husband, Francis Noel Mundy. Emily Maria Georgiana Mundy died in 1929, before the land was sold to the Council.</p> <p>Notwithstanding this clarification, It is not clear what relevance these comments (regarding the Mundy covenant and the historic development of the highway) have to the Scheme, although they are noted. Highways England is not clear what the references to “South of Queensway” mean or how they are relevant to the Scheme. It is not clear what map is being referred to by the man who spent all day in the library, although Highways England assumes that this is not relevant to the Scheme.</p>

Ref	Comment	Applicant's Response
	<p>The beneficiaries are prepared to defend the covenant land South of Queensway. In 1997 V.P. was prepared to go Land Registry in Nottingham to purchase documents about the covenant in order to object to a Planning Proposal on land South of Queensway. In 2007 a man who was off work after an operation spent all day in the Local studies Library. He obtained a map that he e-mailed to support objectors to a different planning application.</p> <p>There was a such good response to surveys conducted for the Heritage Lottery Fund bid that a book was written to preserve their anecdotes about events in Markeaton Park.</p>	
	<p>Friends of Markeaton Park was constituted in 2010 and became a charity in 2015. Now we are opposing the loss of the mitigation awarded in 1980, plus a further loss of Open Space and amenity. The utility companies will be under a statutory requirement to maintain their equipment; on the proposed plan it borders a well-used new path. The beneficiaries will often be barred from that section.</p> <p>Highways England is governed by the human adjustments to words that are written into the national strategic network policy. That does not alter the laws of Physics with regard to the behaviour of water, the laws of Biology with regard to what survives and when it dies, or the laws of Chemistry with regard to the quality of the air, the most basic requirement for successful life.</p> <p>Utility Companies have to apply for a licence to work in trenches because material falling on workmen from the sides of the trench has resulted in life-changing accidents</p>	<p>Refer to the response above (section on Question 9.1) regarding the loss of public open space (public land) and replacement land which will be provided as part of the Scheme proposals which will be formally provided as Public Open Space land.</p> <p>Refer to the response above (section on Question 9.1) regarding the infrequent maintenance of utilities within the utilities corridor along the boundary of the park with the Scheme, noting that any such works would not require closure of the footpath that runs parallel to the utility corridor. As such, Highways England disagrees with the comment that "<i>beneficiaries will often be barred from that section</i>". Highways England also disagrees with the comment that "<i>Highways England is knowingly placing apparatus essential for the delivery of those services into unsuitable ground</i>" – refer to the response to Question 5.1</p>

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	<p>and deaths. That land has a history of flooding. Can the Highways England guarantee that the ground condition will always be suitable for the granting of a licence to excavate a trench to carry out emergency repairs to the utilities apparatus? Highways England is signing contracts that it will pay all future costs and compensation if utilities fail in the statutory obligations. Highways England is knowingly placing apparatus essential for the delivery of those services into unsuitable ground, also knowing that more rainfall is predicted and storms occur more frequently. Utility vehicles could arrive with a licence only to discover a fallen, weakened, remnant tree from previous mitigation, obstructing their work and delaying the swift restoration of service. FOMP notes that some Figures show a path and utilities under the coil of the new footbridge. That too would delay making an immediate repair.</p> <p>The proposals before the Examiners do not achieve a number of the stated objectives. They do not improve road safety on Ashbourne Road. Air quality would be much more improved by the provision of public transport.</p> <p>Carbon dioxide can never be reduced if the plants that live by doing that are felled. Biodiversity is vanishing just as humans realise how inter-related the organisms are. Felling trees and hedges removes food and shelter for insects and animals and birds. Net gain is more assured by using the latest Biometric standards. The details being deferred into the Detailed Design change have a wide practical impact and too much preliminary work is being</p>	<p>which states that the Scheme will not significantly increase groundwater levels or result in wet ground that is “<i>too dangerous</i>” for utilities repairs. Any utility maintenance activities will need to be undertaken in a safe manner, in consultation with DCiC as park owners. It is considered highly unlikely that essential utility works could be delayed by “<i>a fallen, weakened, remnant tree</i>”. This is the case given that utilities will be placed in a corridor not subject to tree planting, whilst DCiC will remain responsible for tree maintenance and would presumably clear a fallen tree within the park.</p> <p>Regarding the issue of a path and utilities under the spiral of the new footbridge, please refer to the response above (section on Question 5.1).</p> <p>Road safety on Ashbourne Road is not considered to be a specific issue and the Scheme would not worsen the current situation. In fact, by removing the A38 through traffic from the A52 junction, the accident rate is likely to reduce.</p> <p>With regard to air quality, the ES Chapter 5: Air Quality [APP-043] indicates that operation of the Scheme is predicted to improve air quality. Air quality improvements by changes to local public transport in Derby is an issue for DCiC and not the Scheme.</p> <p>It is accepted that the planting of new trees by the Scheme does not fully compensate for the loss of mature trees in terms of loss of carbon sequestration. However, the GHG assessment reported in ES Chapter 14: Climate [APP-052]</p>

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	<p>done before it has been properly considered. Agreements written on paper do not alter the available area on the ground.</p> <p>Friends of Markeaton Park have demonstrated that there's compelling public interest case to refuse this Development Consent Order, and to reconsider the value and eventual cost of this scheme compared with the uncertain results. The Scheme not only harms to those individuals on Queensway, it deprives the people of Derby of the use of their bequest, and people of the world of action to reduce Climate Change. If the money was spent on public transport the people of Derby would benefit from better air quality.</p>	<p>found that total carbon emissions from the Scheme are not deemed to be significant in the context of the current UK carbon budgets.</p> <p>A full assessment of the Scheme effects on ecology and biodiversity is provided in ES Chapter 8: Biodiversity [APP-046]. This assessment takes full account of tree and vegetation impacts as associated with the Scheme, together with proposed mitigation features as detailed in the Environmental Masterplan figures – ES Figure 2.12A-H [APP-068].</p> <p>With regard to the use of a biodiversity metric - this issue was discussed at ISH4 [REP6-018] where it has been agreed that such a metric will be used 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.</p> <p>With regard to the comment that too many details are being left for the detailed design stage, Highways England responded to this comment in [REP11-003] which states that: <i>“Highways England has a management and control process for developing and delivering their major projects. This process is called the Project Control Framework (PCF) (refer to [REP4-026]). This process ensures that the appropriate deliverables are prepared and activities are carried out at the optimal time. The process ensures that an appropriate level of design is undertaken for each stage of the consenting and delivery stages.</i></p>

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		<p><i>As such, it is wholly appropriate for some aspects to be left for the detailed design stage. The DCO Requirements and the commitments as detailed in the Outline Environmental Management Plan (OEMP) [REP10-002] ensure that environmental impacts as associated with the Scheme will accord with those reported in the ES.</i></p> <p><i>As explained in the ES Chapter 2: The Scheme [APP-040], the approach to Scheme construction is based on the advice from Highways England's buildability advisors. Construction details will be finalised during the detailed design stage, at which time air quality impacts will be reappraised and mitigation measures finalised, as based upon the measures as detailed in the OEMP. This ensures the most up to date assessment and mitigation measures are applied'.</i></p> <p>FOMP state that they "have demonstrated that there's compelling public interest case to refuse this Development Consent Order". Highways England disagree and consider that reference should be made to the Planning Statement and National Policy Statement Accordance Table [APP-252] which provides details of the wider benefits that the Scheme will bring – the document concludes that:</p> <p><i>"There is an identified need for the junction improvements to address congestion and journey time reliability along the route. The Scheme would provide additional capacity along the route and benefit local and strategic traffic by reducing journey times. The improvements to the A38 Derby junctions are a committed Scheme in the Roads Investment</i></p>

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		<p><i>Strategy, which is supported by the NPSNN and complemented by Local Planning policy. It is considered that the Scheme accords with the relevant national and local transport, sustainability and economic planning policy objectives and should be granted development consent”.</i></p> <p>The ES prepared for the Scheme (reported in [APP-039] to [APP-241]) reports the effects of Scheme construction and operation on people and the environment. It is for the SoS to consider the effects and benefits of the Scheme and decide whether the DCO should be granted.</p> <p>As detailed above, air quality improvements associated with changes to local public transport in Derby is an issue for DCiC and not the Scheme.</p> <p>Passengers using the bus services along Derby's radial routes will benefit from the improved journey reliability at the grade separated junctions. The Scheme will support a public transport strategy based upon bus services.</p> <p>The Scheme will enhance walking and cycling accessibility in the area of the A38 Derby junctions. The Scheme will support a transport strategy based upon active travel.</p>
<p>4 Euro Garages Limited</p>		
8.1a	<p>The main issue relates to the suitability of the proposed access from the A52 to safely serve the EGL/McDonalds site. The Applicant has written to EGL to confirm that they are seeking comments directly relating to the proposed access alterations from Derby City Council (DCiC) as the</p>	<p>Highways England is currently in discussions with DCiC regarding the layout of the A52 access. It is envisaged that these discussions will continue through the detailed design stage and will include Euro Garages and McDonald's. Highways England remains willing to investigate options to</p>

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	appropriate Highway Authority for the relevant section of the A52 and they would be required to maintain the public highway element of the scheme. A response is awaited from the Applicant before progress can be made. It would be premature to consider potential alterations to the access scheme until after a response from DCiC	revise the design (within the constraints of the site) to optimise the layout.
8.1b	The issue of rights is primarily for McDonalds. EGL has existing internal rights over the restaurant plot that appear capable of accommodating the new scheme. If any amendments are proposed to the internal routes however these would be best addressed now to resolve these issues and not left for subsequent discussion given that compensation arising from amendments may be substantial.	Noted and agreed.
8.1c	EGL has made direct requests of the Applicant to clarify the position in respect of the Advanced Warning Signage and again a response from the appropriate branch within Highway England is eagerly awaited.	As the combined site does not meet the requirements for 'Trunk Road Service Area' designation it is unlikely that advance signing can be provided. However, Highways England continues to discuss the issue internally with the Highways England legal team and relevant technical specialists and will update the Examination as necessary.
5 Environment Agency		
1.7	Given the additional wording set out in PW-WAT1, we are content that the OEMP provides sufficient measures to protect controlled waters in the vicinity of the main construction compound. These measures set out protective actions which will be included within the	Noted and agreed.

Ref	Comment	Applicant's Response
	preliminary works CEMP, and will include consultation with the Environment Agency.	
6 Cadent Gas		
	<p>Further to our deadline 7 submission dated 10 March 2020, we write to update the Examining Authority and to address the Examining Authority's further written question 9.10 that was issued on 5th May.</p> <p>UPDATE</p> <p>As you will be aware, the Secretary of State issued its decision letter and made the A585 Windy Harbour to Skippool Improvement Scheme Development Consent 2020 (the "Windy Harbour DCO") on 9 April 2020.</p> <p>In the Windy Harbour DCO (as for this Order), Highways England sought to exclude liability under the indemnity provision in the protective provisions for Cadent's benefit for "any direct or consequential loss of any third party arising from any such damage or interruption, which is not reasonably foreseeable".</p> <p>Highways England is continuing to make the same point on the Order without any justification.</p> <p>The Secretary of State and Examining Authority has found in Cadent's favour on this specific point, that this was not justified and Highways England's proposed carve out was not included in the Windy Harbour DCO. This is consistent with previous statutory instruments that affect Cadent's apparatus. Please see:</p>	<p>Highways England does not accept that the indemnity provision for Cadent's benefit for "any direct or consequential loss of any third party" should be considered as the standard legislative provision for the following reasons:</p> <ol style="list-style-type: none"> 1. As a publicly funded body, Highways England is obliged to follow government guidelines as set out in the HM Treasury document '<i>Managing Public Money</i>'. It is expected that "<i>liability should be designed to restrict exposure to the minimum</i>" (Annex 5.4.12). Accepting liability for unforeseen consequential loss of a third party does not in any way meet this expectation, nor is it reasonable for Highways England to have to do so. The guidance also stipulates that it is "<i>not good practice to take on liabilities to contractors which would indemnify them in the event of their own negligence or that of a sub-contractor</i>" (Annex 5.4.13) – the latter being, in effect, liability for consequential loss that is unforeseen. It would therefore run counter to government guidance for Highways England to agree to this, which it does not both for the A38 Scheme and for the M42 Junction 6 improvement project.

Ref	Comment	Applicant's Response
	<p>1. Paragraph 51 of Part 4 of Schedule 9 to The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016; and</p> <p>2. Paragraph 52 of Part 4 of Schedule 9 to The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016.</p> <p>Highways England has not acknowledged or accepted the decision of the Secretary of State and the Examining Authority on the Windy Harbour DCO nor, as far as we are aware, is Highways England challenging that decision. Furthermore, Highways England has made no case for departing from what is the standard legislative position. Put very simply, there is no scheme specific reason to exclude consequential losses from the indemnity and depart from the standard legislative position or the Secretary of State's recent decision.</p> <p>It is also important to note that Highways England's position in respect of Cadent remains fundamentally inconsistent with Highways England's drafting of its Order and its approach to other undertakers: please see paragraph 11 of Part 1 of Schedule 9 to the DCO submitted for Deadline 9. This is the provision that would apply to Cadent if Cadent had not required (and had largely agreed) bespoke protective provisions, and it does not exclude consequential losses from its costs recovery process. This is the "standard" from of protective provisions.</p>	<p>2. It should be noted that Highways England resisted inclusion of liability for unforeseen consequential loss for the Windy Harbour Scheme. Cadent's justification for including such liability in the protective provisions for Windy Harbour was linked to the question of who should assume liability arising "<i>through no fault of [Cadent's] own</i>" as a consequence of the scheme being implemented. Cadent's principal argument was that liability should not lie with them because the Windy Harbour scheme was not initiated by Cadent and Cadent derived no benefit from it. However, the Eggborough DCO documents used by Cadent to support this view did not hold the Applicant liable for unforeseen consequential third party losses: not only the ExA report, but also the SoS recommendation and the as-made DCO (involving the Canal and River Trust) all established that unforeseeable losses should <i>not</i> be indemnified. The ExA recommended that the Canal and River Trust be allowed to claim for consequential losses <i>if reasonably foreseeable</i>. The SoS agreed, finding that "CRT should be within its reasonable rights to claim <i>for foreseeable consequential losses</i>" (emphasis added). Finally, the wording of the Eggborough DCO Order as made provided at paragraph 32(2)(b) of the Protective Provisions for the Canal and River Trust that: "CRT is <i>not entitled to recover any consequential losses which are not reasonably foreseeable</i> from the undertaker" (emphasis added). Highways England requests that the ExA and the Secretary of State uphold this position.</p>

Ref	Comment	Applicant's Response
	<p>Cadent requests that a consistent approach is taken by the Examining Authority and Secretary of State going forwards on this point. In light of the precedent set by the recent decision of the Secretary of State on the Windy Harbour DCO and all previous statutory instruments made under the Planning Act 2008 which regulate the relationship between Highways England's schemes and Cadent's apparatus, Cadent reiterates its position that paragraph 59(3)(c) of Schedule 9, Part 5 should be omitted from the Order. Cadent submits that it would be irrational to include this wording in light of the extensive legislative precedent.</p>	<p>3. Highways England's position on this point is both consistent (on recent schemes, including Windy Harbour) and entirely in accordance with its obligations to manage public money as set out in current government guidance. In the light of the Eggborough DCO, Highways England invites the Examining Authority to consider what is reasonable. The grant of rights to Cadent for unlimited indemnity against all unforeseen third party consequential losses is not reasonable.</p> <p>4. Highways England does not agree that its position with respect to Cadent is inconsistent with the drafting of paragraph 11 of Part 1 of Schedule 9 of the Order (the "standard" protective provisions). Cadent's objection fails to take account of the fact that the scope of the indemnity in the standard PPs is significantly narrower than that given to Cadent: the former covers "damage", "interruption in any service" or "supply of any goods" arising only from construction of a narrow class of the Authorised Development (namely works affecting a utility's apparatus) and resulting subsidence; whereas the latter covers "... construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person</p>

Ref	Comment	Applicant's Response
		<p>employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods ...”</p> <p>In particular, as the indemnity covers any “use” of “any of the authorised works” – i.e., which could even possibly extend to the use of the new road itself, there is potentially a much wider range of unforeseeable consequences, and it is appropriate that liability for these should be restricted, as requested by Highways England.</p>
9.10	<p>Further to question 9.10 of the Examining Authority's further written questions issued on 5 May regarding whether there is serious detriment to Cadent's undertaking, Cadent directs the Examining Authority to its submission dated 31 January in response to the Examining Authority's question 10.14 of its second round of written questions.</p>	<p>Cadent's submission to the ExA on 31 January states that “<i>Cadent is seeking the inclusion of its standard protective provisions</i>” and that only “<i>in the event that suitably worded protective provisions are agreed [will] Cadent consider[.] this sufficient to remove any serious detriment to its undertaking.</i>” Cadent's position with regard to the protective provisions remains unchanged since Deadline 7.</p>

Ref	Comment	Applicant's Response
		<p>Highways England directs the Examining Authority to the detailed responses it has provided to Cadent at Deadline 10 [REP10-009] and Deadline 12 [REP12-007].</p> <p>Despite ongoing discussion, it is clear that the parties must now agree to disagree on several (though not all) of the points raised by Cadent at Deadline 7. It will be for the Examining Authority to recommend an approach and the Secretary of State to determine these, bearing in mind that the same points of contention are also at issue for the M42 Junction 6 DCO and are set out in detail in Highways England's Position Statement on Cadent Gas Protective Provisions submitted to the M42 J6 Examination at Deadline 10.</p>
7 Network Rail		
1.11	<p>Network Rail's Preferred Protective Provisions are the same as submitted at Deadline 10 [REP10-013]. We understand that Network Rail's Preferred Protective Provisions are agreed other than paragraph 42 which we understand the Applicant is not yet willing to agree.</p> <p>Network Rail note that the equivalent of paragraph 42 is included in the A14 Cambridge to Huntington Improvement Scheme Development Consent Order (which has been made by the Secretary of State) and in the draft A1 Birtley to Coal House Order. The Applicant is the undertaker or proposed undertaker in respect of both orders.</p>	<p>As noted by Network Rail, paragraph 42 remains the only element of the protective provisions still to be agreed. The paragraph in question states that:</p> <p><i>"Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or protective work must, provided that 56 Days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid</i></p>

Ref	Comment	Applicant's Response
	<p>Network Rail is unclear why the Applicant is adopting a different position in relation to this Order particularly as this is not a paragraph that has proved in any way controversial in relation to other development consent orders. Its purpose is to ensure that if Network Rail incurs extra expense in carrying out works for which it already has powers at the date grant of the DCO, and that expense is incurred a result of the undertaker's works, then those additional expenses must be reimbursed by the undertaker. Network Rail considers that to be an essential and uncontroversial provision.</p> <p>We hope to provide protective provisions that have been agreed with the Applicant at Deadline 13.</p>	<p><i>by the undertaker to Network Rail."</i></p> <p>Highways England is concerned that the scope of the proposed wording may impose an uncertain, indefinite and potentially significant liability. Accordingly, Highways England responded to Network Rail by email on 28 April requesting clarification as to which projects NR is looking to bring forward at the relevant time and also seeking wording that is narrower in scope. As at Deadline 13, Highways England has not received a response.</p> <p>The equivalent paragraph in the A1 Birtley to Coal House Order, drafted by NR, is not in agreed form.</p>
2.6	<p>As stated in Network Rail's Deadline 9 submission [REP9-036], Network Rail has not yet seen the relevant bridge assessment and verification surveys.</p> <p>We also repeat the submission made at Deadline 9 about the suitability of relying on the OEMP to safeguard Network Rail's position as follows.</p> <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</p>	<p>The bridge assessment and verification survey reports are for the benefit of Derbyshire County Council. Once the Council is happy with these, it will then be in a position to revoke the weight restriction that is currently imposed on the bridge.</p> <p>Highways England reiterates its position which has been made in respect of this point. Highways England considers that the commitments in the OEMP are adequate, the dDCO does not need to have a requirement requiring consultation with NR and the appropriate body to be consulted (and who is coincidentally content with the proposed approach) is the local highways authority.</p>

Ref	Comment	Applicant's Response
	<p>highway authority. It adds that "the CEMP must be substantially in accordance with the OEMP".</p> <p>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>	
9.9	<p>In relation to protective provisions, we refer to our response to question 1.11 above.</p> <p>To reiterate its submission at Deadline 9, Network Rail is working proactively to agree with the Applicant a Framework Agreement, Bridge Agreement and Deed of Easement.</p> <p>We received the Applicant's comments on the draft Framework Agreement at the end of last week consider that good progress is being made. However, we have not received the Applicant's comments on the draft Bridge Agreement, Deed of Easement or Basic Asset Protection Agreement.</p>	<p>Noted. Highways England continues to discuss the documents and is seeking to agree these with NR as soon as possible.</p>
10.10	<p>To reiterate its submission at Deadline 9, 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).</p> <p>By way of update, Network Rail notes that the draft protective provisions for its benefit in the Order (Part 4 of</p>	<p>Noted.</p>

Ref	Comment	Applicant's Response
	<p>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>	
8 Severn Trent Water Limited		
	<p>I am writing to advise that we have very recently taken over as legal representatives of Severn Trent Water in this matter from Eversheds Sutherland (Clive Mottram was previously dealing with this matter).</p> <p>I have updated the Applicant to advise the same and that we will be unable to provide a detailed response to the questions relevant to our client by today's deadline, but we will provide a response as soon as possible and in any event by early next week.</p> <p>The Applicant is content with this position and we will continue to work with them to agree the protective provisions in Schedule 9 of the draft DCO as well as an agreement between the parties.</p>	<p>Noted. Highways England notes that all but one minor point is agreed with STW. Highways England hopes that the change in legal representation does not cause any delay or material change to what has been agreed. Highways England waits to hear from STW's new lawyers for confirmation that the parties are agreed.</p>

Ref	Comment	Applicant's Response
9 Derbyshire County Council		
1.1	<p>b) As noted at the hearing session on February 18th 2020, 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.</p> <p>In the context of the above, Derbyshire County Council reiterated its concerns in its answer to the Panel's Further Written Questions issued on 19th March 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 place and by whom, so that the Authority can manage and respond to any enquiries made by local residents affected by the works.</p> <p>In the context of the concerns raised above, Derbyshire County Council has reviewed the applicant's Traffic Management Plan particularly Sections 1.1.7, 3.1.7, 5.7.1-4 and 6.3.2-5 regarding proposals for ongoing consultation with the County Council as Local Highway Authority with respect to the disapplication of the County Council's Permit Scheme and is satisfied with the extensive provisions for consultation with the authority that have been set out and identified as the TMP is updated and revised. In particular, it is noted and welcomed that in</p>	Noted and agreed.

Ref	Comment	Applicant's Response
	<p>Section 5.7.4, the TMP indicates that: 'Subsequent versions of this Traffic Management Plan would describe the interactions with stakeholders and the sponsors of any other schemes and describe how these would be addressed. HE, and its Contractor, will collaborate through the Local HAUC (Highways and Utility Committee) coordination meeting. This group has been established for approximately 20 years and is a joint group with Highways England's East Midlands Asset Delivery (EMAD) team, DCC, DCiC and the local statutory Undertakers'.</p> <p>And in Section 6.3.4 that:</p> <p>'There will be occasions when a proposed operation on a traffic sensitive street will fall both within and outside of the DCO's area. In these cases, there will need to be close coordination between the relevant Local Highway Authority and Highways England's Contractor. The process for maintaining this close coordination will need to be agreed between the relevant organisations. It is suggested that this process is documented in a subsequent version of this TMP'.</p> <p>c) Yes it is agreed that Section 6.3.2 of the TMP should read: 'the DCC Permit Scheme'.</p>	
1.2	<p>b) DCC would re-affirm its previous comments that 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.</p>	<p>Highways England's response in [REP12-007] states that the OEMP submitted at Deadline 12 [REP12-002] includes the requirement for a Maintenance and Repair Strategy Statement (MRSS) to be prepared during the detailed design stage, following consultation with the applicable</p>

Ref	Comment	Applicant's Response
	<p>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>Details regarding future maintenance liabilities do not appear to be explicitly set out in the OEMP. For clarity and certainty, it would be beneficial to the County Council if the OEMP did set out a process of how final maintenance and repair liabilities will be identified by the applicant in consultation with the County Council.</p>	<p>local authorities regarding the maintenance and repair responsibilities (as based upon the MRSS [REP6-025] submitted during the Examination). The Scheme is at a preliminary design stage and Highways England does not consider that it is practical to agree the principles for maintenance and repair at this stage; the detail being more appropriately dealt with at the detailed design stage when the specifics are clearer to both Highways England and the local highway authorities.</p> <p>The OEMP is not the appropriate document to include the future maintenance liability information. This specific information will be developed through the detail design process and continue through the construction phase of the Scheme and will be included within all relevant handover documents, this includes the MRSS and the Handover Environmental Management Plan (HEMP) as appropriate. Refer to the Handover for Operation Process Note [REP4-026] - this is where the Highways England PCF document process has been explained. All relevant stakeholders are to be consulted as part of this process to ensure that the Scheme requirements are met.</p>
2.7	<p>a) Derbyshire County Council has reviewed the measures set out in MW – TRA12 in the OEMP and considers that this is an accurate reflection of the discussions that have taken place between the applicant (and their consultants) and Derbyshire County Council and the agreed way forward between the parties to resolve the weight</p>	<p>Noted and agreed.</p>

Ref	Comment	Applicant's Response
	<p>restriction issue on Ford Lane Bridge and potential subsequent maintenance liabilities. Any outstanding concerns (such as agreement of commuted sums) can be addressed through further dialog between the parties, if necessary outside the examination process.</p>	
3.3	<p>d) Yes Derbyshire County Council considers that the locally allocated carbon budgets for Derbyshire are consistent with the UK Government's net zero target.</p> <p>The UK Government has committed to deliver on the Paris Agreement by vigorously achieving its carbon budget and pursuing a target to reduce greenhouse gas emissions to 'net zero' by 2050, ending the UK's contribution to global warming within 31 years. This was enshrined in law in June 2019 through amendments to the 2050 greenhouse gas emissions reduction target in the Climate Change Act 2008 from at least 80% to at least 100%, otherwise known as 'net zero'.</p> <p>Derbyshire's carbon budgets and trajectories The UK carbon budget has been further apportioned to local authority areas, particularly for County Council areas. The recommended budgets reflect the actual emissions from industry and commerce, transport and domestic sectors with a suggested periodic reduction. Each local authority area has been allocated a carbon budget based on 'grandfathering'. A grandfathering approach allocates carbon budgets based on recent emissions data (from 2011-2016). Budgets reflect a</p>	<p>In line with the requirements of the National Policy Statement for National Networks (NPS NN), the assessment of greenhouse gas (GHG) emissions presented in ES Chapter 14: Climate [APP-052] has considered the impact of GHG emissions from the Scheme against the legally binding UK carbon budgets and the UK carbon reduction target. The impact of the GHG emissions in the context of Derbyshire County Council's carbon budget was not therefore considered.</p> <p>GHG emissions from the construction of the Scheme are estimated to be approximately 130,857tCO_{2e}. These arise over the Scheme construction period from 2021 to 2024. The first 18 months of construction results in emissions of approximately 56,081tCO_{2e} and will occur in the Derbyshire carbon budget period 2018 to 2022. This equates to approximately 0.2% of the 27.3 million tonnes CO_{2e} carbon budget and is thus not considered to have a material impact.</p> <p>The remaining Scheme construction emissions results in GHG emissions of approximately 74,776tCO_{2e} which will occur in the Derbyshire carbon budget 2023 to 2027. This</p>

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	<p>local area's particular profile and are consistent with each area's ability to make a fair contribution to the Paris Agreement. The carbon budget for each local authority area is then divided further into carbon budgets for five year periods in-line with the UK carbon budget periods. This allocation produces a carbon emissions pathway or trajectory for each area for the period 2018-2100.</p> <p>The recommended carbon budget for Derbyshire is set out below. Derby City will have its own carbon budget. The County has a maximum cumulative carbon budget of 51.2 million tonnes of CO2 for the period 2018-2100. Budgets periods are aligned with the budget periods in the Climate Change Act and then specific targets are set out for each district and borough council area and aggregated for the County as a whole. Carbon Budgets for Derbyshire County:</p> <p>2018 to 2022: 27.3 million tonnes CO2 2023 to 2027: 12.9 million tonnes CO2 2028 to 2032: 5.9 million tonnes CO2 2033 to 2037: 2.7 million tonnes CO2 2038 to 2042: 1.2 million tonnes CO2 2043 to 2047: 0.6 million tonnes CO2 2048 to 2100: 0.5 million tonnes CO2</p> <p>Derbyshire County Council has been working closely with its local authority partners (8 district and borough</p>	<p>equates to approximately 0.6% of the carbon budget and is thus not considered to have a material impact.</p> <p>In terms of operational GHG emissions, the climate assessment in ES Chapter 14: Climate [APP-052] assesses the variation in GHG emissions arising across the whole of the affected road network. It is therefore not possible to attribute those emissions arising within Derbyshire County Council's boundary. Furthermore, the assessment presents a worst-case scenario that does not fully account for the UK government and local authority policies to decarbonise transportation. A key part of achieving this is to promote the use of electric and other low carbon vehicles. Derbyshire local authorities published in 2019 a Local Transport Plan which is committed to achieving the Derbyshire County Council carbon budgets, a key theme of which is the uptake of electric vehicles. In March 2020 DfT published a report Decarbonising Transport (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878642/decarbonising-transport-setting-the-challenge.pdf) which is a first step towards setting out government's commitment to develop a Transport Decarbonisation Plan. It is envisaged that this will set out in detail what government, business and society will need to aim for in order to reduce emissions across all modes of transport and to achieve net zero emissions for every mode of transport by 2050. The report states that it is expected that a plan will be published in Autumn 2020.</p>

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	<p>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 the 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>Emissions from the Strategic Road Network and how they align with net zero is expected to be considered as part of this government plan.</p>
3.5	<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. Whilst the setting of carbon footprint targets in the OEMP is laudable, it could be argued that the OEMP will only have a very limited impact on carbon emissions in its own right, since in the wider scheme of things, establishing behavioural change in the travel patterns on the part of the travelling public as a consequence of the completion of the scheme, will be likely to have the biggest impact on CO2 emissions.</p>	<p>It is noted that Derbyshire County Council agrees that the proposed measures in the OEMP [REP12-002] are adequate. It is worth noting that Scheme construction GHG emissions equate to approximately 35% of the total lifecycle GHG footprint calculated for the Scheme (refer to ES Chapter 14: Climate [APP-052]). Reduction measures set out in the OEMP therefore do have the potential to have more than a limited impact on carbon emissions.</p> <p>The County Council's point on targets is noted and Highways England, as specified previously, do not consider that it is necessary or practical to set carbon reduction targets. There is currently no approved method for setting carbon targets for strategic road network schemes. For such carbon targets to be robust and meaningful, they need</p>

Ref	Comment	Applicant's Response
		<p>to be based on appropriate evidence of best practice for road schemes and on achieving an identified outcome. As such this would need to be set at a network wide level, not agreed arbitrarily for an individual scheme.</p> <p>Contractors/ suppliers working for Highways England are required to seek to enhance their own performance and demonstrate a reduction in carbon intensity by providing timely and accurate carbon returns. This requirement is formalised contractually with the Highways England contractor as a requirement of the Collaborate Performance Framework (CPF). Contractors must report total emissions quarterly using the Highways Carbon Tool. Emissions intensity should also be reported in CO₂e/£M spend. Contractors receive financial incentives for their performance.</p>
3.6	<p>b) Although the scheme does not specifically include a park and ride scheme, however currently, traffic on the County Council's roads approaching the SRN, including public transport, is subject to delay particularly during peak times. Such delays can be considerable. The scheme(s) will clearly reduce severance and provide substantial benefits in terms of a reduction in delay for all road users. It is anticipated therefore that this will encourage more of a sustainable form of travel for pedestrians and cyclists and make public transport more attractive to both users and operators.</p>	Noted and agreed.

Ref	Comment	Applicant's Response
10 Erewash Borough Council		
3.5	<p>a) <i>Should carbon footprint targets be set in the OEMP to ensure that best practice is followed?</i> EBC has no comments to make.</p> <p>b) <i>Please could the Applicant advise whether the planting of new trees fully compensates for the loss of mature trees from a climate change and carbon sequestration perspective? If not, why not and should it? Please clarify the age of new planted trees considered in the response.</i> Not applicable to EBC.</p>	Noted
5.2	<p><i>Does the revised wording of paragraph MW-G28 of the OEMP [REP10-002] satisfy EBC's concern regarding the condition of the compound when the main works have been completed? If, not, please suggest alternative wording.</i> EBC is satisfied with the revised wording.</p>	Noted and agreed.
6.1	<p>a) <i>Please would EBC set out its reasons for considering that the impact of the proposal on the Local Wildlife Site remains unacceptable in the light of the Applicant's revised assessment?</i> The latest information provided by the applicant in their "Biodiversity Metric Assessment, Alfreton Road Rough Grassland Local Wildlife Site" confirms that the application boundary encompasses 40% of the LWS (1.64ha of 4.09ha). It further confirms that 37% would be destroyed by the construction works (1.51ha of 4.09ha). However, it</p>	<p>a) EBC's comments are responded to in turn below: EBC state "The latest information provided by the Applicant in their "Biodiversity Metric Assessment, Alfreton Road Rough Grassland Local Wildlife Site" confirms that the application boundary encompasses 40% of the LWS (1.64ha of 4.09ha)". It is Highways England's position, and as agreed with Erewash Borough Council (EBC) at Deadline 5, that a biodiversity metric assessment does not form part of the</p>

Ref	Comment	Applicant's Response
	<p>goes on to state that 26% of the site would be restored back to habitat (1.07ha), leaving a permanent loss of only 11% (0.44ha). A professional opinion, in keeping with the original Environmental Impact Assessment, concludes that the most valuable habitat would be preserved, and that consequently the harm to biodiversity is not significant.</p> <p>It is accepted that the best quality habitats on site, the open water and the majority of the seasonally flooded neutral grassland, will not be harmed by the proposed works. Nevertheless, the destruction of 37% of the site is difficult to reconcile with an assessment that the level of harm is not significant. In earlier evidence to the Examination, the applicant has suggested that the proposed restoration of habitat after completion of the main works results in a less significant overall impact on the LWS. However, the biodiversity metric assessment finds that even taking this restored habitat into account, the site would experience a loss of 17% of its biodiversity value due to the lower biodiversity value of the replacement habitats (e.g. amenity grassland in between the carriageways and immature woodland planting on the embankments). The impact on the designated interest of the site is even higher, as neither amenity grassland nor broadleaf woodland form part of the designated interest of the Alfreton Road Rough Grassland LWS. The core habitats, open water and semi-improved neutral grassland, will be reduced in extent by 28% (1.13ha net loss of 4.08ha current provision).</p>	<p>DCO examination process and is not required. It is stressed that the biodiversity metric assessment of Alfreton Road Rough Grassland LWS [REP12-010] was an exercise carried out outside of the DCO process as a guide to the biodiversity-related Designated Fund projects being undertaken for Highways England in the vicinity of the A38 in Derby. The information provided was based on baseline habitat condition data gathered in 2018 and 2017 (plus survey updates as applicable); and the application of a modified Defra v.1.0 Biodiversity metric calculator tool. All biodiversity values referenced are draft and are subject to further review and update.</p> <p>Note: The GIS shape file provided by Derbyshire Wildlife Trust (DWT) for the LWS was amended to align to OS Mastermap to carry out the Biodiversity Metric Assessment. The total area of the LWS was calculated as 4.09ha for the biodiversity metric assessment (in comparison to 4.08ha as reported in ES Chapter 8: Biodiversity [REP9-009]).</p> <p>EBC state <i>"It further confirms that 37% would be destroyed by the construction works (1.51ha of 4.09ha). However, it goes on to state that 26% of the site would be restored back to habitat (1.07ha), leaving a permanent loss of only 11% (0.44ha). A professional opinion, in keeping with the original Environmental Impact Assessment, concludes that the most valuable habitat would be preserved, and that consequently the harm to biodiversity is not significant"</i>.</p>

Ref	Comment	Applicant's Response
	<p>It is respectfully suggested that a net loss of 28% of the designated habitat on this LWS will cause a significant impact upon it.</p> <p><i>b) Does the Applicant's Technical Note dated 13 March 2020 (referred to in REP9-029 paragraph 5.1) and potential provision of bio-diversity enhancements through the Designated Funds project affect EBC's position?</i></p> <p>The use of designated funds to create further biodiversity enhancements in the locality is welcomed. However, Derbyshire Wildlife Trust advise that the replacement habitats proposed at Ford Lane will not provide alternative habitat for the plant and bird species negatively impacted at the Alfreton Road Rough Grassland LWS. Works to enhance the biodiversity value of the Alfreton Road site, and to ensure its long term maintenance, would therefore be preferable.</p>	<p>Approximately 37% of the LWS (approximately 1.51ha of 4.08ha) will be impacted by the Scheme; comprising temporary and permanent impacts. Refer to Table 1 of the Technical Note Ecological Impact Assessment of Alfreton Road LWS [REP4-023].</p> <p>It is noted that of the approximate 1.51ha area impacted, the area of temporary and permanent loss quoted in the Biodiversity Metric Assessment Technical Note (1.07ha temporary loss; 0.44ha permanent loss) is different to the figures reported in the Technical Note concerning the assessment of ecological effects on the LWS as reported in the Scheme Environmental Statement (ES) (0.87ha temporary loss; 0.64ha permanent loss); a difference of 0.2ha. This is because the net losses detailed in the biodiversity metric assessment report takes account of all semi-natural habitats created as a result of the Scheme, regardless of their <i>functionality</i> and conservation objectives relevant to the LWS, including amenity grassland and broadleaved woodland within the Scheme central reservation (approximately 0.2ha). Amenity grassland and broadleaved plantation woodland are determined to still have some biodiversity value. This approximately 0.2ha area of habitat is considered as permanent loss of area of the LWS within the ecological impact assessment as this area of habitat would not <i>function</i> as part of the LWS (it will be separated by the slip road) or meet the conservation objectives of the LWS.</p>

Ref	Comment	Applicant's Response
		<p>EBC state: <i>"It is accepted that the best quality habitats on site, the open water and the majority of the seasonally flooded neutral grassland, will not be harmed by the proposed works. Nevertheless, the destruction of 37% of the site is difficult to reconcile with an assessment that the level of harm is not significant"</i>.</p> <p>The area of the LWS to be retained (outside of the Scheme boundary) supports the core biodiversity importance of the LWS. The core area of biodiversity importance is defined as the floodplain semi-improved grassland i.e. the inundation area and drawdown zone, which is of most biodiversity interest botanically and for ornithology. This conclusion is supported by survey work undertaken for botany and birds as referenced and assessed in ES Chapter 8: Biodiversity [REP9-009]. The LWS was assessed in 2018 and 2015; using criteria taken from the DWT Local Wildlife Assessment Guidance. Additionally, the site has been assessed for breeding and wintering birds. Refer to paragraph 8.10.68 of the ES Chapter 8 [REP9-009]: <i>"The grassland that would be permanently lost is typically dry and has some scattered scrub, which makes the area less suitable for species such as lapwing, possible little ringed plover and oystercatcher. The typically flooded southern part of this field is the optimal habitat which supports these and other wetland birds. The southern habitat area would not be directly affected by the Scheme"</i>.</p>

Ref	Comment	Applicant's Response
		<p>EBC in their response accept that the best quality habitats will not be harmed by the proposed Scheme construction works. This area will not be impacted by the Scheme.</p> <p>The area of the LWS to be impacted by the Scheme (approximately 37%, approximately 1.51 ha of the 4.08ha) is not the core area of the LWS. ES Chapter 8: Biodiversity [REP9-009] reports the Scheme effect on the LWS as being non-significant (neutral). As detailed in the document submitted during the examination (Ecological Impact Assessment of Alfreton Road LWS Technical Note [REP4-023], the conclusion that there will be a non-significant (neutral) effect on the LWS is based on the reduced value of much of the area to be lost to the Scheme through the presence of New Zealand pigmyweed <i>Crassula helmsii</i> and given that the core biodiversity value of the LWS area is in the area to be retained, namely the floodplain semi-improved grassland of botanical and ornithological interest. The area to be lost temporarily and then reinstated will comprise semi-improved species-rich grassland and broad-leaved woodland with non-native invasive plant species controlled within the works area. It is noted that even if the ES reported the effect on the LWS as being slight adverse, this would still be a non-significant effect and would not change the mitigation approach.</p> <p>EBC state: <i>"In earlier evidence to the Examination, the applicant has suggested that the proposed restoration of habitat after completion of the main works results in a less</i></p>

Ref	Comment	Applicant's Response
		<p><i>significant overall impact on the LWS. However, the biodiversity metric assessment finds that even taking this restored habitat into account, the site would experience a loss of 17% of its biodiversity value due to the lower biodiversity value of the replacement habitats (e.g. amenity grassland in between the carriageways and immature woodland planting on the embankments). The impact on the designated interest of the site is even higher, as neither amenity grassland nor broadleaf woodland form part of the designated interest of the Alfreton Road Rough Grassland LWS. The core habitats, open water and semi-improved neutral grassland, will be reduced in extent by 28% (1.13ha net loss of 4.08ha current provision). It is respectfully suggested that a net loss of 28% of the designated habitat on this LWS will cause a significant impact upon it".</i></p> <p>A biodiversity metric calculation as presented in [REP12-010] measures the biodiversity value of a site pre and post development by measuring the biodiversity value of all habitats onsite in "biodiversity units". The biodiversity metric assessment reports that there would be a net change in 17% biodiversity units. The percentage loss of area and biodiversity units cannot be directly compared.</p> <p>Use of a biodiversity metric in this context, to contextualise the significance of an effect occurring to a designated site, has a number of flaws. The calculation of biodiversity units pre and post Scheme development does not account for the</p>

Ref	Comment	Applicant's Response
		<p>conservation objectives of the designated site, the protected or notable species that the site supports, nor the improvements that could be delivered by removing and preventing the future spread of a non-native invasive plant species within the Scheme boundary. In terms of the semi-improved grassland, the metric does not differentiate between the core habitat that supports the majority of the ornithological interest of the site, and the much less relevant grassland which will be lost during Scheme construction. Both are given the same baseline distinctiveness and condition scoring and therefore both contribute equally to the total biodiversity units of the site, when in reality one has much greater importance for biodiversity than the other. The metric does not account for any benefits that woodland screening can bring to the ornithological interest of the site post development. If a metric was to be used to determine the significance or otherwise of an effect to the designated site, then it would need to account for the above through the use of additional multipliers that would in reality then show that the retained area of the designated site supports a much greater percentage of the overall biodiversity value of the site, and the loss of the habitats within the area to be developed constitutes a much smaller percentage than the 17% stated.</p> <p>EBC state that the core habitats, open water and semi-improved neutral grassland will be reduced in extent 28%</p>

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		<p>(1.13ha net loss of 4.08ha). However, this appears to contradict EBC's earlier statement that <i>'it is accepted that the best quality habitats on site, the open water and the majority of the seasonally flooded neutral grassland, will not be harmed by the proposed works'</i>. Highways England argues that there would be 0% reduction in the extent of core habitat within the LWS. As stated above, the core area of biodiversity importance will be retained.</p> <p>EBC has limited their calculation to the semi-improved grassland only (1.51ha of semi-improved grassland impacted within the LWS, of which 0.38ha would be reinstated to semi-improved grassland = net loss of 1.13ha loss of semi-improved grassland). However, a biodiversity metric calculation considers all habitats onsite pre and post development, including the retained and created habitats post works. Although EBC excluded woodland and other habitats from their calculation, they still contribute some biodiversity value.</p> <p>When compensating for biodiversity loss CIEEM (2019) refers to compensating for the same type of features as those affected and seeking to achieve at least equivalent levels of ecological functionality. Therefore, professional judgement must be applied. The following professional judgements must be considered:</p> <ul style="list-style-type: none"> • The area to be retained has the core biodiversity importance of the LWS, namely the floodplain semi-improved grassland (i.e. the inundation area/ drawdown

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		<p>zone) of most biodiversity interest botanically and for ornithology. This conclusion is supported by survey work undertaken for botany and birds as referenced and assessed in ES Chapter 8: Biodiversity [REP9-009]. EBC in their response accept that the best quality habitats on site, the open water and the majority of the seasonally flooded neutral grassland, will not be harmed by the proposed Scheme works. This area will not be reduced in any extent.</p> <ul style="list-style-type: none"> • The woodland habitat to be created by the Scheme (0.49ha) would provide screening for birds utilising the site, noting that advanced planting of this shelterbelt during Scheme construction is also proposed. • Control of non-native invasive plant species in the works area and management of the habitats to be created (for up to 5 years post-construction) will be an improvement on the existing situation. Managing the invasive species within the Scheme boundary aids in maintaining the status of the retained habitats. <p>b) As stated in Highways England's response to the FWQ responses at Deadline 2 (FWD 1.110 [REP2-020]) the Scheme has aimed to minimise the extent of permanent habitat loss within Alfreton Road Rough Grassland LWS. The Scheme avoids the loss of habitat in association with the inundation drawdown zone which is of most biodiversity importance botanically and for birds using the field. It is not considered appropriate that the Scheme secures the</p>

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		<p>protection and enhancement of the wider LWS. The land is in private ownership and the long-term management of the site cannot be secured by Highways England. During the Examination phase the Examiners have been very clear that Highways England should only be acquiring land (via CPO powers) that is needed for the Scheme – securing the LWS unaffected by the Scheme for protection and (for the reasons stated) enhancement is not considered to be essential mitigation for the Scheme.</p> <p>The enhancement of the wider LWS area could be explored outside of the DCO process, for example, through the ongoing Highways England Designated Fund projects as referenced in ES Chapter 8: Biodiversity [REP9-009] in partnership with stakeholders.</p> <p>It is noted that EBC are generally supportive of Highways England in exploring opportunities for ecological enhancement in the vicinity of the LWS via Highways England Designated Funds. A site at Ford Lane was identified by Derby City Council as a potential candidate site for local ecological enhancement proposals. If Highways England determine that Designated Funds projects are appropriate, Highways England would be happy to work with EBC (and DWT) to further develop these biodiversity proposals to provide additional enhancements for biodiversity local to the Scheme, and take into account any habitat requirements to support particular target species of interest or concern. The</p>

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		replacement habitats currently proposed at the Ford Lane site are only indicative at this stage.
11 Derby City Council (DCiC)		
1.1	The DCO and SoS has the power to suspend DCiC's permit scheme, in order to deliver the A38 Derby Junctions scheme. DCiC will be notified under the process set out in Articles 11 and 12 of the DCO. In addition, the TMP has been updated to ensure that DCiC is consulted on any additional processes it may require as the Scheme's design progresses and as part of the full TMP once this detail is collated and submitted to the SoS for approval. On the basis of the ongoing engagement and assurances given by the applicant, DCiC is content for its permit scheme to be disapplied	Noted and agreed.
1.2	a) Regulation 14 clearly requires that the flood storage area is maintained. HE's response to this question states the OEMP submitted at D12 includes the commitment that HE will ensure that the flood storage areas to be installed at Kingsway junction (including those within the Kingsway hospital site) are appropriately maintained and fulfil their flood risk mitigation function (with maintenance being in accordance with the HEMP). DCiC therefore believe that OEMP should include the requirement to develop a detailed maintenance plan indicating who will be responsible for the various aspects of the maintenance. This will ensure the maintenance procedures are fully developed at the CEMP stage once the detailed design	a) As detailed in Highways England's response to this question in [REP12-007], the OEMP submitted at Deadline 12 [REP12-002] includes the specific commitment that Highways England will ensure that the flood storage areas to be installed at Kingsway junction (including those within the Kingsway hospital site) are appropriately maintained and fulfil their flood risk mitigation function (with maintenance being in accordance with the Handover Environmental Management Plan (HEMP). Highways England's response in [REP12-007] also states that the OEMP submitted at Deadline 12 [REP12-002] includes the requirement for a Maintenance and Repair Strategy

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	<p>has been completed and taken forward into HEMP and ensure that there is better clarity.</p> <p>b) From a highway asset management perspective, and as identified in REP9-30 to Question 1.6, yes, DCiC is content that there is a process to secure a detailed Inventory. The OEMP submitted at D12 includes the requirement for a Maintenance and Repair Strategy Statement (MRSS) to be prepared during the detailed design stage, following consultation with the applicable local authorities regarding the maintenance and repair responsibilities. The Scheme is at a preliminary design stage and the detail is more appropriately dealt with at the detailed design stage when the specifics are clearer to both HE and the local highway authorities.</p>	<p>Statement (MRSS) to be prepared during the detailed design stage, following consultation with the applicable local authorities regarding the maintenance and repair responsibilities (as based upon the MRSS [REP6-025] submitted during the Examination). The Scheme is at a preliminary design stage and Highways England does not consider that it is practical to agree the principles for maintenance and repair at this stage; the detail being more appropriately dealt with at the detailed design stage and continue throughout the construction stage, when the specifics are clearer to both Highways England and the local highway authorities. Refer to the Handover for Operation Process Note [REP4-026] - this is where the Highways England PCF process has been explained. All relevant stakeholders are to be consulted as part of this process to ensure that the Scheme requirements are met.</p> <p>b) Noted and agreed.</p>
1.3	<p>The recommended changes have been made following discussion with DCiC. ref schedule 3 Part 6 & 7 in the DCO</p>	<p>Noted and agreed.</p>
1.4	<p>The recommended changes have been made through discussion with DCiC. See schedule 3 Part 7 in the DCO.</p>	<p>Noted and agreed.</p>
1.6	<p>Inclusion of the commitment in the OEMP indicates HE's serious commitment to try and retain the tree in a viable state, noting that compliance with the OEMP is a DCO</p>	<p>Noted and agreed.</p>

Ref	Comment	Applicant's Response
	<p>Requirement. We also note the commitments made to the Examiners in the document Veteran Tree Loss T358 [REP7-008].</p> <p>In order to provide DCiC with some additional comfort, HE also propose to amend the OEMP to include additional text to require consultation with DCiC regarding retention of the tree and canopy treatments which is welcomed and DCiC are content with this approach</p>	
1.9	<p>Impacting upon the veteran tree (whilst aiming to retain the tree with a reduced root system and canopy), would be preferable to further impacting upon Markeaton Park and its associated trees and habitats. DCiC confirm we are happy with HE's approach</p>	Noted and agreed.
2.1	<p>Further to the response given in REP9-30 to Question 2.1, 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. DCiC confirm we are happy with HE's approach.</p>	Noted and agreed.
2.3	<p>DCiC do not have any pre-conceived ideas on time or circumstances. We are happy for the applicant to suggest a broad structure to the arrangement in the OEMP. DCiC understands HE's response states that the OEMP being submitted at D12 states that the Customer and Stakeholder Manager will spend a minimum of 1 day per week in DCiC's offices. DCiC would prefer more physical</p>	<p>The 1 day per week commitment as included in the OEMP [REP12-002] will be from June 2020 onwards and as the Scheme progresses i.e. it advances closer to the start of the construction; this will increase as and when required. Highways England is committed to working with DCiC to communicate with stakeholders.</p>

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	engagement but accept this as the absolute minimum.	
2.4	<p>The TMP identifies a mechanism to prioritise the movement of blue light vehicles through the works and for the need to agree diversion routes with the Royal Derby Hospital. DCiC are content with this approach.</p> <p>Further to the response given in REP9-30 to Question 2.4 on the operation of the network around the Derby Royal Hospital, if there are problems that fundamentally have an impact on the operation of the hospital, the Contractor will have to deal the issues and adjust their traffic management during construction.</p> <p>As a direct consultee to the TMP and this scheme, are the Derby Royal Hospital happy with the TMP, access strategy and the communication that they have had with the HE/Contractor? What is their opinion on the need for a dedicated passage for emergency vehicles?</p>	Noted and agreed.
2.7	Yes DCiC is content with the measures secured in the OEMP. The HE has always promoted the need for a scheme here, as such they have shown their intension to deliver an improvement.	Noted and agreed.
3.3	<p>c) DCiC is working on a draft interim Climate Change Action Plan which will identify a local carbon budget based on nationally available data sources.</p> <p>d) The aim of the interim Action Plan is not only to identify</p>	<p>c) Noted</p> <p>d) Noted</p>

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	<p>local emissions and an associated carbon budget for Derby but will also set a carbon reductions trajectory as part of the Governments net zero target. The city will effectively aim to become zero carbon in advance of 2050.</p>	<p>DCiC's response aligns with Highways England response to this question [REP12-007] in that our response indicates that local carbon budgets published by the Business, Energy & Industrial Strategy (BEIS) have been disaggregated from the national carbon budgets to assist local authorities to set local carbon targets. DCiC has declared a climate emergency and is planning to declare a net zero target to be met before 2050. No target has yet been set. UK Carbon Budgets are legally binding whereas the disaggregated budgets applied at a Local Authority level are not.</p> <p>The National Policy Statement for National Networks (NPS NN) states that road development impacts should be seen against the UKs carbon budgets:</p> <p><i>"3.8 The impact of road development on aggregate levels of emissions is likely to be very small. Impacts of road development need to be seen against significant projected reductions in carbon emissions and improvements in air quality as a result of current and future policies to meet the Government's legally binding carbon budgets and the European Union's air quality limit values. For example:</i></p> <ul style="list-style-type: none"> <i>• Carbon – the annual CO₂ impacts from delivering a programme of investment on the Strategic Road Network of the scale envisaged in Investing in Britain's Future amount to well below 0.1% of average annual carbon emissions allowed in the fourth carbon budget.⁴⁴ This would be</i>

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		<p><i>outweighed by additional support for ULEVs also identified as overall policy."</i></p> <p>Decarbonisation of transportation including the use of the road network is being driven at a national level. The UK government policy on how transport emissions will align with UK policy on net zero will to be set out in their Transport Decarbonisation Plan, which the government has stated is due to be published later this year.</p>
3.5	<p>a) It would be useful to set carbon footprint targets in the OEMP to guide the detailed design and construction phase which needs to be challenging to ensure that best practice is followed to drive down the GHG burden. This is particularly relevant in the 'new normal' post Covid world.</p> <p>The operation of the scheme is far more difficult to effectively monitor/manage and rests with the behaviour of the public along with advances in vehicle technology with electric vehicles and cleaner fuels (including hydrogen) driving down tail gate emissions</p> <p>b) It is difficult to quantify if the replacement trees will take up the same amount of carbon (there is lots of research in this area) but in principle the scheme should be looking to more than compensate for this natural service.</p>	<p>a) The Applicant does not think this is necessary or practical and is not aware of any previous Highways England projects where such targets have been required. There is currently no approved method for setting carbon targets for strategic road network Schemes. For such carbon targets to be robust and meaningful they need to be based on appropriate evidence of best practice for road schemes and on achieving an identified outcome. As such this would need to be set at a network wide level, not agreed arbitrarily for an individual scheme. The OEMP [REP12-002] already includes suitable measures for the appropriate control of GHG emissions during the Scheme construction phase.</p> <p>b) The planting of new trees by the Scheme does not fully compensate for the loss of mature trees in terms of loss of carbon sequestration. The GHG assessment reported in ES Chapter 14: Climate [APP-052] found that total carbon emissions from the Scheme are not deemed to be significant in the context of the current UK carbon budgets.</p>

Ref	Comment	Applicant's Response
		<p>The assessment demonstrates that the Scheme's GHG impact as a proportion of total UK carbon emissions is negligible, such that it can be considered to be immaterial. Therefore, it is not considered necessary to fully compensate for the loss of carbon sequestration due to the loss of mature trees through planting of new trees. It is also worth highlighting that Highways England cannot CPO land specifically for tree planting to increase carbon sequestration.</p>
3.6	<p>There are two different questions being asked here. The ExA's question PD-18 was asked in the context of operational impact of the scheme, Climate Change and offsetting CO2. From this perspective Highways England is a Government owned company that is implementing a strategic transport scheme on the Strategic Road Network based on national policy and strategy. From this perspective it has to be considered against the rest of DfT's transport strategy and funding programme for all transport at a local and national level, including what it spends on public transport, cycling and walking.</p> <p>The National Policy Statement for National Networks and paragraphs 3.19 and 3.20, which are cross referenced in paragraph 5.205, refers to accessibility, severance, social inclusion and the provision for the mobility impaired. These statements refer to the physical design of infrastructure schemes and the vehicle stock of public transport that run on them.</p>	Noted and agreed.

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	<p>From these two perspectives, Highways England doesn't have responsibility for the operation of other transport networks but does have a duty to ensure that the other transport users that cross its network are provided for within the scheme.</p> <p>This is different to the issue of providing a behaviour change strategy to help manage construction impacts. Such initiatives are not usually considered in the costs of construction of major schemes on the Strategic Road Network. However, there is an opportunity here to trial initiatives and the HE to consider the benefits and potential inclusion in other schemes. Any long term shift in travel habits will underpin the longevity of economic journey time benefits created by the scheme.</p>	
4.2	<p>Based on the information available and notwithstanding the various modelling uncertainties previously outlined, DCiC agrees that the modelling does appear to suggest that significant air quality effects during construction are unlikely, within the planning context.</p> <p>While some large increases in pollutant concentrations are predicted, these are expected to occur in locations close to the A38 carriageway where there is an absence of receptors which would be considered relevant against annual average concentrations.</p>	Noted

Ref	Comment	Applicant's Response
9.4	<p>a) The proposed alignment of the scheme is related to the physical and environmental landscape constraints that it is located within. As such, the debate around the loss of the houses on Queensway is set against the loss of high landscape quality of land take from Markeaton Park. In general planning terms loss of the housing is deemed the lesser cost.</p> <p>In addition, the land acquired by the CA of the A38 properties is where the main surface water attenuation features are located. It is not clear that there is an alternative location for these features given their size and requirement for access for maintenance.</p> <p>From a Highway perspective, the geometric design and assessment of the scheme is governed by the standards set out in DMRB for motorways and all-purpose trunk roads. Highways England produces and publishes these standards, and internally regulates any geometric departures. As such, it is not for DCiC to contest the alignment of the scheme or suggest an alternative unless there is a fundamental safety or planning issue with the proposals. Which there is not.</p> <p>DCiC has previously expressed concern at leaving these properties in situ overlooking a wider highway corridor and the resultant open parkland aspect as a result of significant tree losses. It would be a very poor amenity for residents of those properties and a significant cost to the</p>	<p>Agreed</p> <p>To reassert, Highways England is of the view that the Scheme as proposed is what the SoS needs to determine and no alternative alignments are being proposed. This Scheme is an alteration to an existing road and not the construction of a new road. No other party taking part in the Examination has suggested a realignment.</p>

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	city for the loss of the tree screen and backdrop for users of the park.	
9.5	<p>Some weight has to be given to the safety review, which has been produced by a third party for the HE. However, the design note 8.52(a) sets out the justification for the access design and the basis of this as defined in DMRB GD304. The HE has set out clear reasons for the design decisions that they have taken. The basis of these safety decisions is the proximity of the existing access of 255 and 253 to the new signal stop line, design constraints of moving the proposed stop line and the imposition and safety of a left in and left out only access for 255 and 253.</p> <p>However, the safety review identifies the need for some form of right turn harbourage for the all movement access proposal. Considering this is a new scheme this should be provided to reduce the potential for shunts.</p>	<p>Noted and agreed.</p> <p>The need for some form of right turn harbourage for the all movement access will be considered at the detailed design stage in consultation with DCiC.</p>
9.14	<p>This question refers to an ongoing debate about temporary possession of land and Compulsory Acquisition of land. HE's position is that whilst they insist the period specified within the document remains at 14 days, where longer notice periods are required they will be mindful and open to extending this where reasonably required and appropriate to do so agreed on an individual basis as appropriate. This gives DCiC comfort that the notice period can therefore be extended if we should require this.</p>	<p>Noted and agreed.</p>

Ref	Comment	Applicant's Response
12	Derby Climate Coalition	
6.2	<p><i>Please provide a copy of the work undertaken by Sheffield University [cited in REP9-039] on the effect of the scheme on otters.</i></p> <p>No work has been undertaken that is specific to this road scheme but there are many research papers that show that otters have a very large territory - ranging from 2-5km for females and their young, to 10 – 21km for males.^{1 2} One study in Scotland showed a male otter had a territory of about 65km!³</p> <p>We have photographic evidence of otter prints found in the Darley Abbey nature reserve (the first record on the reserve which suggests that otters are establishing new territories in this area) from last April (2019).</p> <p>As this nature reserve is very close to Little Eaton junction this is a huge concern.</p> <p>The AECOM 2016 survey also showed evidence of otters around Markeaton Park.</p> <p>I am currently waiting to see the 2017 and 2018 Water Vole and Otter Survey results deemed by HE as confidential. This suggests evidence of these species was found.</p> <p>There is much research related to road kill of otters and the following points are worth noting:-</p>	<p>Otter surveys have been undertaken to support the Scheme ecological impact assessment as reported in ES Chapter 8: Biodiversity [APP-046] – refer to ES Appendices 8.11a/b [APP-205] and [APP-206] (noting that these appendices are confidential as they contain sensitive information about protected species subject to potential persecution), plus ES Figures 8.28 [APP-119] and 8.29 [APP-120]. With the mitigation measures included in the Scheme design (refer to ES Chapter 8: Biodiversity [APP-046] and the Environmental Masterplan figures (ES Figure 2.12C/ D [APP-068])), the Scheme is assessed to have a non-significant (neutral) effect on otter in the short to medium term and a potential moderate significant beneficial effect in the long term (due to enhancements to Dam Brook at Little Eaton junction).</p> <p>The field survey area for otter comprised 250m from the Scheme boundary. No otter holts were found or confirmed across the Scheme. Foraging and commuting otter were present (or assumed to be present) on all watercourses surveyed within 250m of the Scheme (except Pb1- a drain at Little Eaton junction).</p> <p>It is noted in the response from Derby Climate Coalition that otter prints have been recorded at Darley Abbey nature reserve (referred to as Darley and Nutwood Local Nature Reserve/ Nutwood and Darley Abbey Local Wildlife Site as shown on ES Figures 8.3 [APP-097] and 8.5 [APP-099]),</p>

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	<ul style="list-style-type: none"> • Trunk and A-roads accounted for 57% of road traffic accident records, even though they comprise only 13% of the road network. • A 100-m wide zone surrounding fresh water and the coast accounted for 67% of all casualty records. Measures to reduce road mortality should target this zone.⁴ • 91% of accidents occurred where a road crossed a watercourse which suggests that substantial reductions in road mortality could be achieved by improving the design of road crossings of watercourses. • We suggest that the optimal approach to road crossing design is to maintain a continuous, and where possible, natural bank above the level of high flows, using either wide-span bridges, over-sized culverts or artificial ledges. • The use of otter-proof fencing may be required to reduce mortality where roads pass close to watercourses, but care must be taken that this does not create a barrier to all movements of otters and other wildlife. <p>A road scheme of this magnitude will adversely affect the local otter population which is obviously establishing itself in this area. The need for protection and mitigation where roads pass over watercourses is key, especially now we have one flood after another due to climate change. The Derwent flowing under the A38 bridge near Ford Lane would be impassable during those times so otters would likely be forced to find alternative routes north / south on an increasingly frequent basis.</p>	<p>located approximately 400m to the south of the Scheme adjacent to the River Derwent. Evidence of otter foraging and commuting (otter prints and spraints) were recorded during surveys conducted by Highways England throughout the River Derwent within the Scheme boundary and within 250m upstream and downstream of the A38 bridge over the River Derwent.</p> <p>There are no records of otter being found on the A38 from desk study information.</p> <p>It is considered that there is no requirement for mammal ledges to be installed within the Scheme culvert designs. At Kingsway junction, the length of Bramble Brook that will be culverted already connects to a lengthy culvert which extends below Derby. The unnamed tributary to be culverted near Dam Brook at Little Eaton junction will not connect optimal otter habitat, or known otter foraging and commuting routes. It is considered that there is no requirement for permanent otter fencing to be installed along the Scheme. The purpose of permanent otter fencing is to direct otters away from roads to alternative crossing routes within their home range (Highways Agency, 2001) – this is not considered to be applicable for the Scheme as no crossing routes for otter will be permanently severed by the Scheme with crossing routes for otters being retained. The River Derwent (flowing under the A38 bridge) will remain passable for otters during and post Scheme construction.</p>

Ref	Comment	Applicant's Response
		<p>No works are proposed to the A38 bridge over the River Derwent or the adjacent banks.</p> <p>It is expected that no strengthening works will be required at the Ford Lane Bridge over the River Derwent; however upon receipt of the structural assessment verification results, in the unlikely event that the bridge is not capable of carrying a 40T vehicle, Highways England will propose an alternative solution (such as a strengthening Scheme) to be progressed during the detailed design stage (refer to OEMP [REP12-002] MW-TRA12). If strengthening works are proposed on the bridge, appropriate mitigation measures will be put in place for otter, including for example ensuring one side of the riverbank remains unobstructed during the works ensuring safe passage of otter along the river during the construction works.</p> <p>Pre-commencement otter surveys will be undertaken to reaffirm the presence/ absence of otter within the Scheme footprint prior to the start of Scheme construction works and confirm the necessary mitigation requirements (as detailed in ES Chapter 8: Biodiversity [APP-046] and the OEMP [REP12-002]). Construction working areas will be fenced off, with access ramps provided within areas of excavation overnight to enable any otters to escape. In addition, water pollution prevention control measures and standard best practice measures to control construction dust and noise will be implemented during the construction phase via the CEMP (refer to the OEMP [REP12-002]), thereby</p>

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		minimising potential impacts on otters and their food sources during the Scheme construction phase. Given the above, Highways England disagrees with the comment that <i>"a road scheme of this magnitude will adversely affect the local otter population"</i> .